

Sept. 28, 1831. instance, in such circumstances I am not prepared to advise your Lordships to disregard those decisions, though I have felt it my duty, in the presence of the gentlemen of the Scotch bar, to enter upon the question, feeling most desirous to obtain some further information from the Court below as to the manner in which the two things are to be reconciled in principle. I must however say, that as the principle on which these decisions were pronounced is not very discoverable, if it had not been a case in which such a course would be productive of hardship to the parties, I should have felt a strong inclination to recommend that this question be remitted; but as the effect, would be inconvenient, I shall not advise your Lordships so to do. Still I wish to have it understood, that if ever this question shall arise again, this decision can only be taken as an acknowledgment that all those decisions subsist unappealed from and unreversed, but that this admission is not to be considered of a nature to bind your Lordships to any opinion, as if we clearly understood the grounds on which those decisions had been made.

The House of Lords ordered, That the interlocutors complained of be affirmed.

Appellant's Authorities.—4 Ersk. 3, 26; 2 Bell's Com. p. 581; Smith, 9th March 1798 (M. 11,799); 2 Bell's Com. p. 581; Wight, 13–14th June 1814 (); 2 Dow. 377; 2 Bell, p. 594—6; England, 29th July 1777 (); Barr, 2d March 1822 (1 Shaw, 417); Davidson, 11th March 1818 (Fac. Col.); Scott, 25th January 1817 (1 Shaw, p. 363).

Respondent's Authorities.—2 Bell, p. 587—8.

BUTT—ARNOTT,—*Solicitors.*

No. 47. MEGGET and ROY, W. S., Appellants.—*Mr. Wilson.*

ALEXANDER DOUGLAS, W. S., for BRYDON and OTHERS,
Respondent.—*Mr. Rutherford.*

Process.—Circumstances in which held (affirming the judgment of the Court below), that it is incompetent for the Court of Session to review an interlocutor of the Jury Court by suspension.

Sept. 28, 1831.

1ST DIVISION.

MEGGET and Roy were agents in a jury cause between Jamieson and Main, tried in Edinburgh in January 1830; but Roy, it was alleged, was not licensed, and was not an agent in

the Jury Court. The pursuer's witnesses resided in Kelso, and on 7th December 1829 Megget and Roy wrote their correspondent there, stating, inter alia, "Jamieson must also bargain with the witnesses, and not let them have any claim on us for their expenses." The witnesses were cited by a messenger employed by the pursuer directly, and not by Megget and Roy. They arrived at Edinburgh on the 4th of January, the day prior to that for which the trial was fixed. From pressure of business the trial did not take place till the 7th of that month. Megget and Roy paid them 12*l.* to account of their expenses. The witnesses, Brydon and others, afterwards applied to the Jury Court for decree for the balance; and the Court, after hearing parties (12th February 1830), decerned against Megget and Roy for 20*l.* 10*s.* 8*d.* Thereupon Megget and Roy presented a suspension of a threatened charge, but it was refused by the Lord Ordinary on the Bills, and the Court adhered.*

Sept. 28, 1831.

Megget and Roy appealed.

Appellants.—1. Roy, not being the agent on record in the action between Jamieson and Main and others, the application against him, and the orders by the Jury Court proceeding on it as incidental to that cause, were incompetent, independently altogether of the remaining reasons, which apply equally to him and the other appellant, Megget. 2. The appellants not being parties in any cause depending before the Jury Court, it was incompetent for that Court to pronounce against them the order for payment of which they now complain. 3. The judgment of the Court of Session is erroneous in holding it to be incompetent to stay, by suspension, the diligence threatened against the appellants; and, 4. Supposing the 59 Geo. 3. to confer on the Jury Court the same powers which the Court of Session may competently exercise, the orders complained of are, even according to this view, manifestly ultra vires.

Lord Chancellor.—My Lords, in this case there can be no doubt in any person's mind—it is as clear a case as one can conceive to

* 8 Shaw and Dunlop, p. 779.

