Moreover, it was only because she was at the time in right of the reversion that the clause had any sense or meaning. It was only because she was in right of the reversion that she could agree that the bank should hold the disposition subject to her debts. Accordingly I think that when she gave notice to the bank, as was done by the intimated assignation, that she had parted with the reversion, it was equivalent to giving them notice that they thereafter held the disposition for the assignees, and not in security for any future debts she or her firm might incur. I think that her "agreement" that the bank should hold the disposition in security for payment of sums of money due by her or her firm was the counter part of the obligation of the bank to convey, on payment of such sums, the subjects to her, and when in consequence of the assignation she ceased to have right to demand a reconveyance of the subjects to herself, so I think the corresponding right on her part to charge the reversion with debt, and of the bank to hold the disposition in security for such debt, also ceased.

In short, I think that after the assignation by which Mrs M'Arthur substituted the Union Bank as her assignees in her full right and place in the premises, she was, as regards this loan transaction, in no better position than any other third party, and consequently that the National Bank are not entitled to take credit, in a question with the Union Bank, for loans which may subsequently have been made to her or her firm. I think that she had no right to ask, or the National Bank to make, advances on the security of a reversion which in the knowledge of both did not belong to her.

For these and the reasons assigned by Lords Rutherfurd Clark and Kinnear, I am of opinion that the Union Bank is entitled to prevail in this case.

The Court answered the first question in the affirmative, and the second in the negative.

Counsel for National Bank—Mackintosh—Pearson. Agents—Dove & Lockhart, S.S.C.

Counsel for Union Bank—Sol.-Gen. Robertson —Low. Agents—J. & F. Anderson, W.S.

---

*Saturday, December* 19.

## FIRST DIVISION.

[Lord Ordinary on the Bills.

## ROBERTSON *v.* SCOTT AND ANOTHER.

*Bankruptcy—Appeal by Bankrupt against Trustee's Deliverance—Bankruptcy (Scotland) Act* 1856, *secs.* 127, 169.

The Bankruptcy (Scotland) Act 1856, sec. 127, provides that "if any creditor be dissatisfied with the decision of the trustee" he may appeal against it within fifteen days from the date of the publication of the *Gazette* notice prescribed by the section. *Held* (*diss.* Lord Shand) that an appeal by the bankrupt against the trustee's deliverance was incompetent under this section.

Mr C. J. Munro, C.A., Edinburgh, as trustee in the sequestration of Andrew Ross Robertson, pronounced deliverances, dated 15th October 1885, upon twelve claims upon the estate. Some of these claims were admitted and some rejected.

Robertson appealed to the Court of Session against these deliverances, and on 30th October following the Lord Ordinary on the Bills (Trayner) appointed service of the note of appeal upon the respondents.

The Bankruptcy (Scotland) Act 1856, sec. 127, provides—"If any creditor be dissatisfied with the decision of the trustee he may appeal by a short written note to the Lord Ordinary or to the Sheriff, but if no such note be lodged with and marked by the Bill Chamber or Sheriff-Clerk (as the case may be) before the expiration of fifteen days from the date of the publication in the *Gazette*" of the notice prescribed by the section, "the decision of the trustee shall be final and conclusive so far as regards that dividend." . . .

Section 169 provides that "It shall . . . be competent to appeal against any deliverance of the trustee or commissioners to the Lord Ordinary or the Sheriff, provided the note of appeal shall be lodged and marked . . . within fourteen days from the date of the deliverance." . . .

Roderick Scott, one of the creditors, objected to the competency of the appeal in respect it was not timeously presented. The trustee also resisted the appeal.

On 17th November following the Lord Ordinary dismissed the appeal in respect it was not presented within the time prescribed by the Bankruptcy (Scotland) Act 1856.

"*Opinion.*—This is an appeal by a bankrupt against certain deliverances by the trustee on his sequestrated estates. Some of these deliverances are in favour of creditors, admitting their claims to be ranked, and others against creditors, rejecting their claims. An appeal of this kind presents a novelty in bankruptcy procedure. I am not prepared to say that it is incompetent in so far as it seeks to bring under review these deliverances, which, admitting claims, go to reduce the estate, in the reversion of which the bankrupt has an undoubted right and interest; but as regards the appeal against deliverances rejecting claims, I can see no legitimate right or interest which the bankrupt has to prosecute such an appeal. It is objected, however, on the part of the respondent, Mr Roderick Scott, that this appeal cannot be entertained at all, in respect it was not timeously presented.

"The deliverances sought to be reviewed are all dated 15th Octobet 1885, and the appeal was presented on 30th October thereafter, fifteen days, that is, after the date of the deliverances. By the 127th section of the Bankruptcy Act of 1856 it is provided that 'if any creditor be dissatisfied with the decision of the trustee' he may appeal against it within fifteen days from the date of the *Gazette* notice there provided for. If the present appeal fell within the allowance of that section of the statute it would not be open to the objection now stated against it. But I am of opinion that that section does not apply to the present appeal. It applies exclusively to creditors dissatisfied with the trustee's decision, and the appellant is not and does not claim to be a creditor on his own estates. Under that clause the bankrupt has no right of appeal.

