

parties, in answer to the questions of law submitted for the opinion of the Court, say (1) that the said refuse despatch works at Kelvinhaugh, as described in the minute of admissions for the parties, are a factory within the meaning of the Workmen's Compensation Act 1897; (2) that the preferable course would have been to dismiss the action so far as founded on common law and on the Employers Liability Act 1880, reserving it *quoad ultra* for the purpose of assessing under it any compensation which might be found to be due to the appellant under the Workmen's Compensation Act 1897, but that the course followed did not preclude the appellant from maintaining her pleas under the said Act, or prevent her from having compensation assessed under it; (3) that the Sheriff was right in refusing the respondent's application to state the question "whether the accident to the said Walter Henderson was one arising out of or in the course of his employment," in respect that that was a question of fact and not of law: Recal the interlocutor of 2nd January 1900 in so far as it finds that the said works are not a factory within the scope of the Workmen's Compensation Act 1897, and assoilzies the defenders, and in so far as it finds the pursuer liable in expenses, and allows an account to be given in, and remits to the Auditor to tax and to report; and meanwhile continue the cause."

Counsel for the Appellant—M'Lennan—
 Craige. Agents—Miller & Murray, S.S.C.

Counsel for the Respondents—Shaw, Q.C.
 —M. P. Fraser. Agents—Campbell & Smith,
 S.S.C.

Saturday, July 7.

SECOND DIVISION.

[Lord Pearson, Ordinary.]

GALBRAITH v. PROVIDENT BANK
 OF SCOTLAND, LIMITED.

Husband and Wife—Wife's Capacity to Contract—Personal Obligation of Married Woman—Promissory-Note Granted by Married Woman—Cautionary Obligation—Knowledge and Consent of Husband—Separate Estate—In rem versum—Married Woman Carrying on Business in Maiden Name—Married Woman Holding Herself out as Single—Innocent Misrepresentation—Promissory-Note Signed by Married Woman in Maiden Name.

A, a married woman, carried on the business of a dressmaker under her maiden name, with the knowledge and consent of her husband. The marriage was not secret or latent. In matters connected with her business A was in the habit of signing her maiden name. In other matters she signed her married name. B, a friend

of A and her husband, applied to a bank for a loan, to be used by him for the purposes of his own business, which had no connection with that of A, and on their asking for additional security he submitted the maiden name of A, describing her as a dressmaker, at her business address. The bank, who had no knowledge of A, wrote to her in her maiden name, asking if B had her authority in giving her name as security for the advance desired. Before A had replied to this letter B called on A with a promissory-note for the amount, and A signed it in her maiden name. B then presented the promissory-note to the bank, and they, taking A's signature as a favourable reply to their letter, advanced him the money. This advance having been partially repaid, B obtained a further advance from the bank upon a second promissory-note, which was also signed by A in her maiden name. The bank had no further communications with, and made no further inquiries regarding A before making this second advance. B having thereafter suspended payment, the bank demanded payment of the second promissory-note from A, which she refused on the ground that she was a married woman.

Held (aff. judgment of Lord Pearson) that as (1) there had been no fraudulent misrepresentation made by A to the effect that she was unmarried, and her marriage was not latent or concealed, and (2) the transaction was not *in rem versum* of her, and was not connected with her business, A was not bound by her personal obligation, even assuming it to be the case that she had signed the promissory-note with the consent of her husband—*diss.* Lord Moncreiff, who was of opinion that, although there was no evidence of fraud in the ordinary sense, A by her actings had held herself out as an unmarried woman, and had thereby induced the bank to give the advance, and that this was sufficient to make this case an exception to the general rule that the personal obligation of a married woman is not binding upon her.

Mrs Agnes Jack or Galbraith, wife of and residing with John Sands Galbraith, 304 Bath Street, Glasgow, with consent and concurrence of her husband as her curator and administrator in law, presented a note of suspension of a threatened charge at the instance of the respondents the Provident Bank of Scotland, Limited, 2 West Regent Street, Glasgow, proceeding upon an extract registered protest, dated 2nd June 1899, and warrant of the Lords of Council and Session thereon, dated 17th June 1899, the said protest being at the instance of the respondents against J. & A. Yuill, 4 Robertson Lane, Glasgow, Alfred Yuill, Ralston, Barrhead, Hugh Campbell, Haymount, Cambuslang, and the complainer, to make payment to the respondents of the sum of £22 sterling contained in a promissory-note, dated 18th January 1899, and

payable on demand, granted by the said J. & A. Yuill, the said Alfred Yuill, James Yuill, Broomielaw, the said Hugh Campbell, and the complainer, in favour of the respondents, with interest, damages, and expenses.