Sept. 28, 1831.

arise in any court in this country. There is not a show of authority nor any foundation for assuming a power in the Court of Session to review, by bill of suspension, by advocatation, or any other form, the decision of the Jury Court in a matter of this description, any more than the Jury Court has power to over-rule the decisions of the Court of Session. In this matter, whether the Jury Court is right or wrong, the Court of Session is incompetent. Your Lordships know perfectly well, where there is a final jurisdiction conferred upon any court, though they may have made an error either in kind or degree, that is no ground for going to the Supreme Court of the country. No authority has been produced to dispose of the question here. It is quite clear that no such provision, by way of review, is given by the Act constituting the Jury Court. It is said, then there will be injustice without redress. No doubt there may be mischief, where the legislature has not provided review; there may be mischief, but it is for the legislature to rectify that. Then comes the appeal here. No doubt where the Court of Session has jurisdiction, if it has miscarried, there lies an appeal here; but if the Court of Session has no jurisdiction, then the appeal is cut off from us also. The costs of this party below amounted to 8*l.*—they were taxed in the Court below. The whole matter in dispute is 20*l.* 10*s.* 8*d.* It has been thought proper (and by professional men, who ought to know better the expense of litigation,) to bring up this trumpery matter to a Court of the last resort. That being the case, they must now be prepared, from their professional experience, to pay the expense of having raised this notable point. They would be very much surprised if any thing less than the fullest costs were given in this place; indeed they must have laid their account with that when they chose to enter this appeal. I have never seen an instance (even if the case on its merits had been one of more doubt than it is) where the appellate jurisdiction has been resorted to with less wisdom and prudence than on the present occasion. I shall therefore move your Lordships that the appeal be dismissed, and that the interlocutor appealed from be affirmed, and with 200*l.* costs, which I have no doubt will not exceed the costs to which the other party has been put; but if, on representation within a week, it shall be made to appear that the costs of the other party are less than 200*l.*, I will consider this matter, and not direct the order to be drawn up till the representation has been considered.

The House of Lords ordered and adjudged, That the interlocutor complained of be affirmed.

Appellants' Authorities.—Act of Sederunt, 25th Nov. 1825; 4 Ersk. 3, 8, 20; Dickson, 6th March 1816 (F.C.); Tatnell, 2d February 1827 (S. & D); 55 Geo. 3, c. 42, s. 7; 59 Geo. 3, c. 35, s. 17; Gordon, 3d Dec. 1794 (M. 16,785). Sept. 28, 1831.

Respondent's Authorities.—55 Geo. 3, c. 42 and 35; 6 Geo. 4, c. 120; Feuars and Merchants of Frasersburgh, 19th June 1707 (M. 16,712).

CRAWFURD and MEGGET—RICHARDSON and CONNELL,—
Solicitors.

DAVID CLYNE, Appellant.—*Mr. J. Campbell—Dr. Lushington.* No. 48.

ROBERT SCLATER, &c., Respondents.

Partnership—Clause.—Held (reversing the judgment of the Court of Session), that calling up payment of instalments on shares subscribed for in a joint stock company did not fall under “ordinary business,” and could not be effectually done by a quorum of the committee of management entrusted with the ordinary business of the company.

IN 1824 a joint stock concern was formed in Edinburgh, called the “Caledonian Iron and Foundry Company;” and it was proposed that their capital should be 100,000*l.* sterling, divided into 4,000 shares of 25*l.* each, and that of these no subscriber should hold more than twenty. David Clyne became an original subscriber to the extent of twenty shares. In October 1824 a meeting was held, and 246 individuals having obtained 3,676 shares of the stock, a committee of management was appointed, the draft of a contract of copartnership ordered to be submitted to counsel for revisal, a deposit of 1*l.* per share called up, and directions given to the committee to look out for works, or ground for the erection of works, and to purchase the same forthwith. Clyne attended this meeting, paid his deposit on his twenty shares, and he was thereafter nominated a member of committee to revise the contract of copartnership, which was finally approved in December 1825, and signed by seventy-three shareholders; he also attended the various other meetings of the company. The contract of copartnership contains, inter alia, the following clauses (3d section): “For raising the said capital
“ stock, the persons contracting and hereto subscribing do each
“ of them bind and oblige themselves, their heirs and successors,

Sept. 29, 1831.
2^D DIVISION.
Ld. Fullerton.