"By section 169 of the same Act it is made competent to appeal against 'any deliverance of the trustee or commissioners,' provided the appeal is lodged and marked by the Bill Chamber Clerk 'within fourteen days from the date of the deliverance.' I think, under this section, the bankrupt's right of appeal is provided for in any case where he can qualify a title or interest to appeal. He must do it, however, within the statutory period. In the present case the appeal was not presented or marked within fourteen days from the date of the deliverance appealed against, and it must therefore in my opinion be dismissed as incompetent."

Robertson reclaimed, and argued—There was here no creditor objecting to the admission of the claims, the rejection of which was urged by the reclaimer. The 127th section applied, and must not be too strictly construed. It was very loosely framed, and the intention of the Legislature could not have been to exclude the bankrupt from its provisions, at least in a case where he had the material interest—*Marshall* v. *Livingstone's Trustees*, February 14, 1867, 5 Macph 377. Where a sequestration got out of its regular course the Court would interfere to set it in motion again—*Lindsay* v. *Hendrie*, June 15, 1880, 7 R. 911; *Morris* v. *Connal*, January 21, 1843, 5 D. 439. An appeal for instance had been allowed against a deliverance refusing a sequestration—*Marr & Sons* v. *Lindsay*, June 7, 1881, 8 R. 784, Bell's Comm. 5th ed. ii. 348.

The respondents argued—If this appeal was competent, then the Court must hold that the word "creditor" in the 127th section included the bankrupt. But if the Legislature had intended that the bankrupt should have a right of appeal under that section it would have expressly so provided. It was to be observed that section 127 repealed section 105 of the previous Bankruptcy Act of 1839 (2 and 3 Vict. cap. 41), and sec. 45 of the Act of 1814 (54 Geo. IIIi c. 157).

At advising—

Lord President—I do not think we have any choice in a matter of this kind, or any right to hesitate, because the words of the statute are so clear that we could not alter the Lord Ordinary's interlocutor without doing violence to them. One of the clauses in question (the 127th) gives a right of appeal to creditors, and the other (the 169th) gives a right of appeal generally in such terms that anyone having an interest may present such an appeal. It is very difficult to avoid the conclusion that the words of the first clause were intended to give a right to a special class of persons, and that those of the second were intended as the complement of the other, to give a right to all other interested persons other than those covered by the first clause. I cannot therefore differ from the result to which the Lord Ordinary has come.

The reason for the distinction which is drawn by the statute is not so clear, because the only difference in the provisions of the two clauses is in regard to the time which is allowed for the appeal in both cases. But I do not think we should be justified upon any canon of construction in reading the word "creditors" as including "bankrupt." It is further not unimportant to observe that these two sections of the Act of 1856 were not novelties. They are repeated in that statute almost in terms from the previous Act of 1839, so that for about forty-six years the Court has been going on administering the Bankruptcy Acts without a bankrupt ever having proposed to bring an appeal under the section which empowers creditors to do so, or at any rate without such an appeal ever having been sustained.

Lord Mure concurred.

Lord Shand—As your Lordships have so clear an opinion upon this question it is of little moment what my view is. If the 127th section had stood alone, although it gives a right of appeal only to creditors I cannot doubt that the Court would have extended this right to the bankrupt also. The bankrupt has a very material interest to appeal, and in one view has the whole interest. As matters now stand, if the claims against which he wishes to appeal are rejected he will get the benefit of their rejection. It is too strict a reading of the clause, in my opinion, to hold that creditors alone have a title to appeal, and that the bankrupt, who has the real interest, has none. It is said that the bankrupt has right to appeal under another section, but that he is precluded from now doing so because the appeal is not presented within the fourteen days allowed by the statute. That also is, I think, too strict a reading of the 169th clause as applied to the present case, and we should not in my opinion be stretching the terms of the clause too far in a matter of time only if we were to allow the person who has the real interest to present the appeal to do so now, althought technically he is one day too late.

Lord Adam—It is very difficult for me to say what conclusion I should have arrived at if there had been no 169th clause in the statute.

By the 127th clause a right of appeal is given to creditors, and to creditors only, while under the 169th a right of appeal "within fourteen days from the date of the deliverance" is given, generally against any deliverance of the trustee. If it is to be in the power of the Court, as Lord Shand has suggested, to alter the time within which an appeal is competent, I do not see where we could stop, and I am clearly of opinion that we ought not to do so here. The words of the statute are precise, and I do not see why the present appellant should have any indulgence shown him because he has failed to observe its provisions.

The Court adhered.

Counsel for Appellant—Rhind. Agent—J. A. Robertson, S.S.C.

Counsel for Scott (Respondent) — Kennedy. Agents—Gordon, Pringle, & Dallas, W.S.

Counsel for Trustee — Lang. Agent — R. Broatch, L.A.