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an extended period of his then existing tack, which only expired in 1830, for thirteen years, at such a distance of time; for which he was only to pay an additional rent of £10 yearly, was such an impudent proposal, that it would have been rejected at the *first blush* by a person capable of understanding it.—I am of opinion too, with the Judges of the Court of Session, that this reversionary interest was thus acquired without consideration for it, by means of the fear Lord Arbuthnott had of losing his pension from the seizure of the wine. This matter has been too tenderly handled in the Court of Session; but the Judges must have been much impressed with the conduct of the appellant, when they loaded him with the whole expense of the litigation, which has been conducted in a most intolerable manner, and which in all probability they would not otherwise have done.

Appellant's Case 23 pages of print; Respondent's Case 28pages.

"It is impossible not to take notice of the length of the cases in this cause; they are three-fourths full of matter totally irrelevant. These cases, and others like them, I believe are drawn in Scotland, and sent here ready drawn; but it is the duty of the gentlemen who practise here, when they receive such cases, to redraw them."

It was therefore

Ordered and adjudged that the appeal be dismissed, and that the interlocutors of the Court below be affirmed.

For Appellant, *Sir J. Scott, J. Anstruther, J. Clerk.*

For Respondent, *R. Dundas, T. Erskine, W. Grant, J. Dickson.*

(M. 2673.)

RICHARD HOTCHKIS, W.S., Trustee on BERTRAM, GARDNER & Co's Bankrupt Estate, - - - - - } *Appellant;*

ROYAL BANK, - - - - *Respondents.*

House of Lords, 28th Nov. 1797.

COMPENSATION—RETENTION—BANKRUPT.—The Royal Bank of Scotland found entitled to retain stock of an insolvent proprietor, for payment of debts due to the Bank by a Company of which he was a partner, against the trustee on the bankrupt estate.

Adam Keir was a partner of Bertram, Gardner & Co., bankers in Edinburgh, who having failed in 1793, the appellant was appointed trustee on their sequestrated estates. In proceeding to make available the estate of the company, as well as of the individual partners, he found that Mr. Keir

was a stockholder in the Royal Bank of Scotland to the extent of £2000, and on proceeding to have it sold, in order that the price might form part of the fund of division among the creditors, the bank objected to the sale; and stated that no transfer could be made unless the price of the stock, when sold, were applied towards extinction of a large debt due by *Bertram, Gardner & Co.* to the bank, they being entitled to the right of retention. The present action of declarator was then brought by the appellant, to have it found and declared that the Royal Bank had no right of retention on the said stock, "but that the same do pertain "and belong to the pursuer as trustee foresaid, for behoof "of the creditors of the said *Adam Keir*." The main defences pleaded to this action were, 1. That the stock of this bank enjoyed peculiar privileges. It was of the nature of public funds, and by their charter it is declared that the shares or interest in the capital stock of the said corporation "shall not be liable to any arrestment or attachment." This clause is repeated in the subsequent charter of the bank. Another clause provides, that no person who was indebted to the bank in calls, was to be allowed to transfer their stock until such "calls" were paid. 2. That by authority given in their charter, they had a right conferred upon them of making byelaws for the government of their affairs, so that the said laws "be not contrary to the intent "and meaning of these presents, or repugnant to the laws May 31, 1737. "of the realm;" that accordingly they enacted the bye-law:—"That no proprietor who is or shall become debtor "to the bank, shall be allowed to transfer his stock, or any "share thereof, but in the presence of a Court of Directors, "to the end each Court of Directors, if they think fit, may "stop such transfer, until such proprietor find security to "the bank for what he owes, to their satisfaction." 3. Independently of this bye-law, the bank had a right of retention, by the nature and constitution of their company, whether viewed under the common law of Scotland, or upon the special privileges conferred by acts of Parliament and Royal charters. In answer to this defence, it was maintained by the appellant, that neither by the common law, nor by the special powers in their charters, had the bank, as a corporate body, a lien on the stock of the individual members, to the effect of pleading retention against the right of the bankrupt member's trustee. That the bye-laws were *ultra vires* of the powers conferred by their charters: and that at all

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events the general right of retention here claimed for *all debts due* to the bank, was totally repugnant to the spirit and meaning of these charters and acts of parliament, which makes the stocks transferable to the fullest extent, without any limitation whatever, except what is contained in the said bye-law.

