

exist I do not find that his decision in itself is inconsistent with the decision in *Kinmond, Luke & Company* at all. The two cases are perfectly reconcilable. All that is suggested as inconsistent is his Lordship's ground of judgment, and it is said that the *ratio decidendi* was in conflict with the decision in *Kinmond, Luke, & Company*, although it was accepted by the Second Division upon a reclaiming note against Lord Kyllachy's judgment. But unfortunately the report is so meagre as to make it quite impossible to say what Lord Kyllachy's ground of judgment truly was. I am not satisfied from the report before us that Lord Kyllachy intended to express any opinion which would conflict with the previous decision of the Second Division, and therefore I cannot hold that the Second Division can be held to have pronounced a judgment in conflict with its former decision.

I am therefore of opinion that we should adhere to the interlocutor of the Lord Ordinary.

LORD PEARSON—In 1902 the defender and his firm granted a trust-deed for behoof of their creditors, and offered a composition of 6s. 8d. per pound. It was part of the arrangement that the pursuers, who held security for their advances, should hold the value of their security as £10,000 and rank for dividend on the balance of their debt, which amounted to £3640, 1s. 5d., and of which they discharged the debtors and the trustee on payment of the composition. They have tried to realise their security, but they have not been able to effect a sale, with the exception of certain engines and machinery; and in the result they are left with the security subjects and a liability to the superior for feu-duties amounting to over £150 a-year. They now call upon the defender to accept and record a reconveyance of the security subjects. The defender refuses to do so, on the ground that the security subjects have become the property of the pursuers. This raises the question,—What is the legal result when a secured creditor values his security and ranks for a dividend on the balance of his debt? Does his right of security become a proprietary right in his person, or does it remain a security right the value of which must be accounted for to the debtor if there should turn out to be a surplus value left after the creditor's debt is paid in full? The latter view was adopted in the case of *Kinmond, Luke & Company*, 1904, 6 F. 564, by the Second Division, affirming a judgment of Lord Low, and I think we should follow that decision. The ground of it was that a creditor after operating payment of the full balance of his debt was not entitled to hold to the security so as to make a profit—that the radical and proprietary right remained in the debtor, and that nothing had happened which would convert the creditor's right in security into a right of property.

Our attention was called to the case of *Craig & Somerville*, 1894, 2 S.L.T. 139 and 243, referred to in the Lord Ordinary's note

as being a decision to the opposite effect. I am not sure that it is so when the facts are carefully examined. In *Kinmond, Luke, & Company* the rise in value of the security was sufficient to pay the creditors' debt in full and to leave a surplus; and it was that surplus which was the subject of contention. In *Craig & Somerville* there was no surplus value at all. The security subject—a policy of assurance—had been valued by the creditor at £30; and after deducting this the debt for which he ranked was £750, on which he received a dividend of 10s. in the pound, or £375. What the debtor demanded was retrocession of the policy on payment only of the £30 at which it had been valued. But if—as was laid down in *Kinmond, Luke, & Company*—it was a condition of giving back the security that the debt should be paid in full, that condition was not fulfilled in *Craig & Somerville*, for £375 of the debt remained unpaid and only £30 was offered for the security.

LORD DUNDAS concurred.

The **LORD PRESIDENT** and **LORD M'LAREN** were absent.

The Court adhered.

Counsel for Pursuers (Respondents)—Cullen, K.C.—W. J. King. Agents—Ronald & Ritchie, S.S.C.

Counsel for Defender (Reclaimer)—Hunter, K.C.—D. Anderson. Agent—Charles Waldie, S.S.C.

Saturday, July 17.

FIRST DIVISION.

[Lord Johnston, Ordinary.]

SINCLAIR (TURNERS' TRUSTEE) v. EDINBURGH PARISH COUNCIL AND ANOTHER.

Bankruptcy—Assessments—Preference—Right in Security—Pounding—Poor and School Rates—Revenue Act 1884 (47 and 48 Vict. c. 62), sec. 7 (2)—“Sequestration.”

