

that it is a bad claim, and if it be, it voids the entire patent.

LORD TRAYNER—I have nothing to add to what your Lordships have said. I entirely concur with the opinions expressed.

LORD YOUNG was absent.

The Court pronounced the following interlocutor:—

“Recal the interlocutors of the Sheriff-Substitute and Sheriff dated 29th June 1892 and 6th March and 18th October 1893: Find that the petitioners are assignees of letters-patent granted to George Rose and others: Find that in the specifications lodged in connection with said letters-patent the patentees claim to have invented an apparatus for producing a continuous current of oil spray at the burner of a spray lamp by a continuous current of steam generated in the lamp itself: Find that in the specification lodged in connection with prior letters-patent granted to Doty and Robinson, numbers 8697, A.D. 1887, and 3696, A.D. 1889, the same apparatus was specified, and that it was specified to be used in the same way as the apparatus claimed by George Rose and others, except that it was intended to be used with oil alone, and in order to produce a continuous current of oil vapour at the burner of the lamp: Find that in the specification lodged in reference to the prior letters-patent granted to Doty, an apparatus is specified substantially the same as the apparatus claimed by George Rose and others, and specified for the same uses: Find that there was neither ingenuity nor merit in applying the said apparatus to the production of a continuous current of oil spray in the manner described in the said specification of Rose and others: Find that the said George Rose and others are not the first and true inventors of the said apparatus: Find that there is no novelty or merit in the syphon bend claimed in the sixth claim of the specification of George Rose and others for the purposes therein set forth: Find in law that the said patent is invalid. Therefore assoilzie the defenders from conclusions of the petition,” &c.

Counsel for the Pursuers—Ure—Greenlees. Agents—Young & Roxburgh, W.S.

Counsel for the Defenders—Graham Murray, Q.C.—Salvesen. Agents—J. & J. Ross, W.S.

Tuesday, February 27.

FIRST DIVISION.

[Lord Kyllachy, Ordinary.]

BLACKWOOD AND OTHERS (MITCHELL'S MARRIAGE-CONTRACT TRUSTEES) v. GLADSTONE.

Assignment of Moveables—Delivery—Possession.

In December 1883 M entered into a deed of arrangement with his creditors, whereby, *inter alia*, he assigned his household furniture to a trustee for their behoof. The trustee, without taking possession of the furniture, assigned it in 1884 to M's marriage-contract trustees for behoof of M's wife in liferent exclusive of the *jus mariti* of her husband, and for behoof of the children of the marriage in fee. The furniture was allowed to remain in the house then occupied by M and his wife, and was subsequently transferred by them to another house to which they removed. In 1890 M sold the furniture to G. In an action by the marriage-contract trustees to have G interdicted from removing the furniture, *held (aff. Lord Kyllachy)* that since the date of the assignation in their favour the marriage-contract trustees had been in civil possession of the furniture through M's wife, that the assignation in their favour was therefore effectual, and interdict *granted*.

Thomas Sawers Mitchell was sequestrated in 1883, but before a truster was appointed a deed of arrangement, under section 38 of the Bankruptcy Act, was entered into in December 1883 between Mitchell, his creditors, and his father-in-law Mr Blackwood, whereby, *inter alia*, Mitchell assigned and made over his household furniture in No. 24 Merchiston Park, Edinburgh, to Blackwood for behoof of his creditors, Blackwood undertaking to pay a composition of 1s. 6d. per £ to Mitchell's creditors, and the creditors undertaking to apply to have the sequestration declared at an end. The deed of arrangement was subsequently approved by the Sheriff, and the sequestration brought to an end.