The complainer pleaded, *inter alia*—“(1) The complainer being a married woman, and having signed the promissory-note in question without her husband's consent or concurrence, the threatened charge thereon ought to be suspended, with expenses.”

The respondents pleaded, *inter alia*—“(3) The complainer having estate free of the *jus mariti* and right of administration of her husband, and having granted said bill in the ordinary course of business carried on by her, and having held herself out as an unmarried woman, and thereby induced the respondents to accept her signature to said bill, the respondents are entitled to have the present note dismissed, with expenses.”

Proof was allowed and led. The facts of the case are fully set forth in the opinion of the Lord Ordinary (PEARSON).

On 27th March 1900 the Lord Ordinary suspended the charge complained of, and whole grounds and warrants thereof, *simpliciter*, and decerned, and found the complainers entitled to expenses.

Opinion.—“This is a suspension by a married woman, Mrs Agnes Jack or Galbraith, of a threatened charge upon a promissory-note for £22, signed by her on 18th January 1899 in her maiden name ‘A. Jack.’

“The ground of suspension as set forth in the complainer's first plea is that she was a married woman, and signed the promissory-note without her husband's consent or concurrence. The respondents, admitting the general rule of law as to the invalidity of the personal obligation of a married woman, seek to bring the case within one or other of the recognised exceptions to that rule. They plead (in their third plea) that the note should be dismissed in respect of ‘the complainer having estate free of the *jus mariti* and right of administration of her husband, and having granted said bill in the ordinary course of business carried on by her, and having held herself out as an unmarried woman, and thereby induced the respondents to accept her signature to said bill.’ Though not included in the plea, the respondents further argue that the case is within another of the exceptions, namely, that the proceeds of the bill were wholly or partly *in rem versum* of her.

“As these exceptions turn on questions of fact, it is necessary to examine the proof so far as bearing on them.

“The complainer was married to Mr Galbraith about 1887. Before her marriage she had carried on business as a dressmaker in Glasgow, under the style of ‘A. Jack.’ After marriage she continued to do so. Her marriage was quite open and public, and it was known among her friends and customers that she was a married woman. For about eleven years past she has had an account with the National Bank. Her

pass-book is in the name of ‘Miss Agnes Jack.’ But in the bank ledger her name was entered in 1893 as ‘Agnes Jack (Mrs Galbraith),’ and since 1896 as ‘Miss Agnes Jack (Mrs Galbraith).’ She alone drew cheques on that account, and always with her maiden signature or business signature, ‘A. Jack.’ She had also a deposit-receipt account with the National Bank. In this account two deposit-receipts dated in 1897 were in name of Miss Agnes Jack, and are endorsed ‘Agnes Jack’; and two dated in 1898 and 1899 were in name of Mrs Agnes Galbraith, and are endorsed ‘Agnes Galbraith.’ In the Glasgow Directory her name appears as Miss Jack, dressmaker; while at the same address (which, however, includes several other occupiers) appears ‘J. S. Galbraith.’ On the sign or nameplate the name of Miss Jack alone appears.

“Mr Galbraith was a salesman and traveller in a drapery warehouse before his marriage. He then went into business as a commission agent, until about three years ago. He assists his wife in looking after her business, and sees customer when she is engaged.

“Hugh Campbell, whose name is on the bill, and who induced the complainer to sign it, was a friend of Mr Galbraith before marriage, and so became acquainted with the complainer. In July 1898, Campbell being at the time a partner of J. & A. Yuill, tinsmiths, asked Mrs Galbraith for temporary aid as a friend. She advanced him £5 by cheque on 8th July, which he repaid her by cheque on the 13th. Again on 25th July she advanced him by cheque £12, which he repaid by cheque on 6th August. On all these cheques her name, as drawer or endorser, appears as ‘A. Jack.’ This was her usual signature not only in matters relating to her own business of dressmaker, but in all business matters. Then on 4th September she again advanced him £8, which this time she handed him in cash against his I O U. This loan was still unpaid on 20th September as after mentioned.

“Campbell had called at the respondents' office about 12th August to arrange for this advance of £20 to his firm of J. & A. Yuill, with himself as security. On 17th August he was informed by letter that the bank required an additional security. Campbell did not reply until 12th September, when he wrote the respondents—‘I note that you require an additional security, and therefore submit the name of Miss Jack, dressmaker, 304 Bath Street. Her bankers are the National Bank, Sauchiehall Street.’ The respondents thereupon wrote to the National Bank for the usual financial report on ‘Miss Jack, dressmaker,’ and asked if she was good for £50. The reply made by her bankers was—‘The person named in your letter of yesterday's date has a good business, and is in our opinion good in the way of business for amount quoted.’ The respondents did not ask her bankers if she was unmarried. If they had, the National Bank would probably (in accordance with their ledgers, and with their own know-

ledge) have made answer that she was a married woman.

