of the corn mill, but then it is only with a view to replacing it as a paper mill. They do not say, you shall use it as an oil mill, or a paper mill, but they say, you shall replace it as a paper mill, though you have not yourself converted that paper mill into an oil mill; and though, with our acquiescence, Messrs Stewarts used it as an oil mill, you shall use it exclusively as a paper mill during the remainder of the term. My Lords, I apprehend they have themselves discharged that part of the obligation, as far as the converting it into an oil mill could have any effect; and therefore they cannot now say it shall be used as a paper mill exclusively during the remainder of the term. June 21. 1825.

My Lords,—I have thought it right to say so much on the case; for I wish to explain the views I have taken of the case, why I think your Lordships must affirm this interlocutor; because that interlocutor assoilzies Mr Ramsay from the conclusions of this summons, which summons is brought for the purpose of compelling the use of this as a paper mill, for which I think there is no ground.

*Appellants' Authorities.*—Ford, May 20. 1808, (No. 17. App. Tack); Magistrates of Glasgow, Feb. 11. 1813, (F. C.)

*Respondent's Authorities.*—Aytoun, May 19. 1801, (F. C.); Kinnoul, Jan. 18. 1814, (F. C).

J. CHALMER—SPOTTISWOODE and ROBERTSON,—Solicitors.

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## WILLIAM JEFFREY, Trustee on JAMIESON's Estate, Appellant. No. 47.

## JOHN URE and JOHN MILLER, Respondents.

*Bankrupt—Sequestration.*—A trustee on a sequestrated estate under the 33. Geo. III. c. 74. having in a scheme of division inserted a claim, but allotted no dividend; and having marked that the claimant 'held goods;' and no complaint having in due time been made by the claimant; and the trustee having paid away all the funds;—Held, (reversing the judgment of the Court of Session), That the trustee was not liable for the dividends.

IN April and May 1809, William Jamieson, manufacturer in Glasgow, consigned to a branch in Jamaica of the house of Ure and Miller of Glasgow, two parcels of goods invoiced at L.918. 5s. 6d. On the credit of these consignments Ure and Miller advanced to him L.615. 5s. 6d. Thereafter Jamieson drew a bill in their favour upon William Tate and Company for L.239. 19s. 10d., which Tate and Company refused to accept, and Ure and Miller were obliged to retire it. June 21. 1825.

2D DIVISION.

On the 19th March 1810 the estates of Jamieson were sequestrated under the then Bankrupt Act, 33. Geo. III. c. 74.; and

June 21. 1825.

on the 26th of that month Ure and Miller lodged a claim for L. 856. 5s. 4d. On the 17th April the appellant, Mr Jeffrey, was elected trustee, and on examining the claim of Ure and Miller, he conceived that there was room for a distinction,—that so far as regarded the bill for L. 239. 19s. 10d. they were entitled to be ranked, and to draw a dividend; but that they were not so as to the advance of L. 615. 5s. 6d., in security of which they held the goods. They then withdrew their claim in the above form, and on the 19th January 1811 lodged two separate claims, one for the bill debt of L. 239. 19s. 10d. and the other for L. 615. 5s. 6d. The original claim had been entered in the sederunt book in this form:—

| By whom lodged. | When lodged. | Amount. | No. | Remarks. |
|---|---|---|---|---|
| 19. Ure and Miller. | 1810, Mar. 26. | L.855 5 4 | 19 | Consignment to Jamaica. *Withdrawn.* |

In February thereafter Jeffrey proceeded to prepare a scheme of division, in which he inserted the two new claims in this form:—

| Date of lodging claims. | No. of claims. | | Amount claimed. | Amount continued. | Interest due on claims before 19th Mar. 1810. | Discount on claims due after 19th Mar. 1810. | Neat amount of claims ranked. | Amount of dividends at 4s. per pound. |
|---|---|---|---|---|---|---|---|---|
| 1811. Jan. 19. | 88 | Ure & Miller | 239 19 10 | 234 3 5 | | | 234 3 5 | 46 16 8 |
| | 89 | Ditto | 615 5 6 | holds goods | | | | |

Several others were inserted in the same way, and wherever the party held a security, or had not produced a voucher, no dividend was allotted; while, where no such objection existed, a dividend was introduced into the last column. Agreeably to this mode of ranking, a dividend of 4s. per pound was allotted to the bill debt of L. 239. 19s. 10d., but none upon that of L. 615. 5s. 6d.

On the 20th March 1811 the dividend was paid to the other creditors agreeably to the above scheme; and no objection was made to the above scheme by Ure and Miller.

