have the same force though it is qualified by a condition.

There remains the question whether it was necessary to do more in order to make the assignation effectual as against the liquidator. I do not think that it was. The tenant had nothing more than a right to remove, though the act of removal vests him with the property of the thing removed. If he renounces that right absolutely, it is gone by the mere force of the renunciation. If he renounces it until he shall pay a certain debt, he cannot exercise it until he fulfils that condition. We are not dealing with the property of the tenant, but with his right to do an act by which property may be acquired. To extinguish or modify that right nothing more is required than a completed agreement between the person who may do the act and the person who must suffer it to be done.

In the case of a stranger I think that the assignation would be completed by intimation to the landlord, and that thereafter neither the tenant nor a trustee in bankruptcy could exercise the right to remove. And if the landlord is to be regarded as being merely an assignee, the assignation will be effectual without intimation. For the landlord would not require to make intimation to himself. But I think that the landlord is in a better position than a stranger, for the assignation does not convey to him any property. It is no more than a renunciation or discharge of a claim competent to the tenant, and as such is completed by mere agreement.

I am therefore of opinion that the trade fixtures are at present the property of Mr Muirhead, and that he can prevent the liquidator from removing them till his debt is paid.

The LORD JUSTICE-CLERK and LORD TRAYNER concurred.

LORD YOUNG was absent.

The Court recalled the interlocutor of the Lord Ordinary, and answered the question in the affirmative.

Counsel for the Liquidator—Grainger Stewart. Agents—Dalgleish, Gray, & Dobbie, W.S.

Counsel for James Muirhead—Maclennan. Agents—Dalgleish, Gray, & Dobbie, W.S.

Thursday, March 15.

FIRST DIVISION.

SIMPSON *v.* ALLAN.

Process—Caution for Expenses—Pursuer in Receipt of Parochial Relief—Delay in Application.

Application to have a pursuer who was in receipt of parochial relief, ordained to find caution, *refused* as made too late.

Simpson brought an action of damages against Allan, a medical man, on the ground that he had been negligent in treating an injury from which the pursuer was suffering. The case was put down for jury trial at the Spring Sittings. On 15th March the defender moved the Court to ordain the pursuer to find caution within four days. He stated that the pursuer was in receipt of parochial relief, and could have sued *in forma pauperis*—*Hunter* v. *Clark*, July 10, 1874, 1 R. 1154. The pursuer submitted that no relevant ground had been alleged in support of the application. Pauperism was not a sufficient reason for requiring caution—*Macdonald* v. *Simpsons*, March 7, 1882, 9 R. 696. Further, the defender had long been aware that the pursuer was in receipt of parochial relief, for he stated in his answers that he had heard in January 1892 that the pursuer had applied for relief. The application that he should be ordained to find caution was now made for the first time on the eve of trial, and should be refused as too late.

LORD PRESIDENT—The application should have been made earlier. It is now within a few days of the trial, and, as the pursuer's counsel points out, the defender's information is of long standing.

LORDS ADAM and KINNEAR concurred.

The Court refused the application.

Counsel for the Pursuer—T. B. Morison. Agents—Matthewson & Easson, S.S.C.

Counsel for the Defender—J. W. Forbes. Agent—Thomas Sturrock, S.S.C.

Friday, March 16.

SECOND DIVISION.

[Sheriff-Substitute at Airdrie.

ADAM *v.* ADAM'S TRUSTEE.

Bankruptcy—Husband and Wife—Wife's Furniture in Husband's House not subject to Claims of his Creditors—Married Women's Property (Scotland) Act 1881 (44 *and* 45 *Vict. cap.* 21), *sec.* 1, *sub-sec.* 4.

Certain articles of furniture in a husband's house belonged to his wife, who had purchased them before marriage with money received from her father.

Held that they had not been lent or entrusted to the husband or immixed with his funds in the sense of the Married Women's Property (Scotland) Act 1881, sec. 1, sub-sec. 4, and were not liable to the claims of his creditors.

By the Married Women's Property (Scotland) Act 1881 (44 and 45 Victoria, chapter 21), it is enacted, sec. 1—(1) Where a marriage is contracted after the passing of this Act, and the husband shall at the time of the marriage have his domicile in Scotland, the

whole moveable or personal estate of the wife, whether acquired before or during the marriage, shall by operation of law be vested in the wife as her separate estate, and shall not be subject to the *jus mariti* . . . (3) Except as hereinafter provided, the wife's moveable estate shall not be subject to arrestment or other diligence of the law for the husband's debts provided that the said estate (except such corporeal moveables as are usually possessed without a written or documentary title) is invested, placed, or secured in the name of the wife herself, or in such terms as shall clearly distinguish the same from the estate of the husband. (4) Any money or other estate of the wife lent or entrusted to the husband or immixed with his funds shall be treated as assets of the husband's estate in bankruptcy.

