getting ready, so as to call upon your customers, friends, and acquaintanceships, so you may look out."

I cannot conceive that the laws of any civilised country could allow such letters to be sent to a man, perhaps a married man, to fall into the hands of his wife and family or other near relatives, with the threat that if he did not comply with the demand of the sender they would be published to all his relatives, friends, and acquaintances.

Objection repelled.

The panels then pleaded guilty to the charge as applicable to the writing and sending of the first and third letter, and they were each sentenced to twelve months' imprisonment.

Counsel for the Crown—Montgomerie, A.-D. Agent—The Crown Agent.
Counsel for the Panels—Macfarlane—Dundas. Agent—J. T. T. Brown, Writer.

COURT OF SESSION.

FIRST DIVISION.

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

Public Company—Winding-up—Liability in a case of Deceased Trustee where Few Actings by him, and his Executors were Ignorant of Trust.

The names of two trustees under an *inter vivos* trust were entered in 1851 on the register of a joint-stock company as the holders of stock. They only signed one dividend warrant, viz. in 1860, and the dividends were afterwards drawn by the truster. The survivor of the two trustees died in 1872, and his executors thereafter sold stock in the bank which had belonged to him personally. They were in ignorance that he was also upon the register as trustee, or that he had ever occupied such a position in the trust in question. Upon the failure of the bank, *held* that the names of his executors fell to be placed upon the second part of the list of contributories in the winding-up, as his name was still upon the register at the date of the bank's stoppage.

Mrs Agnes Wilson in 1851 appointed John Thomson, wine and spirit merchant, Glasgow, and John Low her trustees for her behoof. No trust-deed was executed, but a deed of transfer of certain City of Glasgow Bank stock which she held to the extent of £90 was prepared, and the stock was accepted by the trustees and their names entered upon the register. Mr Thomson died about 1864, and thereafter Mr Low was sole trustee. One dividend warrant, dated in February 1860, was endorsed by Mr Thomson, Mrs Wilson, and Mr Low, and that was the only one which Mr Low was called upon to sign. A mandate was at that time given by the trustees and signed by "John Thomson for self and other trustees" authorising the bank to pay future dividends to Mrs Wilson, and she continued to draw these until the date of the failure of the bank in October 1878. She herself survived that date.

Mr Low had died in 1872, and his executors, George Grant, advocate, Aberdeen, and others, thereafter took out confirmation as his executors under his will, and their names were recorded in the books of the bank as such on 17th March 1873. In virtue of that confirmation they received payment from the bank of certain sums due by them to Mr Low both on current account and on deposit-receipt. In October following they sold £595 of stock of the bank which had belonged to Mr Low, and the transfers of that stock were duly given effect to by the bank. Mr Low's name did not thereafter appear upon the published list of shareholders, but it still remained upon the register along with Mr Thomson's as trustee of Mrs Wilson. His executors were in ignorance of the fact that he held this stock as trustee, and did not become aware of it until the stoppage of the bank, when it was found to be there.

This was a petition at the instance of his executors to have his name removed from the register of shareholders, and to make an order prohibiting the liquidators from placing it or that of his representatives on the list of contributories.

The 36th section of the contract of copartnery was as follows:—"In case the shares or interest of any partner shall be arrested in the hands of the company, such partner shall be obliged to loose every arrestment so used within twenty days after being required so to do by letter from any officer of the company; and in like manner, in the event of the shares or interest of any partner deceasing being attached by the diligence of confirmation *qua* creditor, his representative, if he any have, shall be obliged to remove the attachment within the like period of twenty days after being required so to do by letter as aforesaid; otherwise, and in case of failure to comply with such requisition, and also in case a partner deceasing, although no diligence had been or should be used against his estate, and of no party choosing to represent such deceased partner by confirming executor, or otherwise assuming his estate within twelve calendar months after his decease, it shall be in the power of the said ordinary directors of the company either to sell and dispose of the shares so arrested . . . . on the lapse of the said respective periods . . . . or to retain and appropriate the same to the use of the company, in like manner, and as fully and freely in all respects, and subject always to the same claims of deduction and retention as are herein provided with regard to the shares of bankrupt partners" . . . . . .

At advising—

LORD PRESIDENT—This is an application by the executors of the deceased John Low to have the name of the deceased removed from the register of shareholders of the bank. If the name of Mr Low remains upon the register, of course it will have this effect upon his executors, that they will fall to be entered in the second part of the list of contributories. That is the interest the executors have in maintaining that Mr Low's name ought to be removed from the register.

* Decided 14th March 1879.

