they left this trunk exposed on the platform where it was not in a reasonably safe place, and therefore I think they would clearly be bound to make good its value supposing it to be worth less than £5. But then they refer to this special condition, and on this condition I make these two observations:—In the first place, I think we are entitled to look at the entire document, so as to understand the nature of the contract as a whole, and when we do that it is very clear to my mind what the word "warehouse" means, for it is the leading provision of the contract that the company are not to be responsible, except to a certain extent and under certain conditions, for articles deposited in their cloak-rooms or warehouses; and the use of this expression necessarily conveyed to the mind of a person depositing articles that the company intended that they should be deposited in their cloak-rooms or warehouses, and there only. That being so, the second observation is this, that if the company fail to bring themselves within what is thus of the very essence of the contract, and do not deposit the articles in their cloak-room or warehouse, I am of opinion that they cannot take the benefit of this condition.

The counsel for the railway company very properly pressed upon us the authority of the case of *Harris* v. *The Great Western Railway Company*, recently decided by the Queen's Bench Division of the High Court in England; and I may say in common with your Lordships that I have given very full consideration to that case. It was a case in which there was a very decided difference of opinion among the Judges, and for my own part I can only say that the reasoning of Mr Justice Lush most recommends itself to my mind as the sound view of the case, and if I were dealing with a case of that kind I should be inclined to come to the same conclusion as Mr Justice Lush, rather than to that of Lord Blackburn and Mr Justice Mellor, the latter of whom spoke with great hesitation in giving the decision he did. But that case is not in the same position as the one we have here; for there was in the first place this specialty, that the articles in question were left in a vestibule, which seems to have been an attachment of the platform, and not, as here, on the open platform itself. And, in the next place, I think the conditions of the contract in the case of *Harris* were different from what we have here. The condition relating to the warehousing of articles did not occur on the ticket of the *Great Western Company* in the same terms as it does here. Accordingly, on the whole matter I am of opinion with your Lordships that the judgments of the Sheriff-Substitute and the Sheriff should be adhered to.

The Court adhered.

Counsel for Pursuer (Respondent)—Guthrie Smith—Keir. Agents—Adamson & Gulland, W.S.

Counsel for Defenders (Reclaimers)—R. Johnstone—Pearson. Agents—Hope, Mann, & Kirk, W.S.

Friday, June 18.

SECOND DIVISION.

[Lord Craighill, Ordinary.

HAY *v.* DUFOURCET & COMPANY.

Arrestment jurisdictionis fundandæ causa—*Partnership—Company—Debt.*

Held that arrestment in the hands of an individual partner of a debt due by his firm is not a good arrestment so as to found jurisdiction against a creditor of the firm.

This was an action of damages raised by the pursuer Alexander Hay, a merchant in Leith, against Charles Dufourcet & Company, merchants, 18 Billiter Street, London. The damages were claimed for breach of a contract made on the 4th November 1879 between them, by which defenders were to deliver at Ayr a cargo of bone-shavings. On arrival the cargo was found to be not according to contract, and was therefore rejected by the pursuer.

On the 3d of June 1880 the defenders sold this cargo to Messrs Alexander Weir & Co., merchants, Ayr, which firm consisted of two partners, Mr Alexander Weir and Mr M'Geachy, and had an office in the town of Ayr, their business being carried on under the company name of Alexander Weir & Company.

The pursuer, desirous of being recouped for the loss sustained by the breach of his contract with the defenders, and in order to make them subject to the jurisdiction of the Court, on 7th January 1880 used an arrestment *ad fundandam jurisdictionem* in the hands of Mr Alexander Weir as an individual for the balance of the sum of £300 remaining unpaid. The arrestment was left with a servant in the private dwelling-house of the said Alexander Weir, at Newton Head near Ayr. The said arrestment was not served personally upon Alexander Weir, nor at the office of the firm in Ayr.

The defenders pleaded—"(1) No jurisdiction. (2) No funds belonging to the defenders having been competently arrested in the hands of Alexander Weir & Company, the arrestment used is inept to found jurisdiction against the defenders."

The Lord Ordinary (CRAIGHILL) repelled these pleas-in-law, holding that (1), failing payment by the said Alexander Weir & Company, the said Alexander Weir was individually liable to the defenders for their debt; (2) that the defenders' claim against the said Alexander Weir, and the sum covered by it, were open to arrestment by creditors of the defenders; (3) that the said arrestment was apt to attach, and did attach, this fund; and (4) that jurisdiction against the defenders had been thereby created.

The defenders reclaimed, and argued—(1) An arrestment of a company debt must be made in the same way as an intimation to a company of an assignation of debt, that is, to each individual partner unless a manager be formally appointed—arrestment in the hands of one who is *de facto* managing partner being not sufficient — Bell's Princ. 2276, Note G, and cases; 1464, Note A, and cases. (2) Action must be first maintained against the company for a company debt. Here

the debt was never constituted against the company—Bell's Com., ii., 508.

