

it means this—"Whereas I understand in the complicated family relationship that Archibald Gray, my trustee, will get a share of a legacy bequeathed to his father, I declare that the legacy of £500 is to be in addition to that, and I provide that the legacies shall not deprive him of his rights and privileges as a gratuitous trustee." There is no testamentary intention in the second purpose except as regards the legacy of £500. The conclusion might have been different if there had been disclosed in the settlement a general scheme which would be defeated if a legacy of £1000 to the children of Archibald Gray *secundus* were not introduced by implication. It is, no doubt, true that the testatrix takes the family groups, and out of these groups selects one for preferential treatment. I can find no warrant for concluding that the testatrix had any intention to bequeath one-third of £1000 to each of Robert and James, the brothers of Archibald *tertius*. It is not to the point to say that the grandchildren of Sarah, a sister of the testatrix, are brought in by the settlement. This fits into the general scheme, which is that a legacy of £1000 is to go to each stirps which represented a brother or sister of the testatrix. To give effect to the contention of the second parties would be to give to the stirps represented by Archibald Gray *primus* not £1000 but £2000. The bequest in the fourth purpose is to the children of Archibald *primus* "who shall survive me." Archibald *secundus*, the father of the trustee Archibald *tertius*, predeceased the testatrix, and the children therefore get nothing.

The question ought in my opinion to be answered in the negative.

LORD SKERRINGTON—I concur with your Lordships.

LORD CULLEN did not hear the case.

The Court answered the question of law in the negative.

Counsel for the First Parties — Irvine, K.C. — Aitchison. Agents — John Macmillan & Son, S.S.C.

Counsel for the Second Parties — Macmillan, K.C. — D. P. Fleming. Agents — Laing & Motherwell, W.S.

Saturday, February 26.

FIRST DIVISION.

ARAYA AND ANOTHER v. COGHILL.

Bankruptcy—Foreign—Official Receiver—Application by Official Receiver Appointed by Foreign Court for Confirmation of his Appointment, and for Authority to Sell Scotch Heritage and Realise Policies of Insurance.

The Official Receiver appointed by a foreign court on the bankrupt estate of a deceased Scotsman who had carried on business within its jurisdiction, presented a petition to the First Division, in which he craved the Court (1) to

confirm the said sequestration in bankruptcy and his appointment as Official Receiver, (2) to authorise him, *inter alia*, to make up a title to and to sell the deceased's heritable property situated in Scotland, and (3) (in terms of a proposed amendment to the said petition) to authorise him to uplift the proceeds of certain policies of insurance on the life of the deceased. The Court *refused* to grant the confirmation craved and also the special authority to uplift the insurance policies, as being unnecessary in view of the universal title vested in the Official Receiver, but *granted* authority to sell the heritable property subject to these conditions, viz., (1) that suitable conditions of sale should be specified, (2) that the proceeds should be consigned with the Accountant of Court, and (3) that the sale should not operate as a conversion of the heritage left by deceased.

Jorje Araya, Valparaiso, Chile, Official Receiver appointed by the Court of Chile in the bankruptcy of the deceased William Coghill, exchange broker of Valparaiso, and James Walter Buchan, solicitor, Peebles, his mandatory, petitioners, presented a petition in which they craved the Court "to confirm the sequestration in bankruptcy of the estates of the said deceased William Coghill and the appointment of the said Jorje Araya as Official Receiver thereof for behoof of the creditors of the said William Coghill, and to authorise the said Jorje Araya and the said James Walter Buchan as his attorney foresaid, to administer and realise all property belonging to the said William Coghill situated in Scotland, including said subjects known as Lee Lodge, Peebles, for the benefit of said creditors, and in particular to authorise the said Jorje Araya or the said Walter Buchan as his attorney foresaid to make up and complete a title in name of the said Jorje Araya, Official Receiver foresaid, or of the said James Walter Buchan as his attorney foresaid, and thereafter to sell and dispone the said subjects."

The petition stated—"That William Coghill, exchange broker of Valparaiso, Chile, died on 2nd May 1919 at Limache 731, in the district of Vina del Mar No. 3, of Valparaiso, and that after his death it was found that he left numerous debts, as was made public and notorious in those days, very much in excess of his estate, the assets in Chile not exceeding 200,000 pesos, while the liabilities and debts there amount approximately to 4,000,000 pesos. On 8th November 1919 the competent Court in Chile declared his succession bankrupt and nominated the petitioner the said Jorje Araya Official Receiver, the appointment being subsequently confirmed by a meeting of creditors on 30th December 1919 duly held before a competent court. The said Jorje Araya by agreement with the creditors cabled to the said James Walter Buchan, who acted as agent for the deceased with regard to his property in Scotland, instructing him to take the property under his charge to safeguard the interests of the