The Revenue Act 1884 enacts, sec. 7 (2)—“No moveable goods and effects belonging to any person in Scotland at the time any of the duties” (i.e. assessed taxes) “or land tax became in arrear, or were payable, shall be liable to be taken by virtue of any pointing, sequestration, or diligence whatever, or by any assignation, unless the person proceeding to take the said goods and effects shall pay the duties or land tax so in arrear or payable, provided such duties or land tax shall not be claimed for more than one year. . . .” The remedies and provision for the recovery of land and assessed taxes are, under the Poor Law Act 1845, section 88, applicable to the recovery of poor rates.

Held that the word "sequestration" was not intended to denote a sequestration under the Bankruptcy Acts, but meant the diligence of sequestration available to a landlord for recovery of his rent, and accordingly that a pouncing of effects executed within sixty days of the debtor's sequestration by a parish collector for poor and school rates was ineffectual against the trustee in the sequestration—the collector's remedy being to claim in the sequestration the preference given him by the Poor Law Act 1845.

The Revenue Act 1884 (47 and 48 Vict. c. 62), sec. 7, enacts—"The Taxes Management Act 1880 shall be amended as follows—. . . (2) . . . no moveable goods and effects belonging to any person in Scotland at the time any of the duties (*that is assessed taxes*) or land tax became in arrear or were payable, shall be liable to be taken by virtue of any pouncing, sequestration, or diligence whatever, or by any assignation, unless the person proceeding to take the said goods and effects shall pay the duties or land tax so in arrear or payable, provided such duties or land tax shall not be payable for more than one year; and in case the duties or land tax shall be claimed for more than one year, then the party proceeding to take the said goods and effects, after paying the duties and land tax for one whole year, may proceed as he might have done if no duties and land tax had been so claimed. But if the said party refuses to pay the duties and land tax for one year, the duties and land tax so claimed shall be recovered by pouncing, distraining, and selling the said moveable goods and effects notwithstanding, under warrant obtained in conformity with the provisions contained in section 97"—[that is, section 97 of the Taxes Management Act 1880.]

On 15th March 1909 James Craig, C.A., Edinburgh, judicial factor on the sequestrated estate of William Turner & Sons, builders, Edinburgh, brought a note of suspension and interdict against the Parish Council of the City of Edinburgh and Alexander Fraser, collector of poor and school rates for the Parish, in which he craved the Court to interdict the respondents from selling certain goods belonging to Turner & Sons which they (the respondents) had pointed for payment of poor and school rates for the year ending Whitsunday 1909. Craig was succeeded by Spiers Paton Sinclair as trustee on the sequestrated estate, and he insisted in the action.

The complainer pleaded, *inter alia*—" (2) As the respondents insist on their right to carry out a pouncing and sale, and as the said diligence is in terms of the Bankruptcy Act 1856 ineffectual, interdict should be granted as craved."

The respondents, *inter alia*, pleaded—" (2) The said pouncing, and the respondents' right to sell thereunder, not being affected by sequestration, interdict should be refused."

The facts are given in the opinion (*infra*) of the Lord Ordinary (JOHNSTON), who on 16th June 1909 recalled the interim interdict formerly granted and refused the note.

Opinion.—"William Turner & Sons, builders, Edinburgh, were due to the Parish Council of Edinburgh in respect of heritable properties belonging to them the sum of £323, 16s. for poor and school rates for the year to Whitsunday 1909. These not having been paid, the Parish Council, on 3rd March 1909, executed a pouncing of stone-dressing machines and other plant at Westfield Street, Edinburgh, belonging to the firm. The estates of William Turner & Sons were sequestrated on 12th March 1909, and James Craig, C.A., Edinburgh, was appointed judicial factor thereon. This factory was superseded on 14th April 1909 by the appointment of Spiers Paton Sinclair as trustee in the sequestration.

"On 15th March 1909 James Craig, as judicial factor foresaid, raised a suspension and interdict against the Parish Council proceeding with the pouncing, and this suspension is now insisted in by Mr Sinclair the trustee.

"The question raised is one of considerable general importance as affecting the preferable right of recovery of poor and school rates where the debtor is bankrupt.

"The respondents, the Parish Council, insist on their right to carry out their pouncing, notwithstanding the sequestration, unless they are paid the rates which are due, though *ex gratia* they have intimated that they will not press their extreme right provided the trustee gives them an undertaking that he will pay the rates due to them 'out of the first proceeds of the estate' of the bankrupts. The trustee as complainer, on the other hand, while admitting that the Parish Council are entitled to a preference for their rates, maintains that the pouncing fell with the sequestration, having been executed within sixty days of its date, and that the Parish Council are bound to claim and be ranked like other preferable creditors.

