

of shareholders and list of contributories, but that Mr Steedman's should remain upon the latter.

Counsel for Petitioners—M'Laren—Trayner—Strachan. Agents—Mack & Grant, S.S.C.

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

Friday, October 31.

FIRST DIVISION.

CITY OF GLASGOW BANK LIQUIDATION—
(CARMICHAEL'S CASE)—MRS JANE
CARMICHAEL AND HUSBAND *v.* THE
LIQUIDATORS.

Husband and Wife—Jus mariti—Public Company—How far Competent to go behind Register of Members—Where Stock Purchased by Husband stood in Wife's Name but not exclusive of Jus mariti.

A husband purchased with funds belonging to himself three lots of stock in an unlimited banking company, taking the transfers in the name of his wife, the *jus mariti* being specially excluded in two of them. His intention was to settle a provision upon her. He thereafter signed the dividend warrants as on behalf of his wife, but treated the dividends as his own. He also signed on her behalf the acceptance of certain new stock which was subsequently allotted to her as a shareholder. The *jus mariti* was not excluded in regard to this new stock; nor was there latterly any such exclusion on the register of members in regard to any of these parcels of stock, although the original entry contained that qualification. The wife was possessed of separate estate, and under an antenuptial marriage-contract was entitled upon her husband's decease to an annuity of £100. On the liquidation of the bank—held (following *Steedman's* case) that the husband alone was liable as a contributory.

The petitioners in this case, Mr and Mrs Carmichael, were married in 1857. By their marriage-contract Mr Carmichael undertook to secure his wife in an annuity of £100 in case she should survive him, and for that purpose conveyed certain policies of insurance to the marriage-contract trustees. She, on the other hand, conveyed to the trustees her whole estate—the income during the subsistence of the marriage to be paid to her “on receipts signed by herself without the consent of her promised spouse, whose *jus mariti* and right of administration are hereby expressly excluded;” and the capital on the dissolution of the marriage to go to her, her heirs and assignees, she having power to test.

The petition related to £505 stock of the City of Glasgow Bank which at the date of the liquidation stood in the name of Mrs Carmichael. The names of both spouses were placed on the list of

contributories, and the object of the petition was to have that of Mrs Carmichael removed. The general features of the case and the arguments were similar to those in the case of *Steedman*, reported immediately above.

The following joint minute of admissions explains the peculiarities:—“(1) That on or about 23d November 1857 there were transferred to the female petitioner, exclusive of the *jus mariti* of the other petitioner, fifteen shares of the capital stock of the City of Glasgow Bank, of £10 each, fully paid up; and on or about 31st March 1859 there was transferred to her a second lot of fifteen shares of the said capital stock—also exclusive of her husband's *jus mariti*. That these transfers were accepted by the female petitioner with consent of her husband, and were signed by them both. (2) That on or about 10th July 1858 there were transferred to Mrs Carmichael fifteen shares of the said capital stock, fully paid up, the transfer of which was also accepted by her with consent of her said husband, and was signed by them both. That in this transfer her husband's *jus mariti* was not excluded. That in the year 1864 the City of Glasgow Bank sent out circulars to its shareholders inviting them to accept allotments of new stock; that such a letter was sent to Mrs Carmichael, and that the letter accepting £100 of new stock, No. 12 of process, which is signed by the male petitioner ‘Jane Anne Carmichael, p. J. Carmichael, 1 Granby Terrace,’ was thereupon sent to the head office of the bank; that her husband's *jus mariti* was not excluded as regards the £100 of stock so allotted and accepted. (3) That the said stock was purchased by, and the price thereof paid out of, funds belonging to the said John Carmichael, being savings laid past from his business, which he intended by taking the transfer in his wife's name to settle as a provision on her; that the warrants for the dividends accruing on said stock were signed by him as for his wife, and the dividends received and applied by him to his own uses. That it was the custom of the bank when stock was held as in the present case, to pay dividends on the receipt of either husband or wife; and the officials were also in the habit of paying dividends on the receipt of the shareholder's agent, where such agent was known to them. (4) That at the dates the said stock was acquired the bank knew that the female petitioner was a married woman, but they were not informed and were not aware that the cash paid therefor belonged to her husband, or that the dividends falling due thereon were retained by him.”

The original entry in stock ledger No. 4 of these various parcels of stock was headed—“Mrs Jane Anne Brown or Carmichael, spouse of John Carmichael, commission agent, residing at No. 415 St Vincent Street, Glasgow, excluding the *jus mariti* of her said husband.” But in ledger No. 5 it became—“Mrs Jane Anne Brown or Carmichael, spouse of John Carmichael, commission agent, and residing at No. 10 Hillhead Gardens, Glasgow,” and this last form of entry was continued into the ledger which was current when the bank failed.