creditors pending the remittance of the necessary powers. On 31st March 1920 the said Jorje Araya, being vested as Official Receiver with power to ingather and liquidate the estate and to grant powers of attorney, granted the foresaid power of attorney in favour of the said James Walter Buchan, and of Charles John Munro, accountant, Edinburgh, in case the former should not act, authorising him or them to realise and liquidate the whole estate, property, and goods of the deceased in Scotland and in England, and particularly to sell 'Lee Lodge,' Peebles, with all its furniture and effects, either by public roup or private bargain, to receive accounts against the estate and to admit or reject them, to institute and defend legal proceedings, to receive sums of money due to the deceased, and finally to exercise all such express powers as are required in the country in which it is made use of, such as the said Jorje Araya would enjoy if present himself. . . . The deceased William Coghill purchased the property in the burgh of Peebles known as 'Lee Lodge,' with entry as at 10th July 1907, at the price of £1750. He was in the disposition in his favour designed as stock and share broker and commission agent, Valparaiso, South America. He was a native of Scotland, but had married and settled in Chile, carrying on an extensive business there. . . . It is believed that he intended ultimately to return to Scotland and to take up his residence permanently at Lee Lodge. On 22nd March 1919 his wife Mrs Mina Robertson or Coghill died at Valparaiso, and William Coghill himself, as already mentioned, died also at Valparaiso on 2nd May 1919. Their only son John Coghill, who had been a bank apprentice at Peebles, and was afterwards employed in a bank in Canada and was thereafter at Valparaiso, was resident in South Africa at the time of the deaths of his mother and father. Lee Lodge was bonded by the said William Coghill in March 1908 for £1200. This bond was paid off and discharged at Martinmas 1910. In connection with further alterations and improvements at Lee Lodge the said William Coghill subsequently borrowed from Leonard Grandison, plasterer, Peebles, upon a bond and disposition in security, dated and recorded in the Burgh Register of Peebles 13th June 1912, the sum of £1500, and said loan of £1500 now affects the subjects. The rate of interest on said loan is 5 per cent. Lee Lodge was reserved for the personal occupation of the deceased William Coghill and remained furnished. It was, however, from time to time let for short periods as a furnished house, and at the date of the said William Coghill's death had been let . . . from the 1st of May 1919 to the 28th May 1920 at the rent of £320 for the period. The house has not been re-let, and it will be expedient to have it and the effects therein realised as soon as possible to enable the foresaid loan of £1500 to be discharged and to save the continuation of current expenses. The said William Coghill had effected two insurances upon his life with the Sun Life Assurance Society, 63 Threadneedle Street, London—one under policy No.

181794 for £1500, effected in August 1912, and the other under policy No. 165480 for £1000 in February 1913. These insurances fall in in consequence of William Coghill's death, and have yet to be ingathered by the said Jorje Araya as Official Receiver of his estate. There are believed to be certain creditors of the deceased in Great Britain for relatively small amounts, whose claims will fall to be considered and dealt with in the foresaid bankruptcy in Chile. No administration of the estate of the said deceased William Coghill has taken place in Scotland or in England. It is understood that he had executed a will in Valparaiso regarding the disposal of his estate, real and personal, in Chile, but in view of the bankruptcy proceedings already set forth no attempt has been made to act upon it. Further, it is understood that the said William Coghill left a trust-disposition and settlement and codicil, dated 12th December 1907 and 8th August 1912 respectively, dealing with his estate other than in Chile. . . . No administration under said trust-disposition and settlement and codicil has been had."

Answers were lodged for the said John Herbert Coghill, which, *inter alia*, set forth as follows:—"The respondent believes and avers there is no foundation for the large amount of claims said to have been lodged against the deceased's estate. The respondent through his agent requested the petitioner Mr Buchan to obtain and submit a state of affairs with particulars of these claims properly vouched, and Mr Buchan agreed to do so, but he has not yet had time to obtain the information from Chile. The respondent has also written to Valparaiso to endeavour to obtain information as to the estate left by his father. The respondent's mother died intestate and the respondent is entitled to two-thirds of her estate. The petitioner Jorje Araya has drawn no distinction between the estate of his father and mother, and has treated the estate of the wife as part of the husband's estate. The said petitioner is called upon to distinguish between the two estates in any state of affairs to be produced. The respondent respectfully submits that the petition is incompetent, and that in any case the prayer thereof should not be granted until satisfactory vouched information, including a detailed state of affairs of the deceased, is produced, and security given for making good to the respondent any reversion that may remain after payment of the debts of the deceased."

Thereafter the petitioners presented a note to the Lord President, which, *inter alia*, stated—"In consequence of the advisers of the said Sun Life Assurance Society desiring to have an express authority from the Court for the payment of the policy moneys, the petitioner desires leave to amend the prayer of the petition by inserting therein the following words—'and to authorise the said Jorje Araya or the said James Walter Buchan as his attorney foresaid to uplift and receive the proceeds' of the said policies 'and to grant . . . to the said Assurance Society a valid discharge . . . therefor.'"