"The question at issue depends upon a series of statutory enactments.

"The Poor Law Act of 1845, section 88, provides that all 'remedies and provisions' for the recovery of the 'land and assessed taxes or either of them, and other public taxes, shall be held to be applicable to assessments imposed for the relief of the poor . . . provided always . . . and all assessments for the relief of the poor shall, in case of bankruptcy or insolvency, be paid out of the first proceeds of the estate, and shall be preferable to all other debts of a private nature due by the parties assessed.'

"The Education Act 1872, section 44, which imposed on parochial boards, now parish councils, the duty of collecting the school rates along with the poor rates, placed the school rates in the same position in all respects as regards recovery as the poor rates.

"The Taxes Management Act 1880, by section 97, specially regulated the recovery in Scotland of the assessed taxes and land tax by pouncing of the effects of any

defaulter in payment. These regulations it is unnecessary to consider in detail.

“But it was found necessary to amend the Taxes Management Act 1880 by the Inland Revenue Act 1884. This statute, section 7, sub-section 2, provides that . . . (quotes, *v. sup.*).

“Now, as by section 88 of the Poor Law Act all remedies and provisions enacted for recovering the land and assessed taxes and other public taxes are to be held applicable to poor rates, poor rates, however otherwise they might be recoverable, after 1880 became recoverable by pointing conducted under the special regulations provided by the Taxes Management Act of that year, section 97, above referred to, and to such poor rates the amending provision of the Inland Revenue Act 1884, section 7, sub-section 2, also became applicable. Accordingly, after 1884, no moveables belonging to any person in Scotland who was in arrear with his poor rates could be taken ‘by virtue of any pointing, sequestration, or diligence whatever, or by any assignation,’ unless the person proceeding to take them should first pay the poor rates in arrear at least for one whole year, which in practice would necessarily mean for the current year. Any ordinary pointing creditor, or any ordinary assignee, must therefore pay poor rates in arrear due by his debtor or cedent before prosecuting his pointing or taking benefit by his assignation. And the only question is whether the trustee on a sequestered estate takes the moveables of the bankrupt by virtue of ‘sequestration’ or ‘assignation’ in the sense of the amending provision of the Inland Revenue Act 1884, section 7, sub-section 2. It is maintained for the trustee on Messrs Turners’ sequestered estate that ‘sequestration’ must be construed as meaning merely landlord’s sequestration. I cannot, however, see any ground for this limitation. The word ‘sequestration’ in the provision in question is found in the collocation, ‘pointing, sequestration, or diligence.’ It is true it would cover landlord’s sequestration. But I see no reason for excluding sequestration in bankruptcy. It is quite common to speak of the diligence of sequestration, and it is quite correct so to do, in respect that sequestration in bankruptcy is a general diligence the benefit of which enures not to an individual creditor but to the whole creditors. And that it is emphatically a diligence is established by a consideration of the terms of the vesting section of the Bankruptcy Act of 1856. That section (section 102) is so familiar that I need not quote it. It follows, by virtue of the Inland Revenue Act 1884, sec. 7 (2), that it is a condition of the vesting of the moveable estate in the trustee in bankruptcy under that vesting clause that he should *ante omnia* pay all poor rates, as well as all assessed and land taxes in arrear. He cannot touch such moveable estate without doing so. If he refuses to do so such rates can still be recovered by pointing, &c., under warrant obtained in conformity with the provisions of section

97 of the Taxes Management Act 1880. It so happens that such pointing was already executed when sequestration was awarded, but that pointing is as good for recovery on failure of the trustee to pay as if it had been executed after sequestration and refusal or failure of the trustee to make payment.

“Even if the term ‘sequestration’ in the provision in question were to receive the limited meaning put upon it by the trustee in the sequestration, there is still the term ‘assignation’ to be encountered, and the vesting clause of the Bankruptcy Act, 1856, imports as complete an assignation as could well be devised.