Blackwood did not take possession of the furniture under the deed of arrangement, but by assignation dated 15th January and 1st and 3rd May 1884 he assigned it to himself and others as the trustees under the antenuptial marriage-contract of Mr and Mrs Sawers Mitchell (who had been married in 1871), declaring that the said trustees were to hold it for behoof of Mrs Mitchell, “and exclusive of the *jus mariti* and right of administration of her husband . . . but that only in liferent, for the liferent use of the said Mrs Mitchell and for behoof of her children, or such of them as she may prefer thereto by any writing under her hand, in fee, with power to the second parties (the trustees) to sell the same and apply the proceeds in like

manner." This transaction was not accompanied by any removal of furniture, which was allowed to remain in the house No. 24 Merchiston Park. That house belonged to the marriage-contract trustees and was then occupied by Mr and Mrs Mitchell. At Whitsunday 1884 Mr and Mrs Mitchell removed to No. 17 Dalhousie Terrace, taking the furniture with them, and they continued afterwards to occupy this house, which was acquired by their marriage-contract trustees in May 1891.

By assignation dated 11th July 1890 Mitchell assigned the furniture in No. 17 Dalhousie Terrace, being the furniture previously assigned to his marriage-contract trustees, to Andrew Alexander Gladstone in consideration of the sum of £130 received by him, and of the same date he granted a letter of hire to Gladstone by which he hired the furniture at the hire of £10 a quarter. In 1892 the hire which Mitchell had agreed to pay Gladstone had fallen into arrear, and the latter then took proceedings against Mitchell in the Sheriff Court at Edinburgh in order to obtain delivery of the furniture. The marriage-contract trustees were not parties to these proceedings, but in August 1892 they presented a note of suspension and interdict against Gladstone in the Bill Chamber, in order to have him interdicted from removing or interfering with the furniture, on the ground that it belonged to them in virtue of the assignation granted by Blackwood in their favour in the year 1884.

In answer 2 the respondent averred:—"No delivery to the complainers followed upon said pretended assignation, and Mr Mitchell continued actual and ostensible and reputed owner of the furniture. . . . From Whitsunday 1883 to Whitsunday 1884 Mr Mitchell had possession of said furniture in a house in Merchiston Park, Edinburgh, of which he was tenant, and since Whitsunday 1884 he has had possession of said furniture in a house in Dalhousie Terrace of which he has all along been and still is tenant."

The respondent pleaded, *inter alia*—"The articles mentioned in the prayer of the note having been the property of the said T. S. Mitchell, and the property therein having never effectually passed to the said William Blackwood or to the other complainers, the complainers have no right thereto, in competition with the respondent, a *bona fide* purchaser from Mr Mitchell."

On 1st June 1893 the Lord Ordinary (KYLACHY) granted the interdict craved.

"*Opinion.*—The question in this case is whether certain furniture, which formerly belonged to Mr T. S. Mitchell, and still remains in the house occupied by him and his wife and family, belongs to the complainers, the marriage-contract trustees of Mr and Mrs Mitchell, or, on the other hand, to the respondent Mr Gladstone. The marriage trustees claim the furniture as having become their property under a certain transaction which took place when Mr Mitchell became bankrupt in the year 1884. Mr Gladstone claims it as having

been sold, and constructively delivered, to him by Mr Mitchell in the year 1890.

"The facts, which are, I think, sufficiently admitted or instructed by documents, appear to be these—Mr Mitchell was sequestrated in 1884; but before a trustee was appointed a deed of arrangement, under the 38th section of the statute, was entered into between him and his creditors and his father-in-law Mr Blackwood. By that deed of arrangement, which appears to have been duly carried through, the furniture in question was transferred to Mr Blackwood, on payment by him of a sum exceeding its value, in the shape of a composition of 1s. 6d. per £1 paid to the creditors. Mr Blackwood thereupon executed a deed, whereby he transferred the furniture to the complainers, the marriage-contract trustees of his daughter (the bankrupt's wife), to be held by them for her in liferent, and her children in fee. The transaction was not accompanied by any removal of the furniture; but the house in which it remained, and which continued to be occupied by the bankrupt and his family, was the property of the marriage-contract trustees; and that house having been sold, the furniture was subsequently removed to another house, also belonging to the trustees, and also occupied by the bankrupt and his family. And in this house it has since remained.

