

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 com- 'position 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 composi- 'tion, 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 conse- 'quence 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.'

allowance to the tenant out of the first three years' rents for putting them into sufficient condition, according to a plan to be laid down by the landlord; that the tenant should pay $7\frac{1}{2}$ per cent on money expended by the landlord in enclosing or building; and that in the event of the bankruptcy of the tenant the lease should expire; but there was no provision for payment of any meliorations which the tenant might make upon the lands. May 20. 1825.

Drummond having incurred arrears of rent, Pitcairn, in 1810, obtained a warrant of sequestration, and an order upon him to find caution in terms of the Act of Sederunt 14th December 1756; and he having failed to do so, decree was pronounced against him for the arrears, under which he was incarcerated, and at the same time he was decerned to remove. This warrant of removal was not executed; and Drummond having incurred a farther arrear of two years' rents, Pitcairn raised a new action against him, concluding for a declarator of irritancy of the tack, and for a summary removal. On the 26th of February 1812 he obtained a decree to that effect, which was extracted. Thereafter, on the 28th of April, an arrangement was entered into between them, by which, on the one hand, Drummond, in consideration of being allowed to remain in the farm till November, executed a renunciation of the tack; 'but declaring always, that the granting of these presents shall 'in noways hurt or invalidate, but shall, on the contrary, corroborate and strengthen the aforesaid decree,' &c.; and, on the other hand, a mutual agreement was made in these terms:—
 ' At signing the renunciation by David Drummond to Mr Pitcairn, it is agreed on by both parties, 1st, That Mr Drummond shall be allowed to sell his crop and stocking, in his own name, at or about the term of Lammas for the crop, and Michaelmas for the stocking, and allowing a credit to purchasers on security till Candlemas next; but all the bills are to be made payable directly to Mr Pitcairn, or his factor for his behoof, and to be delivered to them in payment of the arrears of rent; for which purpose Mr Drummond does hereby expressly assign and convey them to Mr Pitcairn, his heirs or successors. 2dly, That every obligation incumbent on the tenant, and every obligation incumbent on the proprietor, either as constituted by the present leases or otherwise, shall, if these parties cannot adjust them among themselves, be made the subject of a reference to two respectable men, to be mutually chosen, with power to them to choose an oversman, in case of difference of

May 20. 1825. ‘ opinion ; and the award of either of the arbiters ; or oversman,
 ‘ in their order, shall be obligatory on both parties ; and shall be
 ‘ final. 3dly, That these two articles shall regulate the parties, if
 ‘ it be found possible, but if it should be found necessary or ad-
 ‘ visable, Mr Pitcairn shall nevertheless be at liberty to seques-
 ‘ trate for his security, or adopt any similar measure ; and, in
 ‘ like manner, if either party shall have omitted any thing here-
 ‘ in, it shall be understood and construed to fall under the above
 ‘ submission, that every thing may be fairly adjusted betwixt
 ‘ the parties, without trouble or expense.’

A dispute having taken place as to the terms in which the submission should be expressed, Pitcairn applied to the Sheriff of Perthshire for a warrant of sequestration ; in defence against which Drummond founded on the agreement, in reference to which the Sheriff pronounced this interlocutor :— ‘ Finds it in-
 ‘ structed by the written agreement betwixt the parties, of 28th
 ‘ April last, executed at the same time with the renunciation,
 ‘ that every obligation incumbent on the tenant, and every obli-
 ‘ gation incumbent on the proprietor ; either as constituted by
 ‘ the present leases or otherwise, were, if these parties could not
 ‘ adjust them among themselves, to be made the subject of a
 ‘ referènce to two respectable men, to be mutually chosen, with
 ‘ power to them to choose an oversman in case of difference of
 ‘ opinion, and the award of either arbiters, or the oversman, in
 ‘ their order, should be obligatory on both parties, and should
 ‘ be final ; and in case either party should have omitted any thing
 ‘ in the said written agreement, it should be understood and
 ‘ construed to fall under the above submission, that every thing
 ‘ might be fairly adjusted between the parties, without trouble or
 ‘ expense : Finds, that as, in carrying the submission into effect,
 ‘ it is not essentially necessary that the agreement to be execut-
 ‘ ed should contain a full narrative of what preceded it, or should
 ‘ enter into a detail of the mutual claims of the parties, the
 ‘ arrangement agreed upon will be best carried into effect, ac-
 ‘ cording to its true spirit, by a general submission, not contain-
 ‘ ing any particular narrative, nor particularizing the claims of
 ‘ the parties, all which can, with equal propriety, be fully brought
 ‘ into the view of the arbiters, in their mutual claims and written
 ‘ pleadings, in the course of the submission ; and appoints the
 ‘ draughts of the proposed submission to be adjusted by the
 ‘ agents for the parties on the above principles, and thereafter to
 ‘ be extended and signed without delay : Finds, that although,