Janet Adam, wife of George Adam, sometime spirit-dealer, Airdrie, raised, with the consent of her husband, an action in the Sheriff Court of Lanarkshire at Airdrie against James Craig, trustee on the sequestrated estate of George Adam, in which she prayed the Court to interdict the defender and all others acting for him on his instructions from selling, removing, or in any way interfering with the goods and effects, or any of them, belonging to the pursuer, and presently in the house in which she resides, in High Street, Airdrie, under and in virtue of his act and warrant, as trustee foresaid; and in particular, from removing, selling, or in any way interfering with certain enumerated articles of furniture.

The following were the statements of importance in the condescendence for pursuer and the answers thereto for defender —"(Cond. 1) The pursuer was married to the said George Adam in the year 1885, and prior thereto, with money received from her father, purchased from Peter Duff, 18 South Portland Street, Glasgow, upon 3rd March 1885 the said articles. (Ans. 1) Admitted. (Cond. 2) The said articles are thus the sole property of the pursuer, the said Mrs Adam, and have still remained hers, she having been married after the Married Women's Property Act 1881. The said articles had only been immixed with other estate of the said George Adam, in respect they were in the same house as his furniture, and they were capable of easy identification. (Ans. 2) Denied. The said articles have been immixed with the furniture and other estate of the said George Adam . . . (Cond. 4) The defender has all along been informed that the said enumerated articles did not belong to the sequestrated estate of the said George Adam, but he persists in claiming them, and has instructed Mr Alexander Morrison, auctioneer in Airdrie, to have them removed. . . . (Ans. 4) Admitted that the said articles have been claimed by the pursuer, but that being found immixed with the goods and estate of the said George Adam, the defender, as trustee on the said George Adam's sequestrated estate, took possession thereof."

The defender pleaded, *inter alia*—"(2) The said articles having been immixed with the estate of the said George Adam, and being part of his sequestrated estate, belong to the defender as trustee thereon."

On 6th February 1894 the Sheriff-Substitute (MAIR) pronounced the following interlocutor:—"Finds (1) it admitted by the defender that the articles enumerated in the prayer of the petition were purchased with money received from her father prior to the marriage in 1885 with George Adam, sometime spirit-dealer, Airdrie; (2) That the said George Adam was sequestrated in September 1893, and that the defender is trustee on the sequestrated estate; (3) That in virtue of section 1 of the Married Women's Property (Scotland) Act 1881, the said articles were vested in the petitioner as her separate estate, and were not subject to her husband's *jus mariti*, and were not subject to arrestment or other diligence of the law for her husband's debts; (4) That although the said articles were in the petitioner's husband's house along with articles of furniture belonging to him at the date of his sequestration, they were not, in the sense of sub-section 4, section 1, of the said Act, lent or entrusted to the husband, or 'immixed with his funds,' but were capable of being identified and distinguished from the estate of the husband: Finds in law that the said articles were the separate property of the petitioner, that they did not form part of the assets of her husband, and that the defender, as trustee on the husband's sequestrated estate, is not entitled to take possession of the same: Therefore declares the interim interdict formerly granted perpetual.

"*Note.*—The findings in the above interlocutor speak for themselves, and I have only to refer in support of it to the passage in Lord Fraser's treatise on Husband and Wife, p. 1517, where his Lordship says—'The investments in which the wife may put her earnings may be furniture or any other *corpora mobilia* as well as stocks or heritage, and thus although the two spouses be living together, the whole of the plenishings—apparently his—may be the wife's property, and cannot be taken by the husband's creditors.'

"Reference was made at the debate by the agent for the defender to the case of *Anderson* v. *Leith*, 18th March 1892, 19 Rettie 684, but in my opinion that case was a special one, and does not derogate in any way from what is laid down by Lord Fraser."

The defender appealed to the Court of Session, and argued—The putting of the furniture into the husband's house had the effect of immixing it with his estate in the sense of section 1, sub-section 4 of the Married Women's Property Act 1881. The case was ruled by that of *Anderson* v. *Leith*.

