

particularly, that the pursuer's purchase and right to the tenement in the old wynd was completed by the minute of sale, and inhibition thereon, before his accession to the agreement of the creditors; and as, at the time when he subscribed the agreement, he declared, without objection, that this subject was not understood to be included in the debtor's estate to be conveyed to the Trustees; therefore finds, that, notwithstanding his accession, he is entitled to the benefit of his purchase, and that the bankrupt's conveyance of the subject cannot hurt his right and interest therein."

No 126.

Upon a reclaiming petition and answers, the point of law, as to the competency of parole evidence to defeat writing, was particularly under consideration of the Court; and, as there was apparently fraud practised at the time of signing the deed,

"THE LORDS adhered."

Act. *Walter Campbell.*

Alt. *W. Craig.*

Clerk, *Gibson.*

*Fol. Dic. v. 4. p. 158. Fac. Col. No 55. p. 138.*

1787. February 26.

WILSON and CORSE against JOHN KAY.

WILSON and CORSE shipped on board a vessel at Leith, of which Kay was master, bound for Newcastle, a number of empty pipes and hogsheads, the bill of lading bearing, 'That the casks were to be delivered at the last mentioned port, to Green and Company.'

No 127.  
Parole proof found not relevant to counteract a bill of lading unretired.

Green and Company, however, denied that they ever received those casks, or had any notice of their arrival; upon which Wilson and Corse brought, before the Magistrates of Edinburgh, as Admirals-depute, an action against Kay for the value. The Magistrates allowed to Kay a proof of delivery; but afterwards decerned against him. He then removed the cause into Court by suspension; and the Lord Ordinary allowed a farther proof by witnesses. Kay admitted that he had not got up the bill of lading, nor obtained any separate written receipt for the goods; but insisted on establishing the actual delivery by the parole proof.

The question being brought under review by reclaiming petition, and answers,

The Court were of opinion, That parole proof could not be admitted to counteract the unretired bill of lading; and found Kay liable.

Lord Ordinary, *Alva.*

Act. *Cullen.*

Alt. *W. Craig.*

Clerk, *Home.*

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*Fol. Dic. v. 4. p. 157. Fac. Col. No 325. p. 499.*