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‘ by the said agreement, the proprietor, if it shall be found ne-
 ‘ cessary or advisable, was to be at liberty to sequestrate for his
 ‘ security, or adopt any similar measure, it was agreed that the
 ‘ tenant should be allowed to sell the crop and stocking in his
 ‘ own name, at or about the term of Lammas for the crop, and
 ‘ Michaelmas for the stocking, and allowing a credit to pur-
 ‘ chasers on security till Candlemas next; but all the bills were
 ‘ to be made payable directly to the proprietor, or his factor for
 ‘ his behoof, to be delivered to them in payment of the arrears of
 ‘ rent; and as the defender declares his readiness instantly to
 ‘ concur in the sale of the stocking, and to concur with the pur-
 ‘ suer as to the proper time most likely to ensure the best price,
 ‘ the Sheriff recommends to the agents for the parties imme-
 ‘ diately to make the necessary arrangement for that purpose,
 ‘ with certification to the defender, that if he shall fail to do so
 ‘ in the course of this day, warrant will be granted to-morrow to
 ‘ the pursuer to dispose of the effects by public roup under the
 ‘ sequestration, that the roup may be advertised at the parish
 ‘ churches in the neighbourhood on the day following, so as to
 ‘ avoid any farther delay, when the circumstances of the case will
 ‘ not admit of it.’ In consequence of this interlocutor, a sub-
 mission was executed on the 30th of November 1812, in these
 terms:—‘ John Pitcairn, Esq. of Pitcairns, on the one part, and
 ‘ David Drummond, his tenant, or lately his tenant in the farm
 ‘ and mill of Pitcairns, on the other part, have submitted and
 ‘ referred, and do hereby submit and refer, all claims, questions,
 ‘ disputes, and differences of every kind, depending and subsisting
 ‘ betwixt them, upon any account, transaction, or occasion what-
 ‘ ever, preceding the date hereof, to the amicable decision, final
 ‘ sentence, and decret-arbitral, to be given forth and pronounced
 ‘ by James Duncan, tenant at Mains of Cargill, and Thomas
 ‘ Dow, farmer at Cultmalundy, arbiters mutually and indiffe-
 ‘ rently chosen by them; or, in case of difference of opinion be-
 ‘ twixt the said arbiters, to any oversman to be named by them,’
 &c.

Among other claims which were made by Drummond, was
 one for the price of the reversion of his lease, according to
 its improved value, for the thirteen years for which it would have
 endured had there been no decree of declarator of irritancy and
 of removal. This demand was resisted by Pitcairn; on the
 ground that it did not fall under the submission; but a proof
 having been allowed by the arbiters, he adduced witnesses in op-