The note also contained the following

statement—"The condition under which the petitioner meantime craves power to sell the said heritable subjects is that out of the proceeds thereof he should repay the loan of £1500 affecting the said subjects . . . together with interest due thereon, pay the expenses of advertising and sale, including the expenses of the conveyance to the purchaser, and of the discharge of the foresaid loan, and that he should consign the balance of the proceeds of the sale of Lee Lodge in name of the Accountant of Court to abide the order of the Court in this cause."

Argued for the petitioners—The regularity of the sequestration in Chile (which was the trading domicile of the deceased) and of the appointment of the Official Receiver was not disputed. Such appointment conferred a universal title to the moveable assets wheresoever situated. But the authority of the Court was necessary in order to deal with the heritage—Goudy on Bankruptcy, pp. 600 and 603; *Joel v. Gill*, 1859, 21 D. 929; *Obers v. Paton's Trustees*, 1897, 24 R. 719, 34 S.L.R. 538. It was expedient that the heritable property should be sold without delay, and the petitioners were willing to consign the proceeds to abide the further orders of the Court.

Argued for the respondent—The petition in so far as it asked for confirmation of a foreign sequestration and of the appointment of an Official Receiver was incompetent. Authority to sell the heritable property and to uplift the proceeds of the insurance policies should not be granted until the information and accounting asked for by the respondent had been given.

At advising—

LORD PRESIDENT—This petition relates to the sequestration of the estates of a deceased gentleman named William Coghill, an exchange broker in Valparaiso. The sequestration was granted by the competent Chilean Court on a declaration that Mr Coghill's succession was bankrupt. He died leaving among his assets certain heritable property in this country and also two policies of assurance. The petition is on behalf of the Official Receiver in the bankruptcy and Mr James Walter Buchan, whom he has appointed his mandatory in this country. As presented it was concerned mainly with the bankrupt's Scottish heritable property, but it is proposed by the petitioner to amend it so as to include certain craves with regard to the policies. I shall deal with the several parts of the prayer (including the proposed amendments) in their order.

The first crave is that we should "confirm the sequestration in bankruptcy of the estates of the said deceased William Coghill and the appointment of Jorje Araya as Official Receiver thereof for behoof of the creditors of the said William Coghill." I know of no precedent for a judicial confirmation of this kind in the case of a foreign sequestration granted by a competent court, nor indeed am I at all sure that even with the assistance of counsel's explanations I understand what the legal nature and effect of such a confirmation

would be. I know no useful or legitimate purpose which would be served by it, and therefore so far as the first crave is concerned I do not think it should be granted.

The next crave deals with the heritable property, and here the position is one which may reasonably call for an application of the powers of this Court.

Before dealing with it, however, I ought to dispose of the proposed amendment with regard to the policies of assurance. I do not think it doubtful that a foreign sequestration, regular according to the law of the country in which it is made, constitutes a perfectly good universal title under which any moveable asset of the bankrupt is capable of recovery by law wherever that asset may be found. That being so there does not appear to be any call for us to interfere by way of granting any special authority (as the amendment proposes we should do) in relation to these policies. It is for the person holding the universal title to produce it to the debtor or other person with assets belonging to the sequestrated estate in his hands, and use it, as he is entitled to do, for recovery thereof. Neither in the petition nor in the answers which have been lodged to it, nor in the speeches of counsel, is any suggestion made to the effect that the universal title afforded by the Chilean bankruptcy is other than perfectly valid and regular. Accordingly I think we ought to disallow the amendment which is proposed in reference to the policies as unnecessary.

The questions with regard to the Scottish heritage, particularly in reference to the method by which the proceeds derived from the proposed sale ought to be disposed of among the persons entitled thereto, may raise points of nicety. But the point which arises at present is as to the sale. As the petition is framed, what we are asked to do is to grant authority to the Official Receiver's mandatory to make up a title to the heritable property, and to sell and dispose of it on such terms as the Official Receiver should direct, the net proceeds being, presumably, remitted to the Official Receiver in Chile. I do not think that we should have been justified in giving authority for a sale without adjecting the usual conditions as to upset price and other terms; but I understand that parties are in a position to amend the prayer so as to define the conditions upon which both petitioner and respondent are agreeable that the heritable estate should be exposed. If these are suitable, all difficulty on that head will be removed. Further, and in the second place, I understand that the petitioner is willing to insert a condition in the prayer to the effect that the proceeds when obtained should be lodged in the hands of the Accountant of Court to await disposal as this Court may direct. This will enable any questions which may arise with regard to the disposal of the proceeds among the persons entitled thereto to be disposed of hereafter. Subject to these amendments being made, I pass to the merits of the question. We are told that the heritable property, consisting of a villa residence in Peebles, is at present unlet, and, to use a cant phrase, is eating

its own head off. The present is the time, or one of the times in the year, when heritable property of this class has a reasonable chance of a good market. It appears in these circumstances to be proper in the interests of everybody concerned that in order to prevent loss we should lend our assistance to enable the property to be disposed of and the proceeds put in safe keeping.