Towards the end of that year they brought the goods from Jamaica to Glasgow; and under the authority of the Magistrates, in a process to which Jeffrey was called as a party, they publicly sold them on the 7th March 1812, when they produced a sum which still left a balance due to them of L. 803. 2s. 10d. On the 20th of that month, a second scheme of division of 2s. 6d.

per pound was announced, in which a dividend was allotted to the bill debt, but none to the other, which was left blank as on the former occasion. June 21. 1825.

On the 5th of May thereafter, Ure and Miller lodged a new claim and affidavit for the above balance of L. 803. 2s. 10d.; but Jeffrey refused to receive it, alleging, that from the mode in which they had acted with regard to the goods, they had no legitimate demand against the estate. Ure and Miller then presented a petition to the Court of Session, praying that he should be ordained to receive and rank their claim for the balance of L. 803. 2s. 10d.; and, after a litigation, their Lordships on the 31st January 1819 ordained him to do so, and found him liable in expenses. Ure and Miller then required payment from him of the two dividends of 4s. and 2s. 6d. per pound; and he having declined to do so, so far as related to the sum of L. 615. 5s. 6d. they presented a petition and complaint to the Court, praying their Lordships 'to decern and ordain the 'said William Jeffrey to make payment to the complainers of a 'dividend on their debt of L. 803. 2s. 10d. as sustained by your 'Lordships, at the rate of 4s. per pound, with interest at the 'rate of 4 per cent thereupon from the 20th March 1811; 'and of another dividend at the rate of 2s. 6d. per pound, with 'interest at the rate of 4 per cent from the 20th March 1812 'till payment; and which dividends ought to have been de-'posited in the bank to answer the claim of the petitioners.'

In answer to this petition, Jeffrey stated, that he had always been ready to pay the dividend allotted to the bill debt of L. 239. 19s. 10d.; but that with regard to the other, he had, by his schemes of division, announced that no dividends were payable upon it; and that as no objection had been made in terms of the statute, he had paid away the funds, and therefore no claim lay against him. On the other hand, Ure and Miller stated, that the scheme of division did not specify any objection; that it merely bore that they held goods; and they were led to believe that it was only superseded until the produce of these goods, and the consequent balance, should be ascertained; and therefore that they were not bound to make any objection, seeing that Jeffrey ought, in terms of the statute, to have laid aside a dividend to wait the result of the sale of the goods. The Court, on the 13th February 1821, 'sustained the complaint, and found the trus-'tee liable to the complainers for the dividends which they were 'entitled to draw from the bankrupt estate, but which were 'omitted to be set apart to answer one of their claims, with in-

June 21. 1825. 'terest, as prayed for.' Jeffrey having reclaimed, the Court appointed him 'to give in a special and pointed condescend-'ence, in terms of the Act of Sederunt, of the facts which he 'avers in regard to the practice of trustees on sequestrated es-'tates, as to ranking and rejection of claims in cases similar to 'that under discussion.'

Thereafter, on resuming consideration of the case, their Lordships 'remitted to, and requested Mr Charles Ferrier, ac-'countant in Edinburgh, Mr William Scott, also accountant 'in Edinburgh, and Mr William Mowbray, merchant in Leith, 'being persons who have had frequent occasion to act as trus-'tees in sequestrations in Edinburgh, and three persons (to be 'named by Mr Robert Davidson, advocate) who have had simi-'lar occasion to act in that capacity in Glasgow, to report whe-'ther, according to the practice of trustees acting under the 'authority of the statute in the 33d year of his late Majesty, 'chapter 74., the entries in the sederunt-book kept by the peti-'tioner were, or were not, sufficient to express the judgment of 'the trustee refusing to rank the debt of L. 615. 5s. 6d. claimed 'on by Messrs Ure and Miller for the first and second dividends 'paid from the bankrupt estate; and, secondly, whether, accord-'ing to the same practice, these entries were or were not sufficient 'to express that funds sufficient for dividends corresponding to the 'ultimate amount of these claims were not retained by the trustee.' Reports were accordingly made by Messrs Ferrier, Scott, and Mowbray, on the one hand, and by Messrs Cuthbertson, M'Gavin, and Paul, accountants in Glasgow, on the other. The former reported, that they conceived that sufficient intimation of the rejection of the claim had not been made; while the latter stated, that they were of opinion that, agreeably to practice, it was sufficient. Thereafter the Court, on the 27th January 1824, on advising these reports, with minutes, 'adhered to the inter-'locutor complained of, with this explanation, that the trustee 'having set apart dividends for the claim of the complainers 'ranked as amounting to L. 234. 3s. 5d., which dividends the 'complainers have it in their power to recover in common form, 'with the interest which has accrued thereon, the decerniture 'against the petitioner under this complaint extends only to 'dividends at the rate of four shillings and two shillings per 'pound on the other claim, amounting to L. 615. 5s. 6d., under 'deduction from said claim of L. 46. 6s. 1d. recovered by the 'complainers out of the produce of the consigned goods, with 'interest on such dividends at the ordinary rate payable by banks