"In 1890 Mr Mitchell, having got into difficulties, appears to have borrowed, or at least obtained, £130 from the respondent Mr Gladstone, and, by deeds passing between them, Mr Mitchell sold to the respondent the furniture in question at the price of £130, and, on the other hand, the respondent hired the furniture to Mr Mitchell at the hire of £10 per quarter. This hire having of late fallen into arrear, the respondent has taken proceedings to obtain delivery of the furniture, and the present note of suspension and interdict has been presented by the marriage-contract trustees in order to assert what they allege to be their proper right.

"Upon these facts, which, as I have said, are, I think, not in controversy, I am of opinion that the complainer's title is preferable. I do not, I confess, see how either at common law or under the Mercantile Law Amendment Act the respondent can plead successfully that he has any better title than the complainers. If the complainers have only a *jus ad rem*, I do not at present see how the respondent is in a better position, and as between two personal titles the prior title is preferable.

"But I am disposed to be of opinion that the complainers are proprietors of the furniture, and that although no actual delivery took place in 1884, there was yet such a change of possession as was tantamount to delivery. In other words, I think that in pursuance of the deed of arrangement, Mr Mitchell ceased in law to possess the furniture, and that the possession as well as the right has since been with the complainers, who have possessed directly as owners of the house, and in-

directly through their beneficiaries, the wife and children.

"Had Mr Mitchell's sequestration proceeded to the appointment of a trustee, there could, I think, have been no doubt as to his divestiture. The act and warrant of the trustee would, under the statute, have operated as delivery of the furniture, and the complainers, as taking through the trustee, must I suppose have had the benefit of that delivery. It is not, however, so clear whether mere sequestration had the same effect. Sequestration is only equivalent to a completed pouncing, and the complainers' right is probably therefore no higher than if they had acquired under, *e.g.*, a sale by a pouncing creditor. In such circumstances, it may perhaps be doubted whether the bankrupt was divested by the mere force of the diligence. I prefer, therefore, to take the case just as if the complainer had bought for a fair price from the bankrupt himself, he selling with consent of his creditors, and under circumstances which established beyond doubt the truth and *bona fides* of the transaction. Or to simplify the case still further, I prefer to consider it as if the deed of arrangement had been made directly with the bankrupt's wife and children, who, having separate funds and owning the house in which they all lived, had acquired the furniture at a fair price, duly paid to the bankrupt's creditors.

"Now, I do not stop to consider what would have been the effect of such a transaction under the Mercantile Law Amendment Act. I do not do at all doubt that the deed of arrangement embodied what was in effect a sale. But it may perhaps be doubted whether the Mercantile Law Amendment Act protects a purchaser, not merely against the diligence of the seller's creditors, but against the acts of the seller selling to a second purchaser, and giving delivery. In my view the common law is here sufficient for the complainers' case.

"It will not, I suppose, be disputed, that if two persons jointly occupy the same house, the furniture of which belongs to one of them, such furniture may be effectually transferred by the one occupant to the other, and may be so without any overt change in the use which they respectively make of it. The contract being clear and unreserved, the legal possession in such a case necessarily follows the title, and is held to pass to the purchaser, who obtains all the possession of which the circumstances admit. So far as the seller retains any natural possession, he does so, not as proprietor, but on a new and subordinate title, which may either be hire or gratuitous use, or whatever else the parties arrange. It is perhaps superfluous to quote authorities, but *Maedougall v. Whitelaw*, 2 D. 500, and *Fyfe v. Woodman*, 4 D. 255, both recognise the above principle as applied in the one case as between a sister and a brother, and in the other, as between a father and daughters. Nor is the case of *Anderson v. Buchanan*, 11 D. 270 (supposing it to be still authoritative), at all to the con-

trary. In fact, both the decisions I have referred to were there accepted as good law.

"But if the parties stand in the relation of husband and wife, or if the transaction takes place between the husband on the one hand and his wife and children, or trustees for his wife and children, on the other, does it make any difference? No doubt the truth and good faith of the transaction must, in such a case, be more jealously scrutinised, but if that be established beyond doubt, and if the wife and children have separate estate, or if the price is paid by friends or relations on their behalf, I know of no disability which attaches in such matters to either wife or children. They buy the furniture, and pay for it. They obtain all the possession of which the circumstances admit. In the present case the house is already theirs. They are now the owners both of the house and furniture, and the husband is no longer in possession of the furniture any more than he previously was in possession of the house.