The pursuer argued—The arrestment used in the hands of Alexander Weir was good—Bell's Com., ii. 555; *Elliot* v. *Aiken*, June 23, 1869, 7 Macph. 894.

At advising—

Lord Young—This is an action for damages raised against a company trading in London under the name of Charles Dufourcet & Company. The damages are claimed for breach of a contract made between them and the pursuer, who is a merchant in Leith, by which the London merchants sold to the pursuer a cargo of boneshavings. The pursuer directed the cargo to be delivered at Ayr; the ship sailed, but on arrival the pursuer declared the goods were not according to contract, and he accordingly rejected them, and now claims damages.

The *forum* is in England, but on a rule of the law of Scotland the pursuer says he has arrested a debt in Ayr due to Dufourcet & Company by a debtor there, in which case the action may be pursued against the English debtor in Scotland. The propriety of this rule is questionable, and it is a rule which is not to be given effect to unless the arrestment be good in all respects.

The debt due to Dufourcet & Company was the balance of the contract price of bones sold by the defenders to Weir & Company in Ayr. The contract was in writing, and perfectly distinct. In it the defenders were the sellers, and Weir & Company the buyers, and the contract price had been paid. The arrestment was used in the hands of Alexander Weir, and was of any sums of money due by him to the defenders, and that is contended to be a good arrestment of the debt of the company.

I am of opinion that arrestment of a company debt should be in the hands of the company, and bear to be for money owing to the company, and arrestment in the hands of an individual partner for sums of money due by him will not found jurisdiction against a party to whom a debt is owed by the company. I cannot arrive at any other conclusion on principle or authority. I am therefore of opinion that the Lord Ordinary's interlocutor is wrong.

Lord Ormidale—I concur. I cannot say that I entertain any doubt about the case, which seems to me perfectly clear.

During the discussion several tests have been put before us. (1) Suppose arrestment had been used in the hands of Alexander Weir or M'Geachy on the one hand, and of the company on the other, and a competition arose as to which was to prevail, it is admitted that it would be that in the hands of the company. (2) Suppose arrestment had been used in the hands of Weir, as here, that would not prevent the company from paying its debt. This arrestment so used did not attach any of the company's debts.

These tests appear to me conclusive in addition to the principle that a company has a separate *persona*; and therefore sequestration against a company does not comprehend the assets of an individual partner unless he be the only partner. Then, and only then, are his effects carried by such a sequestration.

I am therefore of opinion that the Lord Ordinary's interlocutor should be recalled and the action dismissed.

Lord Gifford concurred.

The Lord Justice-Clerk was absent.

The Court recalled the Lord Ordinary's interlocutor and dismissed the action.

Counsel for Reclaimers—Trayner—Wallace. Agents—Boyd, Macdonald, & Co., S.S.C.

Counsel for Respondent—Guthrie Smith—Strachan. Agent—David Hunter, S.S.C.

Saturday, June 19.

SECOND DIVISION.

SPECIAL CASE—MONCRIEFF MITCHELL AND ANOTHER (TRUSTEES FOR BEHOOF OF CREDITORS OF MORRIS POLLOK & SON), AND OTHERS.

Agreement—Condition—Trust.

M. *primus*, anxious to retire from a manufacturing business which he carried on successfully with M. *secundus*, his son and sole partner, entered into an agreement by which he agreed to hand over to the latter his whole interest in the concern on condition, *inter alia*, that the latter should "invest £2000 for behoof of M. *tertius*, his son (then an infant), and credit him with that amount in the books of the firm—the interest on which sum was to be accumulated annually until M. *tertius* should attain majority or get an interest in the business, when the accumulated sum of principal and interest was to be put into the business as his share or part of his share of capital in the event of his becoming partner in the said business, and in the event of his refusing to become a partner the accumulated sums were to be credited in the books of the firm to the whole children of his son, equally among them, and paid to them on their respectively attaining majority." The firm several years subsequently suspended payment before M. *tertius* had attained majority.—*Held* (*diss.* Lord Gifford) that the provision contained in the agreement constituted a contingent trust for the benefit of M. *tertius*, and failing him the other children of M. *secundus*; and the fulfilment of the conditions on which that benefit was contingent having been rendered impossible by the insolvency of the firm, that the trust resulted to M. *secundus*, and through him to his company creditors.

Morris Pollok *primus* and his son Morris Pollok *secundus* were the two partners of Morris Pollok & Son, a firm carrying on a prosperous business as silk throwsters in Govan. As Morris Pollok *primus* was desirous of retiring from the firm, he on the 28th May 1861 entered, together with his son, into the following minute of agreement, by which it was agreed—"(First) That the said first party shall retire from and cease to be a partner in the said concern of Morris Pollok & Son as at