On the 23d October 1878, after the liquidation had commenced, Mr Carmichael executed a revocation in these terms:—“I, John Carmichael, commission agent in Glasgow, considering that in the year 1860 I made a gift to my wife Mrs

Anna Brown or Carmichael of certain sums of money, which sums were invested in the purchase of £405 of the City of Glasgow Bank stock. In the year 1864 I made a further gift to my said wife of certain sums of money, which sums were also invested in the purchase of £100 of the stock of the said bank; and further, considering that the said gift was *inter virum et uxorem*, and is consequently revocable by me, therefore I do hereby revoke and recall the same. In witness whereof, &c.

JOHN CARMICHAEL."

At advising—

LORD PRESIDENT—It appears to me that the case of *Steedman* which we have just decided rules this case. It is the case of a husband and wife, and the object of the petition is to remove the lady's name from the register of shareholders and list of contributories. The parties were married in 1857, and in the end of the same year they acquired some stock in the City of Glasgow Bank to the extent of 15 shares. There was a second lot of 15 shares acquired in 1858, and a third lot in 1859. Now, as regards two of those lots—the first and the third—the transfer bore that the stock was conveyed upon the consideration of money advanced by the wife exclusive of her husband's *jus mariti*. As regards the transfer of 1858, there was no exclusion of the *jus mariti*. Then in 1864, when the bank issued new stock, an application was made for that new stock by Mr Carmichael in name of his wife, and the stock was allocated accordingly. But there was nothing done with regard to that stock to exclude the husband's *jus mariti*. It is made matter of admission that the stock was purchased by, and the price thereof paid out of, the funds belonging to the said John Carmichael, being savings laid past from his business, which he intended by taking the transfer in his wife's name to settle as a provision to her. It is further admitted that the warrants for the dividends on the stock were signed by him as for his wife, and the dividends were received and applied by him to his own use. The entry in the register of the bank is somewhat peculiar. In the original stock ledger, under date 1857, the entry is—"Mrs Jane Brown or Carmichael . . . excluding the *jus mariti* of her husband;" but when the stock comes to be transferred to a new ledger in 1869, that exclusion of the *jus mariti* is altogether omitted in the heading of the account, and so it is in the third ledger beginning in 1875. The fact, however, that the stock was registered in her name remains undoubted, and the other fact that the stock was purchased entirely with her husband's funds, and that the dividends were received by him through his wife and applied to his own purposes is also quite undoubted; and that just seems to bring the case precisely within the rule of *Steedman's* case which we have decided. I think it is unnecessary to say more. The same course I think must be followed as in *Steedman's* case—to remove the lady's name and substitute that of the husband.

LORD DEAS and LORD MURE concurred.

LORD SHAND—I am of the same opinion. I think this is a clear case. It is clear—it is admitted indeed—that the stock was purchased with the husband's money. It would be difficult

to maintain, if you look at this as a provision—which he certainly intended it to be,—that it was an irrevocable provision because the husband had already fulfilled all his obligations under the marriage-contract, and if revocable he was really the owner. There is no exclusion of the right of administration, even where the *jus mariti* bears to be excluded, and I see nothing to have prevented the husband at any time changing the investment and putting the money into any other stock he thought fit during the marriage. In the third place, for years the bank had the stock registered in the lady's name without any mention of the exclusion of the *jus mariti* at all. I have no doubt, looking to the facts and to the way in which this stock was registered, that the husband is the partner in respect of it.

The Court removed the name of the wife and substituted that of the husband.

Counsel for Petitioners—M'Laren—Trayner. Agents—Macbrair & Keith, S.S.C.

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

Saturday, November 1.

FIRST DIVISION.

[Lord Adam, Bill Chamber.

TAYLOR (WATT'S TRUSTEE) v. CHARTERIS AND ANOTHER (WATT'S TRUSTEES).

Bankrupt—Trustee—Discharge—Bankruptcy (Scotland) Act 1856, sec. 103—Acquisition of New Estate subsequently to Trustee's Discharge.

A bankrupt acquired new estate subsequently to the discharge of the trustee in the sequestration, and was afterwards discharged himself, but without composition and without the consent of certain of his creditors. He at once assigned it to his marriage-contract trustees. The trustee was then re-appointed upon his own petition. The Court held that he was thereupon entitled to reduce the new estate into possession in terms of section 103 of the Bankruptcy (Scotland) Act 1856, the creditors not being barred by lapse of time or by acquiescence.

The estates of Samuel B. Watt & Co., and Samuel Beveridge Watt as sole partner of that firm and as an individual, were sequestrated by the Sheriff of Lanarkshire on the 29th June 1875, and Mr James Taylor, C.A., Glasgow, was confirmed trustee on the 19th July following. The estate yielded a dividend of 4s. 10³/₄d. in the £, and after dividing that sum amongst the creditors the trustee was discharged on 11th October 1878. Subsequently on 7th April 1879 the bankrupt was also discharged, without a composition and without the consent of certain of his creditors, of all debts contracted by him or by his firm before the date of the sequestration.

Through the death of a relative upon 14th February 1879 the bankrupt had become entitled