"Had the complainers, the marriage contract trustees, acquired not for the wife and children exclusively, but for the husband in life, and the wife and children in fee, it could not, I suppose, have been said that the position of the latter was more favourable. In certain views it might be thought to be less so. But can it be doubted, on the authorities, that in that case there would have been sufficient change of possession? The husband would, in that case, have been still in possession, but it would have been possession on a new and limited title; and according to the case of *Orr v. Trullis* that is enough. Indeed, that this is so is necessarily conceded by the respondent, because his own title, at least so far as rested at common law, is necessarily dependent on the doctrine that delivery is not necessary when the seller continues to possess under a contract of hire, or other new title of possession.

"On the whole, therefore, I am of opinion that the complainers are here entitled to interdict in terms of their prayer, and I see no reason why the complainers should not have their expenses."

The respondent reclaimed, and argued—Delivery was necessary to complete the transfer of moveables—*Ersk. ii. 1, 18; Distillery Company v. Russell's Trustees*, February 9, 1889, 16 R. 479, *per* Lord President, p. 486. The transfer might, however, be effective by constructive delivery though the assigner remained in actual possession of the moveables, if his possession was on a new and subordinate title derived from the assignee under a known contract such as lease—*Orr's Trustee v. Trullis*, July 2, 1870, 8 Macph. 936; *Robertson v. M'Intyre*, March 17, 1882, 9 R. 772; *per* Lord Trayner, p. 775; *Darling v. Wilson's Trustee*, December 16, 1887, 15 R. 180. The furniture in question had therefore been effectually transferred to the claimer, unless Mitchell was divested of his right in it prior to the assignation in the claimer's favour. But at the date of that assignation the furniture still

belonged to Mitchell, for the deed of arrangement and the assignation to the complainers had not been followed by delivery, and that assignation was therefore ineffectual. The complainers claimed to have had civil possession of the furniture through Mitchell's wife, for whose liferent use it had been assigned to them, but the principle of *Orr v. Tullis*, and the subsequent cases in the same category had never been extended to a transaction of that kind, and there was direct authority for the view that the property of moveables was not transferred from husband to wife if the moveables continued to remain in the husband's possession—*Hewat's Trustees v. Smith*, January 27, 1892, 19 R. 403. The same principle was affirmed by earlier authorities—*M'Laren on Wills*, i. 418; *Campbell v. Stewart*, June 13, 1848, 10 D. 1280; *Brown v. Brown's Trustee*, December 19, 1850, 13 D. 373; *Shearer v. Christie*, November 18, 1842, 5 D. 132; *per opinion of Consulted Judges*, p. 141; *Edmond v. Mowat*, November 4, 1868, 7 Macph. 59, *per Lord President*, p. 62. The cases of *Macdougall* and *Fyfe* relied on by the Lord Ordinary were not to a contrary effect. In *Macdougall* a sister purchased furniture from her brother who lived with her. She then took a house and put the furniture in it. The possession of the furniture was thus clearly transferred to the sister, although her brother continued to reside with her. In *Fyfe's* case, which was an application for interdict, no decision was pronounced on the merits; nothing was done except that the note was passed. The judgment in *Scott's* case was based upon section I of the Mercantile Law Amendment Act, and was therefore not in point, for that section only applied to the case of the creditor of a seller using diligence to attach goods which had been left after the sale in the seller's custody. The Lord Ordinary's interlocutor should therefore be recalled, and the note refused.

