

June 21. 1825.

he had himself entered into when admitted a writer to the signet. But then they ought to have sued as a body. The commissioners had no right to sue; the keeper of the signet had no right to sue; the treasurer had no right to sue, nor the procurator-fiscal. It appears to me, that they are not in a situation to support these interlocutors in this suit. Upon the whole, therefore, for the reasons I have ventured to state to your Lordships, I must propose to your Lordships a reversal of these interlocutors, because it appears to me, that whether the writers to the signet are a corporation, or not a corporation, these interlocutors cannot be sustained.

*Appellant's Authorities.*—(1.) 1. Blackstone, 467.; Masons of Lanark, June 11. 1730, (14,554.); Crawford, June 13. 1761, (14,555.); P. F. of Aberdeen, Feb. 15. 1762, (19,061.); 1. Ersk. 2. 49.; 1. Ersk. 7. 64.; 1. Hist. of Charles V. 38.; Miller, 381.; 3. Hallam, 33.; 1. Hallam, 303.; 2. Turner's Hist. 102.; Madox, 26.; 1. Kidd, 44.; Skirving, Jan. 19. 1803, (19,021.); Maitland, 291.; Skene, voce Guild; Dr Jamieson, voce Guild; 1. Craig, 1663.; 1. Bank. 249.; 1. Ersk. 7. 64.; 1. Blackstone, 474.—(3.) Hogg, Dec. 1681, (13,106.); Duff, Feb. 1799, (9576.); 1. Ersk. 7. 64.; 2. Kidd, 112.; Tomlin, voce By-laws.

*Respondents' Authorities.*—(1.) 1. Bank. p. 49.; 2. Bank. 495.; 1. Ersk. 7. 64.; Feuars of Kelso, Jan. 8. 1755, (1380.); Tailors of Perth, Dec. 10. 1756, (1974.); P. F. of Paisley, Feb. 17. 1761, (1956.); Lawson, Aug. 5. 1768, (1965.); Tailors of Potterow, Jan. 26. 1776, (7709.); Solicitors against Writers to the Signet, Feb. 25. 1800, (No. 1. App. Coll. of Jus.); Writers to the Signet, June 21. 1814, (F. C.)

SPOTTISWOODE and ROBERTSON—J. CHALMER,—Solicitors.

No. 46.

YOUNG, ROSS, RICHARDSON and Co. Appellants.

JOHN RAMSAY, Respondent.

*Acquiescence.*—A landlord having let a mill described as a paper mill; and it having been made use of, with his knowledge, for six years as an oil mill; and thereafter the tenant having assigned the lease to another party, who employed it as a flour mill;—Held, (affirming the judgment of the Court of Session), That the landlord was barred from insisting that it should not be used as a flour mill, but should be reconverted into a paper mill.

June 21. 1825.

1ST DIVISION.  
Lord Meadowbank.

MORRISON and Lindsay, papermakers, in 1792 acquired, by missive from the Duke of Athole, a lease for 58 years of the paper mill of Ruthven, and entered into possession. Afterwards, Young, Ross, Richardson and Company, having purchased the barony, land, and mill of Ruthven, executed in 1813 a regular lease in reference to the missive in favour of the son of Lindsay, (Morrison and Lindsay having died), of 'all and whole the paper mill of 'Ruthven, with the waterfall and other appendages belonging 'thereto,' declaring that he and his successors were to be thirled

June 21. 1825.

