

administration, all the apparent difficulty of the case disappears. She is not only entitled to the exclusive beneficial enjoyment of her separate estate, but she has the uncontrolled management and administration of it. She not only does not require the consent of her husband to any act of administration, but her husband's consent even if given is utterly valueless. Nay, she may act in direct opposition to his advice and wishes.

Now, observe what is involved in the administration of an estate. There is not only the collection of the income and the disposal of it, but there are a great many incidental acts connected with the administration of estates, and particularly of heritable estates, which carry along with them the necessity of contracting obligations and incurring risks, and all that is necessarily involved in the position of a married woman situated as Mrs Biggart is. She is also entrusted necessarily with the investment and reinvestment of funds, and it is impossible to doubt that in transactions of that kind risks must be incurred of a greater or less kind. In short, it appears to me that my brother Lord Deas has perfectly well described the position of a married woman in reference to her separate estate when he says her position is just the same as that of an unmarried woman. But not universally. She is protected as a married woman except in so far as concerns her separate estate. Personal obligations contracted altogether unconnected with her separate estate will not bind her. Cautionary obligations, for example, in which she becomes surety for some person or other that he shall either pay a sum of money or faithfully perform the duties of an office would not be obligatory upon her merely because she had a separate estate. But whatever obligations she incurs in the enjoyment and administration of that separate estate itself are, in my opinion, binding upon her just as if she were an unmarried woman.

It has been contended that her powers must be limited to the extent that she cannot embark in contracts of risk of such a nature that not only the funds which she invests in these contracts may be lost, but also her whole separate estate. I can only say with my brother Lord Mure that I know of no authority for such a proposition, and I think it is founded neither in law nor reason.

It is said that this is a contract of great risk into which this lady entered. It is so undoubtedly, as the result has proved; but why she may not embark her funds in the purchase of shares in a joint-stock company as much as in any other kind of investment I am quite unable to see. Unless it can be held that the contract of partnership into which she entered is on the part of a married woman situated like her an absolute nullity, I do not see very well how it is possible to resist the conclusion that the contract is absolutely binding upon her. It would be a very strong thing indeed to say that in investing a portion of her separate estate in this particular form she has done a thing which cannot bind her merely because the risk involved is considerable. And yet, unless the act which she then did is absolutely null, how can she escape the consequences of it? She has become a partner of this bank unless the act is a nullity, and in becoming a partner of this bank she must bind somebody to meet the liabilities of the bank *pro rata*. She certainly

did not bind her husband by what she has done, because it may be done, as I said before, not only without his consent or knowledge, but against his express desire; and therefore I am very clear that she could not bind her husband in doing it. But if she could not bind her husband, does it not of necessity follow that she must have bound herself? and if so, there is an end of the question. I think there is a great deal of force in what has been suggested by my brother Lord Mure, that there is substantially no distinction between the case we are dealing with and the case of a married woman engaging in trade who is living separate from her husband. Why is it that a woman living separate from her husband may engage in trade, and may bind herself in regard to trade obligations? It is not merely out of consideration for her destitute condition, as was argued on the part of the petitioner. That is one consideration no doubt,—that she must turn her attention to earn her living somehow;—but it also proceeds upon this, that the husband being from his absence incapable of exercising his curatorial power, and the wife being entirely deprived of his advice and assistance, must act for herself as an independent person. She must for the time, and while the separation lasts, be considered to be *sui juris*. Any distinction in principle between that and a woman who having a separate estate in the management and disposal of which her husband cannot possibly interfere, I think there is not; and what she does in reference to that separate estate must be dealt with just upon the very same principle as what she does in the way of engaging in trade when living separate from her husband.

I should not have thought it necessary to add anything to the very able judgments which your Lordships have given had the case not been treated, and very justly treated, as one of great practical importance, but I am bound to say that after the fullest consideration I do not entertain the slightest hesitation in concurring with the judgment proposed.

The Court accordingly directed the name of Mr Biggart to be removed from the list of contributories, and refused the petition for Mrs Biggart and husband.

Counsel for Petitioner—Dean of Faculty (Fraser)—Jameson. Agents—Ellis & Blyth, W.S.

Counsel for Respondents—Kinnear—Balfour—Asher—Lorimer. Agents—Davidson & Syme, W.S.

Saturday, January 18.

#### FIRST DIVISION.

CITY OF GLASGOW BANK LIQUIDATION  
—(ROBERT COCHRAN'S CASE) ROBERT  
COCHRAN *v.* THE LIQUIDATORS.