“It is of no importance or effect that section 108 of the Bankruptcy Act 1856 annuls any pointing executed on or after the sixtieth day prior to the sequestration. As I have pointed out, the amending provision of the Inland Revenue Act 1884 does not contemplate that pointing will be necessary for recovery of taxes and rates in arrear. These are made payable as a condition of the trustee taking the moveable estate of the bankrupt. It is only in event of the trustee failing to pay them that a resort to pointing is contemplated, and it is clear that such a pointing cannot be affected by section 108 of the Bankruptcy Act.

“Mr Graham Stewart was, I think, justified in saying that this is not an academic question, for rates are imposed for the service of the year, and payment within the year is a necessity of the situation. It would disorganise the administration of the parish council if they were obliged to be content with a preferable ranking, and to await the convenience of a trustee in sequestration before that preferable claim was made good to them. Hence this apparently somewhat drastic provision for putting them in funds.

“I was referred to the following cases:—*Lindsay v. Paterson*, 2 D. 1373; *Gordon v. Millar*, 4 D. 352; *Borthwick v. Lord Advocate*, 1 Macph. 94; *Donaldson v. White*, 9 S.L.R. 63; *North British Property Investment Company v. Paterson*, 15 R. 885, 25 S.L.R. 641; *Allan v. Cowan*, 20 R. 36, 30 S.L.R. 114; and *County Council of Argyll*, 1909 S.C. 107, 46 S.L.R. 107. These cases, where they do not actually confirm, are not inconsistent with the conclusion at which I have arrived on a consideration of the statutory provisions.

“I shall, therefore, refuse the suspension with expenses, leaving the trustee to arrange for the pointing being withdrawn, if the Parish Council are still willing, on an undertaking by him to make payment out of the first proceeds of the estate.”

The complainer reclaimed, and argued—The respondents’ pointing being executed within sixty days of sequestration was ineffectual—Bankruptcy Act 1856 (19 and 20 Vict. c. 79), secs. 102 and 108. Section 7 (2) of the Revenue Act 1884 (47 and 48 Vict. c. 62), founded on by the respondents, did not apply to mercantile sequestrations. The word “sequestration” was there used in the same sense as in section 163 of the Com-

panies Act 1862 (25 and 26 Vict. c. 89), and meant an impounding in security—viz., a landlord's sequestration for rent—not a mercantile sequestration, which was an absolute transference. Section 7 (2) of the Revenue Act 1884 was intended to amend section 88 of the Taxes Management Act 1880 (43 and 44 Vict. c. 19) where the suit of the landlord for rent was excepted, and that showed that "sequestration" meant the landlord's sequestration for rent. To hold that it meant a mercantile sequestration would be to defeat the whole policy of the Bankruptcy Acts. The word "assignment" occurring in section 7 (2) was no stronger than "sequestration," and if the claimer's contention as to the latter word was right its use was immaterial. The rate collector was no doubt given a preference on the estate of a bankrupt, but it was a preference on the estate *in the hands of the trustee*. The Revenue Act did not intend to supersede the trustee's management. Repeal by implication of a leading provision of the Bankruptcy Acts would not be readily presumed where, as here, the word in question might fairly be read in a sense consistent with these statutes. The respondent's remedy was not to sell at his own hand but to claim his preference through the trustee in bankruptcy—*Donaldson v. White*, September 8, 1871, 9 S.L.R. 65; *Lindsay v. Paterson*, July 10, 1840, 2 D. 1373; *Gordon v. Millar*, January 12, 1842, 4 D. 352; *The Crown v. Magistrates of Inverness*, January 29, 1856, 18 D. 366, *per* Lord Mackenzie at p. 373; *Allan v. Cowan*, November 15, 1892, 20 R. 36, 30 S.L.R. 114.