Argued for the complainers—The effect of the deed of arrangement and the subsequent assignation in the complainers' favour was to divest Mitchell of all right in or to the furniture. After the date of that assignation the possession of the furniture was transferred from him to his wife, for whose behoof the furniture had been assigned to the complainers. Mitchell's position in regard to the furniture could not be more favourable than it would have been had the complainers held it for his behoof in liferent, and in that case his possession would have been on a new and limited title, and the change would on the authorities have been sufficient to complete the assignation in the complainers' favour—*Orr v. Tullis*; *Robertson v. M'Intyre*; *Darling v. Wilson's Trustee*, *supra*; *Liddell's Trustee v. Warr & Company*, July 18, 1893, 20 R. 989; *Scott's Trustee v. Scott*, February 20, 1889, 16 R. 507. The assignation had therefore been followed by a sufficient change in the possession to render it effectual. The case of husband and wife was not different from that of other relatives living together, and it had been held that where

two relatives lived together the furniture of the house in which they resided might be transferred from one to the other—*Macdougall v. Whitelaw*, January 29, 1840, 2 D. 500; *Fyfe v. Woodman*, December 14, 1841, 4 D. 255. The case of *Hewat's Trustee* was not an authority to the contrary, but was merely an instance of the well-known rule that a husband could not by marriage-contract effectually transfer moveables to his wife, of which he retained the possession. The Lord Ordinary's judgment was therefore right.

At advising—

LORD ADAM—In this case the complainers, who are the marriage-contract trustees of Mr and Mrs Mitchell, seek to have the respondent interdicted from removing certain articles of furniture from the house 17 Dalhousie Terrace, presently occupied by Mr Mitchell.

Both parties claim to be proprietors of the furniture, and both claim to derive right to it from Mr Mitchell, to whom it formerly belonged.

The material facts of the case appear to be these. Mr Mitchell was sequestrated in 1883, but proceedings were taken under the 38th section of the Bankruptcy Act and the sequestration put an end to by a deed of arrangement approved of by the Sheriff.

By this deed of arrangement, which is dated in December 1883, and which is entered into between Mr Mitchell of the first part, Mr Blackwood, Mr Mitchell's father-in-law, of the second part, and certain creditors of Mr Mitchell of the third part, Mr Mitchell assigned to Mr Blackwood, *inter alia*, the furniture in question, and in consideration of this assignation Mr Blackwood bound himself to pay a composition on the debts owing to Mr Mitchell's creditors.

This deed was followed by a second deed dated in January and May 1884, entered into between Mr Blackwood of the first part, the complainers as trustees under the marriage-contract of Mr and Mrs Mitchell of the second part, and Mr Mitchell of the third part, by which, on the narrative of the sequestration and deed of arrangement Mr Blackwood assigned to and in favour of the complainers the furniture in question to be held by them for behoof of Mrs Mitchell, exclusive of the *jus mariti* and right of administration of her husband, but for her liferent use only, and for behoof of her children in fee, and in consideration of this assignation the complainers discharged Mr Blackwood of all claims competent to them under the deed of arrangement.

I cannot doubt that this was a perfectly *bona fide* transaction, and that by the first of these deeds Mr Blackwood purchased the furniture from Mr Mitchell and his creditors, and that by the second deed he validly assigned it to be held by them for behoof of Mrs Mitchell in liferent and her children in fee.

At the date of the sale the furniture was in a house in Merchiston Park, which was occupied by Mr Mitchell and his wife and

family. At Whitsunday 1884 they removed to a house in Dalhousie Terrace, taking the furniture with them, and they are still in occupation of that house. The respondent alleges that Mr Mitchell was tenant of these houses, and for the purposes of this case I assume that he was so.

The complainers purchased the house in Dalhousie Terrace in May 1891, but prior to that date Mr Mitchell sold, or professed to sell, the furniture to the respondent for the sum of £130, conform to assignation in his favour dated July 11, 1890. By letters of hire of the same date Mr Mitchell hired the furniture from the respondent for one year certain at the rate of £10 for each three months, payable in advance.

It is on these two documents, followed, as he alleges, by the possession of the furniture by Mr Mitchell, as having hired it from him, that the respondent claims right to it, and he denies the complainers' right to it on the ground that they had never received delivery of it from Mr Mitchell, but that it had remained all along in his possession and was still in his possession when he, the respondent, acquired it.

