the deed of a third party, or on the face of an antenuptial contract of marriage, that the intention of the testator in the one case, or of the parties entering into marriage in the other, was that the *jus mariti* and right of administration should be excluded, that intention must receive effect. That being so, the exclusion being applicable to that portion of the wife's estate that we are now dealing with, viz., the shares of the City of Glasgow Bank, and they having been dealt with as her separate property, she being registered as the sole proprietor, though it is a different case from that of *Biggart*, I cannot doubt that the same principle applies, and that these shares must be held exclusively the property of the wife, to the exclusion of the husband's *jus mariti*. The consequence of that is that the wife must remain on the list of contributories, but the husband's name must be taken off, as Mr Biggart's was.

Lord Mure—I am of the same opinion. Nothing I think can be clearer or more express than the provisions of the antenuptial contract as to the exclusion of the *jus mariti* and right of administration of the husband, and Lord Deas has so fully explained the law on this matter that I think it unnecessary to say anything more than that I concur with him.

But there is one authority which Lord Deas did not refer to, but which I have always understood was an important authority in a case of this sort. I refer to what Mr Erskine says in i. 6, 14, where after referring to the fact that in old times it was impossible to exclude the *jus mariti*, he says—"This doctrine, which springs from a mere subtlety is irreconcileable to that *bona fides* which ought to prevail in marriage contracts, and indeed to common sense, for all rights not inalienable may be renounced by those entitled to them, and the husband's right of administering his wife's moveable estate is not accounted by the law of any other country so essential to him but that he may divest himself of it. It is therefore now received as a settled point, both by our judges and writers, that a husband may in his marriage contract renounce his *jus mariti* in all or any part of the wife's moveable estate." Now, I confess I have never been quite able to understand how, in face of that opinion of Mr Erskine, that passage occurs in Mr Bell's Commentaries where he certainly expresses himself decidedly to the effect that an exclusion of the *jus mariti per aversionem*, and with reference to *acquirenda*, is not competent. He refers to no authority upon the point, and nothing but the respect that one has for Mr Bell's views could make one inclined to think that at any time that could have been the law. The passage in the Juridical Styles which was referred to merely adopts Mr Bell's views; but I thought it right to look into the last edition of the Juridical Styles, and glancing over a hundred pages—as to *jus mariti* and the exclusion of it by a marriage contract—I could not find the passage repeated. I am not surprised at this, because it appears to me that not only is there nothing in principle to support such a doctrine, but in the case of *Hutchison*, referred to in the discussion, the Court unanimously found that a clause almost as broad as this was a good exclusion of the *jus mariti* as regards *acquirenda*. The words there were—"And the said John Hutchison hereby renounces all right thereto," &c, and there is reserved to the wife "liberty to dispone, use, or alienate the whole property she may succeed to through the death of her father or mother, or otherwise, ... or to which she may succeed during the subsistence of the marriage."

In the interlocutor of the Lord Ordinary certain findings were pronounced, some of which were altered by the Inner House, but the first finding, to the effect that it was a good exclusion of the *jus mariti*, was unanimously adhered to by the Second Division. That being so, I have no hesitation in concurring with Lord Deas.

Lord Shand—I am of the same opinion, and after the full examination of the authorities and statement of the grounds upon which that opinion is rested by Lord Deas and Lord Mure, I think it unnecessary to say a word more.

Lord President—I am entirely of the same opinion, and I have nothing to add to the view of the law expressed by Lord Deas. The doubt which has been entertained apparently by practitioners upon this question was naturally founded on the statement contained in Mr Bell's Commentaries, to which my brother Lord Mure has referred; but I trust that now at least all doubt and hesitation on the subject will be at an end, and that it will now be understood that a renunciation by a husband in the marriage contract of his *jus mariti* and right of administration will be quite effectual as regards the *acquirenda* of the wife, if it be so expressed as to cover *acquirenda*. The result will be to refuse the petition of Mrs M'Dougall.

The Court therefore refused the prayer of the petition.

