Feb. 23. 1825. purchasers of parts of the same lot in the order of the sale. There was no undue delay in shipping the cotton at Liverpool; indeed it arrived in Glasgow within the average time that is taken to transmit goods from Liverpool to that port.

'After hearing the Counsel for the appellant, and without hearing the respondents' Counsel, the House of Lords 'ordered and 'adjudged, that the interlocutors complained of be affirmed.'

Appellants' Authorities.—2. Dow's Reports, p. 266.; 2. Starkie's Reports, p. 434—255.; 1. Moore's Reports, p. 109.; 3. Campbell's Reports, p. 462.

No. 3. MABERLY and Company, Appellants.—*Jno. Campbell.*

The GOVERNOR and COMPANY of the BANK of SCOTLAND, Respondents.—*Walker.*

Bank-Notes—Obligation.—A person having cut in two the notes of the Bank of Scotland, for more safe transmission, (as he alleged), and one set of the halves having been stolen, and the Court of Session having found that the Bank was not bound to pay on production of the other set of halves, although the value of the stamp, and charges for issuing new notes, were offered, and security against any demand being made for the lost halves; the House of Lords reversed the judgment, and remitted to allow a proof of an averment, that the notes had been cut maliciously and designedly to injure the Bank.

March 1. 1825.

2D DIVISION. Lord Cringletie.

MESSRS MABERLY and Company established a banking-house in Edinburgh, with agents and correspondents in different parts of Scotland. Their agent at Aberdeen requiring to send them a parcel of notes of the Bank of Scotland, cut the notes into two, and transmitted the one set of halves by the mail-coach. The parcel was lost or stolen on the route. The other halves, however, of the notes, dispatched by a subsequent day's post, safely reached their destination.

Maberly and Company applied to the Bank of Scotland for payment of the value of the notes, of which they tendered the halves which they had received, and offered reimbursement for all charges attending the issuing new bank-notes in place of those cut, and undoubted security, to the Bank's satisfaction, that no demand would ever be made for the value of the half-notes amissing. The Bank having refused to pay the value, Maberly and Company raised an action against them, stating, that they had required the defenders, by their treasurer, Ro-

bert Forrester, to pay the sum of L.270, 'upon receiving satis- March 1. 1825.
'factory indemnity against any possible claim from the holder of
'the halves of the said bank-notes which are amissing, and upon
'payment by the pursuers to the said Bank of all charges attend-
'ing the issuing of new bank-notes to the extent foresaid;' and
therefore concluding for payment, 'with interest from the day
'the demand was made,' 'upon the pursuers producing to the
'Bank the halves of the said bank-notes now in their posses-
'sion, and finding indemnity or caution to the effect foresaid,
'and in such terms as shall be approved of by our said Lords,
'and the pursuers being at the expense which may be incurred
'by the said Bank in reissuing new notes to the extent of the
'said sum of L.270.'

The Bank of Scotland gave in defences, bearing that they 'were not bound by law to acknowledge in any way the half-
'notes on which this action is founded, more especially as the
'documents referred to in the summons were purposely muti-
'lated by the pursuers themselves.'

The Lord Ordinary appointed the parties to lodge informations, with condescendence and answers, of those facts and circumstances which they averred and offered to prove.

In the condescendence the pursuers offered to prove, that the cutting of the notes was for the purpose of the safe transmission of the one set of halves by the mail; that they had not reached their destination, having been lost or stolen from the coach, somewhere, it was believed, between Perth and the Bridge of Earn; that the halves of the notes which arrived safely, and were produced in process, exhibited both the number and dates of the notes—these having been marked on them, from the halves lost, by the clerk of the pursuers—and that the halves produced were, de facto, halves of entire and completed notes regularly issued by the Bank, and which could be identified by the Bank's books. The Bank on the other hand alleged, that nothing could be traced ex facie of the halves produced, by which to ascertain whether all of these halves originally formed part of entire and complete notes, or whether, holding them to have been complete, they ever issued from the Bank of Scotland; that the formation of new notes is attended with trouble and risk, and the expense far exceeds the amount of the stamp-duty; and that it is impossible duly to attend to the arrival and presentment of the other halves, in the event of their reaching the Bank.