It is true that the furniture, at the time of the sale to Mr Blackwood and the complainers, was in possession of Mr Mitchell, and that the complainers never received actual delivery of it from him; nevertheless I am of opinion with the Lord Ordinary that they have acquired the full right of property therein.

I think that this case is ruled by the principles laid down in the case of *Orr's Trustees v. Tullis*, 8 Macph. 935, and followed in the subsequent cases of *Robertson v. McIntyre*, 9 R. 772; and *Darling v. Wilson's Trustees*, 5 R. 180.

In the case of *Orr's Trustees* the articles sold were in possession of the seller at the time of the sale. The seller continued in the uninterrupted natural possession of them, having hired them from the purchaser. There was no actual delivery of them to the purchaser. The articles sold were subsequently claimed by the creditors of the seller, but the Court held that the seller was not in possession under his original title of owner, but under his subsidiary title of hirer, that consequently the purchaser was in constructive possession of them through him, and that that was sufficient to confer the complete right of property on the purchaser although there had been no actual delivery.

The Lord Justice-Clerk said, in giving judgment—"It is not correct to say that some corporeal Act, some change in the actual situation or custody of moveables sold, is necessary to pass the property. That is only true where possession has not been obtained by the purchaser. That is manifestly not true when possession has been attained." Then, after giving some illustrations of this, he goes on to say—"But what shall be said if the seller, in parting with the ownership himself acquires a subordinate title of possession. Shall his continued possession be ascribed to his former ownership or to his new title?"

Although this is not a new question, I have found it difficult, and, so far as I know, it has hitherto been undecided in Scotland. There is a clear distinction," he says, "between cases in which possession is simply continued by the seller, and those in which a new title of possession, specific and determinate, with known rights and limits is acquired by him. It may be true that in the case of goods sold, remaining in the custody of the seller, there is a presumption of simulation raised against any inferior title flowing from the buyer which he may pretend. But this presumption will be stronger or weaker according to circumstances, and, if the good faith of the transaction is clearly proved, will altogether disappear. In such a case the question of possession must be judged according to the legal title of the parties."

Now, applying these principles to the facts of the present case, it is clear that there was no simulation or want of good faith in the transaction with which we have to deal, and that the result is that when Mr Mitchell sold the furniture to the respondent, he was not in possession of it under his original title of owner, and in fact was not in possession of it at all. The facts are that Mrs Mitchell was entitled to the liferent of the furniture, that the complainers were bound to give her the possession and use of it, and that they did so. Her husband's *jus mariti* and right of administration, with respect to it, were excluded, and any use or control he had of it arose from the fact that he was living with and occupying the same house as his wife.

I accordingly think that Mrs Mitchell has been in the actual possession of the furniture throughout, that she has had that possession, not as owner, but from the complainers under the specific and determinate subsidiary title of liferentrix of the furniture, that the complainers have been all along in the civil possession of the furniture through Mrs Mitchell, and that that was sufficient to give them the *plenum dominium* of it. It follows that when Mr Mitchell professed to sell the furniture to the respondent, he could give him no title to it.

On these grounds I am of opinion that the interlocutor of the Lord Ordinary should be adhered to.

LORD M'LAREN—I wish only to add that I think this case is solved by the application of the same principle as has been given effect to in the last case (*Mitchell v. Heys & Sons*, February 27, 1894), viz., that the possession of moveable property can in general give no higher right to an assignee than he has himself acquired from the true owner. The house of Mrs Mitchell was not a market for sale, and the fact that Mrs Mitchell allowed her husband the joint use of the furniture for domestic purposes did not entitle the reclamer, Gladstone, to assume in a question with Mrs Mitchell either that the property was her husband's, or that he had a power of sale. It would be otherwise if Mrs Mitchell had been a

furniture dealer and his wife's furniture had been put into his shop and apparently exposed for sale.

LORD KINNEAR and the LORD PRESIDENT concurred.

The Court adhered.

Counsel for the Complainers—Clyde. Agents—Mitchell & Baxter, W.S.

