

pronounced could not be brought into the present accounting, May 26. 1824.
so as to constitute them an heritable debt on the estate.

The House of Lords found, ‘ That, under the circumstances of
‘ this case, the promissory-note and heritable security under re-
‘ duction cannot be sustained, except to the extent of the sum of
‘ L.200 advanced by the appellants to James Fraser, junior; and
‘ further find, that the decree in absence, in the proceedings
‘ mentioned, ought to be reduced in toto. And it is therefore
‘ ordered and adjudged, that so much of the interlocutor of the
‘ Lord Ordinary of the 24th of November 1819, complained of
‘ in the said appeal, as reduces the said promissory-note, and
‘ disposition and infestment, except as to the said sum of L.200,
‘ be affirmed; and in regard to the other special findings in
‘ that interlocutor, the Lords declare, that this House does not
‘ feel it necessary to give any opinion thereon. And it is fur-
‘ ther ordered and adjudged, that so much of the interlocutor
‘ of the Lord Ordinary of the 17th December 1819, and the 17th
‘ May 1820, and so much of the interlocutors of the Lords of
‘ Session of the Second Division, of the 13th June 1821, and of the
‘ 13th June (signed 14th June) 1821, also complained of in the
‘ said appeal, which adhere to such parts of the said interlocutor of
‘ the Lord Ordinary of the 24th of November 1819 as are hereby
‘ affirmed, be affirmed: And it is further ordered and adjudged,
‘ that so much of the said interlocutor of the 13th June (signed
‘ 14th June) 1821, as reduces the decree in absence in toto, be
‘ affirmed: And it is further ordered, that the cause be remitted
‘ back to the Court of Session, to do therein as shall be consis-
‘ tent with this judgment, and as shall be just.’

OSBALDISTONE and MURRAY,—Solicitors.

(*Ap. Ca. No. 43.*)

JAMES, WOOD and JAMES, Appellants.—*Marryat—Stephen.*

No. 31.

JOHN TELFORD, for the Stirling Bank, Respondent.—

John Campbell.

Principal and Agent—Bill of Exchange.—An agent for a Company having in his own name drawn bills on a purchaser of goods from the Company, which the purchaser accepted, and having discounted them with a banker, by indorsing them also in his individual name, and he and the purchaser having become bankrupt;—Held, (reversing the judgment of the Court of Session), That although the agent was in the practice of drawing and discounting bills, sometimes in his own name, and at others per procuration of the Company, and the Company settled with the purchaser on the footing of his having granted these bills, yet, as the name of the Company was not on the bills, no claim lay against it for payment of them.

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1ST DIVISION.
Lord Gillies.

THE appellants, James, Wood and James, were wholesale dealers in tallow, residing in London, and had been in the practice for many years of supplying soap-boilers and tallow-chandlers in Scotland with that commodity. For the management of their business in Scotland, they appointed George Arnott, merchant in Leith, as their agent, who accordingly acted for them in that capacity, drew bills upon the parties to whom the goods were sold, and discounted them, sometimes in his own name, and at others per procuracy of James, Wood and James, and accounted to that Company for the proceeds. Among others, Robert Paterson, soap manufacturer in Stirling, had frequently purchased tallow from the appellants, and many of the bills which were drawn upon him by Arnott, and accepted by him for the price of the goods, had been discounted with the Stirling Bank, of which the respondent, Telford, was the cashier. On the 1st of January 1819, the appellants shipped a quantity of tallow to Paterson, amounting in value to L.385. 9s. 6d., of which they informed their agent, Arnott. At this time Arnott had gone to Holland, and had left with his clerk, Alexander Miller, several blank bill stamps subscribed and indorsed by him, to be filled up and negotiated if necessary. On receiving the letter of the appellants, Miller filled up two of these bill stamps, the one for L.64. 19s. 6d. dated 8th January 1819, drawn upon Paterson, and the other for L.290. 10s. dated the 11th of January, also upon Paterson; thus leaving a balance of L. 30 due of the price. The first of these bills was expressed in these terms:—‘ L.64. 19s. 6d. Leith, 8th January 1819. ‘ Four months after date, pay to my own order Sixty-four ‘ pounds nineteen shillings and sixpence sterling, per value re- ‘ ceived. GEORGE ARNOTT. Mr Robert Paterson, soap manu- ‘ facturer, Stirling. (Indorsed) George Arnott.’ And the other was thus expressed:—‘ L.290. 10s. Leith, 11th January 1819. ‘ Four months after date, pay to the order of myself, Two ‘ hundred and ninety pounds and ten shillings sterling, for value ‘ received. GEORGE ARNOTT. (Addressed) Mr Robert Pater- ‘ son, soap manufacturer, Stirling. (Indorsed) George Arnott.’ These two bills Miller, acting ‘ for George Arnott,’ enclosed in a letter to the respondent, Telford, requesting him to get them accepted, and to send him the proceeds. This, accordingly, Telford did, by transmitting the draft of the Stirling Bank upon Edinburgh for L.349. 3s. 6d. in favour of Arnott; and it was alleged by Telford, that when he presented the bills for accept-