The Lord Ordinary having reported the cause to the Court,

March 1. 1825. their Lordships, on the 27th February 1822, sustained the defences, assoilzied the defenders, and decerned with expenses. At the same time the Court permitted the Counsel for the pursuers to give in a minute, stating the substance of their viva voce pleading that day; and the Counsel for the defenders to state their answer in the same manner. A minute was accordingly lodged, craving that the opinion of English Counsel should be obtained, before final judgment be given. The defenders answered, that, according to the known rules of the Scotch law, the pursuers had no right to recover; and if the Court were convinced of this, it was idle to refer to the law of any other country. No deliverance proceeded on this; but, on the case being again moved, expenses were modified in proper form.*

Maberly and Company appealed.

Appellants.—Where a security is given for payment of a debt, the loss, destruction, or extinction of the instrument or security does not of necessity involve an extinction of the debt itself: on the contrary, the debt still continues to exist, and may be established by other evidence. No doubt the debtor is entitled to full indemnity against any possible loss he may sustain in consequence of the non-production of the instrument at the time of payment; and here the best possible indemnity is offered. The creditor is entitled to require payment on offering such indemnity. But if this be the case where the security has been lost in toto, much more will the equitable rule hold, where only one portion of the instrument has been lost, and the other preserved. As to the notes being intentionally mutilated—thereby inferring an illegal purpose on the part of the appellants,—there is no illegality with reference to the Stamp Acts, and nothing tortious with reference to the respondents, since the expense of a reissue to the amount of the loss, including stamp-duties, has been offered to them. Besides, the Bank have repeatedly paid notes which had been similarly cut for the purpose of transmission. The solution of the question is clear by the law of England. In Scotland, the same point does not seem to have ever previously occurred. If so, this being a question, not of particular law, but of general and universal equity, whatever substantial principle of equity has been established by the Courts in England, the Scotch Courts ought, if the point be new there,

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* See 1. Shaw and Ballantine, No. 406.; and Fac. Coll.; where the opinions of the Judges are given.

to adopt, if not prevented by any peculiar form of practice, or special rule of law. But even ex convenienti, looking to the demands of commerce for the rapid transmission of negociable securities to distant places, with safety from accident and loss, the judgment of the Court of Session ought to be reversed. March 1. 1825.

Respondents.—Each of the halves produced is a left-handed one, (the notes having been cut vertically), containing the number of the note, the government stamp, and a few engrossed words and parts of words; and, with the exception of the number, nothing is written. There are neither date nor subscription: these are on the right-hand portions. Thus, it is impossible to say whether, de facto, the fragments produced were ever regularly signed and issued. If the appellants proceeded by an action of proving the tenor, a Court of equity might interfere. But in the present shape, neither common law nor equity can give redress. According to strict law, a bank-note is to be viewed as a written obligation, and, like all writings which owe their efficacy to their being subscribed, it is useless unless bearing the subscription. But the obligation to pay depends on the existence of the whole note. Here there is only a portion of the document, and that without authentication. To say that there was an original obligation constituted, is not an answer; for the evidence of this obligation is not an unvouched fragment, and even if there were evidence of the fragment having formed part of a genuine note, the mutilation was the tortious work of the appellants. This is not an action of debt, but an action resting on an unvouched scrap of paper. The destruction of the document is the destruction of the debt. The offer of indemnity is out of place. The misfortune of being obliged to pay at all a debt which is not proved, is one against which the offer of security affords no protection. As to redress at equity, it is plain that there is no equity in holding a signature to be, when it is not. No doubt there is a remedy for mutilated deeds, but not the one the appellants have resorted to. Let them restore the deed, and then they will be in a proper shape to ask payment. Besides, the mutilation was not accidental, but of set purpose; and no person is entitled to ask equity to repair his own fault or imprudence. If this practice should be sanctioned by a Court, the utmost inconvenience would result, and the operation of banking would be in a manner palsied. The indemnity offered is altogether insufficient to protect the respondents. This is a Scotch case, and must be determined by Scotch

March 1. 1825. rules. But even in England no demand similar to what has been made here has been sustained.