Accordingly upon the petition being amended in the two particulars to which I have referred—(first) the specification, either by description or by reference to some document in process, of suitable conditions of sale; and (secondly) a crave in the prayer of the petition that the proceeds are to be lodged in the hands of the Accountant of Court—we should grant the authority craved.

LORD MACKENZIE—I concur. The only matter that I would refer to in addition to those mentioned by your Lordship is that I understand this Court to be moved to introduce as a condition that the sale is not to affect the character of the succession.

LORD SKERRINGTON—The regularity of the appointment by the Chilian Courts of an Official Receiver upon the estate of the deceased bankrupt has not been challenged. It must therefore be regarded as conferring upon the Official Receiver a universal title to the moveable or personal assets of the deceased bankrupt wheresoever situated, including the policies of life assurance referred to in the present proceedings. It follows that the petitioners' proposal to amend the petition by asking for authority to uplift the policy moneys should be refused as unnecessary. If the heir has a claim against the Official Receiver in respect of property wrongfully taken possession of by the latter he can make it good in the ordinary way. All that we have to consider is the application by the Official Receiver's attorney in Scotland for authority to sell a villa in Peebles. That is a course expedient for all concerned, and their interests will be conserved by the clauses and conditions specified by your Lordship. When the estate has been sold and the price consigned, the attorney of the Official Receiver will no doubt apply for authority to deal with the money. I express no opinion as to whether the heir-at-law will be able to prevent the money from being remitted to Chile until he has received certain information, to which he considers that he is entitled, in regard to the validity of the debts which the Official Receiver has ranked or proposes to rank in the Chilian bankruptcy. Nor do I express any opinion as to the procedure by which the heir's right, if it exists, should be enforced. I approve of Lord Mackenzie's suggestion that there should be an express declaration that the sale shall not operate conversion.

LORD PRESIDENT—I intended myself to have added the condition as to conversion to which your Lordships have referred.

LORD CULLEN did not hear the case.

The Court refused the crave of the note so far as regards the policies of insurance as being unnecessary, and *quoad ultra* allowed the prayer of the petition to be amended in the terms suggested at the bar, and said amendments being made, *ad interim* authorised the sale of the heritable property upon such terms and conditions as might be agreed between the parties, or failing agreement as might be fixed by the Court, declaring that such sale should not operate as a conversion of the heritage left by the deceased William Coghill. Further, authorised and directed the petitioner James Walter Buchan, as attorney for the petitioner Jorje Araya, out of the proceeds of the sale to repay the loan of £1500 affecting the heritable subjects together with interest due thereon and the expenses of the sale, and to consign the balance of the proceeds in name of the Accountant of Court to abide the orders of the Court.

Counsel for Petitioners—Graham Robertson. Agents—Buchan & Buchan, S.S.C.

Counsel for Respondent—Dean of Faculty (Constable, K.C.)—Wilson. Agents—Menzies, Bruce-Low, & Thomson, W.S.

Saturday, March 19.

FIRST DIVISION.

[Sheriff Court at Edinburgh.]

SCRIMGEOUR v. WILLIAM THOMSON & COMPANY.

Master and Servant—Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), sec. 1 (1)—“Arising out of the Employment” —Seaman under the Influence of Drink Drowned whilst Going on Board Ship.

A seaman was given leave to go ashore for his own purposes. Whilst returning on board he, as the result of his dazed condition due to the liquor he had consumed while ashore, fell from the ladder, which was the only means of access from the quay to the ship, and was drowned. Held that the accident was one “arising out of the employment.”

Fraserv. Riddell & Company, 1914 S.C. 125, 51 S.L.R. 110, and Williams v. Llandudno Coaching and Carriage Company, Limited, [1915] 2 K.B. 101, followed; Nash v. Owners of S.S. “Rangatira,” [1914] 3 K.B. 978, and Frith v. Owners of S.S. “Lovistavianian,” [1912] 2 K.B. 155, distinguished.

Mrs Annie Anderson or Scrimgeour, widow of the deceased Donald Watson Scrimgeour, seaman, 37 Gellatly Street, Dundee, appellant, being dissatisfied with an award of the Sheriff-Substitute at Edinburgh (ORR) in an arbitration under the Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58) between her and William Thomson & Company, shipowners, 28 Bernard Street, Leith, managers for the owners of the s.s. “War Carp,” respondents, appealed by Stated Case.