ance, Paterson informed him that they were on account of the tallow which he had received from the appellants. It was also alleged, and offered to be proved, that the cash received for these bills was placed by Arnott to the credit of the appellants. May 26. 1824.

Thereafter, and before the bills fell due, one of the appellants came to Scotland, and settled with Paterson for the balance of L.30, by receiving from him a promissory-note for L.25, and deducting the remaining sum of L.5. This note he indorsed to, and discounted with, the Stirling Bank in name of the Company, who, about the same time, withdrew their agency from Arnott. Both Paterson and Arnott became bankrupt, and the bills having been dishonoured, Telford, on behalf of the Stirling Bank, claimed payment of them from the appellants, on the footing that they were the parties truly interested in them, and that Arnott had acted as their representative and agent. This having been resisted by them, (except as to the promissory-note of L.25, which they stated they were ready to pay), an action was brought against them and the other parties by Telford, in which the Lord Ordinary decerned against the appellants in terms of the libel; and he refused a representation, 'in respect that the bills in question were granted for the price of goods sold by the representers to the acceptor, and that the same were drawn and discounted by Arnott merely as the representers' agent, and for their behoof.'

The appellants having reclaimed, the Judges expressed an opinion, that the reasons assigned by the Lord Ordinary were perfectly sound; that there was a distinction between the case where a party was vested with the full powers of a general agent for negotiating the affairs of another, and where they were of a limited nature; and that in this case it was satisfactorily proved, that Arnott had been in the practice of drawing and discounting bills on behalf of the appellants; and consequently they were liable for the debt in question. Their Lordships, therefore, adhered on the 14th December 1821, refused a petition on the 5th of February 1822, and found expenses due.*

The appellants then entered an appeal to the House of Lords, and maintained,—

1. That as the bills were drawn and indorsed by Arnott simply as an individual, and as he had not subscribed per procuracion of them, nor expressed that they were for value received from

* See 1. Shaw and Ballantine, No. 329.

May 26. 1824. them, and as their names did not appear upon the face of them, they must be held to have been received, and the money paid for them, in reliance on the credit of Arnott, and not of that of the appellants; and accordingly there could be no doubt, that if the appellants had become bankrupt, the respondent would have been entitled to have claimed the full amount against Arnott as liable individually; whereas, on the supposition that the transaction had taken place with him as a mere agent, the respondent could have made no such claim against him; and therefore, as the bills established an individual liability, it was impossible to hold that the respondent had discounted them on the faith of Arnott being their agent.

2. That although it was perfectly true that Arnott acted as their general agent, and that he did so in *drawing* the bills in question upon Paterson, and although, no doubt, the appellants were bound to that extent by his acts, and had settled on that principle with Paterson by giving him credit for these bills, (because it was within the limits of Arnott's powers as their agent to draw bills), yet he had no power to *indorse* or discount them, and so pledge the credit of the appellants to third parties; and, even supposing he had discounted them as their agent, they could not be bound by his unauthorized acts: but in this case he had not done so, and had merely pledged his own credit.

