July 19. 1822. Stirling and Robertson presented a bill of suspension, on advising which, with answers, the Second Division of the Court, on 27th February 1817, refused it.*

Stirling and Robertson then brought an action of reduction, on the grounds which they had mentioned in the Court of Admiralty; but the Lord Ordinary assoilzied Goddard. Against this judgment they reclaimed to the First Division, who, on the 3d of February 1819, adhered, and found them liable in expenses.†

Stirling and Robertson having appealed, the House of Lords 'ordered and adjudged that the interlocutors complained of be 'affirmed, with £100 costs.'

Respondent's Authority.—Marshall on Ins. 457. 463. 459. 450.

BOURDILLON and HEWITT,—SPOTTISWOODE and ROBERTSON,—Solicitors.

(*Ap. Ca. No. 33.*)

No. 45. JOHNSTON, SHARP, and COMPANY, Appellants.—*Gifford—Moncreiff—Buchanan.*
JOHN PHILLIPS, Respondent.—*Warren—Forsyth.*

Partnership—Bill of Exchange.—Circumstances under which it was held, (reversing the judgment of the Court of Session,) that a bill granted by a partner under the partnership firm for a private debt, but whereby it was alleged an advantage was derived by the Company, was not binding on it.

July 24. 1822.

1ST DIVISION.
Lord Alloway.

JAMES JOHNSTON junior, merchant in Glasgow, carried on business in his own name, and as a partner of Thomas Phillips and Company. In December 1813, a partnership was established between him and T. P. Sharp of Glasgow, and John Davidson of London, under the firm of Johnston, Sharp, and Company, merchants in Glasgow. Davidson continued to reside in London, and transacted the business of the company there, while Sharp

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* Not reported. In the case for the respondent it is stated that this judgment was unanimous, and that 'their Lordships all severally delivered their opinions, 'that there was a sufficient alteration in the risk, by the delay of the voyage, to 'authorize the judgment which had been pronounced in the Court of Admiralty.'

† Not reported. In the case for the respondent it is stated, that 'their Lordships of the First Division, upon considering the appellants' petition, with answers, 'entertained the same view of the case as that which had been successively 'adopted by the Judge-Admiral, by their Lordships of the Second Division, and 'by the Lord Ordinary.'

proceeded to the Continent, with the view of disposing of goods belonging to the company, which were to be purchased by Johnston, the managing partner at Glasgow. Early in the year 1814, Johnston purchased large quantities of goods on behalf of the company, (which, it was alleged by the respondent, he accomplished by means of his own private funds,) and sent them to Sharp, who disposed of them on the Continent, and remitted the proceeds in acceptances by the purchasers in favour of Johnston, Sharp, and Company, to the extent of £10,125. These bills were received by Johnston in the course of the month of May 1814, and it had been arranged that the proceeds were to be placed in bank, under a deposit-account to be opened in name of Johnston, Sharp, and Company. Instead of doing so, however, Johnston deposited the proceeds in different banks in Glasgow in his own name; and in particular he so placed about £3000 with the Glasgow Bank. On the 3d of June Johnston made a settlement with the Glasgow Bank of his private account, on which a balance of £2870 was ascertained to belong to him; and this sum he on the same day placed under an account which he opened in name of Johnston, Sharp, and Company. July 24. 1822.

In the mean while Johnston, as an individual, had discounted certain bills with the Glasgow Bank, amounting to £1650, which he had obtained in the course of his private business; and on the day on which the above settlement took place, (but subsequent to it,) these bills were returned, dishonoured by the acceptors, to the Bank. In consequence of this, Johnston was obliged to call a meeting of his private creditors, which was held on the following day; and it was then agreed to give him indulgence in point of time. To this, however, the Glasgow Bank was not a party; and when Johnston, a few days thereafter, wished to draw money from the account opened in name of Johnston, Sharp, and Company, (with a view to retire some of their acceptances which were about to fall due,) the Bank refused to permit him to do so, until he should pay those bills which he had discounted with them as an individual, and which had been dishonoured. He then applied to the respondent Phillips, (who was the father of Johnston's partner in the firm of Thomas Phillips and Company,) and an arrangement was entered into, by which the Bank, in consideration of an acceptance by Phillips for the amount of the dishonoured bills, agreed to allow Johnston to draw from the funds placed under the account of Johnston, Sharp, and Company. On the part of Phillips it was stated, that he accepted the bill blank in the drawer's name, on the understanding that it was to be drawn and indorsed under the firm of Johnston, Sharp, and Company, as he

July 24. 1822.

considered that he was interposing his credit on their behalf; but that Johnston had, without his knowledge, inserted his own name as an individual, and so had indorsed it to the Bank. In consideration of this bill, Johnston granted an acceptance to Phillips under the firm of Johnston, Sharp, and Company, for £1650, being the amount of the dishonoured bills, which he delivered to him at the same time in further security; and Phillips granted a back letter, addressed to Johnston, Sharp, and Company, stating that he held these dishonoured bills merely in security for the payment of the acceptance which had been granted for his relief. In consequence of this transaction, Johnston got access to the funds of the company, and was thus enabled (as was alleged by Phillips) to prevent that company from being declared bankrupt.