to the mill of Ruthven, (the property of Young, Ross, Richardson and Company), 'paying multures conform to use and wont for whatever quantity of corn they shall grind;' and binding them 'to uphold the mill, houses, and machinery upon the lands let, and also any new erection he or they may make thereon during the currency of this lease, in a sufficient workable condition, and to leave the same so at the issue of the tack.' Lindsay, in 1814, assigned the tack to people of the name of Stewart, who, in the knowledge of Young, Ross, Richardson and Company, converted the mill into an oil mill, and possessed it as such until 1819. The Stewarts then assigned their lease to Ramsay, a corn-merchant in Perth, who took possession, (having stipulated previously with the tenant to remove the machinery calculated for extracting the oil, leaving only the water-wheel on the premises), and at a heavy expense introduced machinery adapted to a flour mill. From the neighbourhood of Young, Ross, Richardson and Company's works, and other circumstances, they must have been aware of these operations; but they stated that they were not so,—that no communication had been made to them by Ramsay, and that they had not accepted rent, lest that might be construed into acquiescence. Ramsay, after having carried on the grinding of flour for about a twelvemonth, was called in an action by Young, Ross, Richardson and Company, concluding to have it found and declared, that he was only entitled to use the mill and appurtenances as a paper mill, and in no other way whatsoever; and to have him ordained to remove the machinery and other apparatus of a flour mill, and replace the machinery suited for making paper, and keep the premises in good and sufficient tenantable and workable condition, as a going paper mill; failing which, that he should be found liable in damages. The Lord Ordinary found, 'that the alleged acts of acquiescence and homologation are not sufficient to exclude the pursuers from insisting in the present process,' and decerned in terms of the conclusion of the libel. But the Court (11th March 1824) altered, sustained the defences, and found expenses due.\*

Young, Ross, Richardson and Company, appealed.

*Appellants.*—1. The mill was let as a paper mill. The respondent had no right to convert it to any other purpose; and the

---

\* 2. Shaw and Dunlop, No. 735.

June 21. 1825. appellants had a substantial interest to have the terms of the lease strictly obeyed. Although the Stewarts might have been permitted to convert the mill into an oil mill, that gave the respondent no similar right; and, at all events, never could be held to tolerate the change from an oil to a flour mill. 2. The Court ought to have ordered the flour machinery of the respondent's mill to be removed, for, by the terms of the lease, he is bound to frequent the corn mill of Ruthven, belonging to the appellants, with all his grindable corn; and as wheat was a perfectly well known crop at the date of the lease in question, the privilege must be held to comprehend wheat as well as oats. 3. The appellants never acquiesced in the respondent's alterations.

*Respondent.*—1. The original lease contains no clause obliging the tenant to use it as a paper mill. It is called a paper mill merely distinctivé. Provided he fulfilled at the end of the lease the obligation as to the machinery, the lessor had no title or interest to interfere. 2. The respondent's flour mill does not, and cannot interfere in any respect with the appellants' right of thirlage; the Barony mill has not the monopoly of grinding wheat. 3. The appellants unequivocally acquiesced in the alteration. They had seen the mill for years applied to oil making; and they saw, and did not disturb the respondent introducing flour machinery, and deliberately, and at a very heavy expense, converting the mill to its present purpose.

The House of Lords ordered and adjudged, 'that the appeal be dismissed, and the interlocutors complained of affirmed.'

LORD GIFFORD.—My Lords, There is a short case which was heard before your Lordships a few days ago, in which Messrs Young, Ross and Company, are the appellants, and John Ramsay is the respondent. My Lords, the question in this cause is, whether Messrs Young, Ross and Company, who have purchased the property out of which this question arises from the Duke of Athole, have a right to compel Mr Ramsay to use a mill, of which he has purchased the remainder of the lease, in a particular way.

My Lords,—I will state very shortly to your Lordships the particulars of this case. This mill, which belonged originally to the Duke of Athole, was let under an agreement for a lease by the Duke of Athole, in the year 1792, to persons of the name of Lindsay and Morrison, who were paper-makers in Perth. On the death of Lindsay and Morrison, the right to the lease of this mill devolved on Henry Lindsay, the son of one of the lessees, who entered into possession. My Lords, in the year 1813, the appellants, Messrs Young and Company, having obtained by purchase from the Duke of Athole the right to this mill, together with other property, Mr Lindsay applied to them for a lease, and in