"The respondents having thus obtained a satisfactory report of her credit sent to Campbell on 16th September a form of application for the advance. He filled it up as for an advance to himself, and handed it in to the respondents' office on the 17th. Under the head 'Security offered' he inserted 'Messrs J. & A. Yuill & Coy., 4 Robertson Lane; Miss Jack, 304 Bath Street.' This he did without communication with the complainer and without authority, in reliance on her general willingness to aid him.

"The respondents thereupon wrote on 19th September to 'Miss Jack, Bath Street, Glasgow,' that her name had been given to them by Campbell as security for an advance of £20, and asking to hear from her on receipt that this was duly authorised by her and in order. This letter she received the same evening. She sent no formal reply, as her husband arranged with her that he would go down to the Provident Bank next morning (the 20th) to see about it. But Campbell having called early on the 20th with the promissory-note, she signed with her signature 'A. Jack.' Campbell on the same day presented it at the respondents' bank and got their cheque for it, which he immediately paid into his firm's account at the British Linen Bank. Mr Gavin, the Secretary of the Provident Bank, says (and I have no doubt quite truly) that he took Miss Jack's signature to the promissory-note as being her reply to his letter of the 19th.

"The advance of £20 thus made to Campbell was arranged to be repaid by him in four monthly instalments of £5, 10s. each. The Provident Bank received three monthly payments. The fourth instalment was payable in January, about the time when the promissory-note now in question was granted, and the Provident Bank deducted the amount of that instalment from the value which they gave to Campbell for the new note on 18th January. To that extent the second promissory-note was a renewal of the first one.

"Campbell had applied to the respondents for this new advance on 13th January 1899. Of that date he signed a form in which he asked for an advance of £40 to J. & A. Yuill, and as the security offered he again inserted 'Miss Jack, dressmaker, 304 Bath Street.' The respondents agreed to an advance of £22, and on Campbell producing the promissory-note now in question bearing her signature 'A. Jack,' they made the advance to him. They did so without further communication with the complainer or further inquiry about her.

"The circumstances attending the signature of this second promissory-note by the complainer were these. Campbell called one evening and told her that the first bill was paid out, and asked her to sign another which he had brought with him. After consulting with her husband in another room, who advised her not to sign it, she returned to Campbell, who persuaded her to give her signature.

"Then in February the Yuills suspended payment, and the respondents wrote on 17th March to 'Miss A. Jack,' intimating that they would have to look to her for a settlement of the bill. In reply her husband, Mr Galbraith, called and saw Mr Gavin, the respondents' secretary, and made certain offers for payment by easy instalments. This, however, was before he consulted a lawyer.

"Mr Gavin depones that until this call of Mr Galbraith shortly after 17th March 1899 he and his bank had no idea that 'Miss Jack' was a married woman, and to this agrees the evidence of Mr Galbraith, who says that Mr Gavin made that statement to him at the time. Campbell, on the other hand, asserts that he told Mr Gavin, and that Mr Gavin knew all along from September 1898 that she was a married woman, and that Mr Galbraith was her husband, and he gives certain particulars of the conversations. Mr Gavin, who gave his evidence in a clear, business-like, and straightforward manner, and who in my opinion was obviously speaking the truth in this matter, denies Campbell's statements *in toto*, except as to one or two details, of which he says Campbell informed him after the stoppage of the Yuills in March 1899, when he challenged Campbell for having misled him. In this conflict I have no hesitation in preferring the evidence of Mr Gavin against that of Campbell, whose demeanour was unsatisfactory, and whose evidence I am not disposed to accept where it is contradicted.

"Accordingly the position of the Provident Bank was this. Having no reason to believe that she was a married woman, but rather reason for believing her to be single, they wrote to her on 19th September in the name of 'Miss Jack, Bath Street, Glasgow,' asking if Campbell's use of her name as security for an advance of £20 was authorised. Next morning she signs the promissory-note in her maiden name 'A. Jack,' and delivers it to Campbell that he may raise money on it, and the respondents give him the advance on the faith of her signature. In the same state of knowledge or ignorance, nothing having happened meanwhile to put them upon further inquiry, they advanced to Campbell and his firm £22 in January 1899 (less the last of the previous bill) again upon the faith of her signature 'A. Jack.'

