which I have read, but which are not quoted by the Lord Ordinary, for it is plain that in Erskine's opinion future and contingent creditors would not be entitled to rank in sequestration; but, as we all know, future and contingent creditors are just as much entitled to a ranking as present creditors, in a different way no doubt, and subject to different rules, but they are all entitled to claim in a sequestration. This does not depend on statute, but on the common law—on the fundamental rules of equity which underlie our whole system. If future creditors, *i.e.*, those whose date of payment has not yet come, and contingent creditors, *i.e.*, those whose debts are not yet payable and may never become payable, were not entitled to claim in the sequestration, their debt would be gone for ever, because the bankrupt's discharge would finally put an end to it. The statute therefore allows future and contingent creditors to claim just as much, and no more than as much, as justice requires. Future debtors are allowed to rank subject only to a deduction of interest for the period between the date of sequestration and of the payment of their debt. In the case of contingent creditors, a sum is set apart to meet their claim, should the condition upon which it depends become purified. If, therefore, the doctrine of Erskine applies to cases of insolvency, it would exclude this whole class of cases. Indeed, I cannot think that that learned writer refers to competitions in bankruptcy. The whole scope of the Bankruptcy Statutes is opposed to such a view. In particular, I may notice that equalising of diligence which is provided for by the 12th section. Before the process of sequestration was made applicable in the case of all debtors this equalising process was one of great importance. It is dealt with in the whole series of statutes in very much the same way, and the general effect is that all diligences used within sixty days of notour bankruptcy are equalised. We hear little of this now, because almost all estates are wound up by sequestration. But where there is no sequestration, how does the statute deal with this very subject of arrestment in dependence? The 12th section provides that "arrestments and poindings which shall have been used within sixty days prior to the constitution of notour bankruptcy, or within four months thereafter, shall be ranked *pari passu* as if they had been used of the same date, provided that if such arrestments are used on the dependence of an action or on an illiquid debt they be followed up without undue delay." Now, therefore, it is clear that the statute here contemplates that arrestment on the dependence is just as good a diligence as arrestment in execution, provided that there is no delay in following out the diligence. This provision seems to me directly in point in the present case. I am therefore of opinion that if the arrestment is used sixty days before sequestration, and is followed up without undue delay, and is in other respects unimpeachable, it will entitle the creditor to a preferable ranking, although sequestration of the debtor's estate has been awarded before following out the arrestment. I am for adhering.

Lord Deas, Lord Mure, and Lord Shand concurred.

The Court adhered.

Counsel for Reclaimer — Mackay — Low. Agents—Macandrew & Wright, W.S.

Counsel for Respondent—Trayner — Pearson. Agent—Alexander Morison, S.S.C.

Wednesday, June 29.

SECOND DIVISION.

[Sheriff of Lanarkshire.

RAEBURN AND OTHERS *v.* MULHOLLAND.

Shipping—Stevedore—Damage to Cargo—Responsibility of Stevedore appointed by Charterers for Damage to Goods for which Owners of Ship had been made liable by Consignees of Cargo.

By charter-party, dated 17th November 1879, between William Raeburn and others, the owners of the steamship "Escurial," and Messrs James Dunn & Sons of Glasgow, that vessel was chartered to take a cargo at Glasgow to Pernambuco, and or certain other South American ports, the ship being paid a lump sum of £2450 sterling as freight, the charter bearing that the owners of the vessel were to be responsible for improper stowage. The loading of the cargo was conducted by James Mulholland, who was appointed by the charterers, Messrs Dunn & Sons, as stevedore. On the arrival of the vessel at Rio some of the cargo was found to be so much damaged that the captain was compelled, in order to stop a threatened arrestment of the vessel, to pay the consignees, Messrs Finnie & Co. of Rio, the sum of £96, 7s. 1d. sterling. In these circumstances the owners raised this action against Mulholland for the sum which they said had had to be paid in consequence of the culpable and careless or negligent stowage of the vessel by the defender. The defender pleaded that not having been employed by the pursuers to stow the said cargo, nor paid by them, he was not responsible to them for any alleged defect in the stowage. The Sheriff-Substitute (Spens) sustained this plea and dismissed the petition. On appeal the Lords of the Second Division were of opinion that this plea could not be sustained, as although the charterers, Dunn & Co., had given the defender his appointment as stevedore, the work for which he was appointed was work done in the pursuers' interest, and, besides, it was clear on the evidence that the defender was aware of this when he took the appointment.

In these circumstances they sustained the appeal, recalled the judgment, repelled the defender's plea-in-law, and remitted to the Sheriff to proceed with the case.

Counsel for Pursuers (Appellants)—Solicitor-General (Balfour, Q.C.)—Jameson. Agents—Webster, Will, & Ritchie, S.S.C.

Counsel for Defender (Respondent)—Dickson. Agent—Thomas Carmichael, S.S.C.