

LORD DEAS—With reference to the case of *Rust*, I wish to say that that was an action of declarator at the instance of a trustee to have it found and declared that the house was the property of the husband. There was no other conclusion come to, and that was a conclusion which was negatived—it was not the property of the husband. The *ius mariti* was not excluded from the rents; it had nothing whatever to do with the rents.

LORD PRESIDENT—I wish to add a word of explanation with reference to the case *Craig v. Galloway*, which I think is apt to be misunderstood. The principles of law applicable to this class of cases were not in dispute at all, and the principles were laid down in the Second Division of this Court and in the House of Lords in almost identical words. But the point of difference between the Second Division and the House of Lords was as to whether it could be said to be the intention of the parties to make that policy of insurance a provision so as to take it out of the law of donation. The great difficulty which the Court here had in arriving at that conclusion arose from the circumstance that the policy was made payable to her, her heirs, executors, and assignees, and we came to the conclusion that, as it would be payable to her executors in the event of her predeceasing, it was something a great deal more than a provision which could only be payable in the event of her surviving her husband. The way in which the House of Lords got the better of that, and construed the intention of the parties, was this, that they held that the parties intended that this taking of the policy in the wife's name should have no more effect than to secure the payment of the sum therein contained to her in the event of her survivance, and that it had no other effect whatever.

LORD DEAS—I should like to say that I entirely agree with your Lordship in the view you have stated about that opinion of the House of Lords. There is no difference of opinion, so far as I understand, upon the one case more than upon the other. The only reason I referred to that was in respect of my observations, and the ground of my opinion, that the effect of this provision becoming no provision at all was a thing we were entitled to take in view. It was for that purpose I referred to the case of *Craig v. Galloway* in the House of Lords, and that does not infer any difference between my opinion and your Lordship's as to the principles of law applicable to that class of cases.

The Court directed the liquidators to remove the name of Mrs Thomas from the list of contributories, but refused the petition so far as David Thomas was concerned.

Counsel for Petitioners—M'Laren—Black.
Agents—Mason & Smith, S.S.C.

Counsel for the Liquidators—Kinnear—Balfour—Asher—J. C. Lorimer. Agents—Davidson & Syme, W.S.

Friday, January 31.*

FIRST DIVISION.

CITY OF GLASGOW BANK LIQUIDATION
—(BELL'S CASE) BELL AND OTHERS
(LANG'S TRUSTEES) v. THE LIQUIDATORS.

Public Company—Transfer of Shares—Entry on the Transfer Register where new Trustees Assumed—Companies Act 1862 (25 and 26 Vict. c. 89), sec. 25.

Trustees whose names were entered on the register of a joint-stock bank, registered but not formed under the Companies Act 1862, executed a deed of assumption of new trustees, which they intimated to the bank. The bank official made an entry of the terms of the deed in the stock ledger, following the previous entry, and giving the names and designations of the new trustees.

Held, that they thereby duly became shareholders of the bank, and *objections* that the deed of assumption should have been entered in the transfer register, and that there was a want of compliance with the provisions of section 25 of the Companies Act 1862, *repealed*.

Mr John Bell, one of the petitioners in this case, was the only surviving original trustee of the late Mr James Lang, who died in the year 1850. The other petitioners were trustees who were assumed by deed of assumption dated 18th May 1865. This deed was subsequently cancelled and another executed in 1871, but it was under the trust-deed that the new trustees acted. At his death Mr Lang was possessed of forty shares in the City of Glasgow Bank, and the original trustees purchased on 11th December 1851, with trust funds, fifty-five additional shares, making a total estimated in stock of £855.

It was ultimately not seriously disputed that all the trustees—original and assumed—had agreed to become members of the bank in their capacity of trustees; but it was contended, by the assumed trustees at least, that this agreement had never been duly carried into effect by formal and proper registration in terms of the Act of 1862 and the contract of copartnership of the bank.

Section 25 of the Companies Act of 1862 provided that—“Every company under this Act shall cause to be kept in one or more books a register of its members, and there shall be entered therein the following particulars:—“(1) The names and addresses and the occupations, if any, of the members of the company, with the addition, in the case of a company having a capital divided into shares, of a statement of the shares held by each member, distinguishing each share by its number, and of the amount paid, or agreed to be considered as paid, on the shares of each member; (2) the date at which the name of any person was entered in the register as a member; (3) the date at which any person ceased to be a member.”