Argued for respondents—The Lord Ordinary was right. *Esto* that pointing had occurred within sixty days of sequestration, the respondents were entitled to sell the pointed goods, for their diligence was not affected by the sequestration—Poor Law (Scotland) Act 1845 (8 and 9 Vict. c. 23), sec. 88; Taxes Management Act 1880 (*cit. supra*), sec. 97; Revenue Act 1884 (*cit. supra*), sec. 7 (2); *North British Property Investment Company, Limited v. Paterson*, July 12, 1888, 15 R. 885, 25 S.L.R. 641. The case of *Donaldson (cit. supra)*, founded on by the complainers, was not in point, for it was prior to the Act of 1884, and the case of *Allan (cit. supra)*, also founded on by them, was equally inapplicable, being the case of a liquidation. The Revenue Act intended that the year's assessments should pay for the year's expenditure, and that was why the rate collector was preferred. To hold that he was to await the convenience of a trustee in bankruptcy would be to defeat the spirit of the Act. Words in a statute were to receive their ordinary meaning, and the ordinary meaning of sequestration was a mercantile sequestration. Had another meaning been intended, qualifying words, e.g., landlord's sequestration, or sequestration for rent, would have been used. The provisions of the Bankruptcy Act did not affect the Crown—*Borthwick v. Lord Advocate*, December 5, 1862, 1 Macph. 94—and a pointing of the ground was preferable to a sequestration, so that there was nothing extraordinary in providing that a

rate collector should exclude a trustee in bankruptcy.

At advising—

LORD KINNEAR—This is a somewhat singular case. A trustee in bankruptcy applies for interdict to prevent a collector of rates from carrying out or executing any pointing or other diligence against the property of the bankrupt, or selling or taking any further steps with the view of selling the effects that he has pointed. The collector pleads in answer that he was entitled to point, and that his pointing is not affected by the sequestration, and that he should be allowed to proceed with his diligence. But in argument the respondent went a little further, and he pleaded, not only that he should not be interfered with, but that he had a statutory right to prevent the trustee from touching these goods. I think these arguments are not only not contradictory, but are so consistent that one really implies the other. The respondent's case is that by section 7 subsection (2) of the Inland Revenue Act 1884 rate collectors have acquired a statutory right which excludes the operation of the Bankruptcy Act altogether. The statute provides—[*His Lordship read the subsection, v. sup.*] The question which arises on this section is whether the word "sequestration," which is introduced in the collocation I have read, was intended to cover the rights and powers of a trustee under the Bankruptcy Acts, or whether it means the diligence of sequestration by which a landlord is enabled to take a crop and farm stock of the tenant in execution for unpaid rent.

If the question were to be treated as one of first impression—which is a legitimate method where the words used are so familiar to the Court—I should have no hesitation in holding that this section was not intended to cover bankruptcy proceedings at all. I think that this construction of it is plainly evidenced not only by the purposes of the statute but also by the collocation in which the word is found in the section. This provision of the Act is intended to prevent any person from taking goods by pointing, sequestration, or diligence. Now, if Parliament had intended to describe anything so different from the ordinary forms of diligence as proceedings under the Bankruptcy Acts, I think it would have done so in plain language, and would not have used a term which at best is so ambiguous as sequestration. That is a technical term for describing a certain form of diligence. It is said that sequestration under the Bankruptcy Act is also a diligence. But that is inaccurate. A petition for sequestration is not a diligence; it is an action, as was pointed out by Lord President Inglis in *Kinnes v. Adam & Sons* (8th March 1882, 9 R. 698); and then he goes on to say—"And though where it is granted it has the force of diligence (and that of the strongest kind), that does not take away from the petition its nature as an action." It is a totally different thing to say that a trustee who has been confirmed

is to have the same rights as if a diligence had been executed, and to say that the award of sequestration is itself a diligence. It is, in fact, the declaration of a Bankruptcy Court that the estates of a bankrupt debtor are set apart for the benefit of his creditors; and it is only when certain procedure consequent upon that declaration has been duly followed out that the Act gives to the trustee a title equivalent to that which may be obtained by diligence as well as to that obtained by voluntary conveyance.