"It appears to me that her receipt of the letter of 19th September addressed to her as Miss Jack without repudiation or explanation, followed by her signature of the first bill in her maiden name, amounted to a representation by her to the Provident Bank that she was an unmarried woman, and that if this was sufficient when the first bill was signed, the bank had no knowledge when the second bill was signed of any circumstance which put upon them any further duty of inquiry. On these facts the question is, whether the respondents have succeeded in bringing the case within any recognised exception to the rule that a married woman is incapable of granting an effectual personal obligation.

"The exception most prominently suggested in the evidence and in argument was that the complainer had held herself out as an unmarried woman, and had thereby induced the respondents to advance money on her signature. This, on the statement of it, seems a highly equitable principle, and especially so in a case like the present, where the wife is in business with a separate estate of her own, so far at least as regards the earnings of her business, and where the husband is really her mere assistant. I should be strongly disposed to find for the respondents here, but I am unable to do so consistently with the law as hitherto laid down.

"There is, indeed, singularly little authority in our law on the subject. The general rule is, of course, amply established. Perhaps the statement of it most favourable to the respondents' view is to be found in the opinions in the case of *Thomson v. Stewart*, 1840, 2 D. 564, where it was laid down that the personal obligation of a married woman is 'not always and in every case an absolute nullity,' but is null *ope exceptionis*. But this is explained as meaning only that an action against her on the personal obligation is not in itself incompetent. As soon, however, as she pleads the defence of marriage, that is an absolute defence, unless the pursuer can bring the case within one of the recognised exceptions. That decision therefore does not carry the respondents very far as modifying the rule that such obligations are null.

"But upon the exception which I am now considering the authorities are very sparse, and they appear to stand thus—So far as I have noted, Stair, Erskine, Bell (Prin. and Comm.), Menzies and Montgomery Bell, all of whom treat of the rule with the exceptions, are silent on this topic. The first and only institutional writer who alludes to the subject is Bankton (i. 5, 74). He says—'If the wife passes herself for a person unmarried, and contracts debts, they will be effectual against her, because the law does not protect people in committing of frauds, it being a rule in such case that *deceptis non decipientibus jura subveniunt*.' The next publication of the doctrine was in 1824, when the volume known as Elchies' Annotations on Stair was published. Lord Glenlee, who was possessed of a manuscript copy of these notes, quoted from them in 1815 in his judgment in the case of *Cockburn Ross v. Heriot's Hospital*, and states that he did not know who was the author. Mr Bell in his Commentaries attributes them to Lord Elchies, and speaks of their authority in high terms. On page 26 of these notes occurs the following:—'In some cases a wife binds herself personally for debt, as if the marriage was latent and concealed, and one contracts with her *bona fide* not knowing of the marriage, as in the case of *David Spence and Relict of Captain Reynolds* decided about the years 1729 and 1730—a decision of which I can find no trace elsewhere. So far it will be observed that deceit or fraud enters into the statement of the exception—either deceit in the

marriage itself being latent and concealed, or fraud in misrepresenting her status in the particular transaction. The only other authority to which I was referred was the passage in Lord Fraser's work, where he treats of this matter (*Husband and Wife*, ii. 544) as follows:—'3. Where the married woman fraudulently holds herself out as unmarried. If a married woman assert herself to be unmarried, and so induce any person to enter into a contract with her, the other party may insist on the contract being implemented, and may use diligence on the wife's obligation.' And for this proposition he quotes Bankton and Elchies' Annotations as already cited. 'But,' he adds, 'there is room for a distinction;' and then follows what is substantially a translation from Pothier (*Puissance du Mari*, sec. 54). The distinction or division of cases suggested is by no means a satisfactory one, for it is plainly not an exhaustive division, and in practice cases might well happen which do not fall within either class. The distinction as expressed by Pothier is practically this—If the other contracting party could have informed himself of the woman's status, she is not bound, else the rule as to a wife's contracts could be easily evaded, for she would simply have to assume the position of a single woman or a widow. But when a woman, in the absence of her husband, and whose marriage was unknown in the place of her residence, and who passed in public for a single woman, contracts in that place, she is bound, it being hardly possible in that case for the other contracting party to have ascertained if she was married. Lord Fraser in his conclusion restricts the exception to cases where the marriage was secret or practically so.