Section 196 provided that—“When a company is registered under this Act in pursuance of this part thereof, all provisions contained in any Act of Parliament, deed of settlement, contract of copartnership,” &c., “shall be deemed to be conditions

* Decided January 22d 1879.

and regulations of the company in the same manner as if they were contained in a registered memorandum of association and articles of association."

Clause 38 of the contract of copartnership provided that—"The said deed of transference, as also every assignment of shares in security, or *mortis causa*, and confirmations thereof by right of succession, shall, after being completed, be recorded in a book to be kept for that purpose; and such deeds, transference, assignments, and confirmations, shall be delivered or returned to those in right of the same, after having marked thereon a certificate of the registration thereof; and it is hereby declared that the production of such writings to the said manager or ordinary directors for the purpose of registration shall, *ipso facto*, infer the acceptance of the capital stock therein specified, and the liabilities of the parties having right to the same as partners of the company; but it is hereby declared that no purchaser or other assignee of, or successor to, shares so acquired shall be recognised as a partner until the writing constituting his title is recorded in the books of the company in manner above specified."

Clause 39 provided that—"The name, designation, and place of abode of every partner, together with the number of shares held by him or her, shall from time to time be entered in a book to be kept for that purpose, to be called the 'Stock Ledger,' &c., and every partner who shall at any time change his name or place of abode, or, being a female, shall marry, and the trustee or assignees of any partner who shall become bankrupt, and the representatives of any partner deceasing, shall immediately after the occurrence of such events leave a written notice at the place of business in Glasgow, stating his or her name and place of abode; and when a female partner shall have been married, the name and place of abode of her husband; and when the name of such partner, with the number of shares held by him or her of the capital stock, shall be so made in the stock ledger, and signed by the officer of the company duly authorised so to do, coupled with an entry in the stock ledger of the partner having paid the first call or instalment subscribed for by him or her, such entries shall be held as conclusive evidence of the partnership to the extent subscribed for and appearing by such entries. But in case further evidence is required, the directors shall cause a certificate signed by the manager to be delivered to such partner as shall require the same, specifying the shares," &c.

The petitioners contended that their names ought to be removed from the list of contributors (1) in respect that the deed of assumption under which they acted had never been recorded in the register of transfers in terms of clause 38 of the contract of copartnership; and (2) in respect that the entry in the stock ledger was not in terms either of the Act of Parliament or of the contract of copartnership.

In reference to the first point, it was admitted "that all the entries in the transfer registers relating to the shares or stock in question referred to only name the original trustees appointed under Mr Lang's settlement. The names of the petitioners, the assumed trustees, are not entered in the said transfer registers, nor were their names included in any of the annual returns furnished

by the bank to the registrar of joint-stock companies. That the transfer register of the said bank contains no entries relating to Mr Lang's trust-settlement, or to the confirmation of Mr Lang's executors, but the original trustees are therein designed as trustees and executors. That said register further does not contain any entry relating to any deed of assumption of the petitioners (other than Mr Bell) as trustees, and there is no marking on the extract of said settlement, No. 24 of process, or the document titled 'deed of assumption,' No. 25 of process, and extract registered deed of assumption, No. 26 of process, that these writs had been produced to the bank, unless the note on the back of No. 25 of process, 'fees £2, 1s. 6d., paid A.M.,' has that effect."

The entry in the stock ledger was as follows:—
"Peter M'Callum, hardware merchant, Greenock; John Bell, fletcher, Dumbarton; Archibald M'Callum, writer, Port-Glasgow; and James M'Callum, residing in Greenock, as trustees and executors of the deceased James Lang, steamboat master, Dumbarton, the major number being always a quorum."

[Then followed the usual account.]

"*Note.*—By deed of assumption by the above-named John Bell and Archibald M'Callum, the only surviving executors of the said deceased James Lang, of date 18th May 1865, they nominate and assume the following trustees to act along with them:—Mrs Agnes Meikle M'Callum or Lang, residing in Greenock (relict of the truster); John Lang, iron merchant, Greenock; Margaret Lang, Agnes Lang, and Janet Lang, all children of the marriage between the said James Lang and Agnes M'Callum or Lang."