Counsel for Petitioners—Dean of Faculty (Fraser)—Jameson. Agents—Boyd, Macdonald, & Co., S.S.C.

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

Saturday, June 21.

FIRST DIVISION.

CITY OF GLASGOW BANK LIQUIDATION—(*FORBES' CASE*)—THOMSON OR FORBES AND ANOTHER *v.* THE LIQUIDATORS.

Public Company—Winding-up—Liability of a Husband for Stock registered in Wife's Name—Exclusion of jus mariti *in a Family Agreement.*

A died intestate leaving personal property to a considerable amount. He was survived by his mother and five married sisters. By deed of agreement entered into between the mother and the husbands of the five sisters, the mother gave up to her daughters by far the greater part of what she was legally entitled to receive from her son's estate, but on condition that the whole amount which would thus accrue to the sisters, as well what they

were legally entitled to as what they received from her, should be their own property, exclusive of the *jus mariti* and right of administration of their respective husbands. B, one of the sisters, received as part of her succession £100 stock in the City of Glasgow Bank, and the stock was registered in her name in terms of the agreement. *Held* that the agreement was irrevocable and binding on all the parties, and that therefore the husband, upon the principle laid down in *Biggart's* case, Jan. 15, 1879, 16 Scot. Law Rep. 226, was not liable for calls made upon him by the liquidators in respect of this stock.

Mr James Forbes, the petitioner, had been placed by the liquidators of the City of Glasgow Bank upon the list of contributories in respect of £100 stock of the bank held by his wife, and he prayed to be removed from that list. This stock stood in the bank's stock ledger as under—

"*City of Glasgow Bank—Stock Ledger No.* 6, *page* 221.

"Mrs Christina Breckenridge Thomson or Forbes, wife of James Forbes, Albert Place, Airdrie, exclusive of the *jus mariti* and right of administration of her husband, or any future husband whom she may marry—

Date.	Particulars of Entry	*Dr.*	*Cr.*	Balance.
1878				
Aug. 14.	By Stock, per Executrices of Jas. Thomson.		£100	£100

The transfer under which Mrs Forbes acquired this stock was made by certain relatives, the "executrices of the deceased James Thomson, banker, New Cumnock," the brother of Mrs Forbes. He died intestate in October 1876, and his next-of-kin were Mrs Forbes and her four sisters, who were each entitled to a one-fifth part of Mr Thomson's personal estate. The deceased's mother was still alive at the time of his death, and was therefore entitled to one-third of the estate, the remaining two-thirds falling to be divided among his sisters. Had the legal order of succession been adhered to, Mrs Forbes would have got as her share £990, and that would have fallen under the *jus mariti* of the husband. The parties, however, instead of adhering to the legal order, entered into an agreement under which the mother of the deceased gave up her share of her son's estate, amounting to nearly £2500, reserving only a sum of £200 for herself. The remainder of her share was to be divided equally among the daughters along with the two-thirds of the estate to which they were legally entitled. It was, however, stipulated by the mother, and agreed to by the husbands of the daughters, Mr Forbes among the number, that the total amount of the succession coming to the daughters through their brother's death should be settled upon the daughters exclusive of their *jus mariti* and right of administration. Under this agreement Mrs Forbes became possessed of £100 stock of the City of Glasgow Bank, and the question came to be, whether this stock was really her own property exclusive of her husband's rights?

The petitioner argued that though the circumstances were slightly different, the principle which ought to rule the case was that laid down in the case of *Biggart*, Jan. 15, 1879, 16 Scot. Law Rep. 226.

The respondents argued that this case ought to be ruled by the case of *Thomas*, Jan. 31, 1879, 16 Scot. Law Rep. 244. In the case of *Biggart* the fund from which the husband was excluded was excluded from the very beginning; here it was a succession *ab intestato* from a brother, and such a succession was really a succession to the husband. The renunciation of his *jus mariti* by the husband in that part of the succession to which Mrs Forbes was legally entitled was simply a donation between husband and wife, and therefore was revocable; the husband got nothing for it.