"In the present case the marriage was in no sense secret or latent, and the representation which I hold the complainer to have made to the respondents with the effect of inducing them to accept her signature was, I think, obviously not fraudulent nor intended to deceive. She and her husband were in fact ignorant of the rule of law; the wife's acquiescence in being addressed as 'Miss Jack,' and her signature conform thereto were both according to her ordinary conduct of all her affairs not purely private, and her husband's intended visit to the Provident Bank before the first bill was signed would have cleared up matters at once. That visit fell through because Campbell's call was unexpectedly early, and the complainer having signed the bill she and her husband evidently believed that she was bound, and that she was too late to go to the Provident Bank. If, therefore, this case were within the exception, every case would be within it in which a wife signed in what was known to the other party to be her maiden name. Indeed, the exception would go further, for if innocent representation were enough, every married woman who enters into a contract might well be held to represent thereby a capacity to contract, and thus the exception would eat up the rule. This cannot be the state of the law. Lord

Fullerton's opinion in the above-cited case of *Thomson v. Stewart* (p. 572) shows that he takes account of this view in his statement of the general rule—"I think any married woman who signs a bond or bill at least holds herself out as a person against whom an action of constitution may be brought though the law has given her the benefit of a plea in defence, which, if pleaded, must be sustained, unless its effects can be taken off by the pursuer bringing her case within some of the exemptions from the general rule."

"I do not proceed upon any views expressed in English cases, as the law of England is perhaps not a safe guide in such a matter. But I observe that a wife who had signed a promissory-note as 'Anne Farmer, widow,' was held not to be barred from founding on the general rule in defence to an action on the note ('*Cannam v. Farmer*, 1849, 3 Exchequer 698')."

"I hold that the respondents have not succeeded in bringing the present case within the exception on which they found, according to the statement of that exception in any of our authorities; and that the larger proposition for which they contend has never been admitted in our law."

"In my opinion the respondents fail to bring the case within any of the other recognised exceptions. They plead that the complainer has estate free of the *jus mariti* and right of administration of her husband; and that she granted the bill in the ordinary course of business carried on by her. It is impossible to maintain on the proof that the bill was granted in the course of her business. It was a cautionary obligation in no way connected with her business, and granted out of pure goodwill to Campbell. It may be taken that the complainer has separate estate, for the Married Women's Property (Scotland) Act 1877, sec. 3, excludes her husband's rights from the earnings of any business which she carries on under her own name; and I am willing to assume that the deposit-receipts, which were spoken to, represent such earnings, but that fact does not displace the general rule as to the incapacity of a married woman to bind herself except in matters relating to such separate estate. As it was put by Lord President Inglis in the case of *Biggart*, 6 R. page 481, cautionary obligations by a married woman '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.' The obligation here does not come within that description."

"Nor can it properly be said to be *in rem versum* of the complainer. Undoubtedly it was an onerous contract so far as the Provident Bank was concerned. They gave value for the bill by advancing the amount to Campbell on the faith of the complainer's signature. But the complainer took no advantage under it, direct or indirect. Indeed, a cautionary obligation, which this was, is the typical instance

of a contract which though onerous is not as regards the cautioner *in rem versum*. A case might indeed be figured in which the pecuniary relations between cautioner and debtor otherwise were such that the cautionary enured to the cautioner's pecuniary benefit indirectly. But that is not so here. As regards the bill now in question (the second bill), it certainly is not so. And even if the question had arisen as regards the first bill, I do not think this ground of liability would have been made out. It is said that Campbell was indebted to her in the loan of £8; that his cheque for that amount, dated 21st September, but handed to her on the morning of the 20th, was in point of fact paid out of the proceeds of the bill; and that the first bill having been paid by Campbell, excepting the last instalment of £5, 10s., the complainer must be regarded as having obtained payment of her debt, at least in part, through the medium of the cautionary obligation. On the facts as proved this is not obvious, for although Campbell tendered her the cheque for £8 first in order that she might the more readily consent to sign for the £20, yet looking at the transaction as a whole, it cannot be said that it was worth her while, and to her pecuniary advantage, to undertake a liability of £20 in order to get her debt of £8 paid. I rather think that the exception of *in rem versum* rests on a different principle, namely, that a wife cannot at once repudiate her contract and take benefit under it. But whatever might be said as to the first transaction, the second, which is in question here, cannot in my opinion be brought within this exception."

"On these grounds I think I must apply the general rule and suspend the threatened charge."

The respondents reclaimed, and argued—The Lord Ordinary had found that they had advanced the money to Campbell on the faith of the complainer's signature. It was submitted that this being so the complainer was bound to fulfil her obligation. The complainer's husband knew of the obligation and consented to his wife entering into it. His consent must be inferred from his knowledge that his wife was signing the bills, and his taking no steps to dissent. By signing the promissory-note in her maiden name the complainer held herself out to the bank as an unmarried woman. She was therefore guilty of constructive fraud.