*Public Company—Winding-up—List of Contributories—Circumstances not inferring Liability of a Party Assumed as Trustee.*

By an informal deed of assumption C was assumed as additional trustee by S, the sole

accepting trustee and executor under the trust-deed of a deceased party. Part of the estate consisted of City of Glasgow Bank stock. The trust-deed and the deed of assumption were accordingly presented by C to the bank officials for the purpose of registration in their books, but the transfer clerk replied that that could not be done unless the stock certificate were produced. It was not produced, C on inquiry having discovered that the certificate had been pledged for advances which he declined to redeem, and having intimated so to the bank, the deed of assumption was left in the hands of the bank, and a docquet was afterwards added by them to the former entry in the stock ledger, to the effect that C had been "assumed as a trustee." His name was never put upon the register or published in the list of shareholders. The dividends continued to be paid in the name of S, the executor, but were uplifted by C, not, it was proved, as one of two joint-owners of the shares, but as the mandatory of S, under which title also he signed the receipts. On the liquidation of the bank C's name was put upon the list of contributories by the liquidators as "trustee of C." In these circumstances the Court held that C's name must be removed from the list, as there was no evidence that he had intended to have himself registered along with S.

Observed (per Lord Deas and Lord Shand) that, even conceding the deed of appointment to have been irregular, still if it had been registered in the bank's books at C's request he must have remained subject to the responsibilities of a partner.

Counsel for Petitioners—Dean of Faculty (Fraser)—Vary Campbell. Agents—Mitchell & Baxter, W.S.

Counsel for Respondents—Kinnear—Balfour—Lorimer. Agents—Davidson & Syme, W.S.

Thursday, January 23.

## FIRST DIVISION.

### CITY OF GLASGOW BANK LIQUIDATION— (SINCLAIR'S CASE) SINCLAIR (STOTT'S TRUSTEE) v. THE LIQUIDATORS.

Trust—Resignation of Trustee—Trusts Act 1867 (30 and 31 Vict. c. 97), sec. 10—Liability of Trustee as Partner of Public Company where Resignation not intimated.

A trustee who was registered as partner of a joint-stock bank communicated to his co-trustees his desire to resign, and through the agent to the trust executed and recorded a minute of resignation in terms of section 10 of the Trusts (Scotland) Act 1867. The minute was intimated neither to his co-trustees as required by the Act, nor was the bank in any way made aware of the resignation.

Upon the liquidation of the company, held (distinguishing the case from Oswald's

case (the deceased trustee) *supra*, p. 221), that as intimation to the bank was essential in order to complete the resignation, the name of the trustee fell to be placed upon the list of contributories.

Question—(1) Whether in the above circumstances the petitioner had effectually resigned as in a question with his co-trustees? and (2) Whether the resignation had the effect of transferring the title to the trust funds to the remaining trustees without the necessity of a conveyance applicable to the particular property in question?

The petitioner in this case was one of the trustees under the trust-disposition and settlement of the late Joseph Hood Stott, who was at the time of his death possessed of stock in the City of Glasgow Bank to the amount of £200. The trustees were also nominated executors, and were duly confirmed as such. The stock of the bank belonging to the trust was thereafter transferred to them in the books of the bank, and their names entered in the register of members as holders thereof.

On the 20th February 1878 the petitioner intimated to the agent of the trustees a request to be relieved of his office of trustee. His letter was on the 22d brought under notice at a meeting of trustees, which directed the agent "to prepare a formal minute of resignation by Mr Sinclair, and get the same signed and recorded in the Books of Council and Session, and engross it in the sederunt book of the trust." A minute of resignation was accordingly prepared by the agent and signed by Mr Sinclair, and on 7th March 1878 was recorded in the Books of Council and Session.

Section 10 of the Trusts (Scotland) Act 1867 provided that a trustee resigning by minute of resignation should after registering the minute in the Books of Council and Session "be bound to intimate the same to his co-trustee or trustees, and the resignation shall be held to take effect from and after the expiry of one calendar month from the date of such intimation, or the last date thereof, if more than one, if the trustee or trustees to whom such intimation is given is within Scotland, or otherwise within three months after that date; and in case after inquiry the residence of any trustee to whom intimation should be given under this provision cannot be found, such intimation shall be given edictally in usual form, and the resignation shall be held in that case to take effect from and after the expiry of six months." The intimation here required was never made to Mr Sinclair's co-trustees, and it was further admitted that his "resignation was never intimated to the bank, nor was the minute of resignation nor any transfer of the stock to the remaining trustees ever produced or intimated to the bank. No change in the entry in the stock ledger was asked or proposed by the petitioner or the other trustees in consequence of the petitioner's resignation till the present petition was presented after the winding-up began."

His co-trustees as well as the liquidators lodged answers.

Mr Sinclair now applied to have his name removed from the list of contributories to the bank.

Argued for the petitioner—There evidently was a *bona fide* intention on the part of the petitioner to resign, and on the part of his co-trustees to accept his resignation. The dates showed that it