At advising—

Lord President—The circumstances of this case are no doubt somewhat peculiar, and the liquidators are very well justified in bringing it under the consideration of the Court, because there are points of distinction between it and that of *Biggart*, but as the result of an examination of the documents and the admissions I am satisfied that it cannot be distinguished from *Biggart's* case in principle. The stock here is unquestionably registered in the name of Mrs Forbes as property belonging to her in her own right, exclusive of the *jus mariti* and right of administration of her husband, and that registration is justified by the terms of the transfer by which Mrs Forbes acquired the stock. The transfer was made by certain relatives who had the power of transferring, and it bore to be given to her exclusive of the *jus mariti* and right of administration of her husband, so that the registration and transfer are perfectly in accordance with one another. But the argument is that the transfer ought not to have been made in these terms, or at all events, whether made in these terms or no, the inquiry is still open whether this stock did really belong to this lady as her own separate estate, or whether it was not in legal effect, in the circumstances in which she acquired it, the property of her husband.

Now, that depends upon the effect of a certain deed of agreement dated in May and June 1878 which embodied a family arrangement. It appears that Mrs Forbes' brother James Thomson died intestate in October 1876, and his next-of-kin were Mrs Forbes and her four sisters. They were therefore entitled each to one-fifth part of Mr Thomson's personal estate, and we are informed that that estate amounted in all to £7426. Now, if the estate had been divided according to the legal order of succession, one-third of that would have gone to the intestate's mother, who still survived, and the remaining two-thirds would have fallen to be divided equally among her five sisters, the result of which would have been that Mrs Forbes would have succeeded in her own right to £990; and no doubt but for the agreement her succession to £990 would have inured to the benefit of her husband, or, in other words, that money would have fallen under his *jus mariti*. But it was thought desirable to make an arrangement by which this legal division of the estate should be in some degree altered, and altered for the benefit of the sisters of the deceased at the expense of the mother. The mother was willing to give up her share of the estate, which was £2475, all but £200, and to allow the remainder of that sum to be divided among her daughters along with their own shares. But in doing so she stipulated, and it was agreed, that the amount of the suc-

cession coming to each of the daughters, consisting partly of the money to which they were entitled in their own right, and which would have fallen under the *jus mariti*, but consisting also in part—and in no small part—of the money surrendered by the mother, should all be settled upon the daughters exclusive of the *jus mariti* and right of administration of their respective husbands.

Now, it was in pursuance of this arrangement that Mrs Forbes became entitled on the division of her brother's intestate succession to £100 stock of the City of Glasgow Bank; and the question is, whether, that being part of the estate which was divided in terms of this agreement, it is not her separate estate, exclusive of her husband's rights? It is said that this, so far as the £990 is concerned, is a pure donation on the part of the husband, and as such is revocable. I shall not say what pleas might be advanced by creditors under such an agreement, particularly by creditors whose debts were contracted before the date of the agreement, because I do not think we have any such case before us, but as between the parties to that agreement it appears to me that that deed is irrevocable by any of the parties. It is a family arrangement no doubt, but I do not think it is a gratuitous deed. On the contrary, I think the contribution of the mother to increase the share of the succession to each of the daughters an onerous consideration given by her for that which the husbands of her daughters did on the other side, and, on the other hand, I think the surrender of the *jus mariti* on the part of the husbands of the daughters is the consideration upon which the mother surrendered her right. The one is, in short, the consideration of the other. Now, that being so, I think Mr Forbes would not be entitled—he is not seeking to do it, but if he did I think he would not be entitled—to revoke what he calls his donation under this deed against the will of the other party to that deed—Mrs Thomson, the mother—but that the deed is binding upon him as an onerous deed. And the effect of that, in my opinion, is to make this stock the separate estate of his wife Mrs Forbes, and consequently the case falls precisely under the principle of *Biggart's* case.

