

See in fold of Envelope C.4/C116

KLINGENDER, CHARSLY
& DICKSON.

Bank Place.

Melbourne 10th Mch 1879

My dear Andrew,

I am very much annoyed & disappointed at being unable to lay my hand on the verses you sent me 4 years ago; I seem to be in the possession of every other letter you wrote me & have evidently placed this particular letter in some special place of safe keeping which I cannot now discover. The delay has been altogether beyond my power to prevent, inasmuch I rec'd a long letter of apology 4 days ago from McLulloch & Co in which they explain that owing to a Clerk's error my box parcels were forwarded to

The Esplanade Hotel, St. Kilda,
instead of to the George Hotel
where I am stopping, & there
they lay for about a fortnight.
It extremely provoking because
it looks like neglect on
my part -

My luck seems to be "out"
altogether. I find I did not
send you the Enclosure referring
to Mortgages & Apignen &
referred to in my last letter -
This I can only attribute
to haste.

The following is the result
of my Enquiries on the subject
so far as they extend - I doubt
how out the propositions are
being strictly correct.

I start with the principle
that the Mortgagee's Title
is the better one only in
the case of the Insolvency
of the Mortgagor - and then

(1) If the Landlord puts in a
Distress before the Mortgagee
seizes his Title is paramount
unless the Tenant becomes
Insolvent, if there is no
Insolvency; but he should
confine himself if possible
to goods not comprised in
the Bill of Sale (See Milnes
& Collier, tit. Marshalling of
Assets.)

2 If the M'tgee seizes before
the landlord, the latter may
evict him and sell the
goods and his Title cannot
be disturbed as to those goods
by the Insolvency of the Tenant

inasmuch as he can exercise
his Common Law right of Seizing
any the goods of any person on
the premises & these goods are the
goods of the Mortgagee not of the
Tenant (See Brocklehurst v Law)

3 - If the Landlord seizes the
Tenant then becomes insolvent
the Title of the Mortgagee will be
the most profitable as he can
retain his security & sell or
value the security & prove for the
balance and leave the Landlord
to his 3 months preferable claim
for Rent

4 It follows that the L^d Mortgagee
should be advised to remove the
goods from the premises immediately
he has seized to resist the
Landlord's subsequent seizure

I shall be glad to hear your views on the
matter

I am delighted to read of your recent
success but it seems a great failure of
justice - Send me the report please -
Kind regards to Mrs Clark & all friends
Ever yours
W. H. L.