M'Lean appealed, and repeated the statements made in the Court below. No appearance was made for the respondent. May 28, 1827.

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

J. DUTHIE, *Solicitor.*

WILLIAM CRAWFURD, Esq. of Cartsburn, Appellant.—*Adam*—*Wilson.* No. 45.
HELEN M'CORMICK, and JOHN FAIRIE, her Husband, Respondents.—*Keay*—*James Campbell.*

General Discharge.—Circumstances under which it was held, (affirming the judgment of the Court of Session,) that an agreement between partners in trade relative to company matters, 'to grant full and competent discharges to each other, in full of all bonds, &c., as individuals or partners,' did not embrace a bond by one of the partners to another, relating to a private transaction between themselves.

May 28, 1827.

2D DIVISION.
Lord Pitmilly.

IN the year 1775, previous to the American Revolution, Thomas M'Knight, William Aitchison, James Parker, and William M'Cormick, were concerned as partners in a variety of commercial houses and trading adventures in and from America, under the firm of Thomas M'Knight and Co., Aitchison and Parker, and William M'Cormick and Co. On the declaration of independence, these individuals, being all royalists, except Aitchison, who remained behind, returned to Great Britain. In the confusion of their flight, a great proportion of their books and valuable papers were lost or destroyed, thereby creating almost insuperable difficulties to the ascertaining how their mutual balances stood, and leading to various intricate and tedious accountings.

In 1782, M'Knight alleging that M'Cormick had inter alia L.600 belonging to William M'Cormick and Co., and M'Cormick alleging that M'Knight held a similar sum due to the same company, it was agreed that these sums should be lent on a bond to a third party, in trust for the partners; and a bond was accordingly granted. In November 1786, M'Knight borrowed from M'Cormick L.700, and granted bond to repay the same. This deed bore no reference to the company transactions, and

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* The Master of the Rolls heard this appeal.

May 28, 1827. it was averred by M'Cormick that it had no connexion with them. A partial payment of L.350 was subsequently made, and interest was also regularly paid, until about the year 1807, when M'Cormick brought an action against the partners of Thomas M'Knight and Co., of Aitchison and Parker, and the other partners of William M'Cormick and Co., for sums alleged to be due to William M'Cormick and Co. On the other hand, M'Knight brought an action against the partners of William M'Cormick and Co., for payment of sums alleged to be due to Thomas M'Knight and Co. M'Cormick, in support of his claims, brought forward twelve accounts; but the bond of 1786 was not claimed, the actions and accounts being confined to company transactions.

After these actions had depended for several years, and M'Knight having died in 1811, his son and heir, William M'Knight Crawfurd—Mr Parker's son, (who also represented the heir of Mr Aitchison,) and Mr M'Cormick entered into the following agreement:—'At Edinburgh, the 13th day of September, 1811 'years. It is agreed by the subscribing parties, viz. William 'M'Knight Crawfurd, Esq. of Ratho, son, heir, and representa-'tive of his late father, Thomas M'Knight, Esq. of Ratho, Wil-'liam M'Cormick, Esq. of this city, and Charles Stewart 'Parker, of Glasgow, merchant, acting in virtue of a letter from 'his father, James Parker, now residing at Glasgow, the said 'James Parker taking burden on him for himself and the repre-'sentatives of the late William Aitchison of Norfolk in Virgi-'nia, as follows: That whereas the said Thomas M'Knight de-'ceased, William M'Cormick, James Parker, and the said de-'ceased William Aitchison, were engaged in various branches 'of commerce together in America, before, during, and since 'the rebellion in that part of the world, both as copartners and 'individuals, under the various firms of Thomas M'Knight and 'Company, William M'Cormick and Company, and Aitchison 'and Parker, or whatever other firm or firms they, or any of them, 'may have been engaged in, or connected with; and that, owing 'to the rebellion breaking out in America, about the year 1775, 'at the places where their business was conducted, they, or the 'survivors of them, were compelled to abandon their residences 'in America, and fly for refuge to this country, leaving their 'affairs, in consequence of loss of property and vouchers, in a 'state of the greatest intricacy and confusion; and, in conse-'quence of such intricacy and confusion, they were not able to 'agree among themselves as to a final settlement of their various 'accounts as individuals and partners, and were, from this cir-