Lord Deas—I am not prepared to say that when a purely moveable succession devolves upon a wife, the husband, being perfectly solvent, and the matter being carried out in good faith, may not make an arrangement—there being no other party but himself and his wife—by which that moveable estate shall come to the wife exclusive of his *jus mariti* and right of administration. But it is not necessary to go into that question here, because there are three peculiarities in this case, any one of which is to my mind quite conclusive.

In the first place, this was an onerous transaction between the husband of the daughter and the mother, by which the mother gave a large sum of money—a third at least of the whole provision—which she would not have given so far as we see except upon the condition that the husband was to renounce his *jus mariti* and right of administration. Well, that was an irrevocable bargain between the mother and the husband, and it would be very difficult to say that if it is an irrevocable deed between the husband and a third party it would be revocable in part although not in whole. I asked the question, Is she not to get back her money? The answer was not very readily given, but it was apparently that she is not to get back her money. That consideration of itself goes a very long way to distinguish this case from the ordinary one.

In the second place, these parties were mere executors to an intestate succession, and as such they need not have become parties to this bargain at all. They were under no obligation to register these shares and to become partners. They were entitled to sell them without registering, and so would not have incurred this liability at all. But upon the faith of this agreement they became partners of the bank, which we are not entitled to suppose they would have done except upon that footing.

In the third place, the agreement was completed and carried out with consent of the bank itself. The bank consented to adopt the agreement, and to register the daughters in terms of it, and they did so; and upon the face of the register they stand in the position of shareholders exclusive of the *jus mariti* and right of administration of their husbands.

Any one of these grounds would of itself have been conclusive, altogether apart from the more general question that might have arisen whether this was not a thing that under the circumstances the husband and wife together might not have done of themselves. I have no doubt whatever about the result. The circumstances were different in the case of *Biggart*, but I cannot have the slightest doubt that the result is the same.

Lord Mure—I think there is a great deal of force in the last observation of Lord Deas, that in this case the bank have registered these parties in a form that plainly does not render the husband liable as a shareholder according to the decision in the case of *Biggart;* and if the case were raised in a pure shape, that a husband after having succeeded to money had executed a deed by which he made over immediately to his wife a certain sum, excluding his *jus mariti*, and with that money she purchased shares in a bank registered in her own name in the way we have here, a very nice question might be raised, on which I give no opinion, as to how far under such circumstances the liquidators or creditors could deal with these shares as belonging to the husband.

But that is not the exact case we have to do with here, and I think there is a plain distinction between this case and that of *Thomas*, founded on by the liquidators, for in that case there was no exclusion whatever in any shape. The stock was bought with money to which the wife had succeeded, and which of course upon her succession belonged to her husband in virtue of the *jus mariti*. The money was by arrangement between the two applied in the purchase of shares in the bank, and, as I understand the decision in the case of *Thomas*—for I was not in this Court at the time—it was held that the wife was virtually acting as agent for the husband, the money being hers, and his name being used, and so it fell under that category of cases. But here the *jus mariti* is excluded in the most express terms. No doubt that is done by agreement after the succession to the brother emerged, but I agree with your Lordship that it is an onerous transaction upon the face of it, by which the husband gave

up certain things in respect of the mother having agreed to make over to her daughters certain sums of money on the conditions stated in the deed; and I concur with your Lordships in holding that that deed is not a revocable deed at the instance of the creditors of the husband.