The House of Lords 'ordered and adjudged, that the interlocutor complained of be reversed; and it is further ordered, 'that the cause be remitted back to the Second Division of the 'Court of Session, for them to allow a proof, and further to 'proceed in the cause as shall be just.'*

Lord Gifford.—My Lords, Upon reference to the appellants' case, it appears that this is the first time that a question of this sort has occurred in Scotland; and it has been contended, that you were bound to consider and decide the question upon the Scotch law, and not upon the English law, except so far as any analogy may be fairly drawn from the forms of proceeding in the one country and the other.

My Lords,—The circumstances of the case are shortly these:—Messrs Maberly, the appellants in this case, are bankers at Edinburgh, and in the course of their dealings they had frequent occasion to receive from their agents and correspondents in different parts of Scotland, large sums of money in the notes of the various banking companies of Scotland. On the 8th of December 1818, the agent of the appellants at Aberdeen transmitted to their manager or agent at Edinburgh a number of bank-notes, at least the halves of a number of bank-notes, for the security of Messrs Maberly, and to avoid what has occurred in this case, namely, the loss of the notes; and they adopted a practice which is adopted in this country, namely, of separating the notes, and dividing them, and sending one-half by the post, and, as it should seem, the other half they sent by the mail-coach, in a parcel, which was stolen from the coach. The consequence was, that the halves so sent have never been found. Under these circumstances Messrs Maberly applied to the Bank of Scotland, stating the accident that had occurred, that they had used all due diligence to recover the parcel that had been taken from the coach, but without effect; and stating, that they were in possession of the halves of the notes they had received by the post, and offering to indemnify the Bank of Scotland against any future demand which might be made upon the halves that had been stolen, and to secure them against any possible loss that might occur to the Bank from the accident that had happened.

A great deal has been stated as to the previous transactions and differences between Messrs Maberly and the Bank of Scotland, and the habit of Messrs Maberly of mutilating the notes of the Bank of Scotland. I must confess that I do not see the application of those

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* See the ultimate decision, 4. Shaw and Dunlop, No. 362.

differences to the present case; because, whatever might be the case if Messrs Maberly have improperly and wantonly attempted to mutilate the notes of the Bank of Scotland, that is not this case; because, from the facts I shall presently state to your Lordships, it will appear that it was offered to be proved (and they rest their claim in this case upon that), that they divided these notes, from the caution and care they thought necessary for their own interest, and not to prejudice the Bank of Scotland, but in order to secure to themselves a demand against the Bank of Scotland, and in order to guard against the accident that has happened here. And from the letter stated in the summons, they originally put their demand, not upon any legal ground, in this instance, but they put it to the liberality of the Bank of Scotland, whether they will not, without hesitation, pay them the amount of the notes, they receiving an indemnity. It appears that the Bank of Scotland, upon looking at the circumstances, were not moved, from what had taken place between Messrs Maberly and themselves, to accede to that; and then Messrs Maberly, after some time, repeated their demand upon the Bank of Scotland in a more authoritative tone, not putting it upon the liberality of the Bank, but claiming it as a legal demand; and, upon that being resisted, they subsequently instituted the action that forms the subject of this appeal. Under that action they allege, that they have possession of these notes of the Bank of Scotland, which they describe by the numbers, and, as far as they are able to ascertain them, the dates and the amounts. They then state the circumstances I have shortly detailed to your Lordships. They set out the letters, and conclude the summons by stating,—'That although they have often required the de-'fenders to pay them the sum of L. 270 sterling, upon receiving satis-'factory indemnity against any possible claim from the holder of the 'halves of the said bank-notes which are missing, and upon payment 'by the pursuers to the said Bank of all charges attending the issuing 'of new bank-notes to the extent aforesaid, yet they refused, or at 'least delayed so to do; and therefore they pray that it may be de-'cerned and ordained, that the defenders shall pay to the pursuers the 'sum of L. 270 sterling, with interest from the time of the demand, upon 'the pursuers producing to the Bank the halves of the said bank-notes 'now in their possession, and finding indemnity or caution to the 'extent aforesaid, and in such terms as shall be approved of by our 'said Lords, and the pursuers being at the expense which may be in-'curred by the said Bank in reissuing new notes to the extent of the 'said sum of L. 270.'