But whether, in an accurate use of the term, sequestration under the Bankruptcy Statutes should or should not be called a diligence is really not material. It is merely a question of terminology. For it is clear that the procedure in a sequestration under the Bankruptcy Acts is of a different kind and has totally different effects from the diligences with which the word is associated in this section. The diligence referred to there is a process of execution set on foot by an individual creditor for the purpose of seizing some specific property belonging to the debtor for payment of his individual debt. But a sequestration under the Bankruptcy Acts is quite different; it is a judicial process for rendering litigious the whole estate of the bankrupt in order that no part of it may be carried away by a single creditor for his own benefit, but that the whole may be vested in the trustee, to be administered by him and distributed among the creditors according to certain fixed rules of distribution. Nothing could be more different from a diligence carried out by an individual creditor for his own benefit than a statutory process of that kind. The whole language of the clause in question seems to show that that was the kind of proceeding in the mind of the Legislature. It begins by saying that "No moveable goods or effects belonging to any person in Scotland at the time any of the duties or land tax became in arrear or were payable shall be liable to be taken by virtue of any pointing, sequestration, or diligence whatever, or by any assignation, unless the person proceeding to take the said goods and effects shall pay the duties or land tax." It assumes that some person—that is, *quibus ex populo*—may interpose and use diligence against the ratepayer's estate which may compete with the collector. But that is a very inept form of words for describing the operation of the Bankruptcy Act. No person can touch the sequestrated estate by diligence. It is the trustee in bankruptcy alone who can deal with it; and if he were to be excluded from the performance of his statutory duty, I think he would have been described in express terms by his statutory character.

That is the first view of this matter, but the Lord Ordinary makes a sound observation when he says that this Act was intended to amend the Taxes Management Act 1880, and therefore it is legitimate to refer to the Taxes Management Act to see what amendment was required. Now that Act, by section 88, provides, in much the

same terms as in the section we are considering, that no goods of a person who is in arrear as to duties or land tax shall be taken "by virtue of any execution or other process, warrant, or authority whatever, or by virtue of any assignment, on any account or pretence whatever, except at the suit of the landlord for rent, unless the party at whose suit" the execution, &c. is made shall pay the arrears of duty or land tax. Now there is a very marked exception there from the prohibition against the taking of goods which does not occur in the later Act. The intention of the earlier Act was that the landlord's right to enforce payment of rent should not be disturbed by the privilege given to the collector of rates; and accordingly sequestration, which is the proper diligence of the landlord, is not mentioned among the diligences which are not to compete with the collector. But this is altered by the Act of 1884. The landlord is now put in exactly the same position as other creditors; and to make that perfectly clear, not only is the former exception in his favour omitted in the new enactment, but his peculiar diligence of sequestration is specified as one of the processes by which goods are no longer to be taken, to the collector's prejudice. This is the amendment to which the Lord Ordinary refers; and it is quite sufficient to account for the introduction of the word sequestration into the Act of 1884.

If, therefore, we construe the clause by itself and are to say whether it uses the word sequestration to cover bankruptcy proceedings or only to cover diligence done by a landlord, I should have no hesitation in preferring the latter construction.

But then we must go further and see how far that section, according to either construction, is in conformity with the standing provisions of the Bankruptcy Act in force at the time when it was passed. And if we do so, I think it will be found that, if it had been held to cover proceedings in bankruptcy, the competing rights of the trustee and the rate collector would be brought to a deadlock. The collector of rates is entitled, under the Poor Law Act 1845, to be paid out of the first proceeds of the estate of a bankrupt, and his debt is made a preferable debt. But that assumes that he comes into the sequestration and claims on the whole estate of the bankrupt; and that would have been in accordance with the Bankruptcy Act, for the whole estate is vested in the trustee, and anyone who claims must come in and claim as a creditor against the trustee on the whole estate. Now I do not know if the respondent's argument does or does not imply that that provision in favour of the rate collector is repealed by the later section. I do not think that the argument was carried out to its logical conclusion. But at all events the two provisions are brought into discordance if the Lord Ordinary's view is right. By the one provision the collector is to claim on the whole estate; by the other he is to take away part of the estate at his own hand. If he takes away less than he requires to satisfy his debt,

there is no provision in the Bankruptcy Acts by which he can at the same time take a part of the estate for himself without accounting for it to the trustee and rank as a creditor upon the estate; and on the other hand, if he takes away more than he requires, there is no provision as to what is to happen to the surplus; there is no provision by which it is to be handed over to the trustee. I think, therefore, that a comparison of these two statutes raises a very considerable difficulty.

