

Respondent's Authorities.—Stoddart, June 30. 1812, (F. C.) ; Bell, March 10. 1784, (16,374.) ; Campbell, July 6. 1627, (16,246.)

SPOTTISWOODE and ROBERTSON—MONCREIFF and WEBSTER,—
Solicitors.

WILLIAM GUTHRIE, Appellant.—*L' Amy—Ro. Bell.*

No. 23.

J. CURL, J. DOUGLAS, and CLAUD GIRDWOOD and Company,
Respondents.—*Greenshields.*

Bankrupt—Sequestration—Agent and Client.—Circumstances under which it was held, (affirming the judgment of the Court of Session), That an agent in a sequestration was not entitled, after the bankrupts had been discharged on payment of a composition, and finding security for payment of expenses, to claim the amount of his account from the creditors.

MALCOLM PATERSON and Company, merchants in Glasgow, having become bankrupts, a mandate in the following terms, subscribed by them, by the individual partners, and by Claud Girdwood and Company, creditors to the extent required by law, was transmitted to the appellant, William Guthrie, writer in Edinburgh :—‘ October 27. 1820.—We hereby authorize you to apply ‘ to the Court of Session for sequestration of the estates, real and ‘ personal, of the subscribers, Malcolm Paterson and Company, ‘ and individual partners; for doing whereof this shall be your ‘ mandate.’ In virtue of this authority, the appellant applied for and obtained a sequestration of the estates, on which Gilbert Sanders, accountant in Glasgow, was afterwards elected and confirmed trustee, and by whom the appellant (who was himself a creditor) was employed as agent in the sequestration. On the 20th of January 1821, the bankrupts offered a composition of 6s. 8d. per pound on the debts due by the Company, and of 6d. per pound on the debts due by Malcolm Paterson as an individual, which offer was entertained by the creditors, who instructed the trustee to call a meeting, for the purpose of finally deciding on it. At the meeting which was held for the purpose, the bankrupts renewed their offer, and proposed Charles M’Kidd, brick-maker in Glasgow, as cautioner, both for payment of the composition and the expenses of the sequestration. To this the creditors present agreed, with the exception of a Mr Kennedy, who declined to accede unless additional security was granted. In consequence of this, and of the extent of Mr Kennedy’s claims, the meeting ‘ unani-

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May 13. 1825. ' mously instructed the bankrupt, Mr Paterson, to obtain the
' signature of the respective creditors ranked to a minute of ac-
' cession to the said offer; and also to arrange with, and procure
' Mr Kennedy's accedence to the offer; and on this being ob-
' tained, and a regular bond of caution executed, the meeting
' also unanimously authorize the trustee to concur with the bank-
' rupt in an application to the Court, in order that the compo-
' sition may be approved of, and the bankrupt discharged in
' terms of the before recited offer.' All the creditors, with the
exception of Kennedy, subscribed the minute of accession; and
he was also at last persuaded to do so, on receiving additional
security. A report was then made up by the trustee, in which
he represented, that the offer made at the first meeting had
been entertained by all the creditors, with the exception of Ken-
nedy; and without alluding to his non-accession at the second
meeting, he stated, that the bankrupt Paterson had been unani-
mously instructed to get the accession of all the creditors to a
minute of agreement, which had since been obtained. This re-
port was transmitted to the appellant, who, as agent, presented
a petition to the Court, in which nothing was stated as to the
non-accession of Kennedy at either of the meetings, but in which
reference was made to the report of the trustee, and in which it
was prayed, that as the whole creditors had acceded, and the
trustee had given his concurrence, and the requisites of the
statute had been complied with, a discharge, except as to the
payment of the composition, should be granted.

After the usual intimations the bankrupts were discharged;
but soon thereafter the cautioner, M'Kidd, became insolvent,
and Malcolm Paterson and Company, and the individual part-
ners, were again rendered bankrupt, and a sequestration of their
estates awarded.