Argued for the complainer—The Lord Ordinary's decision was right, and the reasoning in his note was sound—(1) There was no evidence that the husband gave his consent to the transaction. The mere fact that he did not repudiate the bill, which he did not know his wife had signed, till after her signature had been appended, was not proof of acquiescence. But even if he was held to consent, no amount of consent on the part of a husband would make a wife's personal obligation good—*Gibson*, Feb. 21, 1900, 7 S.L.T. 385. (2) There was no fraud or deceit in the matter. There had been

no representation to the bank by the complainer that she was an unmarried woman. Any difficulty that had arisen in the matter was the result of an innocent mistake, and that was not enough to make the complainer liable—*Wright v. Miller*, 1861, 11 C.B. (N.S.) 258.

At advising—

LORD JUSTICE - CLERK — The circumstances of this case are very peculiar. The lady whose signature to an obligation has given rise to this case is a married woman, and has been married for a considerable number of years. According, therefore, to the strict rule of law she cannot be bound by any obligation she may grant unless the circumstances are such that the case forms an exception to the rule. In the present case the respondents in the suspension found on these facts—That the complainer has carried on business ever since her marriage under her maiden name, that all her letters, cheques, &c., in connection with her business are signed in her maiden name, and that she having held herself out as an unmarried woman, this obligation signed by her in her maiden name is binding on her. They further plead that she and her husband by misrepresentation misled them into accepting her obligation as binding. If there was evidence to support this latter ground of answer to the complainers' plea, I should hold that the complainers could not take advantage of their own deceit. But a study of the evidence does not lead me to the conclusion that there was such misrepresentation. The respondents may have been misled, but I do not think it is substantiated that this was by either of the complainers. It is true that when the bank wrote to the female complainer as "Miss Jack" she did not repudiate that title, and afterwards signed her name as "Jack." But looking to the fact that she carried on a business in that name, and signed that name in business, I do not think she can be held to have acted unfairly in what she did. At that time I do not doubt that she thought she was granting a perfectly good obligation, and had nothing in her mind regarding the legality of her transacting in her maiden name and without her husband. Nor do I think there was any action on the husband's part for which he can be blamed. Indeed, I think that in the whole transaction their conduct was frank and straightforward, and not intended in any way to mislead.

But it might not be necessary that there should be any misleading or misrepresentation to justify the defence in the suspension. For undoubtedly as the female complainer was carrying on a separate business in her maiden name, and for her own profit, obligations granted by her in connection with the business might be enforceable. But I cannot see that there is anything of that kind here. The person for whose behoof the signature was given, as a cautionary obligation, was in no way connected with the female complainer's business. It was entirely a friendly act on

her part, Mr Campbell being a personal friend of her husband and herself. It was to relieve him of a financial embarrassment of his own, connected with his own business, with which she had nothing to do. It is therefore, I think, impossible to hold that the transaction was in any way connected with the separate business she was carrying on. That being so, there is nothing in the transaction itself to take the case out of the rule applicable to obligations undertaken by a married woman, and I feel compelled to hold that the judgment of the Lord Ordinary is right, and must be adhered to.

I cannot say that this suspension in reference to so small a sum reflects much credit on the complainers. It is plain that this purely technical answer to the bank must have been suggested to them as a plea they could state successfully by a legal adviser. It is not a plea that commends itself to an ordinary mind. But it is, I think, in law unanswerable, and effect must be given to it.

LORD TRAYNER — The diligence here sought to be suspended proceeds upon a promissory-note signed by the complainer, who although a married woman has a separate estate and carries on business for herself under her maiden name. Had the promissory-note been granted by the complainer in the ordinary course of her business it would have imposed on her a valid obligation, payment of which could have been operated out of her separate estate. But admittedly the promissory-note had no connection with the complainer's business, and was not granted by her in the ordinary course of business. It was granted as an accommodation to a man named Campbell, and was really (whatever it may be in form) a cautionary obligation. It is quite settled that as a general rule a personal obligation granted by a married woman is not valid. But there are exceptions to that rule, and to one of these exceptions I have already adverted. The respondents maintain that there are other exceptions to this rule, and they rely in this case as entitling them to succeed on three grounds—1st, That the husband consented to his wife granting the promissory-note, 2nd that the transaction was *in rem versum* of the complainer, and 3rd that the complainer fraudulently held herself out as a single woman and deceived the respondents. These or any of these grounds being established as matter of fact the respondents contend entitle them to use their diligence against the complainer's separate estate. With regard to the first ground, I think the husband's consent cannot give validity to what in law is absolutely invalid. He might have consented so as to make himself liable, but he could give no consent to such a transaction as we are here dealing with, which would make the obligation valid against his wife. The second exception also fails the respondent. There is no proof of the alleged fact that the proceeds of the promissory-note in question were *in rem versum* of the com-