My Lords,—I collect, from the whole of these proceedings, that this is in the nature of an equitable demand against the Bank of Scotland, founded upon the equitable circumstances stated, and on the offer made by Mr Maberly to indemnify them against any claim that might be made upon them. This action having been thus instituted, the Bank of Scotland put in their defences, not objecting to the form

March 1. 1825. of proceeding; not interposing any dilatory plea; not maintaining that this action could not be sustained without the production of the documents; not stating that an accessary action ought to be brought to prove the tenor; but they state, 'the defenders are not bound by law 'to acknowledge in any way the half-notes on which this action is 'founded, more especially as the documents referred to in the sum-'mons were purposely mutilated by the pursuers themselves.' Upon this defence being put in, the matter came before the Lord Ordinary, and he pronounced the following interlocutor:—(His Lordship then read it).

My Lords,—In consequence of that interlocutor a condescendence was put in by the Messrs Maberly, by which they offered to prove, what I may state shortly without going through the various articles of the condescendence—that they were in the possession of these notes; they offered to prove the circumstances of the transmission and the loss; and they state they shall be able to prove the identity of the notes that had been thus lost. In answer to that, the Governor and Company of the Bank of Scotland state the practice of Messrs Maberly cutting the notes into halves; but Messrs Maberly deny that they cut the notes wantonly. The other allegations go on to state the facts I have already mentioned to your Lordships. The respondents only say in answer, that they have no opportunity of knowing whether the averments stated be correct or not, but they have little doubt that they are. Perhaps that is not a distinct admission of the truth of these allegations, and it might be necessary for the pursuers to prove, supposing the Court had thought it necessary that the proof should be given, but they admitted that they had little doubt of the truth of the statements of Messrs Maberly. They state, 'that all the halves of 'notes now founded on by the pursuers are left-hand halves, and that 'there is nothing apparent on the face of these left-hand halves, or 'discoverable in any other way that the respondents know of, by 'which it can be ascertained whether all of these halves originally 'formed parts of entire and completed notes, or whether, supposing 'the notes to have been so completed, they were ever issued by the 'Bank.'

Now, in this stage of the proceeding, the matter came before the Lords of the Second Division; and after hearing the cause argued, they pronounced this interlocutor, against which the appeal is brought:—(His Lordship then read the interlocutor). The effect of their decision is to assoilzie the Bank of Scotland altogether from this demand; and to sustain the defences put in to this action. Against that decision this appeal has been brought; and the case has been very elaborately and ably argued at your Lordships' Bar. The objections that have been made to this decision are, That Mr Maberly had a right to the equitable interference of the Court upon the grounds stated in this summons; and inasmuch as the halves of these notes had been thus stolen, and therefore there was a possibility that the Bank of Scotland

