

ment, according to the law of England, as to entitling the inspectors to demand delivery of the iron due under those warrants, and for whose behoof could they so demand it?

"2. What is its effect in competition with a prior assignment from the bankrupts in security or absolutely, not followed by intimation of that assignment to the warehouse-keepers, where such intimation is necessary in law to complete the right of the assignee?"

The following opinion was returned by Sir Roundell Palmer and Mr de Gex, the counsel consulted:—

"1. On this supposition, we think that the deed of arrangement has no effect, according to the law of England, as to vesting in the inspectors whatever movable subjects may have been the property of the bankrupts, or as to entitling them to recover and take possession of such property from the custodiers of the same under such circumstances as are stated in the case, or as to giving any preference in regard to moveable subjects in competition with other parties holding prior completed rights of pledge over the same, or parties holding prior rights in reference thereto, although depending entirely on personal contract.

"2. On this supposition, we think that the deed has no effect, according to the law of England, as to entitling the inspectors to demand the delivery of the iron due under the warrants, or in competition with a prior assignment from the bankrupts in security or absolutely, although not followed by intimation of that assignment to the warehouse-keepers."

The Court unanimously held that the law of Scotland was to be applied in determining the rights of parties over the iron in question; that the warrants in question were transferrable documents, but that their indorsation required to be followed by intimation to the warehouse-keepers to perfect the right of an indorsee as in a question with competing rights constituted by arrestment or otherwise. They also held, in accordance with the above opinion of English counsel, that the inspectors on Daunt's estate had not by the deeds in their favour any right which could compete with that of Loder; but as the averments made by Loder as to the way in which he had become possessed of the warrants, and as to his having intimated to Connal & Co. that he held them, were not admitted, they allowed him a proof thereof, and to the competing claimants a conjunct probation.

Agent for Loder—John Wright, W.S.

Agent for Daunt & Co.'s Inspectors—Andrew Beveridge, S.S.C.

Agents for Arresting Creditors—Neilson & Cowan, W.S.

HOUSE OF LORDS.

Thursday, June 25.

HUNTER v. LOTHIAN.

(4 Macph. p. 216.)

Partnership—Profits—Dividend—Title to Sue—Fraud. L, by the settlement of his deceased wife C, acquired right to certain shares of a joint-stock company, from which, and their profits, his *jus mariti* had been excluded. He sold the shares to the company. After his

death his executor sued the company for reduction of the sale, count and reckoning for the profits subsequent to the sale, and damages, alleging that L had been fraudulently deceived by the company as to the true value of the shares. The action was compromised, the company paying a sum of money to L's executor, and getting an assignation of his claim. The executor of C now raised an action against the company for the undivided profits which had accrued during C's life. The company pleaded, *inter alia*, that the pursuer had no title to sue for undivided profits, these having been carried, with the shares, to L by his wife's settlement. Plea *sustained*.

Per LORD CHANCELLOR—Any right of C was a right by virtue of, and attached to, the shares of which she was the owner, and if her settlement passed the shares it passed along with them every incident that properly belonged to them.

The Carron Company was established in the year 1760, and it received a grant of a royal charter in 1773. At that time, and from that time onward, it was regulated by a contract of copartnery, which was dated in the year 1771. As to the constitution of the Company, it is sufficient for the present purpose to say that it was a company of the nature of an incorporated joint stock company. The shares were transferable; but before any transfer or sale they had to be offered to the Company, which might, on certain terms as to price, become the purchasers of the shares. Provisions were made as to the capital and stock of the company, and as to the mode of ascertaining and declaring the dividend; and other provisions such as are usual in similar cases.

In the year 1828 there was a Mrs Caldwell, a widow, who held ten shares in this Company. She was about to be married to Mr Lothian, and by her marriage-contract these ten shares were settled, in substance, upon her for life, and then upon her husband for life, then upon the children of the marriage, if there should be any; and failing children, one-half of the *corpus* or fee in the shares was to belong to her husband, and the other half was to go as the widow, Mrs Lothian, should dispose of by instruments of the kind described in the contract. In pursuance of this marriage-contract, and of the power contained in it for Mrs Lothian, she made a settlement in the year 1837, and by that settlement, after giving various specific benefits to different persons named in it, which were to be satisfied out of her property, as to the residue of her property she expressed herself thus—"direct and appoint my trustees to invest the whole residue of my means and estate remaining, after satisfying each and all of the foregoing provisions and appointments, in heritable bonds or such other securities as they may approve of, and that for behoof of my sister Mrs Mary Hunter or Philp, spouse of Charles Philp, merchant, Bonnington, in life, for her life, for her life, exclusive of the *jus mariti* of her present or any future husband; and to Charles, Mary, and Jane, the children procreated of my said sister, equally amongst them in fee." Under this residuary gift the respondents in this appeal claim.

To this settlement by Mrs Lothian she added a codicil in the year 1843; upon the construction of which the question in the present case in a great measure turns. In that codicil she made this provision for the benefit of her husband, Mr Lothian. "In the third place, as my said hus-