'cumstance, drawn to the disagreeable alternative of seeking redress from each other in the courts of law in this kingdom: That after a litigation having subsisted between the parties for nearly eight years, they, to their mortification, find that they are now, after having expended a great part of their substance at law, as far, or nearly so, from having their matters brought to a final issue, as ever they were: The subscribing parties, desirous not only to pass the remainder of their days in peace and mutual harmony, and forgiveness of past animosities, but to rescue whatever there may remain of the subject in dispute, from being swallowed up in further litigation, do hereby solemnly agree, namely, William M'Knight Crawfurd, Esq. as heir and representative of his said deceased father, William M'Cormick, and Charles Stewart Parker, acting under authority of his said father James Parker, who represents himself, as well as the heirs or assignees of the said deceased William Aitchison, that from and after the date hereof, there is, and shall be, an end of all farther proceedings at law; that they do hereby most formally bind and oblige themselves, those whom they represent, and their heirs and assignees, to grant full and competent discharges to each other, in full, of all bonds, bills, notes of hand, and vouchers of any description, either in process in Court, or out of it, whether the same vouchers be granted to or by each other, as individuals or partners, or whether the same, or any of them, be held by assignment, indorsation, or otherwise, and to deliver up such vouchers, fully cancelled, or that such vouchers, cancelled or uncancelled, be hereafter null and void, in or out of any court of law in this realm, or elsewhere; in short, to grant each other full and mutual discharges, on competent stamps, for all demands whatever, and relieve and relinquish any hold they have, or suppose they may have, on any sums of money anywhere deposited whatever, with these exceptions only, to wit, who shall pay the taxed costs in the reinvestment action; and that in the attempt to a final settlement of the affairs of William M'Cormick and Co. a difference has arisen, to the effect following: The said William M'Cormick claims from the said William M'Knight Crawfurd and Charles Stewart Parker, representing as aforesaid, the sum of L.2500, to be paid by both or either of the said William M'Knight Crawfurd, and Charles Stewart Parker, in full of all demands whatever; while, on the other hand, the said William M'Knight Crawfurd and Charles Stewart Parker contend, that they, or the parties for whom they appear, are only liable to pay the said William M'Cormick the

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May 28, 1827. 'sum of L.2000 sterling, each one half, in behalf of the parties 'they represent. They therefore agree to submit to arbitration, 'whether the claim should be restricted to L.2000, or L.2500; 'it being understood that it is on no account to be less than 'L.2000, or more than L.2500; and in case it shall be L.2000, 'to be paid in manner hereafter described: each an equal half 'by Mr Crawfurd and Mr Parker; and if the sum awarded 'shall exceed L.2000, to be paid in manner following:—L.1000 'by Mr Crawfurd, L.1000 by Mr Parker, and the remainder by 'both or either of them, as may be awarded by the arbiter or 'arbiters.'

This deed was drawn by Parker, one of the parties.

A submission on the point reserved was accordingly entered into, and in order to enable the arbiter to decide more easily, it was confined to articles contained in three accounts doquetted by the parties, with power to inspect the books and documents from which the accounts were taken; but although the bond of 1782, which related to a company transaction, was included in the accounts, yet that by M'Knight to M'Cormick in 1786, was not so.

By the above arrangement, Crawfurd became, at all events liable for L.1000 to M'Cormick, with annual interest until paid, and also for such sum as the arbiter should decree; and on that point no dispute arose. But after M'Cormick's death, on 16th January, 1815, a question occurred, whether the 1786 bond had been extinguished by the agreement and discharge, or whether it was still a subsisting debt.

It appeared that no interest had been paid by M'Knight from 1807 on that bond; and a small sum to account, paid immediately after his death, by his son, had been paid through ignorance that the debt was disputed. On 2d April, 1812, Crawfurd transmitted to M'Cormick a bank order for L.40, 'in terms of the agreement of submission.' Thereafter M'Cormick handed to Stewart (Crawfurd's man of business) a state, including interest on the 1786 bond, along with interest on the L.1000, and giving credit for the partial payment; but mentioning, that, as he did not understand the reference made in the order, he had applied the money 'to the discharge of the 'old interest, and so much towards the new interest on the sign-'ed agreement,' and he sent a receipt accordingly, adding:—'Should Mr Crawfurd object to the payment of the above, or 'any part of it, it shall be rectified.' From November 1812 to November 1814, various sums were transmitted by Crawfurd to M'Cormick, 'as per agreement and submission.' There was no evidence, parole or written, that any demand (other than in the

above state, which Crawfurd alleged had never been communicated to him) directly on the bond had been made, or rejection of the qualification attached to the transmission of the several sums mentioned. May 28, 1827.

After M'Cormick's death, this entry was found in his private books:—'L.350 sterling, balance of the late T. M'Knight of 'Ratho's bond.' On the other hand, Crawfurd alleged that he had repeatedly mentioned to different individuals, but whom from death, relationship, and agency, (among others, Parker, who was a party to, and who drew the deed,) it was impossible to examine, that this bond had formed subject matter of the agreement, and had, with all the other claims but the one excepted and referred to the arbiter, been discharged and extinguished.

M'Cormick's representatives having raised an action against Crawfurd for payment of the balance of the bond with interest, the Lord Ordinary decerned against him for payment of the principal sum of L.350 sterling, with interest from Martinmas 1811. From an error as to a date, it became necessary that the libel should be amended; which being done, the Lord Ordinary again decerned, conform to the conclusions of the libel as amended, and thereafter adhered; and the Inner-House confirmed that judgment on the 16th May, 1820, by refusing a petition.*

Crawfurd appealed.

