

Linen Mill goods," and of having taken offers from several buyers and accepted the highest. They added: "we were obliged to undertake to lap the goods in order to effect a sale, as all goods are sold here lapped. Owing to this there has been some little delay in getting the goods despatched, but we hope to be able to send you a statement shortly." On 10th July they wrote the liquidator that they had a complete statement ready, and asked whether it with the balance was to be sent to him, or if they were to deal with the new company; and on 13th August they sent the liquidator a statement of their account and a bank draft for the surplus proceeds of sale. Two years afterwards, on 17th November, 1908, in reply to inquiry as to dates of the sales, they wrote the liquidator's solicitor that "the goods were sold in two separate lots, the respective dates of the sales being 13th and 22nd June, 1906." The parties went to trial on this statement as being the correct dates of the sales. But the plaintiffs at the trial pointed out that these dates do not agree with the letter of 8th June which spoke of the sales as already effected, and desire that they should have an opportunity of correcting the mistake.

We have no means of knowing when the property in the goods passed, or when each purchaser selected the pieces he was to get. The vendors were to lap them, and therefore they were not bought in the condition in which they were, and it would seem probable that this lapping had not been done even on June 8th. It may be that the property did not pass till 13th or 22nd June.

However, on 8th June, 1906, Lumsden & McKenzie wrote the new company that they had been instructed by the liquidator to dispose of the goods, and pay their own account out of the proceeds, remitting any balance to him—and on 11th June, 1906, they acknowledged the receipt of the new company's letter of 29th May enclosing draft for £87 10s. 10d.

That letter to the plaintiffs of 8th June was inaccurate in two respects—the liquidator had not instructed them to dispose of the goods nor to remit him the surplus proceeds. But it is upon the basis of that letter being true that the plaintiffs brought their action.

It is admitted that by the law of Scotland, Lumsden & McKenzie had no right to sell the goods without the authority of a Court or the consent of the owners, but that they had a right to retain the goods until paid for their work upon them.

The liquidator had in his letter of 2nd May told Lumsden and McKenzie that the assets of the old company had been