3. That it was a general rule, that a written obligation could not be established against a party unless his subscription appeared on the face of it, or was signed per procuracy; and as in the present case the subscriptions of the appellants were not on the face of the bills, and Arnott had not signed per procuracy of them, it was impossible to proceed against them under these bills.

On the other hand, it was maintained by the respondent,—

1. That as Arnott had acted confessedly as the agent of the appellants, and as he had been in the practice of drawing and discounting bills in relation to their transactions, sometimes in his own name, and on others in that of the appellants, and this had been sanctioned by them; and as the bills in question arose out of one of these transactions, and had been drawn by Arnott as their agent, and for their behoof, and the proceeds had been carried to their credit, the respondent was entitled to recover payment from them.

2. That as Arnott was the general agent of the appellants, and was not restricted to the performance of a particular act, and had been in the practice of negotiating the bills of the appellants, he had full power to discount those in question, and to bind the appellants. And,

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3. That the facts and circumstances were at least sufficient to constitute an obligation of relief against the appellants.

The House of Lords found, ' That the appellants are not liable to make payment to the respondent, as cashier and for the behoof of the Stirling Bank Company, of the principal sums of L.64. 16s. 6d. and L.290. 15s., contained in and due by the two bills drawn by George Arnott on George Paterson, or interest thereon, or expenses of protesting the same, or any part thereof; and it is therefore ordered and adjudged, that the said interlocutors complained of, so far as they are inconsistent with this finding, be reversed. And it is further ordered and adjudged, that so much of the said interlocutors of the Lords of Session of the First Division, of the 14th of December 1821 and the 5th of February 1822, as finds the appellants liable, conjunctly and severally, to the respondent in the expenses of process, be reversed. And it is further ordered, that the cause be remitted back to the Court of Session to apply the foregoing findings, and to do further therein as may be just.'

LORD GIFFORD.—My Lords, In this case the respondents sought, by action in the Court of Session, to recover from the appellants three sums, of L.64. 19s. 6d. L.290. 10s. and L.25. on account of certain transactions, the outline of which may be thus represented.

A person of the name of George Arnott, merchant in Leith, had been employed to act as agent for the appellants, who are soap manufacturers in London; and a Mr George Paterson, soap manufacturer in Stirling, having commissioned from them a quantity of goods, owed them on that account, in the beginning of the year 1819, a sum of between L.300 and L.400. It appears, my Lords, that Arnott, having occasion to go to the Continent, left with Alexander Miller, his clerk, certain bills in skeleton, (*i. e.* blank in the dates, the sums, and name of the drawer, but signed by himself as drawer and indorser), to be filled up by his clerk according to circumstances, and that the clerk had filled up two of these bills by converting them into drafts upon Paterson for L.64. 19s. 6d. and L.290. 10s.

It farther appears, my Lords, that in the course of his transactions as agent for the appellants, Arnott had been in the habit of drawing upon their debtors, but that this had been expressed as done by procuration. Here, however, the bills were drawn in the name of Arnott only, by Miller the clerk, who transmitted them to the respondent in a letter of 9th January 1819, for the purpose of obtaining Paterson's acceptance to each, and of having them afterwards discounted. To this letter the respondent returned an answer in these terms:—' Stirling Bank, 12th January 1819. The amount, L.355. 9s. 6d. discount and postage L.6.—L.349. 9s. 6d.; for which I enclose, as you desire,

May 26: 1824. ' my draft on Edinburgh, L. 349. 3s. 6d. stamp 6s.—L. 349. 9s. 6d. I am, Sir, your most obedient servant,' (Signed) JOHN TELFORD. To ' Mr George Arnott, Leith.'

My Lords,—Before these bills became due both Arnott and Paterson became insolvent, and a claim having been made for the amount by the respondent upon the appellants, they refused payment, on the ground that they were not parties to the bills in any shape, nor were in any way bound for them. After these bills had been discounted, but before the time of their falling due, one of the partners of the appellants' house having come to Scotland, called on Paterson, and learning from him that such acceptances had been given to Arnott, took Paterson's promissory-note for L. 25, which, with a trifling balance of L. 5, (probably allowed for discount), made a sum upon the whole equal in amount to Paterson's debt. Arnott's name is not upon the promissory-note, but, in the action brought before the Court of Session, he, as well as the appellants, is called as defender, and concluded against for this as well as the other two sums. (Here his Lordship recited the terms of the summons, defences, and interlocutors in the Court of Session).

