

think that the Mercantile Law Amendment Act makes any difference upon it. The effect of that Act has been repeatedly considered, and its effect in a question of this kind was fully discussed in the case of *Wyper*.

The Court pronounced the following interlocutor:—

“Recal the interlocutor reclaimed against, and the deliverance of the trustee appealed from, and remit to the trustee to rank the appellants for the sum of £742, 13s. 10d., and to allow them to retain the whisky in dispute as their own property.” . . .

Counsel for the Distillers Company—Balfour, Q. C.—Goudy. Agents—Fraser, Stodart, & Ballingall, W. S.

Counsel for W. & J. Russell's Trustee—Jameson—Salvesen. Agents—Boyd, Jameson, & Kelly, W. S.

Wednesday, February 20.

SECOND DIVISION.

SCOTT AND OTHERS v. HORSEBRUGH

(SCOTT'S TRUSTEE).

Bankruptcy—Sale of Furniture left in Bankrupt's House—Reputed Ownership—Mercantile Law Amendment Act 1856, sec. 1.

In 1885 a bankrupt entered into a composition arrangement with several of his creditors, including his mother-in-law, who in reduction of her claim bought his furniture as valued by an appraiser. She thereafter lent it to her daughter, the wife of the bankrupt, and it remained in his house until 1888, when his estates were sequestrated. Held that the trustee in bankruptcy was not entitled to sell the furniture in a question with the bankrupt's wife and sister, to whom their mother had bequeathed the furniture.

The Mercantile Law (Scotland) Amendment Act 1856 (19 and 20 Vict. c. 60) provides by section 1 that “From and after the passing of this Act, where goods have been sold, but the same have not been delivered to the purchaser, and have been allowed to remain in the custody of the seller, it shall not be competent for any creditor of such seller, after the date of such sale, to attach such goods as belonging to the seller by any diligence or process of law, including sequestration, to the effect of preventing the purchaser or others in his right from enforcing delivery of the same; and the right of the purchaser to demand delivery of such goods shall from and after the date of such sale be attachable by or transferable to the creditors of the purchaser.”

The affairs of William Begg Scott, now butcher, Bervie, became embarrassed in 1885. At that time he was a baker and grocer in Montrose, and consulted Mr Ramsay, agent for the Bank of Scotland there with a view of coming to an arrangement with his creditors.

The following circular, unsigned but drawn up by Mr Ramsay, was issued:—

“*Bank of Scotland,
Montrose, 11th February 1885.*”

“Dear Sir,—Mr W. B. Scott, baker and grocer, Ferry Street, Montrose, has put his affairs into my hands, with a view to an arrangement with his creditors. He has made an agreement with a baker in town to take over the whole stock, plant, &c., at valuation in May next. When he advertised the business he was under the impression that with some help from his friends he would be able to pay 20s. per £ to all his creditors. But I have gone thoroughly into his affairs, and I find he is hopelessly insolvent. There is such a large deficiency that his friends cannot undertake any responsibility connected with it.

“The following is an abstract of the assets and liabilities:—

<i>Assets.</i>	
Bakehouse plant and utensils	£104 14 9
(Estimate by Mr M'Queen, baker).	
Stock of baking and grocery goods, with shop-fittings, &c.	146 14 5
Book debts, £68 (of which doubtful, £15), say	60 0 0
Life Policy p. £200 (dated 1879)	20 0 0
Household furniture	70 0 0
	£401 9 2
<i>Less preferable debts—rents</i>	38 10 0
	£362 19 2

<i>Liabilities.</i>	
Trade debts	£408 13 3
Accommodation from bank and relatives	688 0 0
	£1096 13 3
Showing a deficiency of	£733 14 1
and a dividend of 6s. 7½d. per £.	

“With assistance Mr Scott proposes to pay 7s. per £ on promissory-note, payable 3 months hence—the bill to be countersigned by his brother Mr George Scott, cattle-salesman, and to be met out of the proceeds of the purchase price of the stock from the new tenant. There cannot be a doubt that this proposal is as favourable as the creditors need expect. If it is not agreed to it will be necessary to take out sequestration, I fear, to prevent preferences being forced. I may say that Mr Scott will not make any higher bid to avoid the unpleasantness and publicity of sequestration. I may add that in making the offer of 7s. he is doing more than the state of his affairs prudently warrants; because I have little hope that the stock will come up to the valuation put on it when it comes to be taken over.

“Trusting you will agree to the proposal for settlement—I am, yours faithfully,

“P. S.—Under sequestration the yield will be very much less of course. The furniture will not produce nearly £70 if brought to the hammer.”

Scott afterwards settled with most of his creditors by paying them 8s. in the £. Among these creditors was his mother-in-law Mrs Gouk, who had a preferential claim for the rent of a house, amounting to £25, and a claim to rank *pari passu* with other creditors for a loan of £100. In reduction of these claims she bought his furni-

ture for £50, 7s. 6d., valued by a licensed appraiser as shown in the following note of settlement, No. 15 of process :—

“Half-year’s rent of shop, house, bakehouse, &c., due at Whit-sunday 1885 to Mrs Gouk . . .	£25 0 0
Composition of 8s. per £ on Mrs Gouk’s claim of £100 . . .	40 0 0
	£65 0 0
Deduct value of Mr Scott’s house-hold furniture purchased by Mrs Gouk	50 0 0
	£14 12 6

“Montrose, 1st June 1885.—Received payment of the above sum of fourteen pounds 12/6, by the hands of Alex. Ramsay, Esq., banker, Montrose.