might hereafter be troubled by the production of those halves in the hands of a third person, Messrs Maberly felt that they had no right to demand payment, except upon giving indemnity to the Bank against the liability—I cannot call it a liability—but against the demand to which they might be exposed. To this it is said by the Counsel for the Bank, first you must prove the identity of the notes, and then give a sufficient indemnity. In this case you cannot prove the identity of the notes, nor was the Court of Session in a condition to decide upon that. To this Messrs Maberly say, they can prove it, and that they offered to prove it; and it is a little too much, because that is refused by the Court of Session, to say that you are to take that as a sufficient proof that it cannot be made out. The Court of Session said, whether you can prove it or not, you are not entitled to relief; therefore, as to the proof of the identity, we are not in a situation to say whether it can or cannot be proved. The question is, Whether, in this stage of the cause, it was not right that Messrs Maberly should be let into this proof? In the next place, the Bank argues, that Messrs Maberly cannot give a sufficient indemnity to the Bank. What is it, it is asked, are you to indemnify against? and it is said, that these halves may appear at various times, and produce great inconvenience; and that if you decide against the Bank of Scotland, you must decide that half notes are as negociable as whole notes; and the Bank would be put to great inconvenience if you so decide this case. But the decision of your Lordships, supposing you should be of opinion that the Court of Session have not come to a right conclusion, will not produce any such effect. It is only in a case like the present, where the loss has happened, by mere accident, to the other halves of the notes; and it would be very difficult for any body to obtain payment, under any circumstances, for the other halves; because, in one of the English cases, Mayor *v.* Johnston, in the third volume of Mr Campbell's Reports, I observe, and also in a very learned work upon Bills of Exchange, written by a person in a high judicial situation, very great doubt was entertained, whether a party could recover at law, because any body in possession of the other half note, for valuable consideration, might come upon the Bank. But no Bank would pay that half note at once without a full inquiry into the circumstances under which the party had obtained it. Therefore it would be very difficult for the holder of any half note that had been stolen to recover it from the Bank. I mention that as one of the difficulties that a person would be under that had got possession of the half notes that had been stolen. There would be no difficulty in any Bank guarding against their clerks or agents paying the halves of notes that had been thus lost, without a previous inquiry into the circumstances; and therefore it does appear to me, that there is not any great difficulty in preparing an indemnity that should secure the Bank of Scotland against any subsequent payment of them. But then the Court of Session have decided that the pursuer was not entitled to relief; to which decision your Lordships

March 1. 1825.

March 1. 1825.

are bound to pay the greatest respect, and to attend to their reasons, more particularly when you have any doubt in agreeing to those reasonings. But I apprehend that the ground of the decision is this, namely, that because the mutilating of the notes was a voluntary act of Messrs Maberly, (although the subsequent loss was not their act, being by mere accident), and because they voluntarily cut the notes, they can have no relief in law or equity upon the halves they have secured, in consequence of the others being lost by an act of theirs. The separation of the notes was their voluntary act; and they consider that a party so conducting himself cannot come into a court of equity, because the party has been guilty of a tortious act. I have already said, that if it could be shewn that Messrs Maberly did wantonly, and merely to injure the Bank of Scotland, destroy their notes, then, when that case arises, the Court of Session and this House will know how to deal with it. But the question here is, Whether, without any intention to injure the Bank, but where, merely to secure themselves, they separated the notes, that is such an act on their part—voluntary undoubtedly—as precludes them from having recourse to any equitable proceedings against the Bank of Scotland for payment of these notes, the halves of which are produced, they indemnifying them for any loss? If the case rested on that question, I should have no difficulty in stating my opinion, that that is not sufficient to prevent Messrs Maberly having their equitable claim; and, therefore, if that was the ground of the decision, I should have no difficulty in advising your Lordships to reverse this interlocutor, and then remit it, as it must be remitted, to the Court of Session, to proceed further with this case as they may think fit.