In the meanwhile, the appellant had repeatedly applied to
Sanders, the trustee, and also to Alexander Ure, the agent at
Glasgow, for payment of his account; and it appeared, that in
liquidation of it a bill was granted to him by the bankrupt,
Paterson, and one Downie, which was guaranteed by Paterson
and Company. When that Company were sequestrated a second
time, Sanders claimed on the estate in virtue of that bill, stating,
that he was the creditor in it by virtue of an indorsation from
the appellant. Thereafter the appellant presented a petition to
the Court of Session, under the Act of Sederunt 6th February
1806, in which he stated, that he had not received payment of
his account, and praying for a remit to the auditor in the usual

terms, and for decree against Sanders, Ure, and the respondents, May 13. 1825.
creditors ranked under the original sequestration. No appearance was made by Sanders or Ure; but the respondents appeared and pleaded,—1. That as it was provided by the 54. Geo. III. c. 137. § 69. that the whole expenses shall be paid or provided for by the bankrupt or his friends before any discharge shall be granted, and as it was the duty of the trustee and his agent to see that this was done, they must be held to have discharged the creditors for any claim on that account, and to have received the parties, who were the obligants in the bond, as their debtors in place of the creditors, who, by the provision of the statute, were to obtain payment without deduction of their composition; and accordingly, if the trustee and his agent had not been satisfied with the arrangement for these expenses, they might have successfully objected to the discharge. 2. That by receiving the bill for payment of the expenses, there was such a novation of the debt as extinguished any claim which the appellant might have had against the creditors, even supposing that the statute had not exempted them from responsibility. 3. That it was proved by the indorsation of the bill to Sanders, that he had paid the amount to the appellant. And, 4. That this action was a collusive attempt to recover payment for Sanders, who, from the irregularity of the proceedings, was not entitled to demand payment himself. By the appellant it was answered,—1. That as he had been employed as the agent of the creditors and under their mandate, and as he had no connexion otherwise with the sequestration, and was not responsible for any irregularities which might have been committed by the trustee, and had laid before the Court the whole information which had been communicated to him, and had never agreed to discharge the creditors from their liability, or to adopt the bankrupt and his cautioner as his debtors, it was impossible to maintain that under the statute he was not entitled to recover. And, 2. That he not only had never agreed to receive the bill in payment of his account, but when sent to him by the trustee, he had rejected it, and had merely put his name upon it to enable him to indemnify himself pro tanto, by claiming on the estates of the granters; that in point of fact he had received no payment; and that it was not true that he was colluding with the trustee. The Court, after allowing a proof by examination of havers, relative to the alleged payment, remitted the case to the auditor quoad Sanders and Ure, but refused the petition with respect to the respon-

May 13. 1825. dents; and to this interlocutor they adhered on the 6th of June 1823.*

Against these judgments the appellant entered an appeal; but the House of Lords 'ordered and adjudged, that the appeal be 'dismissed, and the interlocutor complained of affirmed, with 'L.100 costs.'

M'DOUGAL and CALLENDAR—A. MUNDELL,—Solicitors.

No. 24.

JOHN PITCAIRN, Appellant.

DAVID DRUMMOND, Respondent.

Submission.—A landlord having obtained and extracted a decree of irritancy of his tenant's lease, in which there was no stipulation as to meliorations; and thereafter entered into a submission with him of 'all claims, questions, disputes, and differences of every kind depending and subsisting betwixt them, upon any account, 'transaction, or occasion whatever, preceding the date hereof;' and the arbiter having found the tenant entitled to a sum for meliorations;—Held, (affirming the judgment of the Court of Session), That he had not exceeded his powers.

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1ST DIVISION.
Lord Alloway.

By a tack, dated 12th July 1805, Drummond became tenant of the Mains of Pitcairns, the property of the appellant Mr Pitcairn, for 19 years, under which he took possession. By a clause in the tack it was provided, that the tenant should take the houses and fences in the state in which the outgoing tenant should leave them; that the landlord should make a certain

* In the appeal case for the appellant it is stated,—'In pronouncing the interlocutor now submitted to review, the appellant understands the Court to have proceeded upon various grounds:—1. That the appellant had failed in his duty to the creditors, as well as to the Court, by allowing a party to be received as cautioner for the composition who was not able to discharge the debt and the expenses attending the sequestration; and also, for having stated in the petition for approval of the composition, that caution had been found for payment of a composition, and that the expenses had been paid or provided for, when it afterwards turned out that neither of these were the case. 2. That he had forfeited his claim against the creditors in consequence of his having brought the sequestration to a close, by carrying through the bankrupt's discharge, and extracting the decree, without receiving payment of his expenses. 3. That he ought to have brought his action, in the first instance, against the trustee as his original employer, and as the person primarily liable to him. And, 4. That there was collusion between him and the trustee, in respect that the trustee had already, in point of fact, made payment to the appellant of that very account which he is now endeavouring to recover from the creditors.'