It was further proved that the certificate provided for in the end of clause 39 of the contract had been sent to the trustees, and had been brought under the notice of all of them at a meeting of trustees on 30th September 1872.

The petitioners argued—It was absolutely essential in order to membership that the deed of assumption should be entered in the register of transfers. That had not been done, and no entry however formal in the stock ledger could supply the defect. But the entry in the stock ledger was itself bad, inasmuch as it did not specify the particulars required by the Companies Act and by the contract of copartnership. The drawing of dividends did not necessarily infer membership—*Armstrong's case*, 1 De Gex and Smale 565; *Gouthwaite's case*, 3 Mac. and G. 187.

Argued for the liquidators—There could be no reasonable doubt that the petitioners agreed to become members—the question was, had they been duly registered? It was said section 38 of the contract had been violated, but that did not apply here—only to cases of divesting and investing. Here there need not be a formal transfer. The entry in the stock ledger might not be perfectly formal, but in truth no particular formality was required either by the Act or the contract, and there could be no doubt that the entry was explicit.

At advising—

LORD PRESIDENT—It appears that Mr James Lang, who executed a trust-disposition and settlement on the 4th June 1850, was possessor of forty shares in the City of Glasgow Bank, and that these shares were taken up by his trustees hardly

admits of doubt. The sole surviving trustee, Mr Bell, one of the petitioners in the present case, undoubtedly concurred with his co-trustees in having these shares registered in the stock ledger of the bank very shortly after Mr Lang's death in the name of "Peter M'Callum, hardware merchant, Greenock; John Bell, flesher, Dumbarton; Archibald M'Callum, writer, Port-Glasgow; and James M'Callum, residing in Greenock, as trustees and executors of the deceased James Lang, steamboat master, Dumbarton, the major number being always a quorum." And this registration continued for some time without any alteration or qualification at, all until new trustees were assumed in 1865. But the original trustees not only made themselves partners of the company in respect of the shares left by the truster; they also themselves invested part of the trust estate in the purchase of an additional lot of fifty-five shares, which they also procured to be registered in the stock ledger of the company in their own name as trustees and owners of the stock. In regard to those new shares, there is a regular deed of transfer and formal acceptance, and it was upon that transfer and acceptance being handed to the bank that they were registered in respect of these shares.

Now, I really am unable to conceive upon what ground it is that the petitioner's counsel contends that Mr Bell is to be struck off the register in respect either of the one lot of shares or the other. He seems to be precisely within the ruling of cases which the Court has already determined, and the petition as regards him must be refused.

But it is necessary to consider the position of the other petitioners. They were undoubtedly assumed as trustees by the then two surviving trustees of Mr Lang. The first piece of evidence as regards them is the minute of meeting of 18th May 1865, at which there were present the two surviving trustees:—"Mr MacCallum laid before the meeting deed of assumption nominating and assuming Mrs Lang, Mr John Lang, and Misses Margaret, Agnes, and Janet Lang to be trustees along with the said John Bell and Archibald MacCallum in the management of the trust-estate, and the said Mrs Lang, John Lang, Margaret, Agnes, and Janet Lang being called in, severally accepted, and by their subscription hereto do hereby severally accept of the office of trustee accordingly. The said deed of assumption was directed to be engrossed in the sederunt book." Now, that minute is signed by all the petitioners, and there cannot be a doubt that it is a sufficient acceptance of the office of assumed trustee. It appears further, by a minute of meeting two years later, that these persons assembled at Greenock on the 17th April 1867, when there were present Mr John Bell, Mr Archd. MacCallum, Mrs Lang, the three Misses Lang, and Mr John Lang. There was submitted to the trustees a vidimus of the estate account brought down to 11th February 1865, which having been examined was found correct and approved of: Also another vidimus of same account brought down to 6th February 1867, which was also found correct. It appeared that the whole amount of the estate, according to the price of bank stocks at 1st March 1867, was £3266, 5s. 9d. The meeting taking into consideration that the whole of the stock held by the trustees stands in the name of the original trustees, several of whom are now dead, it was