Now, it cannot be disputed that Mr Low's name was entered in the register quite regularly as joint holder, along with another person of the name of John Thomson, of £90 stock of the City of Glasgow Bank. That stock was transferred to them by a person of the name of Kent, by a transfer dated 18th and 26th September 1851, and it bears that those two transferees, Thomson and Low, had paid a sum of £114, 5s. to the transferrer, in consideration of which he conveyed to them, and their heirs, executors, and successors whomsoever, as trustees for Mrs Agnes Wilson, Glasgow, the stock in question; and Thomson and Low, as trustees, regularly accepted of that transfer. The consequence was that they were put upon the register of shareholders for that amount of stock, and their names were transferred from one stock ledger to another, according to the ordinary practice of the bank, the last entry being under date 2d June 1875. That entry remained unaltered down to the stoppage of the bank and the commencement of the liquidation.

The ground upon which it is said that Low's name ought to be taken off the register I think is this, that when he died he was the last survivor of the two gentlemen who were entered as holding this stock as trustees, and therefore the petitioners contend there was a duty imposed upon the bank, in consequence of his death, to put an end to this entry altogether, and to do it in a way which they say is provided by a certain article of the bank's contract of copartnery. Mr Thomson, one of the trustees, had died at an earlier period than Mr Low, but his name continues on the stock ledger as well as Mr Low's. There may be a question, but I do not think it arises here, whether under the terms of this trust the trust-estate accrued to the survivor of the two trustees? and that would be a very important question as regards the executors or representatives (if there be any) of Mr Thomson, the first deceaser. But the important fact we have to deal with, and which, I think, precludes any necessity of entering into that question, is this, that those two names both stood upon the stock ledger at the time when the liquidation commenced, and it seems to me to follow that unless there is something very special in this case the personal estate of Mr Low must at anyrate be answerable for all liabilities incurred by him as a partner.

But the contention of the petitioners really came at last to this, that the case falls under the 36th article of the contract of copartnery, and that under that article there was an imperative duty imposed upon the directors of the bank when a shareholder died to have his name in one way or another removed from the register *tempestive* by the exercise of the powers which they say are thereby conferred upon the directors. Now, I think all this proceeds upon a misreading of that article in the contract. It deals with three different cases. It deals with the case of the creditors of a partner arresting his share in the stock of a company. It deals with the case of a deceased partner whose shares are attached by an executor-creditor confirming. And it deals also with the case of a partner dying with no diligence done against his estate either during his life or after his death, and no person choosing to represent him.

As regards the two first cases, they may be set aside altogether, and the parts of the article applicable to them may be read out of it for the purpose of making the matter more clear. The words applicable to the case of a deceased partner against whose share no diligence has been done are these:—"In the case of a partner deceasing, and of no party choosing to represent such deceased partner by confirming executor, or otherwise assuming his estate within twelve calendar months after his decease." That is the case to which the article applies, and it is the only case to which the article applies, except the cases of arrestment or confirmation as executor-creditor, which I have already set aside. Now, is this the case of a partner deceasing and of no party choosing to represent such deceased partner by confirming executor or otherwise assuming his estate? Most certainly it is not, because in the present case the petitioners were duly confirmed executors of Mr Low shortly after his death, and therefore there was a party choosing to represent the deceased and confirming executor and assuming possession of his estate. Upon that ground alone it is quite clear that the article does not apply to the present case.

The way in which the power given to the ordinary directors is expressed, in the case supposed in the 36th article, has been founded upon as showing that the words I have just been commenting upon bear a different significance from the natural meaning. The words are, that it shall be in the power of the ordinary directors of the company either to sell or dispose of the shares not taken up by a legal title on the lapse of twelve months. It is said that this shows that the words which I have already commented upon mean that the party has shown that he does not choose to represent a deceased partner by not within twelve months becoming a partner in respect of the shares which the deceased held. I think that is a most extraordinary argument, because it seems to me that the words "taken up by a legal title," which occur a little further on in the article, very accurately represent the position of an executor who has confirmed and lodged an inventory in common form. That is the way of taking up an executry estate by a legal title, and if the shares in question were not in the inventory, and therefore not taken up by a legal title, that was an omission—provided always they should have been there,—and an omission which might have been set right by the interposition of the bank directors themselves if they had chosen, or very probably by the officers of Inland Revenue if the fact had come to their knowledge. But it is a mere omission, and it does not in the least degree weaken the effect of the confirmation as being a confirmation to the estate of the deceased, and involving entire representative liability upon the part of those who expede it.

Now, let us see what it is that the directors are empowered to do in the case to which this section applies. They may either sell or dispose of the shares not taken up by a legal title on the lapse of twelve months, or they may retain and appropriate the same to the use of the company, in like manner, and as freely, and subject always to the same claims of deduction and retention as are provided in the case of bankrupt partners. This is a mere power. There is no express direction on the face of this clause, and therefore even if the article applied to the case before us, I

should say it was entirely in the option of the directors to exercise or not exercise that power according to their discretion.