But another question has arisen, and been discussed very ably at the Bar, that whatever might be the case in this country, your Lordships are to be bound by the forms adopted in Scotland; and that the pursuers in this case have mistaken their remedy, and whatever their ultimate rights might be, your Lordships cannot disaffirm the present interlocutor without infringing upon the rule of proceeding in the Courts of Scotland. This, to be sure, is a case proceeding upon the principles recognized in the Courts of Scotland; but in any view of the case this interlocutor cannot be right; because one of the grounds taken on the other side of the Bar, and which was admitted by the Counsel for the Bank, was, that the Court of Session have done wrong in assoilzieing the defenders and sustaining the defences, because the utmost they could have done would have been to put the pursuers to have brought their action to prove the tenor, or they might have pronounced this judgment without reference to any other proceedings; but they have done no such thing—they have assoilzied the defenders and sustained the defences. As I understand the opinions of the Judges, they do not proceed, any one of them, upon the ground that this was not the proper form of proceeding, nor on the ground that, from the circumstances stated by Messrs Maberly, they were

not entitled to equitable relief; but they say, although you may prove all your circumstances, you are not entitled to the relief you pray for, because the mischief has happened by your own voluntary act. That such is the ground of decision of the Judges, I think no man, who has read the notes, can doubt. Lord Robertson was of opinion, that the pursuers were entitled to the relief they sought by this mode of proceeding. My Lord Glenlee entertained no doubt upon the form of proceeding; but he stated, that although Messrs Maberly might prove the circumstances connected with the loss of the notes, they were not, in his opinion, entitled to relief, unless the legality of cutting the notes was first cleared up. My Lord Bannatyne stated, that the cutting of the notes did not appear to be accidental; that it created a difficulty in identifying them; and therefore he conceived the pursuers were not entitled to relief. My Lord Craigie proceeded upon the same ground; but he concluded that part of his judgment by saying, 'I think on general principles of law and equity we ought not to sustain this demand. We have a remedy well established in our law for 'such a case—an action for proving the tenor. There it is necessary 'to prove, not only the form of the document, but that it has been lost 'by a misfortune not imputable to the pursuer himself. I do not 'think we can allow a proceeding of that kind here.' So that his opinion was, that no action to prove the tenor in this case could be sustained.

My Lord Justice-Clerk proceeded, in a very elaborate judgment, to point out why, in his opinion, the pursuers were not entitled to equitable relief. He says, 'It is pretty clearly admitted by the pur-'suers, that it is not a question of law, but of equity; and though I 'admit that in a case of this kind it is quite legitimate to refer to the 'law of England, I think it is now a settled point, that no action at 'common law would lie in the Courts of England.' Then he goes on to say, 'Is there any thing in the equitable powers of this Court to 'entertain this? I must confess that I cannot see that there is.' Then he goes on to state the reason: 'A party must shew that he has done 'nothing injurious to the other party. I can never lay out of view 'that this case has arisen from the act of Mr Maberly himself. I have 'got no light on the right to cut the notes ad libitum.' Messrs Maberly certainly had no right so to do this; they could not have justified the act in this case, unless it had been done with the motive they allege and offer to prove, for the purpose of transmission, and to secure themselves. Then he goes on to say, 'I must be of opinion 'that we cannot sustain this action as laid. Although it is offered to 'find security to the extent of relieving the Bank of any other de-'mand on these notes, and with an offer to prove their identity by the 'books of the Bank, it is obvious, that if the practice is declared to 'be lawful, there is a complete dislocation of the business of the Bank, 'as they must establish at every branch a variety of clerks, in order 'to prevent their paying the same note a second time. Then the

March 1. 1825. 'question is, Whether in equity we are bound to give effect to this 'claim. I cannot accede to the doctrine contained in the papers of 'the pursuers, for it is obvious that there are certain risks to which 'the Bank is exposed. If it were an action such as that referred to 'in England appears to be, or, as we call it, a proving of the tenor, 'it would be a different thing; but this is not a proving of the tenor.'

His Lordship then takes a distinction between a proceeding strictly at law, and a proceeding for equitable relief.