unanimously agreed that the stock be transferred to the surviving original trustees and the assumed trustees, and Mr Lang was instructed to have this done forthwith. Now, after that it appears that a communication was made to the bank, and the deed of assumption of 1865, which appears now to be cancelled, was intimated to the bank. Why it was cancelled it is hardly worth while to inquire. But the deed of assumption upon which all the parties acted was undoubtedly executed on the very day of the meeting before referred to—18th May 1865—and it bears to be intimated to the bank. After that there is another meeting, which I consider of very great importance, of date 26th September 1872:—"At a meeting of the trustees held this day within the house of Mrs Lang, Union Street, Mr Lang submitted a state of the trust-account and the trust funds, the capital as at June amounting to £4266, 18s. 9d., which having been examined was found correct. He also tabled the scrip of the bank stock, showing that the same had been transferred into the names of all the trustees, original and assumed, as directed at a previous meeting.—In testimony whereof, this minute is subscribed by Mrs Agnes Lang, Mr John Bell, Mr Archibald MacCallum, Mr John Lang, Miss Margaret and Agnes Lang, and Mrs Robert Hill (*nee Janet Lang*)." Now, it is not disputed that what is meant by "scrip" here is the certificate which was issued by the bank after the deed of assumption had been sent to the bank, and that it bears that the trustees' names were entered in the register as holders of the stock, and that it is signed by an officer of the bank. In 1872, therefore, it was brought to the knowledge of all parties that they had been registered, that is to say that they had been entered as holders of stock. And I may remark in passing that Mrs Janet Hill was now in majority, and capable therefore of holding the office of trustee, and capable also of validating what had been done in her minority.

Now, in that state of facts it appears to me impossible to escape the conclusion that these petitioners agreed to become members of this company in respect of the shares or stock left by Mr Lang, and also in respect of the stock purchased by the original trustees.

But it is said that although there might be such an agreement, these petitioners were never in point of fact registered as shareholders, and we are told that there was an irregularity in the way in which this was gone about, in so far as the deed of assumption was never in any way entered in the transfer register as was required by the contract of copartnery. It is said that this omission is fatal, and although the names appear in what the law calls the register of shareholders, and the bank itself the stock ledger, yet this entry is ineffectual. Now, that is a kind of argument which we have heard several times in the course of this liquidation, and I think that it has always been met in the same way. All those arrangements in the contract of copartnery providing a number of books and entries for the purpose of exact bookkeeping were so many regulations for the continuity of the bank's affairs, more or less important, as preserving regularity in the manner in which the business of the bank was conducted, but they did not in the least degree interfere with the substance of the right of a party who had bought shares, and had been registered as a shareholder, to participate in the rights of share-

holders and to be subjected in all their liabilities.

But, then, the 38th clause of the contract of copartnery, upon which the petitioners found, does not in anyway support the allegation that there was in point of fact any irregularity or omission in this case. The 38th clause does not deal with the present case. I do not very well see how the officials of the bank could have entered this deed of assumption in the register of transfers. They have no authority in the contract of copartnery for doing so, and I think there is just as little in the Act of Parliament which could suggest that it should be done, for there is no such book as the register of transfers dealt with in the Act at all.

Now, let us see what was done with this deed of assumption. In stock-ledger No. 4 there is this entry relating to the original trustees—"Peter M'Callum, hardware merchant, Greenock; John Bell, flesher, Dumbarton; Archibald M'Callum, writer, Port-Glasgow; and James M'Callum, residing in Greenock, as trustees and executors of the deceased James Lang, steambot master, Dumbarton, the major number being always a quorum;" and then there follows the number of shares, their original value, and certain other particulars, in the usual manner. Now, what was done was this—Mr M'Callum, acting as agent for the trustees, original and assumed, having presented the deed of assumption, the bank official makes another entry in these terms:—

"*Note.*—By deed of assumption by the above-named John Bell and Archibald MacCallum, the only surviving executors of the said deceased James Lang, of date 18th May 1865, they nominate and assume the following trustees to act along with them—Mrs Agnes Meikle MacCallum or Lang, residing in Greenock (relict of the truster); John Lang, iron merchant, Greenock; Margaret Lang, Agnes Lang, and Janet Lang, all children of the marriage between the said James Lang and Agnes MacCallum or Lang."