AND GREIG,
Agent for Mrs Gouk.
1/6/85.”

The Bank of Scotland received nothing towards the reduction of their claim amounting to £288. Mrs Gouk allowed the furniture to remain in Mr Scott’s house on loan for the use of her daughter Mrs Scott and her husband, and by them it was removed to Bervie when they went to reside there in 1887.

Mrs Gouk died on 17th December 1885, leaving a settlement by which she directed her furniture to be divided between her two daughters Mrs Scott and Mrs Maconochie in certain proportions.

Scott remained insolvent from 1885 to 1888, when his estates were sequestrated. Mr H. M. Horsbrugh, C.A., Edinburgh, was appointed trustee on his sequestrated estate on 17th June 1888. Upon the said trustee proposing to sell the furniture in the bankrupt’s dwelling-house in Bervie Mrs Scott and Mrs Maconochie raised an action of interdict against him in the Sheriff Court at Stonehaven in November 1887. Interim interdict was granted, and a record made up.

The pursuers pleaded—“(1) The female pursuers being the true owners of the furniture and other effects as condescended on, are entitled to obtain interdict against the defender selling the same.”

The defender pleaded—“(2) The pretended sale having been entered into by the bankrupt when in insolvent circumstances with his mother-in-law, who was a conjunct and confident person with him, without a just price being paid, and with a view to defraud his just and lawful prior creditors, is null and void and of no avail at common law. (3) Mrs Gouk being a conjunct and confident person with the bankrupt, the presumption is that the alleged purchase was entered into without a true, just, or necessary cause, and without a just price being paid, and with a view to defraud his just and lawful prior creditors, it is therefore null and void and of no effect. (4) The furniture in question not having been sold, and having remained in the undisturbed possession and occupation of the bankrupt, and im-mixed with his effects at the date of sequestration, the female pursuers have no right or title to the same, [and their claim ought to be repelled.”

A proof was taken upon 6th June 1888 before

the Sheriff-Substitute (BROWN). The circular issued to creditors, the note of settlement (both quoted above), and the following receipt—

“Current Account Receipt.

Bank of Scotland Branch,

Montrose, 12th February 1885.

“Received from Mr George Scott, cattle-dealer, Montrose, the sum of one hundred and fifty pounds sterling, which is placed to the credit of Mr Wm. B. Scott.

“For the Governor and Company of the Bank of Scotland.

“Entd. J. S. No. ALEX. RAMSAY, Agent.
12/2/85.”

were, *inter alia*, produced in evidence.

Alexander Lyell deponed—“I am a solicitor in Montrose, and the agent for the British Linen Bank there. On 17th February 1885 Mr Ramsay, agent for the Bank of Scotland, came to my office and told me that the bankrupt was in difficulties. He asked me to take charge of the matter, and suggested that I should endeavour to negotiate a settlement of his affairs with the creditors, as they would have nothing to do with him seeing he was a creditor. He placed a statement in my hands dated 11th February 1885. It was sent to all the creditors. . . . I paid a dividend of 8s. per pound in terms of the last meeting of creditors, except to George Scott, cattle dealer (£300), Alexander Ramsay, agent for Bank of Scotland (£288), and Mrs Ann Gouk (£100). I understand the 8s. in the pound was paid to Mrs Gouk through Mr Greig, who got it from Mr Ramsay. Mr Greig handed me the document (No. 15 of process). . . . I do not know anything about the purchase by Mrs Gouk of the furniture. . . . In the summer of 1885 Mrs Gouk called upon me once, and I think twice, but I am not sure of that, with reference to the furniture. I was then acting on behalf of the bankrupt. She said that she wanted to make sure that the furniture which she had bought from the bankrupt was made sure to her, and that Mr Scott’s creditors could not touch it. She said she wanted it made sure to her daughters. I advised her to consult her agent Mr Greig, who was then acting for her. I understood that Mrs Gouk referred specially to the furniture, which she said she had purchased from Mr Scott. Mr Ramsay said he was willing to take the composition of 8s.”

Andrew Greig deponed—“I was agent for the late Mrs Gouk, who was the mother of the female pursuer Mrs Scott. I was consulted by her with reference to the preparation of her settlement. I am now shown the settlement I prepared for her. It is dated 11th September 1885. I continued to be agent for Mrs Gouk until her death. Mrs Gouk spoke to me several times about the furniture in question after the preparation of the deed, expressing the hope that it was perfectly safe as belonging to her. That had reference to the composition settlement by her son-in-law Mr W. B. Scott. Mr Scott became bankrupt in March 1885. Mrs Gouk had a claim upon his estate of £125, £25 of that being preferable for rent. Mr Scott offered a composition of 8s. in the pound, which reduced Mrs