plainer. There remains therefore only the contention founded on the alleged fraud or deception by the complainer. In my opinion this also fails. The complainer carries on business under her maiden name, but the fact of her marriage has never been concealed by her or her husband. On the contrary, the fact of the marriage is well-known, although it was not known to the respondents when they took or got the promissory-note. It is quite true that they were given the name of "A. Jack" as the proposed cautioner for or co-obligant with Campbell; that they wrote to "Miss A. Jack" to know if she consented to become bound, and that the next day they received through Campbell the promissory-note signed "A. Jack." I think the respondents might have made more inquiry than they did as to who or what the "A. Jack" was who was offered to them as cautioner for Campbell. They were content with consulting the directory and learning from it that there was an "A. Jack" carrying on business at the address which had been given them. Very little inquiry would have enabled them to discover that "A. Jack" was a married woman carrying on business under her maiden name. But I do not decide against the respondents on the ground that they failed to make due inquiry. The complainer gave and the respondents accepted a promissory-note signed by "A. Jack." Now, in granting that promissory-note the complainer made no false or fraudulent representation. It was her business firm, and the proper signature to any transaction in the course of her business. She intended to bind herself and her estate to the respondents under that firm signature, and would have done so, as I have said, had the promissory-note been granted in the ordinary course of her business. But she did not do or say anything for the purpose of deceiving the respondents or inducing them to believe she was anything other than she really was. That it turns out now that the promissory-note is not binding on the complainer is not the result of anything she has done or said. It is the result of applying a legal rule. I think it would have been more creditable to the complainer and her husband if they had acknowledged a liability which the complainer in the knowledge of her husband certainly intended to undertake. But if they plead their legal rights, these must be accorded. I therefore think the reclaiming-note must be refused.

LORD MONCREIFF—I am of opinion that this suspension should be refused.

The material facts are these:—The complainer Mrs Agnes Jack or Galbraith carried on business under her maiden name "A. Jack," with the full knowledge and acquiescence of her husband. In all matters connected with her business she was in the habit of signing her maiden name "A. Jack," otherwise she signed "A. Galbraith," her married name. In September 1898 a person of the name of Camp-

bell had previously received some small loans from the complainer, applied to the respondents for a loan, and on their asking for additional security he submitted the name of "Miss Jack, dressmaker, 304 Bath Street, Glasgow." Mr Gavin, the respondent's secretary, thereupon wrote to the National Bank asking whether "Miss Jack" was good for £50. On receiving an answer in the affirmative he wrote to the complainer on 19th September 1898 a letter addressed to "Miss Jack, Bath Street, Glasgow." "Dear Madam,—Your name has been given to us by Mr Hugh Campbell, Cambuslang, as security for an advance of £20, and we shall be glad to hear from you on receipt that this is duly authorised by you and in order." The complainer did not write a letter in reply, but she acted on this letter by signing the promissory-note in her maiden name "A. Jack." Although she was aware that the transaction was not connected with her business, and wished accordingly to sign her married name, she was pressed and induced by Campbell to sign "A. Jack."

In January 1899, when the second promissory-note, the charge on which is sought to be suspended, was granted, she again signed it "A. Jack, 304 Bath Street, Glasgow."

It is clearly proved that the bank in taking both notes were under the belief that the complainer was an unmarried woman. The witness Campbell, who swears to the contrary, is utterly unworthy of belief, and his evidence does not help the complainer's case.

These being the facts the argument for the respondents and reclaimers, the Provident Bank of Scotland, Limited, was rested mainly upon two grounds—first, that the complainer held herself out as an unmarried woman and thereby induced the respondents to accept her signature to the bill; and alternatively, that the complainer having become a party to the bill with the consent of her husband, effectually bound her separate estate.

On the second point, anomalous as it may appear, while a married woman who is possessed of separate estate may with the consent of her husband alienate her estate, there is a large body of authority to the effect that she cannot in a matter not connected with her business or her separate estate bind herself even with the consent of her husband by granting a personal obligation, such as signing a bill or promissory-note or entering into a cautionary obligation or guarantee. According to the authorities, such personal undertakings by a married woman are null; and it is not clear that the Married Women's Property Act 1881 has affected the disability of a wife in this respect.

But I do not find it necessary to consider whether this question is still open, because I am prepared to decide against the complainer on the first ground.

