

in argument, but I do not feel called upon to interpret it. It is not a Scottish Act, and we have nothing analogous to it in our Scottish Act. I do not think it could be satisfactorily or safely construed without considering the whole statute, and I do not feel called upon to undertake the task. I am not prepared to say in what cases or circumstances the justices are authorised thereby to issue a warrant to attach the estate of a lunatic, and with respect to the cases in the Court of Chancery, in one of them certainly the lunatic was not a pauper but was in right of property during the immediate period in question there. But I should observe generally that I do not feel competent to say what rules govern the Court of Chancery in the administration of the estate of a lunatic which comes into their hands for administration. That is a branch of English rule and Chancery practice, and I do not feel called upon to enter upon that, nor should I deem it safe or satisfactory, where the principles of our own law are sufficiently clear, to act otherwise than they seem to dictate out of respect—and we have an unfeigned respect—for the Chancery Judges applying their own rules to the administration of lunatics brought under their cognisance. On the whole matter I am satisfied that the Lord Ordinary is right, and right in all respects.

**LORD CRAIGHILL**—I am of the same opinion. I think the decision arrived at by the Lord Ordinary is consistent with the true view of our Poor Law administration, and I feel that the giving effect to the pursuer's contention would introduce the plainest inconvenience into it. The idea that every pauper entitled to relief may be called upon to repay advances made to him if ever he cease to be a pauper, is inconsistent with the motive which induced the Legislature to secure to the pauper a right to be maintained in the place where pauperism supervened. The conditions on which the advances have been made are inconsistent with the idea of debtor and creditor. I agree in thinking there is no distinction between a pauper who is lunatic and a pauper who is sane. The former costs more than the latter, but that is the only difference. Personally, I may say that I feel indebted to your Lordship for an able exposition of the law on this subject, and I think it will be of great use to the public in determining the rights of persons in the position of the pursuer.

**LORD RUTHERFURD CLARK**—I am of the same opinion. In January 1865 Christina Macfarlane was undoubtedly a pauper, that is to say, she had no means of her own, and was from affliction unable to earn her own living. She continued in that condition down to the year 1880, when she became wealthy by the succession then opening to her from her relative Mr John Bell. During that period she was also a lunatic but did not cease in any sense to be less a pauper; on the contrary, it was lunacy which prevented her from earning her bread, and the only difference between a pauper who is sane and a pauper who is lunatic is this, that in the one case the law lays a heavier burden on the parish of settlement than in the other. Now, when Christina Macfarlane became a pauper in January 1865, her parish of settlement became bound to furnish parochial relief. The obligation to do so was

absolute, and could not be made conditional. It was not entitled to stipulate that it should not furnish relief unless the pauper executed a disposition not only of all the estate which she then possessed but which she might ever acquire. It was bound by statute to give relief to her and all like her. It seems impossible therefore to hold that money advanced in performance of a statutory duty can create a debt on the part of the recipient, and therefore no claim can lie against Christina Macfarlane on her emergence from poverty, as is the case here, by succession. As to the distinction between a pauper and a pauper lunatic, I cannot see it, nor do I think that the pauper derives any aid from the statute. The English cases cannot be construed by us, and I prefer to proceed on the very plain principles of our own law.

The LORD JUSTICE-CLERK was absent.

The Court adhered.

Counsel for Pursuer—Guthrie Smith—R. V. Campbell. Agent—David Cook, S.S.C.

Counsel for Defenders—J. A. Reid. Agent—J. B. McIntosh, S.S.C.

Friday, November 7, 1884.

## OUTER HOUSE.

[Lord Kinnear.

GUILD (KETTLE & COMPANY'S TRUSTEE)  
v. YOUNG.

GUILD v. HANNAN.

*Bankruptcy—Preference—Latent Transfer of Shares—Act 1696, cap. 5—Bankruptcy Act 1856 (19 and 20 Vict. c. 79), sec. 6.*

A trader executed and delivered in security for certain advances transfers of shares belonging to him, remaining himself the registered owner and in receipt of the dividends till he was on the eve of sequestration, when the creditor had the transfers registered. In order to this being done the bankrupt did and could do nothing. The trustee in the sequestration challenged the transfers as illegal preferences under the Act 1696, c. 5, and maintained that the date of the transaction must, under the Bankruptcy Act 1856, section 6, be taken as the date of registration. *Held* that the transfers were not illegal preferences, and that the date of registration was not to be taken as the date of the security.

On the 25th January 1884 the estates of Robert Kettle & Company, cotton yarn merchants and agents in Glasgow, and Andrew Hislop Maclean, sole partner of that firm, were sequestered, and Mr Wyllie Guild, C.A., Glasgow, was appointed trustee.