Appellant.—The object of all parties was to extinguish and

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* The summons was entitled, 'Janet and Helen M'Cormick against William 'M'Knight Crawfurd,'—bore that the late Thomas M'Knight of Ratho had granted the bond—that the pursuers had often required the said *William* M'Knight Crawfurd, now of Ratho, son and heir to the said deceased Thomas M'Knight, to pay. Therefore the said *Thomas M'Knight* Crawfurd, as heir of the deceased Thomas M'Knight, ought and should be ordained, &c. The will was, to pass and charge the said William M'Knight Crawfurd; to hear sentence conform to the conclusions above written, in all points; and execution proceeded against William Crawfurd. The words 'Tho-'mas M'Knight,' in italics, had been a mistake; but in amending the libel, instead of correcting that misnomer, it was allowed to stand; and *William*, in italics, was, when it should not have been, altered to 'Thomas.' The confusion and disconnexion thereby created in the record, seeing that decree went out against the defender, a 'Wil-'liam Crawfurd,' conform to the conclusion of the libel as amended; whereas the conclusion was directed against a 'Thomas M'Knight Crawfurd,' which same person had been required, but refused to pay—was pressed as a ground why judgment of affirmance by the House of Lords could not follow on such a record. But the House did not regard the objection as of sufficient weight to impede the expression of the House's opinion on the merits. If the House affirmed, there could be a remit to have the record amended; if reversed, that step was unnecessary.

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sopite all existing claims and counterclaims, whatever might have been their origin or nature. That is evident from the covenanting part of the discharge. The preamble, thrown in as a sort of flourish in a deed not drawn by a law practitioner, cannot thwart or control the clear and explicit language which follows. Besides, truly, the appellant's father was enabled to give the loan from American money belonging to his partners, coming into his hands. At all events, this was a disputed claim, as interest had been refused on the bond from 1807. The conduct of M'Cormick proves this. If he thought he had a claim, he never would have qualified his receipt, or continued to receive qualified payments, without having made the matter a subject of expostulation or explanation. But he died without ever having used an explanation to the appellant, betraying the belief that this bond was not, like all other claims, utterly extinguished. The appellant, not suspecting that the narrow interpretation adopted by the Court below, could be ever sanctioned, refrained from making many claims, which were much better founded than the claim on the bond. Besides, quomodo constat, that the bond was not American? The appellant could prove by witnesses, that the bond was intended to be included in the discharge.

Respondents.—The parties to the discharge had not in view the bond of 1786. That was altogether a private loan, which was not, and could not, be disputed. The object of the agreement was to wind up the complicated claims arising out of the three different American firms, in which all of these parties had been mutually engaged. The preamble to the deed clearly indicates the intention and object of the discharge; and any general words that follow, must be construed consistently with that expressed intention. The true meaning of a deed is always to be gathered not from detached words, but a general view of the whole contents. There was nothing in M'Cormick's conduct that indicated an opposite belief. Accordingly, the only bond embraced in the claim of Mr M'Cormick, or brought into discussion before the arbiter, was that of 1782, which was a company transaction, and consequently American. But as M'Cormick's claim did not embrace the 1786 bond, this clearly shows what was actum et tractatum among the parties who signed the discharge. The receipt and state he gave Stewart proves that he considered the bond an existing debt; and the notandum related not to any doubt as to the validity of the claim, but to the correctness of the whole state. The entry in his pri-

vate books shows his opinion on the same point. Parole evi- May 28, 1827.
dence is inadmissible to control a written document.

The House of Lords ordered and adjudged that the interlocutors complained of be affirmed, with L.100 costs.

*Master of the Rolls.**—The material question here is, whether this bond was granted for a private or a partnership's debt. It is a private bond in form, and for a private debt. The party who says otherwise must prove his denial; for every instrument must be taken for what it imports to be. The trust bond of 1782 was given in trust expressly for partnership funds. If the second bond was for a partnership debt, the reasonable inference is, that it would have been given in the same shape. I am confirmed in my inference, by observing that the twelve accounts did not include the second bond. It is so stated by the respondent; and the importance of the point is too great to suppose that the appellant would not have made the correct statement, if the respondent had been inaccurate. Then come the accounts in the submission; they include the trust bond, but not the second bond. The appellant does not pretend that the second bond is to be found there. Now, if the second bond had been composed of equally partnership money as the trust bond, why did not the second bond enter into the consideration of the parties? The state and receipt given by M'Cormick to Stewart, was a demand on the private bond; and the note added was merely to say, 'If 'my calculation be not right, I shall correct it.' There is no evidence of this notandum having been added in consequence of any difficulty on the part of Stewart as to this second bond. If there had been a difficulty, it would have been explained to the appellant by his man of business. For these reasons, the inference I draw is, that it is not necessary for the respondents to prove that the bond was granted for a private debt. That is already proved; and as the terms of the discharge do not expressly include the private debt, I must hold that it is not discharged. My opinion is, therefore, that the interlocutors complained of ought to be affirmed.

Appellant's Authorities.—Ersk. Inst. 1. 1. 49.
Respondents' Authorities.—Ersk. Inst. 3. 3. 9.—Stair Inst. 1. 18. 2. Erskine, July 30, 1714. (5029.)

FRASER,—ALEXANDER MUNDELL,—Solicitors.

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* This opinion was communicated to the parties in a side-room.