I do not think that there is here evidence of fraud in the ordinary sense of the word; that the complainer had any intention of deceiving or misleading the bank; she in-

tended to give a good security, and thought that she had done so. To my mind the only discreditable conduct upon her part, if she is responsible for it, is her present defence. But I am of opinion that it is not necessary for the bank to establish intentional fraud; it is sufficient that they were induced by the actings and misrepresentation of the complainer to believe that she was a single woman, provided always that they took reasonable steps to satisfy themselves upon that point. It is not necessary to hold that it would have been sufficient for them to obtain information from third parties, because they applied to the complainer herself and addressed her by her maiden name. She responded by signing the bill in the name by which she had been addressed by the bank, thus confirming them in their belief that she was the Miss Jack whose name had been furnished to them and to whom they had written.

I do not find that any of the scant authorities referred to by the Lord Ordinary necessarily conflict with the view which I take of the case. I am content with Lord Fraser's statement (vol. i. p. 544)—“If a married woman assert herself to be unmarried, and so induce any person to enter into a contract with her, the other party may insist on the contract being implemented, and may use diligence on the wife's obligation.” A woman may assert herself to be unmarried by her actings as well as by an express statement, and that I think was done in the present case. Indeed, there was here an express assertion—an assertion in writing by the complainer, made by signing her maiden name in response to a letter addressed to her as an unmarried woman. The respondents were as effectually deceived by this as if she had stated to them in words that she was unmarried, or had forged the name of another person, or signed a fictitious name, though, as I have said, I acquit the complainer of any consciously fraudulent intent.

Then Lord Fraser proceeds to deal with a case “where the wife makes no assertion,” and it is in connection with that case that he says that the wife's liability would “only arise in those cases where the marriage was secret, or entered into in such a place or such circumstances as would render it difficult or impossible for the other contractor to obtain information as to her status.”

The passage quoted from Lord Elchies' Annotations (p. 26) is as follows:—“In some cases a wife binds herself personally for debt as if the marriage was latent and concealed, and one contracts with her *bona fide* as unmarried not knowing of the marriage.” In this passage I take it the writer is simply giving an example of a case in which a wife binds herself personally. Surely it is an equally strong case for the application of the exception where the wife not only trades in her maiden name, but signs an obligation in her maiden name in response to a letter addressed to her as an unmarried woman.

In conclusion, I think that in this case there is no equity in favour of the com-

plainer or her husband. Although I do not think she had any fraudulent intention, she knew so much that she was departing from her usual rule (which must have been based on some good reason) of not signing obligations unconnected with her business with her maiden name; and as for her husband, whose evidence I think by no means trustworthy, he was aware from first to last of his wife's proceedings, and that the respondents were advancing money to his friend on the faith of her security, and yet he took no steps to prevent his wife giving her name, or to enlighten the bank, his only anxiety apparently being that she should not use her married name.

I think this is not a case to which the law, already perhaps unduly stretched as to the disability of a married woman, ought to be applied.

LORD YOUNG was absent.

The Court adhered.

Counsel for the Complainer—Guy—Lyon Mackenzie. Agents—Clark & Macdonald, S.S.C.

Counsel for the Respondents—Craigie—M. P. Fraser. Agents—Patrick & James, S.S.C.

Saturday, July 7.

FIRST DIVISION. TAYLOR, PETITIONER.

Bankruptcy—Sequestration—Statutory Notice of Deliverance in “Gazette”—Non-Timeous Insertion—Rectification by Court—Bankruptcy (Scotland) Act 1856 (19 and 20 Vict. cap. 79), sec. 48.

Section 48 of the Bankruptcy (Scotland) Act 1856 enacts that “the party applying for sequestration shall, within four days from the date of the deliverance awarding the sequestration (if awarded in the Court of Session) . . . insert a notice in the form of Schedule B hereunto annexed, in the *Gazette*.” The *Gazette* is published on Tuesdays and Fridays.

The petitioner's estates were sequestrated by the Lord Ordinary on the Bills on Thursday 14th June 1900. His agent omitted *per incuriam* to insert a notice of the deliverance in the *Gazette* published on Friday 15th June, but the notice appeared in the *Gazette* published on Tuesday 19th June. Thereafter the statutory meeting for the election of a trustee and commissioners was held, and they were duly appointed.

On a petition presented by the bankrupt the Court pronounced the following interlocutor:—“Hold the notice of the first deliverance in the sequestration of the petitioner in the *Edinburgh Gazette* of date 19th June 1900 as equivalent to a notice in the said *Gazette* within four days from the 14th June 1900, and decern.”

Counsel for Petitioner—A. M. Anderson.
Agent—John Veitch, Law-Agent.