November 1813 they executed a deed, whereby they set to him, for June 21. 1825.  
fifty-eight years from Martinmas 1792, ‘ all and hail the paper mill  
‘ of Ruthven, with the waterfall, and other appendages belonging  
‘ thereto, together with a park or field lying south thereof, and the  
‘ houses and yards thereunto belonging; declaring, that the use of the  
‘ water to the mill above mentioned, and the corn mill of Ruthven,  
‘ shall be regulated as heretofore, that is, each having one-half; and in  
‘ times of drought, when the water became insufficient to answer both  
‘ mills, that each mill shall have the use of the whole water twenty-four  
‘ hours at a time alternately.’ There was an engagement in that tack,  
by which Mr Lindsay obliged himself to uphold the mill, houses, and  
machinery upon the lands let, and also any new erections he or they  
may have thereon, during the currency of the lease, in a sufficient work-  
able condition, and to leave the same so at the end of the tack.

It appears that, after this lease or tack had been so granted,  
Mr Lindsay assigned it to a gentleman of the name of Stewart, and  
his two sons, and they possessed under this tack from the year  
1814 to the month of March 1819: and, my Lords, it is important to  
observe, that when these gentlemen got into possession of this mill, it  
is, I think, clearly proved, that, with the knowledge and acquiescence  
of Mr Young, they converted it from a paper mill to an oil mill; and  
as an oil mill it was occupied by these gentlemen for several years,  
during which they held it. It appears, that in the year 1819 they  
were anxious to get rid of this mill, and they assigned their interest  
in it to the present respondent, Mr Ramsay, who, it appears, was a  
corn merchant, and who, soon after his entry, converted this oil mill  
into a corn mill and flour mill.

My Lords,—Soon after this, it appears that some disputes arose  
between the respondent Ramsay and the appellants, with respect to  
some things which had been done by the appellants on the water  
course through which the water flowed to the respondent’s mill. An  
action was brought for the removal of these obstructions, and he suc-  
ceeded in that action. An action was then brought by them against Mr  
Ramsay, by which, as I have stated to your Lordships, they sought to  
have it declared, that he should be decerned and ordained immediately  
to remove the machinery from the mill of Ruthven, and other apparatus  
of a flour mill introduced into the same, and to replace into the mill  
the machinery and other apparatus of a paper mill, so improperly and  
unwarrantably removed by him and his authors therefrom, and to keep  
and maintain the same in good and sufficient tenantable and workable  
condition as a going paper mill in all time thereafter during the re-  
mainder of the term. My Lords, they say, that under this tack, this  
being described as a paper mill, and the undertaking in the tack by  
the tenant being throughout to uphold the mill, houses, and machinery  
in this, which had been previously described as a paper mill, and  
also any new erections which he or they might make thereon during  
the currency of the lease, in a sufficient workable condition, and to

June 21. 1825. leave the same so at the issue of the tack,—they say that is an obligation upon him to keep it as a paper mill, and to leave it so.

Now, my Lords, supposing that to be the understanding on the part of the tenant, it is equally clear that it may be dispensed with on the part of the landlord. Now, in the year 1814, it is quite clear that they consented with Messrs Stewarts that it should not be used as a paper mill, but as an oil mill; and as an oil mill it was used for five or six years, up to the period of Mr Ramsay's entering upon the mill. My Lords, they now say, (and to which I beg leave to call your Lordships' attention), not, you shall use it as a paper mill, or use it as an oil mill, but you shall use it exclusively and solely as a paper mill during the remainder of the term. Now, my Lords, have they right to say that, after what has taken place between them and the Stewarts? They have, I say, by their own conduct, dispensed with that obligation, by permitting the mill to be used as an oil mill. But then they say, supposing that to be so done, you have no right to use it as a corn mill, not only on account of the obligation referred to, but on account of another obligation, not at all founded upon in the summons,—namely, an obligation on the part of Mr Ramsay, that he and his foresaids are hereby declared to be thirled to the mill of Ruthven, paying multures conform to the use and wont of whatever quantity of corns they shall grind. They say, therefore, that, under this lease, it was clear it was never intended this paper mill should be used as a corn mill. My Lords, as I have stated to your Lordships, this was no part of the title under which they proceeded in their summons. In their summons they proceeded solely on the ground I have stated to your Lordships, of a grant as a paper mill, and that therefore they say it shall be used as a paper mill.