Counsel for the respondent—C. S. Dickson—A. O. M. Mackenzie. Agent—Robert Broatch, L.A.

Tuesday, February 27.

FIRST DIVISION.

[Lord Low, Ordinary.]

MITCHELL v. HEYS & SONS.

Contract of Hire — Lessee Holding Himself out as Owner — Lien — Question which of Two Innocent Parties is to Suffer by Fraud of Third Party.

M. J. & Co. calico printers, hired a quantity of copper rollers for use in their business from M. M. J. & Co. had no print works of their own, and, in accordance with a common practice in the trade, employed other printers to print for them, to whom they sent their cloth with the rollers to be used in printing it. One of the firms so employed by M. J. & Co. was H. & Sons, and in the course of their business M. J. & Co. sent a number of the hired rollers to this firm, to whom they falsely represented that the rollers were their own property. M. J. & Co. having become insolvent, H. & Sons refused to give up the rollers to M., on the ground that they had a lien over them for a balance due them by M. J. & Co. It was admitted that by the custom of the trade printers employed to print for others had a general lien over the cloth and rollers of their customers.

Held that M. was entitled to delivery of the rollers, in respect (1) that M. J. & Co. had no authority to subject his rollers to the lien of a third party; (2) that he had done nothing with the intention of misleading H. & Sons into the belief that the rollers were the property of M. J. & Co.; and (3) that in fact H. & Sons had not relied on any representation by M., but solely on the false representations of M. J. & Co.

Observed that proof of custom of trade might determine the incidents of a contract or explain its terms between the contracting parties, but that it could not affect the rights and property of others, which fell to be determined by the settled rules of law.

In 1885 Mitchell, Johnston, & Company, calico printers in Manchester and Glasgow, hired a number of copper rollers from William Mitchell, who had shortly before

retired from business as a calico printer in Glasgow. By the terms of the agreement between the parties the rollers were to be used by Mitchell, Johnston, & Company in their business of calico printers, and to be engraved with such patterns as they should think proper, but for no other purpose whatever. The seventh head of the agreement provided that the whole of the rollers should be kept distinctly numbered and marked with the lessor's name, in order to identify them as his property, and in the event of the lessees parting with the custody of the rollers to any printer or other third person, that they should deliver them to such printer or other third person on the lessor's behalf under a receipt bearing expressly that they were "received from William Mitchell."

This agreement expired in 1889, and another agreement to the like effect was then entered into between the parties. In this agreement Mitchell, Johnston, & Company further undertook to add new rollers to William Mitchell's stock when necessary, in order to provide against loss of copper in turning off old patterns and depreciation in the value of copper.

Mitchell, Johnston, & Company had no print works of their own, and in accordance with a common practice in the trade, they employed firms who had print works to print for them, and sent their rollers and cloth to these firms in order to have the cloth printed. One of the firms which Mitchell, Johnston, & Company employed in this way was Z. Heys & Sons of Barrhead, and they were in the habit of sending this firm rollers they had hired from William Mitchell in order to have their cloth printed from them.

In June 1892 Mitchell, Johnston, & Company became insolvent, and at this time there were in Heys & Sons hands 902 rollers belonging to William Mitchell, which had been hired from him by Mitchell, Johnston, & Company.

William Mitchell applied to Heys & Sons for delivery of these rollers. Heys & Sons, however, claimed a right to retain them in security of a general balance of £4529 due them by Mitchell, Johnston, & Company, and William Mitchell then brought an action against them for delivery of the rollers.

The defenders made, *inter alia*, the following averments—"The pursuer knew that Mitchell, Johnston, & Company had full possession and control of the said rollers, and that they dealt with them as their own property, and were in the practice of sending the said rollers to these defenders, *inter alia*, in order that these defenders might engrave the same and use them for printing cloth for or on the orders of Mitchell, Johnston, & Company, and he intended all along that this should be done. The pursuer knew all along that by the usage and custom of the calico printing trade in Glasgow, all rollers delivered to calico printers actually engaged in printing (as these defenders are) were delivered and received on the footing that the engravers and printers (as these