'for the time on monies deposited; and reserve to the petitioner 'any claim competent to him against the creditors drawing 'dividends under the sequestration for relief and indemnification, 'and all objections thereto as accords, and decern.'* June 21. 1825.

Mr Jeffrey appealed.

*Appellant.*—1. The appellant, as trustee, was entitled and bound to exercise his own judgment in ranking or refusing to rank the claims made on the bankrupt estate. He accordingly exercised it, by refusing to rank, for the first and second dividends, the respondents' claim for L. 615. 5s. 6d. His judgment was announced by the schemes of division, in which this claim was excluded from the class of claims ranked, and no dividend was set apart for it. It was competent to the respondents to have complained to the Court of the refusal to rank the claim, within the time limited by the statute; but they made no application for this purpose; and the appellant having in consequence distributed the whole realized funds among the other creditors, and not having recovered any funds since the distribution, he is not liable to pay the dividends claimed by the respondents.

2. The appellant's refusal to rank the claim was distinctly expressed in the schemes, where it is excluded from the class of claims ranked, no dividends are allotted to it, and the reason of refusal is expressed by the words 'holds goods;' while, on the other hand, the respondents' separate claim of L. 239. 19s. 10d. is placed at its nett amount of L. 234. 3s. 5d. among the claims ranked, and dividends are set apart for it. This was the appellant's judgment in the ranking, which the respondents were bound to know, the schemes being open for their inspection during the statutory period. Accordingly, the Glasgow reporters state, that, according to practice, this was a sufficient intimation of rejection.

*Respondents.*—1. It is the duty of a trustee, where the amount of a claim is disputed or uncertain, to set apart a dividend corresponding to the utmost amount to which it may be ultimately sustained. If, indeed, he explicitly reject the claim, and his judgment of rejection is acquiesced in, a different rule may be followed. But, in the present case, there was no judgment of the trustee in the sederunt book rejecting the claim, nor any entry which, according to the practice of trustees acting under

* 2. Shaw and Dunlop, No. 614.

June 21. 1825.

the statute 33d Geo. III. c. 74. could be held equivalent to such rejection.

2. The sederunt book, when it lay open for the inspection of the creditors prior to the payment of the first and second dividends, not only contained no entries which, either in express terms, or according to the understanding of professional men, indicated a rejection of the claim in question; but it contained nothing which, in fair reasoning, could lead the respondents to conclude, or even to suspect, that the appellant meant to reject their claim, and not to set apart funds to answer its ultimate amount. But even supposing that the entries in the sederunt book left it doubtful whether or not a rejection of the claim was intended, it was incumbent on the appellant to have expressed his intentions clearly, and he, rather than the respondents, ought to bear the loss or inconvenience which has arisen from his misconduct, in violating or neglecting the plain and positive enactment of the statute.

The House of Lords ordered and adjudged, 'that the interlocutors complained of be reversed, and that the defender be 'assoilzied.'

*Appellant's Authorities.*—33. Geo. III. c. 74. § 35. 39.; Act of Sed. Dec. 14. 1805; Connel, Jan. 16. 1813, (F. C.); 2. Bell, p. 430.

J. RICHARDSON—J. CAMPBELL,—Solicitors.

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## MAGISTRATES of MONTROSE, Appellants.

## No. 48. JOHN MILL, Burgess and Guild-Brother there, Respondent.

*Personal Objection—Burgh Royal.*—Circumstances under which it was held, (reversing the judgment of the Court of Session), That a party making use of a right which he only had under documents challenged by him, to the effect of having them reduced, was barred from insisting that they should be set aside.

June 28. 1825.

2D DIVISION. Lord Cringletie.

IN July 1816, on an application in the name of all parties interested, the Convention of Royal Burghs modified and altered the old set of the burgh of Montrose. The Michaelmas election of that year was, on account of certain irregularities of procedure, declared null and void; and an application, also in the name of all parties interested, was made to the King in Council, for the restoration of the burgh franchise. A royal warrant followed in