This was an action by Mr Guild as trustee to reduce (1) a transfer by Maclean in favour of James Young, the defender, of certain shares in the Eglinton Chemical Company dated 24th October 1882, and registered in the company's register of members 21st January 1884; (2) another transfer by Maclean to the defender of shares in the same company, dated 31st January

1883, and also registered 21st January 1884; (3) a transfer by Maclean to the defender dated 3d August 1883, and also registered 21st January 1884; and (4) a transfer by Maclean to the defender of shares in the New Zealand Meat Company, dated 18th December 1882, and lodged 23d January 1884 for registration but not registered.

The grounds of reduction are explained in the pursuer's pleas, which were . . .“(3) The documents sought to be reduced are informal and vitiated in *essentialibus*, are of false dates, and are otherwise defective in the solemnities required by law. (4) The deeds under reduction having been granted without just cause or consideration, and, in so far as completed, having been employed within sixty days of bankruptcy, for the security and satisfaction of prior debts, and in the knowledge of the grantees of the grantor's insolvency, to the prejudice of other lawful creditors of the bankrupts the same are illegal, and reducible at common law. (5) The deeds under reduction, in so far as completed, having been granted to the defender, if for any consideration, in security and satisfaction of prior debts, within sixty days of bankruptcy, to the prejudice of the other lawful creditors of the bankrupts, they are illegal, and fall to be reduced, in virtue of the Act 1696, cap. 5, and 19th and 20th of Victoria, cap. 79 (Bankruptcy Scotland Act 1856). (6) The deed under reduction, which has not been completed, is illegal, and falls to be reduced, in terms of the Act 1696, cap. 5, in respect that the same, if for any consideration, was granted in security or satisfaction of prior debts, and cannot be completed after bankruptcy. (7) The transfers libelled having all been made and executed by the bankrupt in favour of the defender gratuitously, and without any obligation on the part of the bankrupt to make and execute the same, in defraud and to the prejudice of the lawful creditors of the bankrupt, the shares remained the property of the bankrupt, and are now vested in the pursuer as his trustee, and the defender is bound to make over and restore them to the pursuer accordingly.”

The defence was that the transfers sought to be reduced were not struck at by the Act 1696, c. 5, but were granted more than sixty days before the transferor's bankruptcy for onerous cause in respect of obligations immediately undertaken, and that under these contracts between the bankrupts and the defender the latter at once became entitled to hold the transfers sought to be reduced and to have them registered at any time, and that anything done thereafter was done in pursuance of the contract without any intervention by the bankrupt.

It appeared from the proof led that the defender had made advances to the bankrupt by means of promissory-notes and acceptances, and that the transfers brought under reduction were originally security for such notes and acceptances. The earlier notes and acceptances had been retired, but the transfers had continued to be held for the later acceptances which took their place. The bankrupt had remained apparent owner of the shares and had drawn the dividends. The defender deponed that he had not known the necessity of presenting the transfers for registration till he had consulted his lawyer on hearing rumours as to the solvency

of MacLean which he had been previously in the belief was indisputable.

The Bankruptcy Act 1856 (19 and 20 Vict. c. 79) provides (section 6):—“The date of a deed under this Act or under the Act 1696, c. 5, shall be the date of recording of the sasine where sasine is requisite, and in other cases, of registration of the deed, or of delivery, or of intimation, or of such other proceeding as shall in the particular case be requisite for rendering such deed completely effectual.”

It was proved that the transfers were all executed on the dates they bore, and there and then delivered in exchange for advances then made. There was nothing further which the bankrupt did or could do at the time when the defender had the transfers registered by his agent's advice.

There was also a similar action by Guild against H. M. Hannan. The circumstances were similar, save that the bankrupt had specially requested Hannan not to register the transfers.

The Lord Ordinary (KINNEAR) assolized the defender.

“*Opinion.*—The pursuer brings this action for the purpose of setting aside certain registered transfers by the bankrupt in favour of the defender, of shares in the Eglinton Chemical Company, and a transfer of shares in the New Zealand Meat Preserving Company, which has been delivered to the defender along with share certificates, but which has not yet been registered.

“The main ground of reduction is, that these transfers were granted in satisfaction or for security of prior debts, within the meaning of the Act 1696, c. 5. It is pleaded separately that the transfers are invalid, because the approval of the directors has not been obtained, in terms of the articles of association; and it is said that if they have not been executed in conformity with the contract, they are improbativ documents, because they are attested by one witness only. But it is of no importance whether they are probative documents if they have been duly registered, or if the directors have no valid objection to the registration, for which the defender has applied. The pursuer has no title to found upon objections to the regularity of the transfers, which the directors may have waived.

“It is said that the security must be held to have been extinguished, because the advances were made by promissory-notes, which were retired, while the bankrupt was still carrying on his business, without any agreement that the security should be held for other acceptances, which may have been substituted for those retired. But the evidence of Mr Guild makes it clear that the acceptances current at the date of the sequestration, notwithstanding an apparent diversity in dates and amounts, were simple renewals of the acceptances for which the shares were originally pledged. There can be no question, therefore, that upon the contract between parties the defender is entitled to hold the shares as security for the existing debt; and the only point for consideration is whether the transaction is brought within the operation of the statute by reason of the defender's failure to present the transfers for registration before the bankruptcy of the transferor.