I should have stated to your Lordships, that, independently of the circumstances I have stated, Mr Ramsay founded on supposed acts of homologation and acquiescence on the part of the appellants; and the Lord Ordinary was of opinion, that the acts of acquiescence and homologation were not sufficient to exclude the pursuers from insisting in the present process; and therefore he found, decerned, and declared in terms of the conclusion of the libel. The result of this finding was a favourable one to the appellants; but on the case coming on before the Court of Session, they altered this interlocutor of the Lord Ordinary reclaimed against, sustained the defences, and assoilzied the petitioner from the conclusions of the libel, and decerned.

My Lords,—It appears to me, upon the whole, that the decision of the Court of Session is right; because I think, that after the acquiescence and permission (because such it clearly was) to Messrs Stewarts to convert the paper mill into an oil mill, it was not competent to Messrs Young and Ross to say, that it should not be used as a corn mill; that they cannot say it shall be used as a paper mill,—and the whole gist of the action they have brought consists in this, that it shall be used as a paper mill. It is true they talk of removing the machinery

of the corn mill, but then it is only with a view to replacing it as a paper mill. They do not say, you shall use it as an oil mill, or a paper mill, but they say, you shall replace it as a paper mill, though you have not yourself converted that paper mill into an oil mill; and though, with our acquiescence, Messrs Stewarts used it as an oil mill, you shall use it exclusively as a paper mill during the remainder of the term. My Lords, I apprehend they have themselves discharged that part of the obligation, as far as the converting it into an oil mill could have any effect; and therefore they cannot now say it shall be used as a paper mill exclusively during the remainder of the term. June 21. 1825.

My Lords,—I have thought it right to say so much on the case; for I wish to explain the views I have taken of the case, why I think your Lordships must affirm this interlocutor; because that interlocutor assoilzies Mr Ramsay from the conclusions of this summons, which summons is brought for the purpose of compelling the use of this as a paper mill, for which I think there is no ground.

*Appellants' Authorities.*—Ford, May 20. 1808, (No. 17. App. Tack); Magistrates of Glasgow, Feb. 11. 1813, (F. C.)

*Respondent's Authorities.*—Aytoun, May 19. 1801, (F. C.); Kinnoul, Jan. 18. 1814, (F. C.)

J. CHALMER—SPOTTISWOODE and ROBERTSON,—Solicitors.

WILLIAM JEFFREY, Trustee on JAMIESON'S Estate, Appellant. No. 47.

JOHN URE and JOHN MILLER, Respondents.

*Bankrupt—Sequestration.*—A trustee on a sequestrated estate under the 33. Geo. III. c. 74. having in a scheme of division inserted a claim, but allotted no dividend; and having marked that the claimant 'held goods;' and no complaint having in due time been made by the claimant; and the trustee having paid away all the funds;—Held, (reversing the judgment of the Court of Session), That the trustee was not liable for the dividends.

IN April and May 1809, William Jamieson, manufacturer in Glasgow, consigned to a branch in Jamaica of the house of Ure and Miller of Glasgow, two parcels of goods invoiced at L. 918. 5s. 6d. On the credit of these consignments Ure and Miller advanced to him L. 615. 5s. 6d. Thereafter Jamieson drew a bill in their favour upon William Tate and Company for L. 239. 19s. 10d., which Tate and Company refused to accept, and Ure and Miller were obliged to retire it. June 21. 1825.  
2D DIVISION.

On the 19th March 1810 the estates of Jamieson were sequestrated under the then Bankrupt Act, 33. Geo. III. c. 74.; and