My Lords,—It was contended below, that the appellants must be liable, as the transaction was for their benefit, and accomplished by their own agent; or, as expressed in the Lord Ordinary's interlocutor of 16th May 1821, ' In respect that the bills in question were granted ' for the price of goods sold by Messrs James and Company to the ' acceptor, and that the same were drawn and discounted by Arnott, ' merely as their agent, and for their behoof: '—A ratio decidendi, my Lords, which must be presumed to have been approved of by the Lords of the First Division, when they affirmed that interlocutor. My Lords, undoubtedly no action can lie against the appellants on these bills, as their names are not upon them; but I am unable to see any other grounds upon which the respondent can recover. It is admitted, that Arnott had authority to draw bills for the appellants, but in no other way than by procuration from them; and it has not been denied in the course of the pleadings, that Arnott was in the practice of discounting bills with the respondent, not only in the character of agent for the appellants, but on his own account. The bills must therefore necessarily be held as having been discounted on the credit of Arnott and Miller.

My Lords,—It has been said, that the money received on discounting these bills had been accounted for by Arnott to the appellants; but I can find no evidence of this, or that the proceeds had been placed to their credit in any way whatever.

The sole question therefore is, Whether the discount was made by Arnott, on his own credit, or on that of Paterson? My Lords, in such a question, the law of Scotland must be considered the same as the law of England; and it appears from the series of authorities cited for the appellants, in particular from that of Emly, tried before my

Lord Ellenborough, that no action like the present could be sustained in this country. May 26. 1824.

My Lords,—Upon the most careful consideration which I have been able to bestow upon this case, I am very clearly of opinion, that with regard to the two bills, the interlocutors complained of cannot be supported, and that they ought in so far to be reversed. But, my Lords, your Lordships cannot adjudge a general reversal; for, as to the promissory-note for L. 25, the appellants never denied their liability to that extent; but although Arnott's name does not appear upon that instrument, he (as well as they) has been found liable for payment of the contents in the Court below. It will therefore be necessary that a special remit be made to the Court of Session, to apply your Lordships' judgment to the particular situation of that article.

Appellants' Authorities.—3. Term Rep. 757.; 2. Campbell, 308.; 15. East, p. 17.; 10. Vesey, 206.; 12. Mod. Rep. 243.; 1. Esp. 4.; 10. Vesey, junior, 206.

Respondent's Authority.—Paley, p. 144.

TUSTIN—ROBINSON and BURROWS,—Solicitors.

(Ap. Ca. No. 44.)

ROBERT CUNNINGHAM, Appellant.—*Shadwell—Walker.*

No. 32.

PATRICK WARNER and R. BEAUMONT, Respondents.—*Murray—Abercromby.*

Partnership—Clause.—Two parties having entered into a contract of partnership for working coal, under which a permission, in general terms, was granted to work coals in the lands of one of them, by means of pits sunk in the lands of the other; and having thereafter entered into another contract, prorogating the whole terms of the first contract, but declaring that the coal in the lands of the first party should be worked only to the east of a certain point;—Held, (reversing the judgment of the Court of Session), That the company had no right to work beyond that point.

ROBERT REID, afterwards Cunningham, the father of the appellant, was proprietor of the lands of Saltcoats Campbell, (on which he had erected salt-pans), adjoining to those of Ardeer belonging to Patrick Warner, the father of the respondent, and both of which properties are situated in Ayrshire. Ardeer lies to the south-east of Saltcoats Campbell, and is divided from it, on the west, by a rivulet called the Stevenston-burn, and near to which, on Saltcoats Campbell, there is a stratum of whinstone, called the Capon Craig-gall. In 1770 Reid and Warner entered

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1ST DIVISION.
Lord Alloway.