Therefore as the entry originally stood upon the ledger the original trustees were the joint-owners of the stock, but two of their number having died these ceased to be owners, and the surviving trustees remained sole joint-owners. Well, then, the first statement in the note which is appended to the entry shows that there were only two left, but they remained the sole owners until by deed of assumption they assumed the new trustees. But the effect of the deed of assumption was in law to make the assumed trustees for the future, along with the surviving original trustees, joint-owners of this stock. And it seems to me that this is quite an adequate mode of making this entry. It is just an amendment of the title of the owners.

It must be observed that there is no particular form of entry prescribed. If you follow the substance of the contract of copartnery that is sufficient. Now, what does the contract of copartnery require? All that is required is stated in the 39th clause of the Articles of Copartnery. Now here you have the names of the trustees as they formerly stood; you have the surviving trustees and the names and designations of the new ones; so that this provision is fully complied with.

Reference was made to the 25th section of the Act of Parliament. But I have great doubt

whether that section applies to the present case. That section applies to companies formed under the Act. But this company was not so formed. It was registered under the Act, and is regulated therefore by Part VII. thereof. And from a consideration of section 196 it rather appears that the regulations as to the mode in which the existing register is to be kept is to be found in the contracts of copartnery and not in the Act of Parliament.

But waiving this, I think that, looking to the terms of section 25, there has been a substantial compliance with the provisions of this statute.

I therefore think in the whole circumstances that it has been proved by sufficient evidence that the whole of the petitioners agreed to become members of this company in respect of the shares left by Mr Lang, and also in respect of the shares purchased by the original trustees; and that the agreement has been given effect to by the proper officials of the bank making an entry of their names and designations in the stock ledger as owners of these shares of the company. I have therefore no hesitation in coming to the conclusion that this petition must be refused.

LORD DEAS concurred.

LORD SHAND—I also am of opinion that this petition must be refused. In regard to Mr Bell, it is quite clear that he accepted the trust, and was with his authority put on the register in respect of the original shares and in respect of the new shares; that they were transferred to himself and his co-trustees, that the dividends were drawn by himself as holder, and as holder that he assumed the new trustees; so that in every possible way he has made himself a partner by accepting and acting.

In regard to the other petitioners, it is, I think, clear that they also agreed to become members. They obtained a conveyance of the trust property, including these shares; they were present at the meeting of 17th July 1867; and the authority granted by them at that meeting having received effect, they were present at the meeting of 26th September 1872, at which Mr Lang "tabled the scrip of the bank stock, showing that the same had been transferred into the names of all the trustees, original and assumed, as directed at a previous meeting." More conclusive evidence that they had agreed to become members could not be produced.

The question remains—Were they in point of fact registered? Now, we find that in consequence of the deed of assumption the entry was made originally in or before 1869, and has, I understand, been continued year by year in the same terms. The effect of that entry is twofold. In the first place, it is a distinct record of the death of two of the original trustees. But in the next place, it records the fact that the surviving trustees have assumed certain new trustees, and records their names and designations. It is not necessary to go over the Act of Parliament or the contract of copartnership. The 39th clause of the contract provides—[*His Lordship here quoted the clause ut supra*]. The further evidence here referred to was required in the present case, and we have the certificate before us, from which it appears that there is no difference made between the original and the assumed trustees. It is not disputed that if the entry, instead of beginning with the word "Note," had been in the

title of the account, it would have had the effect of making the members partners. But I think this is too critical a distinction. I cannot doubt that these petitioners have put themselves into the position of partners.

I agree with your Lordship that the special provisions of clause 38 are of no consequence here. The stock ledger is the test. The moment it is proved that the entry was made with the authority of the person concerned, I do not think that the preliminary steps are of any moment, or that the petitioners can take any advantage from their absence.

The petition was therefore refused.

Counsel for Petitioners—M'Laren—M'Kechnie.
Agent—W. B. Glen, S.S.C.

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

CIRCUIT COURT OF JUSTICIARY.

[Inverness.

HER MAJESTY'S ADVOCATE *v.* ANDREW GRANGER.*

(Before Lord Deas.)

Murder—Culpable Homicide—Insanity—Delirium Tremens.