I apprehend, when an action is brought, and the party proves the tenor, and then proceeds to recover the debt, there would be no need for an indemnity; but this is a proceeding for equitable relief, upon the ground of offering an indemnity. The question then is with respect to the form of entering your Lordships' judgment reversing this interlocutor; for that this interlocutor cannot stand is quite clear from the arguments of the learned Counsel for the respondents, and your Lordships are not convinced by their arguments that the appellants were not entitled to equitable relief. I mean, if the circumstance of their having voluntarily cut the notes does not deprive them of that equitable relief, it is impossible this interlocutor can stand. The only question would be, whether, under the circumstances alleged on the part of the respondents, in what form your Lordships would pronounce your judgment? That the case must go back again to the Court of Session, is quite clear, because I apprehend, if it is required by the Bank of Scotland that the pursuers must go into proof of the matters in their summons, the interlocutor must be reversed. The only question is, in what form it should be entered? My present impression certainly is, that this objection as to the action upon the tenor comes too late, even if it could be originally sustained, because they have gone into their defence generally, and the Court have proceeded upon it. I think, upon looking at the whole of the judgments, that the Court were of opinion, that if the circumstances were sufficient to entitle the pursuers to the equitable relief sought, it was not necessary for the party to proceed to an action upon the tenor. Therefore, upon both these grounds, I should say first, this objection not having been taken in the first instance, and looking at the decision of the Judges, the result seems to have been, that this was a proceeding which could be sustained without that formal action to prove the tenor, if the circumstances entitled the pursuer to equitable relief. The only point upon which I should ask a day or two to decide, would be upon the form of reversing this interlocutor. But I have no doubt in saying, that I think this action is sustainable, and that the interlocutor must be reversed. I only ask a day or two to consider in what form your Lordships would pronounce that reversal. But I should move your Lordships that this judgment should be reversed.

25th February 1825.

LORD GIFFORD.—My Lords, In the case of Maberly *v.* the Bank of Scotland, I stated to your Lordships, the last day I had the honour

of being in your Lordships' House, that, in my opinion, the interlocutors should be reversed. The only point which remained was the form of your Lordships' judgment. Considerable questions were argued, which it is not necessary for your Lordships now to decide; and I would move your Lordships, that this interlocutor be reversed, and that the case be remitted to the Court of Session, in order that they may allow of proof, and further proceed in this cause as they may see just. March 1. 1825.

Appellants' Authorities.—1. Vesey, 343.; Pothier on Obligations, 4. 2. 6.; Marius' Bills of Exchange, p. 19. fol. ed.; 12. Mod. Rep. 309.; 1. Vesey, 341; 2. Vesey, 38. 6. Vesey, Jun. 812.; 2. Campbell's Rep. 214.; 3. Campbell, 324.; 16. Vesey, Jun. 430.; 4. Price, 176.

Respondents' Authorities.—3. Campbell, 324.; 6. Vesey, Jun. 812.; 2. Campbell, 211.

FOULKES, LANGFORD, and WALFORD—J. CHALMERS,—Solicitors.

WILLIAM TAYLOR, Appellant. No. 4.

JAMES KERR, (Taylor's Trustee), Respondent.

DURING the dependence of the appeal entered by the appellant of the interlocutor refusing to recall the sequestration of his estates under the Bankrupt Act,* the Court of Session, under the authority of the 67th section of that statute, appointed the creditors to meet in order to choose commissioners. Against this order the appellant also appealed; and the first appeal having been dismissed, the House of Lords, after hearing the appellant in person at the Bar, 'ordered and adjudged, that the 'appeal be dismissed, and the interlocutor complained of affirm-'ed, with L.100 costs.' March 2. 1825.

1ST DIVISION.

J. DUTHIE—THOMAS,—Solicitors.

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* See 1. Shaw's Appeal Cases, p. 254.