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position to those brought forward by Drummond. The arbiters having differed in opinion, and having appointed an oversman, he pronounced a decree-arbitral, finding that Drummond was owing an arrear of rent of L. 475. 12s. 8d. ; ‘ but in respect it ‘ had been established by respectable witnesses, that the land had ‘ been improved; manured, and otherwise meliorated by the te- ‘ nant during the time he was in possession of the farm, by ‘ which means it was in a more productive state when he re- ‘ moved than at his entry, the benefits arising from which had ‘ been, and would continue to be, reaped by the proprietor ‘ for the unexpired period of the lease, being thirteen years ‘ from the term of the tenant’s removal ; from that consideration, ‘ and in regard the mill-houses were completely in a state of ruin, ‘ and had not been repaired by the proprietor, whereby the te- ‘ nant could not, during the time he was in possession of the mill, ‘ reap any adequate benefit by the manufacturing of grain, the ‘ said oversman decerned the proprietor to pay, on these ac- ‘ counts, to the tenant, the sum of L. 845. 8s. 5d. sterling, but ‘ with and under deduction always of the foresaid balance of ‘ L. 475. 12s. 8d. due by David Drummond.’ And accordingly the oversman gave a decree for the sum of L. 369. 15s. 9d., being the difference between these two sums.

Thereafter, a creditor of Drummond having arrested in the hands of Pitcairn, and brought a forthcoming, Pitcairn raised an action of reduction of the decree-arbitral, in support of which he maintained, That as the claim for meliorations had never been made by Drummond prior to the date of the submission, and did not fall under the terms of the lease ; and as it neither was nor could be contemplated by Pitcairn at the date of executing the submission, seeing that he had acquired the absolute right to the farm by virtue of the decree of irritancy and removing, and was under no obligation to pay any thing for the reversion, or for meliorations ; the oversman had exceeded his powers in pronouncing decree for such a claim.

To this it was answered, That the words of the submission were of themselves sufficiently broad to embrace the claim ; that it was one which existed prior to the date of the submission ; and as that deed had been framed in terms of the interlocutor of the Sheriff, not particularizing the respective claims, but employing general words, which might include every thing which either party might have omitted to specify in the agreement, the decree-arbitral was binding and effectual.

The Lord Ordinary found, ' That iniquity or injustice, how-
 ' ever apparent, affords no ground for setting aside a decree-
 ' arbitral ; that the submission in question was sufficiently ample,
 ' and included every subject of claim or dispute which existed
 ' between the parties ; and that in the agreement which was sub-
 ' scribed by the parties when the renunciation was granted, every
 ' obligation incumbent on the proprietor, as constituted by the
 ' leases or otherwise, was referred to arbitration, if the parties
 ' themselves could not adjust them ; and the submission after-
 ' wards entered into by the parties was sufficiently broad to em-
 ' brace all the points decided by the decree-arbitral ;' and there-
 fore repelled the reasons of reduction, and assoilzied Drummond.
 Against this interlocutor Pitcairn presented a petition ; but the
 Court refused it, without answers, on the 24th May 1822.*
 Pitcairn then appealed ; but the House of Lords ' ordered and
 ' adjudged, that the appeal be dismissed, and the interlocutors
 ' complained of affirmed.'

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Appellant's Authorities.—4. Ersk. 3. 32. ; Steel, June 22. 1809, (F. C.)

A. MUNDELL—C. ARNOTT,—Solicitors.

W. STIRLING and Others, Appellants.

No. 25.

Mrs HOUSTON and Others, Respondents.

Jurisdiction—Foreign.—An Englishman, residing in England, having died indebted to certain parties in Scotland, arising out of mercantile transactions ; and being creditor of persons resident in Scotland, against whom he had raised actions in the Court of Session ; and having nominated executors, who administered in England, claimed in a sequestration, and sisted themselves as parties to the actions, but did not confirm in Scotland ; and the Scottish creditors having obtained from the Judge-Admiral letters of arrestment jurisdictionis fundandæ causa against the executors, and thereupon arrested in the hands of the Scottish debtors to the defunct ;—Held, (affirming the judgment of the Court of Session), That the arrestment was inept to the effect of founding a jurisdiction against the executors.

THE late James Henry Houston, merchant in London, was
 creditor of various persons in Scotland, and particularly of Allan
 Scott and Son, merchants in Glasgow, (on whose sequestrated
 estate he claimed for upwards of L.14,000), and also of the
 Banton Coal Company, and Walter Logan, a partner of that
 Company. Against these parties respectively he raised actions in

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2D DIVISION.
Lord Reston.

* 1. Shaw and Ball. No. 488.