Feb. 28, 1797. Mar. 11, 1797.

The Court, on report of the Lord Ordinary, on informations, of this date, *sustained* the *defences;* and, on reclaiming petition, adhered.

Against these interlocutors the present appeal was brought.

Pleaded for the Appellant.—The bank has, at common law, no lien or right of retention over the stock belonging to the *stockholders* for debts due by them to the corporation. For these they must rank against their individual estate as creditors. It is only under their own bye-law that they can claim such a right of retention; but although the bank had, by their charters, the general power of making such bye-laws, yet it is only under condition that such "bye-laws "may not be contrary to the intent and meaning of their "charter, or repugnant to the laws of his Majesty's realm." But the bye-law in question, supposing in its import it gave a right of retention in the circumstances here pleaded, is unwarranted by the bank's own charter; and also inconsistent with the transferable nature of the stock. The only case in which the charters give a right of retention to stop transfers of stock and payment of dividends, is the case where the stockholders are in arrear of calls; which must be construed to be the utmost limit to which the bank can plead their right of retention. But further, in the special circumstances of this case, even if such a right were competent to them, it cannot be pleaded, because the debt due to the bank is not a debt due by Mr. Keir, the proprietor of the stock; but a debt due by Bertram, Gardner & Co.

Pleaded by the Respondents.—At common law the bank has a right of retention, because, according to the law of Scotland, when a person is disabled by bankruptcy from discharging the obligations he owes, payment or transference cannot be demanded of any money which that other owes him, either by himself or by any one claiming in his right. The solvent person is entitled to compensate, and retain for his payment and security, any effects of the bankrupt legally placed in possession within the statutory period. Nor is there any distinction in this respect between a private copartnership and a corporation. The bye-law alluded

to was quite within the spirit, meaning, and powers of the charters, and is at once decisive of this question. It is not pretended that Mr. Keir was ignorant of this regulation; and that ever since 1728 it had been acted on without question or dispute. He must have bought his stock in the full knowledge that its transference was subject to this regulation; and the bank advanced him money on the faith that the stock was pledged for its repayment. The creditors of Mr. Keir, therefore, can have no better right than Mr. Keir himself, and must take it *tantum et tale* as in him. The bank's power to make such bye-law is not the least shaken by a right of retention being given in special cases, because such special cases are often inserted *ob majorem cautelam*, so as to apply to cases where the right might not otherwise be pleadable. But as the charters confer general powers to make bye-laws for the good of the Company; and as they expressly declare the stock not affectable by the diligence of arrestment or attachment, it is obvious that the right of creditors in regard to this stock was limited: and that the bye-law, when enacted, fell within the intent and meaning of the charters so limiting the rights of creditors.

After hearing counsel, it was

Ordered and adjudged that the said interlocutors be affirmed.

For the Appellant, *W. Grant, Wm. Adam, John Clerk.*

For the Respondents, *Sir J. Scott, W. Alexander.*

MRS. SARAH AGLIONBY, otherwise LOWTHIAN, Widow of Richard Lowthian, } *Appellant;*

GEORGE Ross, Nephew and Heir-at-law of Richard Lowthian, and his Trustees, } *Respondents.*

House of Lords, 15th Dec. 1797.

WIDOW'S TERCE—JUS RELICTÆ—HERITABLE OR MOVEABLE.—(1.) A husband, before his death, having estates both in England and Scotland, executed a series of deeds, by which he left his wife the English estate, and also the liferent of one of the Scotch estates, &c. In a claim made by her for her widow's terce: Held, that the act 1681 did not refer to unilateral deeds, but to contracts of marriage, or other such deeds of a conventional nature, to which both husband and wife are consenting parties; and therefore she was not barred from claiming her terce and *jus relictæ* as well as the provisions so left her. (2.) The deceased having purchased an estate,