“The reason for the delay is not very clearly explained. The defender says that he did not know of the importance of registration until he

had obtained advice from his law-agent, after he had become alarmed by certain rumours as to his debtor's solvency. But he knew that in the meantime the bankrupt was still the apparent owner of the shares transferred, and was drawing dividends in that capacity. It is argued, therefore, that the purpose as well as the effect of the transaction was to leave the debtor in the ostensible ownership of the shares, and at the same time to give the creditor the means of completing a security as soon as it should appear that the debtor was *vergens ad inopiam*. But there is nothing necessarily illegal in a transaction by which the lender may hold shares belonging to the borrower in security without becoming ostensibly the owner of such shares. If this were done with intent to defraud, it would be a different matter. But no such intent is imputed to the defender. It is not a perfect security; and if it were completed, or required to be completed, by an act of the bankrupt, it might be struck at by the statute. But in the present case the bankrupt did nothing, and could do nothing, to give a further security to the defender beyond what he had obtained when the transaction was settled. It is proved that the transfers were executed of the dates they respectively bear, none of these being within the period of constructive bankruptcy; that they were delivered to the defender of the same dates, along with the relative certificates, and in each case in return for an advance which on that day he made to the bankrupt. There remained nothing further for the bankrupt to do in order to complete the security. It is true that the transferee's right was not completed, for all purposes and against all the world, until he had obtained registration of the transfers. But as against the bankrupt and anyone in his right it was completed and made effectual by delivery of the transfers and certificates. They were registered without the aid or interposition of the bankrupt, and he had no right or title to oppose the registration at any time when the transferee might think fit to apply for it. It is the debtor, and not the creditor, whose hands are tied by the statute; and it is impossible to hold that the act of the creditor in presenting his transfer for registration is the voluntary deed of the debtor within the meaning of the statute.

"But it is said that under the 6th section of the Bankruptcy Act 1856 the date of the registration is to be taken as the date of the security, and therefore that the security must be held to have been given on the 21st of January, after the debtor had stopped payment, when of course it would be quite ineffectual. There can be no question that registration was a proceeding necessary to make the right created by the transfer completely effectual. But the question raised under this provision of the Bankruptcy Act is precisely the same as that which arose, and has long since been settled, under the corresponding provision of the Act 1696, c. 5, which declares that dispositions and other heritable rights on which infertment may follow shall be reckoned to be of the date of the sasine which may follow upon them. This enactment was at one time the subject of conflicting decisions. But Mr Bell, after citing the earlier cases, states it to be now settled law that 'no objection can be taken to a heritable security granted at the date of the advance,

though sasine should not be taken till within sixty days before bankruptcy;' and the law so laid down was approved in the case of *Inglis v. Mansfield*. Mr Bell goes on to observe that in the analogous case of moveable property the same sort of difficulty occurred, and he solves it in the same way. Thus he points out that 'if money be borrowed upon the transfer of a ship, the vendition is not complete without making entry in terms of the statute; but the delay of this act of completion will not alter the lender's condition nor endanger his security upon the statute as granted for a prior debt.' The lender who has advanced money upon a transfer of shares, and has delayed to have his transfer registered, appears to me to be in precisely the same position.

"There is no material distinction between the case I have just considered against Mr Young and the other action, *Guild v. Hannan*, which has been brought upon similar grounds against Messrs Monteith & Company. It appears that in that case the bankrupt had specially requested his creditors not to register the shares; and it does not seem doubtful that they purposely abstained from doing so. I do not think it material to inquire whether this was merely to oblige the bankrupt or whether it was the desire of both parties to prevent the transaction becoming known to the banks where the defenders' acceptances were discounted. The material point is, that from the moment the transfers were delivered it was in the power of the creditor, uncontrolled by the debtor, to present them for registration. They were asked not to do so, but they made no agreement on the subject. No aid, therefore, was required from the bankrupt, and nothing was, in fact, done by him to complete the security after he had stopped payment, or during the currency of the sixty days. The result is that in both cases the defenders must be assozied."

The pursuer reclaimed, but afterwards acquiesced in the Lord Ordinary's judgment, and the cases were taken out of Court.

Counsel for Pursuer—Ure. Agents—Macnochie & Hare, W.S.

Counsel for Defenders—Jameson. Agents—Millar, Robson, & Innes, S.S.C.

Saturday, March 7.

## SECOND DIVISION.

[Sheriff of Lanarkshire.

MURDOCH *v.* MACKINNON (GAUCHALLAND COAL COMPANY'S TRUSTEE).

*Reparation—Master and Servant—Mine—Bottomer—System of Signals—Reasonable Precautions for Safety of Servant.*

Two miners were employed in loading a hutch of coals from a seam of coal on to a cage which was raised and lowered up and down a "blind" shaft by means of a rope working over a pulley in charge of a brakesman. He mistaking as a signal what was merely an exclamation by one of the miners to the