Lord Shand—The transfer of this stock, which as we know from other cases was prepared in the bank itself, bears that the stock was conveyed by the executrices *qua* next-of-kin of the late James Thomson in favour of Christina Breckenridge Thomson or Forbes, exclusive of the *jus mariti* and right of administration of her husband, or any future husband she might marry; and the entry in the register or stock ledger of the bank is in the same terms. So that *prima facie* the stock stands registered in such a way as to exclude all liability on the part of the husband. But it is maintained that the bank are entitled to get behind that registration and the terms of the transfer, and to show that although the stock appeared to be the property of the wife it was truly the property of her husband. It may be that they are entitled to get behind the terms of an entry of this kind if it could be clearly shown that the stock was the property of the husband, or that he was entitled to revoke the gift of the stock and at once to claim it as his own. But I am of opinion with your Lordships that the liquidators have failed to show that that was the case. The question turns on the validity and terms of the agreement of June 1878. By that agreement each of the husbands of the daughters of the late Mr Thomson contributed £990, while on the other hand his widow contributed £455, to form a separate provision for each of her daughters. The deed does not expressly bear that Mrs Thomson gave the £455 in consideration that each of the husbands agreed to renounce his *jus mariti* over the £990, but although that is not expressly stated upon the face of the agreement, there is no doubt that that is the substance of it; and I take it that it comes to this, that the mother purchased from each of her sons-in-law a provision of £990 in favour of his wife by agreeing herself to advance £455. So far as the mother was concerned, it was a purchase from each of the husbands of a renunciation of his *jus mariti*. That being so, the transaction was plainly an onerous one. There was nothing illegal in it so far as I can see, or contrary to the rights of husbands. The husband had a very legitimate and proper interest in entering into an onerous contract of that kind with a person who was willing to purchase a provision in favour of his wife. That being the nature of the transaction, it appears to me that it was not revocable by the husband, but was an onerous transaction. The result was that the stock became the lady's own, and I am of opinion that the husband could not revoke the provision. That being so, it cannot be represented as his property, and I think he is entitled to succeed in his application to have his name removed from the register.

The Court therefore directed the removal of the petitioner's name from the list of contributories.

Counsel for Petitioner—Gloag—Mackintosh. Agents—Wilson & Dunlop, W.S.

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

Friday, June 27.

FIRST DIVISION.

[Lord Adam, Bill Chamber.

VALLANCE *v.* FORBES (BLYTH BROTHERS & COY.'S TRUSTEE).

Bills—Promissory-note—Document constituting Promissory-note.

A letter in the following terms:—

"97 *Kirkgate, Leith, 30th August* 1878.

"Received from Mr David Vallance, in behoof of Mrs Mary Lockie, for the children of the late Mr William Lockie, Dunbar, the sum of £100 sterling, for which we herewith agree to pay him 4 per cent. per annum. This amount to be refunded twelve months after date." "Blyth Brors. & Co.

"30/8/78."

held to be a promissory-note, and void as not being stamped at time of execution.

Stamp—Stamp Duties Act (33 *and* 34 *Vict. cap.* 97), *secs.* 18 *and* 53—*Power of Commissioners of Inland Revenue to Stamp Bills of Exchange and Promissory-notes.*

Held, upon a construction of sections 18 and 53 of the Stamp Duties Act (33 and 34 Vict. cap. 97), that the Commissioners of Inland Revenue have no power under that statute to stamp, after its execution, a promissory-note which was otherwise void through want of stamp.

The estates of Blyth Brothers & Coy. of Leith were sequestrated, and Mr Simon Forbes was appointed trustee in the sequestration. Mr David Vallance claimed on the estate as a creditor to the amount of £100 in virtue of a document in the following terms—[*quoted supra*]. The trustee rejected the claim, on the ground that the document was null, being a promissory-note and unstamped. The document having afterwards been taken before the Commissioners of Inland Revenue, they, in virtue of sec. 18 of the Act 33 and 34 Vict. cap. 97, stamped it with an adjudication stamp and also with the appropriate agreement stamp. The section in question was as follows:—"(1) Subject to such regulations as the Commissioners may think fit to make, the Commissioners may be required by any person to express their opinion with reference to any executed instrument upon the following questions—(*a*) Whether it is chargeable with any duty? (*b*) With what amount of duty it is chargeable? . . . . (3) If the Commissioners are of opinion that the instrument is chargeable with duty, they shall assess the duty with which it is in their opinion chargeable, and if or when the instrument is duly stamped in accordance with the assessment of the Commissioners, it may be also stamped with a particular stamp denoting that it is duly stamped. (4) Every instrument stamped with the particular stamp denoting either that it is not chargeable with any duty, or is duly stamped, shall be admissible in evidence, and available for all purposes notwithstanding any objection relating to duty." The section then proceeds under the head "pro-