For these two reasons I reject the argument founded upon the 36th article—(1) because the case in hand is not one to which it applies; and (2) if it did apply, there is no duty imposed upon the directors, but merely a power given, which they may exercise or not according to their discretion, acting in the interest of the corporation which they represent.

No doubt it is hard that after the lapse of six years from Mr Low's death his executors should be called upon for the first time to undertake so large a responsibility as is here sought to be imposed upon them, and I dare say what they say is very true—that they knew nothing about his holding those shares; but I am afraid that lapse of time has nothing to do with it, and that if Mr Low had died in the month of September last instead of having died five or six years ago, the question would have been exactly the same; and if that had been so—if Mr Low had continued a partner *qua* trustee in respect of those shares down to within a week or two of the stoppage of the bank—I doubt whether the petitioners would ever have supposed they had any case for escaping from liability to the extent of his executry estate. Now, that really makes the case, I think, a very simple one. It is quite impossible for us to order Mr Low's name to be taken off the register. It was properly put there, and it has never been taken off by any competent proceeding.

It is said on the part of the petitioners that if a man dies he must cease to be a trustee, and therefore he ought no longer as trustee to continue a partner of the bank, and that it is not necessary, in order to enable the directors to take a name off the register, that there should be somebody else whose name is to be put on in his stead. That may be true in certain cases, but I doubt very much whether it is true in any case where the directors have no application made to them at all on the subject. It is a very delicate matter indeed for directors of a joint-stock company to meddle with their register to the effect of either taking a name off or putting a name on where nobody asks that that shall be done. I doubt the propriety of their doing it. They cannot know, and do not know, why a name is allowed to remain there. There may be very good reasons for it, of which they are not aware, and therefore it would be a very rash thing, and very far from being their duty, for the directors of such a company to take a name off the register of shareholders without knowing the reason why, and being asked to do it by somebody who can assign a good reason for asking it.

I am therefore for refusing the petition.

Lord Deas, Lord Mure, and Lord Shand concurred.

The Court pronounced this interlocutor:—

"The Court . . . direct the liquidators to remove the name of the deceased John Low from the first part of the list of contributories of the City of Glasgow Bank, and to place the names of the petitioners as his representatives on the second part of the said list: *Quoad ultra* refuse the petition, and decern: Find the petitioners liable in expenses," &c.

Counsel for Petitioners—Trayner—Pearson. Agents—Cowan & Dalmahoy, W.S.

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

Thursday, October 16.

SECOND DIVISION.

MACKENZIE *v.* BLAKENEY.

Expenses—Fees to Counsel in Sheriff Court Action—Act of Sederunt 4th December 1878.

The Act of Sederunt of 4th December 1878 recognises the employment of counsel in Sheriff Court cases only when "authorised or subsequently sanctioned" by the Sheriff. In a Sheriff Court action, which was subsequently appealed to the Court of Session, a commission was granted by the Sheriff to examine witnesses in London. The pursuer at this examination employed both counsel and agent, but the defender was only represented by his agent. No notice of the employment of counsel was given to the Sheriff by the pursuer, and his sanction was not obtained. The pursuer was successful in the action, and at the taxation of accounts he claimed that counsel's fees for the commission should be paid by the unsuccessful party. The Auditor disallowed the claim, and the Court adhered.

Counsel for Pursuer—R. Johnstone. Agent—J. Smith Clark, S.S.C.

Counsel for Defender (Appellant)—Balfour—Darling. Agents—Lindsay, Paterson, & Co., W.S.

Friday, October 17.

SECOND DIVISION.

[Lord Rutherfurd Clark, Ordinary.

CRAIGIE AND OTHERS *v.* THE COMMISSIONERS OF SUPPLY FOR THE COUNTY OF ABERDEEN.

Commissioners of Supply—Whether Entitled to more than One Vote when Representing Several Interests—Proxy—Stat. 17 *and* 18 *Vict. c.* 91 (*Valuation of Lands* (*Scotland*) *Act* 1854), *sec.* 19.

A factor acting for a commissioner of supply does not vote by proxy, but under a separate qualification as commissioner established by the Valuation of Lands Act 1854, and however many qualifications he may have, he is only entitled to one vote.

By the Act 17 and 18 Vict. cap. 91, entituled an Act for the Valuation of Lands and Heritages in Scotland, sec. 19, it was, *inter alia*, provided—"From and after the passing of this Act the qualification requisite for a commissioner of supply in any county shall be the being named as an *ex officio* commissioner of supply in any act of supply, or the being proprietor, or the husband