But when we go further and look at the provisions of the Bankruptcy Act itself we find a still more obvious and serious conflict. For if the respondents' argument is right, the clause on which they found necessarily repeals by implication the direct provisions of the Bankruptcy Act. And, first, it repeals the vesting clause so far as it carries to the trustee the kind of property now in question. For we are considering the case of corporeal moveables, and the way in which corporeal moveables are carried to the trustee is by the enactment in section 102, that the effect of confirmation is to vest in the trustee the debtor's moveable estate and effects "so far as attachable for debt, to the same effect as if actual delivery or possession had been obtained or intimation made." Now that covers two kinds of moveable estate—the kind that can be transferred by an intimated assignation, and corporeal moveables, which can only be transferred by delivery; and it is with regard to the latter that the Act provides that they shall vest in the trustee as if they had actually been delivered to him. Now what is the operation of the section of the Inland Revenue Act we are here considering? It provides that no goods and effects "shall be liable to be taken." If that means that they shall not be taken by a trustee in bankruptcy, it is a repeal of the vesting clause in the Bankruptcy Act I have just referred to. You cannot stop a man taking what has already been delivered to him; and if the clause has the effect the Lord Ordinary ascribes to it, it is thus a direct repeal of the vesting clause in the Bankruptcy Act by the mere repugnance of a new enactment. And if that is so, I recur to what I said before, that I know of no statutory provision by which the trustee can take these goods which are thus excluded from him.

But another difficulty arises when we consider the provisions of the 108th section of the Bankruptcy Act. That section provides that "no arrestment or pouncing executed of the funds or effects of the bankrupt on or after the sixtieth day prior to the sequestration shall be effectual; and such funds or effects, or the proceeds of such effects, if sold, shall be made forthcoming to the trustee." Now if that clause is still in operation it cuts down the pouncing of the rate collector, and even if he had sold it would have made the proceeds forthcoming for the trustee. But it is said that it is repealed by the clause of the 1884 Act providing that pouncing, sequestration, or diligence is not to interfere with the rights

of a rate collector. I think, if Parliament intends to repeal by means of an inconsistent enactment a clause of an Act in operation, it must do so by means of language as clear as the language employed in the clause to be repealed. Therefore I do not think it can be maintained that Parliament intended to repeal this most important general provision by the use of an ambiguous word introduced into a clause in a subsequent Act, the purpose of which is entirely satisfied by another construction of the word which is consistent with the provisions of the previous enactment. Accordingly, I cannot agree with the Lord Ordinary in the interpretation that he has put upon this word.

But it has been argued to us that, although the word sequestration will not do, there is another word used in this clause, the word "assignation," and that that word is so wide that it must be held to cover the vesting clause in the Bankruptcy Act. I think the objection to that argument is the same as I have already stated, and I do not intend to repeat what I have said with regard to the word sequestration. Nor do I think that the argument is in any way advanced by asserting that sequestration and assignation are convertible terms. If they were, there would be no additional force in the use of the latter. But an assignation is a totally different thing from sequestration. An assignation is a written document by which rights of a certain class are voluntarily transferred from one person to another. It is perfectly true that the Bankruptcy Act says that the effect of the trustee's title is to be the same as if he had an intimated assignation in his favour. But that only makes the assumption of the argument all the more singular, for it assumes that the framer of the Act, intending to exclude the rights of a trustee in bankruptcy, and considering that the word sequestration was not sufficient for that purpose, proposed to achieve it by picking out one of a great variety of processes to all of which in combination the trustee's title is by statute equivalent, and so leaving him the benefit of all the other equivalents, since *ex hypothesi* they are not covered by the word "sequestration." I think this only brings out more clearly what is after all the strongest point in the claimer's argument, that if Parliament had intended to interfere with a trustee's rights, it would have done so in plain words, as, for example, by enacting that "notwithstanding anything contained in the Bankruptcy Acts" a trustee should not take these goods. The powers of a trustee under the Bankruptcy Act of 1856 are much too well known, as in daily operation, and the beneficial operation of the Act as a well-considered scheme for the distribution of insolvent estates has been too well recognised for half-a-century, to allow of our supposing that Parliament would be likely to disturb it by the use of indirect and ambiguous language. If it were thought necessary to amend it, this would be done in language as clear as that of the Act itself.