Held (1), on the principle of the case of *Dingwall*, February 1863, 4 Irvine 301, confirmed by the case of *M'Lean*, October 1876, 3 Couper 334, that aberration of mind not amounting to insanity may legitimately form an element in the question between murder and culpable homicide; (2) Circumstances in which this principle applied, where the panel at the date of the homicidal act was labouring under *delirium tremens*.

The panel, a railway contractor and tenant of the farm of Fettes, near Beaulay, was indicted for the murder of James Fraser (a police constable) in the Grantown Hotel on Wednesday, 17th July 1878, by stabbing him in the stomach or belly with a pocket-knife, in consequence of which he died on the second day thereafter. A defence was lodged in the following terms:—"The panel pleads not guilty, but he specially pleads that at the time of the act charged he was insane."

The following witnesses were adduced for the prosecution:—Alexander Fraser, hotel-keeper, Grantown—Was at Grantown Station on Wednesday, 17th July last, about twelve noon, when train from Forres arrived; panel arrived by it. He was sitting on the coals far back on the tender—a man on each side of him holding him by the shoulder. He was assisted down and led to a seat on the platform, where he sat down. He recognised and spoke to witness. Said would witness see that nobody should hurt him. Witness answered—"Not the least fear of that, and to sit still a little." He said something about his tongue being burned. Witness then left. Between two and three same day saw him sitting in kitchen of hotel, and Mr Forbes, the station agent, with him. Had not seen him come in. Witness did not go into kitchen. Saw him afterwards in the bar. Spoke to him then. Said "Oh, Mr

* Decided Friday, September 13, 1878.

Granger, are you here?" He answered yes. I have known you a long time as an honourable gentleman. I hope you will allow no one to do harm to me. Witness said—"Not the least fear of that." Asked if going back to train. He said "No." Asked what he wished to do. He said—"Would like to go to bed in the quietest room in the house." Took him up stairs to bedroom No. 18. Went into room with him. He wished door locked, and witness turned key inside to please him. He wished key taken out, and did this also to please him. He then told witness to look under the bed. Did so, and said—"No one there; look for yourself." He did so, and while he was looking witness unlocked door and went out. Panel turned key inside and took it out. Observed this by the turning of the handle. Spoke to panel through door. Asked if going to bed, and if required anything. Said going to bed, and not require anything for some time. Asked witness to send for his groom, and for Falconer Brothers of Inverness to come to him. Then said not to send for groom but for the Falconers. Answered would do so, and left him. Sometime afterwards, in consequence of housemaid saying great noise in room, went back and spoke to panel through door. Observed, through keyhole, panel still in bed. Key in lock, and panel's clothes on a chair. Asked what he doing and to get in. Refused, and said making a gallows to hang himself. Left, but returned to bedroom door a quarter before four same afternoon, in consequence of one of housemaids screaming, and saying panel had knocked out panes of glass of window. Asked again to get in. Still refused. Panel said—"A great number of you," and seemed to think wanted to take him. Witness brought a constable—the now deceased James Fraser. Went up to bedroom door together. Fraser asked panel to open the door, saying, "I know you, Mr Granger, quite well, and also your brother." Panel answered—"I dare say you do," but refused to open the door. Tried key of a different door, which not fit, and then another which did. Opened door and made a push in—Fraser first. Fraser looked behind door and said "Oh, Mr Granger, what!" but before could finish sentence fell back on witness with exclamation—"Oh!" Witness pulled door close, locked panel in, and assisted Fraser, who said, in answer to questions, that severely stabbed. He said—"I am stabbed, and I fear I am done for." With assistance of Mrs Yeats, the housekeeper, put him on sofa. He showed witness where stabbed. Got Duncan, chemist and druggist. Dr Pringle (also a witness) afterwards came—wound dressed, and Fraser taken to his own house. Proceeded to open bedroom door, but resistance at back of it by panel. Got a long pole so as to push it open without being exposed to panel, till should see his attitude. Then got in, and panel was secured and taken to Police Office. Not see knife at that time. Was told been chucked out of window, and afterwards learned it had been found by witness Forbes Grant. *Cross-examined*.—Panel said at station—"They have burned my tongue," or "my tongue has been burned." When in room thought him very excited. Might have looked at his eyes, but can't say. Before pushed up door had placed mattresses on street below window, as thought when saw he was to be overpowered he might leap out. When got in saw