Argued for the pursuer—This furniture was admitted to be the property of the wife, and her husband could not have sold it without her consent. Under the Bankruptcy Acts sequestration of the husband's estate did not attach anything of which

the husband was not the owner. Opinion of Lord Watson in *Heritable Reversionary Company, Limited* v. *Millar*, August 9, 1892, 19 R. (H. of L.) 43. It had been decided that where a father made a bequest of furniture to his daughter, excluding the *jus mariti* of the daughter's husband, the furniture did not pass to the husband's trustee in bankruptcy although it was situated in the husband's house—*Young* v. *Loudoun*, June 26, 1855, 17 D. 998. But the effect of the Married Women's Property Act applied was to make the wife's moveables, where distinguishable from those of the husband, in the same position as if the *jus mariti* of the husband had been effectually excluded. The furniture had neither been immixed with the husband's goods or lent or entrusted to him, and therefore in terms of the statute it was not attached by his sequestration.

At advising—

LORD YOUNG—The question in this case arises under the Married Women's Property Act 1881. It relates to fifteen articles of furniture—I should think the whole articles of furniture found in the house of this bankrupt publican. He became bankrupt, and these articles are claimed by his trustee. The wife, however, says that the articles are hers—that they were purchased before her marriage with her own money; and that averment is admitted by the trustee. Therefore in the case of these articles of furniture there was no immixing of them with any furniture of the husband.

The question is, whether under the Married Women's Property Act 1881 the wife is entitled to the furniture, or whether it belongs to the husband's creditors? *Prima facie* the wife is entitled to the furniture unless the case falls under sec. 1, sub-sec. 4, of the Act. The trustee says the case does fall under that clause. The section is in these terms—[*His Lordship quoted the clause*]. It is not stated on record, and it is not the defender's case, that the furniture was entrusted or lent to the husband. The defender's case as stated in ans. 2 and in his second plea-in-law is that these articles of furniture have been immixed with the furniture and other estate of the husband, and that therefore they now belong to the defender as trustee on that estate. But, as I have already said, there was no immixing in this case, at least no immixing that was not capable of immediate separation or unmixing. I am therefore of opinion with the Sheriff-Substitute, who in deciding the cause proceeded on the law stated by Lord Fraser in his Treatise on Husband and Wife, that this furniture and any furniture in a similar position is the estate of the wife and does not pass to the husband's trustee in bankruptcy.

The Sheriff-Substitute refers to the case of *Anderson* v. *Leith*, but he is of opinion that that case was a special one, and does not derogate in any way from the law laid down by Lord Fraser. I agree with the Sheriff-Substitute. I think the case of *Anderson* was a very special one, and I do not think it was decided on any ground of immixing. The case was one of a clergyman who on the eve of bankruptcy, having a considerable number of small debts and being tormented by his creditors, in order—as I thought, and as I think all the Judges who heard the case thought—to put his furniture beyond the reach of his creditors, had made a sale of his furniture on paper to his wife. No change had been made in the possession of the furniture; there was nothing but the document to show that the furniture had become the property of the wife. I was of opinion that the transaction was not *bona fide*. But the case there was not one of immixing, but that even if there had been a valid sale the wife had lent or entrusted the furniture to her husband. There were some observations made by some of the Judges in that case tending to this, that a wife may lend or entrust furniture to her husband. That may be; I do not think it is impossible. But I do not think where a woman who is in possession of furniture marries a man who has no furniture at all or very little and brings it into his house, or it may be into her own house, that she thereby lends or entrusts it to her husband within the sense of sec. 1, sub-sec. 4 of the statute. I do not think that there is any case of lending or entrusting made out here at all.

On the whole matter, I agree in the judgment of the Sheriff-Substitute, and in the law as stated by Lord Fraser, on which the Sheriff-Substitute proceeds.

LORD RUTHERFURD CLARK — In my opinion the furniture belonged to the wife, and was not lent or entrusted to the husband or immixed with his estate. I therefore concur.

LORD JUSTICE-CLERK—I also agree. If we decided this case in favour of the defender, I do not think that there could ever be any case in which a wife's furniture when brought into her husband's house could be prevented from becoming her husband's property.

LORD TRAYNER was absent.

The Court refused the appeal.

Counsel for the Pursuer—Clark—T. B. Morison. Agent—J. L. Officer, W.S.

Counsel for the Defender — Grainger Stewart. Agent—Marcus J. Brown, S.S.C.