Accordingly, on the whole matter, I am

of opinion that the judgment of the Lord Ordinary cannot stand. I only add a word with regard to the passage in the Lord Ordinary's opinion where he supports his interpretation of the statute on the ground of public policy, for he says—"It would disorganise the administration of the Parish Council if they were obliged to be content with a preferable ranking, and to await the convenience of a trustee in sequestration before that preferable claim was made good to them." I do not suppose that this implies any reflection on the conduct of trustees in bankruptcy as a class, but means only that the collector must wait until the trustee, in following out the statutory procedure, has gathered enough funds to satisfy his claim. Now that may be unfortunate for the collector, but after all that delay is the necessary consequence of the bankruptcy of a debtor; and the policy of the Bankruptcy Act, which we are just as much bound to regard as that of any other statute, is to prevent the bankrupt's estate from being torn in pieces by the diligence of individual creditors, and to set it apart for distribution among all the creditors according to their respective rights. In this distribution the collector has a preference which may probably be more valuable to him, as well as less prejudicial to other creditors, than the diligence by which he would set aside the trustee.

LORD PEARSON—The estates of the bankrupts were sequestrated on 12th March. The question is whether a pointing of effects belonging to the bankrupts, executed by the respondents for poor and school rates within sixty days prior to the award of sequestration, is effectual in a question with the trustee. In the ordinary case there could be no question that such diligence is ineffectual, and that the claim, however preferential in its nature, would have to be worked out in the process of sequestration. The sequestration has the effect not merely of enabling the trustee to ingather the estate, but of vesting the estate in the trustee as if he held a completed diligence. In the legal sense the whole estate is already vested in the trustee, for distribution by him to all creditors according to their preferences. And it appears to me clear that no claimant can come in to the effect of interfering with the universal and completed title of the trustee unless he can show statute for it. Now it is said the Inland Revenue Act of 1884 confers on the Parish Council the right which they now claim. If on a sound construction that statute were clear in the respondents' favour, it must, of course, receive full effect. But so far from being clear in the respondents' favour, the language of section 7, sub-section 2, appears to me on a sound construction to mean that the undoubted preference of the public body for payment of rates must be worked out in the sequestration process, and that the word "sequestration" where it occurs in the clause really refers only to the particular diligence known under that name,

and does not impair the universal right and title of the trustee under sections 102 and 108 of the statute. And I think that the same remark applies also to the term "assignation" occurring in section 7 of the Inland Revenue Act. I therefore arrive at the conclusion that the respondents' claim must be worked out by ranking in the sequestration, and I may add that in my view this result will avoid serious inconvenience and loss which would result if the opposite view were to prevail.

LORD SKERRINGTON—I agree with your Lordship.

The LORD PRESIDENT and LORD M'LAREN were absent.

The Court recalled the Lord Ordinary's interlocutor except in so far as it recalled the interim interdict formerly granted; affirmed the said interlocutor in so far as it recalled said interim interdict; found that in a question with the respondents the trustee in bankruptcy was entitled to the pointed articles, and that the respondents were not entitled to the same; and found it unnecessary to dispose of the conclusion for interdict.

Counsel for Complainer (Reclaimer)—Morison, K.C. — Mair. Agent — James Ayton, S.S.C.

Counsel for Respondents — Graham Stewart, K.C. — Kemp. Agents — R. Addison Smith & Co., W.S.

Friday, July 16.

FIRST DIVISION.

[Lord Johnston, Ordinary.]

INGLIS AND OTHERS v. WILSON.

Superior and Vassal—Entry—Non-Entry—Prohibition against Subinfeudation—Irritancy—Obligation to Enter within Three Months—Disposition by Vassal Containing Obligation to Infeft a me vel de me—Confirmation not Asked of Superior—Conveyancing (Scotland) Act 1874 (37 and 38 Vict. cap. 94), sec. 4.

A feu-contract, dated in 1862, contained a prohibition against subinfeudation expressed in ordinary terms, and protected by an irritancy, whereby it was provided that any sub-feus granted in contravention thereof should be absolutely null and void. It also stipulated that each successor should be bound to enter with the superior within three months, and that if they failed to do so they should be bound to pay to the superior a duplicand of the ordinary feu-duty for each year they delayed to enter, which duplicand was declared to be an additional feu-duty and not a penalty.

In the same year—1862—on a narrative showing that the conveyance was in security of a loan, the feuars con-