Thereafter Sharp having returned from the Continent, and having made a settlement with the creditors of Johnston, Sharp, and Company, (who had become embarrassed,) brought an action in name of the company against Phillips, concluding for reduction of the bill of £1650, which Johnston had granted to him under the firm of the company, on the ground that it had been granted by Johnston for his own private accommodation, of which Phillips was aware. In defence it was pleaded,—

1. That the acceptance which Phillips had granted, and which he had since retired, was a beneficial act in favour of the company, as Johnston was thereby enabled to draw the funds of Johnston, Sharp, and Company, and so to prevent them from being declared bankrupt; and therefore, as the money was in rem versum of them, and the bill had been granted on that understanding, it was a valid and binding document of debt against the company; and,—

2. That it was of no importance whether the Bank were entitled to have acted as they had done or not, and that it was sufficient for him to show that, by incurring an obligation on account of the company, they had derived advantage from it. To this it was answered,—

1. That it was plain, even from the statement of Phillips himself, that he was aware that he was interfering merely on behalf of Johnston in his individual capacity, and that it was not relevant to allege that thereby an indirect advantage was obtained by the company; but that, in point of fact, the company enjoyed ample sources of credit, without being under the necessity of applying to Phillips for an accommodation;—and,

2. That Phillips was interested in upholding the credit of Johnston, who was the partner of his son, and who was a joint obli-

gant, along with Phillips himself, on bills which were then in the circle. July 24. 1822.

The Lord Ordinary, after appointing Phillips 'to give in a condescendence stating the facts and circumstances he offered to instruct, in order to establish the value paid by him for the bill under challenge,' found 'it positively averred, and not contradicted, 'that, for some time previous to the 3d day of June 1814, James 'Johnston junior, who then resided in Glasgow, as the managing 'partner of Johnston, Sharp, and Company, had deposited, in 'his own name, in the banks of Glasgow, money to the amount 'of £10,125, which, it is said, was the property of Johnston, 'Sharp, and Company:—that, from whatever source that money 'had arisen, the banks would have been entitled to retain it 'until they were relieved of the bills which had become due by 'James Johnston junior, in whose name alone it was deposited:— 'that, upon the 3d day of June, James Johnston transferred the '£10,125 standing in his own name to the deposit-account 'of Johnston, Sharp, and Company:—that, upon the 4th of 'June, three of James Johnston's bills lay over protested and 'unpaid at the Glasgow Bank to the amount of £1650, and 'upon that day, it is said, he called a meeting of his creditors:— 'that it is offered to be proved, and not distinctly denied, that 'when James Johnston junior attempted, by checks, to draw a 'part of the money deposited in the name of Johnston, Sharp, 'and Company from the Glasgow Bank, they refused to pay the 'same:—that it is unnecessary to determine whether they were 'legally entitled to do so, on account of the suspicious circum-'stances of the case:—that these bills were retired by the defender 'having granted his acceptance for that amount; and that James 'Johnston, for his relief, then granted him the bill in question, 'in name of Johnston, Sharp, and Company, and by which means 'the funds of Johnston, Sharp, and Company, which had been 'retained by the Bank, were released:—that although no partner 'of a company is entitled to grant an obligation, under the firm 'of the company, for his own private debt, and the person who 'receives such an obligation, and is acquainted with the nature 'of it, will not be entitled to recover from the company; yet, in 'the whole circumstances of this case, the defender having every 'reason to believe that this transaction was for the benefit of the 'company, and it was so far in rem versum of the company, as 'they could not then have had access to their own funds until 'the sum of £1650, for which this bill was granted, was retired; 'therefore assoilzied the defender from the conclusions of the 'action.'

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July 24. 1822.

Against this interlocutor Johnston, Sharp, and Company offered a representation, in which, while they maintained that the allegations of Phillips were irrelevant, they denied them, and stated that it was incumbent on Phillips to establish them. The Lord Ordinary appointed them to say whether they were willing to pay the previous expenses, upon a proof being allowed of the facts which were now explicitly denied by them; and they having declined to pay them, he adhered to his interlocutor. To these judgments the Court also adhered, on advising two petitions and answers, on the 18th of June 1818, and 3d February 1819.*

Johnston, Sharp, and Company having appealed; the House of Lords 'found, that, in the whole circumstances of this 'case, the bill for £1650, with respect to which the process of 'reduction is raised, ought not to be considered as binding on 'the firm of Johnston, Sharp, and Company; and it is therefore 'declared and adjudged, that the said bill is null and void as 'against the said company, and ought to be reduced as prayed 'by the libel; and it is further ordered and adjudged, that the 'said several interlocutors complained of be reversed; and it is 'further ordered, that the cause be remitted back to the Court 'of Session, to do therein as shall be just and consistent with this 'judgment.'

LORD CHANCELLOR.—My Lords, in the case of Johnston and Phillips, upon looking at the several interlocutors, and the several matters to be found in those interlocutors, it seems to me that the principal question is, Whether the transaction between these persons is a transaction in which Mr. Phillips has a right to say that the partnership is bound. The Court of Session have agreed in holding that Mr. Phillips had a right to say that the partnership was bound. But, upon a very accurate and sifting attention to the circumstances of the case, as stated to your Lordships, I am of opinion that he had no such right; and that the consequence of that would be, that the interlocutors must be reversed. As I am therefore clearly of opinion that in this case Mr. Phillips took a security which, under the circumstances, he could not take so as to bind the partnership, the result will be, that the interlocutors will be reversed.

J. CAMPBELL,—A. MUNDELL,—Solicitors.

(*Ap. Ca. No.* 35.)

* Not reported.