

[4th May 1841.]

(No. 9.)

JOHN HUTCHINSON FERGUSON, Appellant.¹[*Pemberton — Fitzroy Kelly.*]

DAVID FYFFE and others, Respondents.

[*Sir W. Follett — Griffith Richards — H. J. Robertson.*]

Account — Interest, Accumulation of — Foreign. — A party resident in India opened an account with a mercantile company, as his agents, at Calcutta in 1786; the party was non compos mentis in 1793, and continued so till his death in 1810. In 1812 a partner of the company, then in Great Britain, rendered to a relative of the deceased party an account embracing a long term of years, and balanced annually on the 30th of April, down to the 30th of April 1810. The company at the close of each year debited themselves with Indian interest, and carried forward the balance, composed of principal and interest (under deduction of one per cent. for commission), as one sum, bearing Indian interest, in the next year; the balance thereby exhibited against the company was 17,346 sicca rupees; a docquet was subjoined, to the effect that the balance was to bear interest at nine per cent.; a letter from the said partner accompanied the account, and acknowledged the above balance. No representation was taken out to the party's estate till 1835, but in 1833 certain parties, as his alleged representatives, raised an action in the Court of Session for the amount of the account rendered, with interest at nine per cent., and in 1835 raised a supplementary action, concluding for compound interest on the account rendered, against a partner

¹ 16 D., B., & M., 1038; Fac. Coll.

of the company resident in Scotland, and who had in 1820 retired from the company, which had since been dissolved: Held (affirming the judgment of the Court of Session), (1.) That the defender was bound by the account so rendered, and was liable for the amount of the sums therein charged: (2.) That he was chargeable also with interest on the said amount at the rate of nine per cent. per annum from the 30th of April 1810 to the date of the final decree to be made in the action: But Held (3.) (reversing the judgment of the Court of Session), that, in calculating interest on the said amount, compound interest or annual rests ought not to be allowed.

1ST DIVISION.

Lord Ordinary
Fullerton.

Statement.

THE late Dr. Charles Fyffe, who resided in Calcutta, opened an account, in 1786, with the company of Fergusson and Fairlie, afterwards Fairlie, Reid, and Co., of Calcutta. In 1793 Dr. Fyffe was affected with insanity, the precise date of the commencement of the illness not being known. The account was balanced annually on 30th April; and in 1793 the balance in his favour, in account with the company, was 4,207 sicca rupees. No operations were afterwards had on the account by Dr. Fyffe, or any one on his behalf. On 1st May 1793 the appellant became a partner of the company. On 30th April 1795 one of the partners withdrew, another partner was assumed, and the business was carried on by the new company under the firm of Fairlie, Gilmore, and Co. On 30th April 1810 another change of some of the partners took place, and the new company carried on the business under the firm of Fairlie, Fergusson, and Co. till 30th April 1818, when a similar change occurred, and the new firm was Fergusson, Clark, and Co., which continued till 30th April 1820. At that date the appellant, who had been

a partner of all the firms since 1793, retired, and the business was subsequently carried on under the firm of Fergusson and Co.

Dr. Fyffe died on 9th May 1810. In 1812 James Fyffe, residing in Glasgow, his near relation, applied to the late William Fairlie, one of the partners of Fairlie, Fergusson, and Co., and of the previous firms, for a state of the account of Dr. Fyffe with the company. James Fyffe alleged that he received an answer, dated 23d March 1812, stating, " I beg that you will
 " inform the relations of Mr. Charles Fyffe, that the
 " balance of his account with Messrs. Fairlie, Fergus-
 " son, and Company, upon the 30th of April 1810, was
 " sicca rupees, 17,346. 5. They will continue to advise
 " me how this balance may stand with them. The
 " interest of money has fallen greatly in Bengal, and
 " seven per cent. is now the highest rate which is
 " allowed." This letter was not produced, and the appellant did not admit it. On 5th July 1812 Fairlie furnished a state of the account of Dr. Fyffe, which had been obtained from India, and was made up from the company's books. He at the same time wrote to James Fyffe, " I now enclose you Mr. Charles Fyffe's account
 " from its commencement, which I received some time
 " ago from Calcutta; the balance, on the 30th April
 " 1810, was rupees, 17,346. 5., chiefly arising, you will
 " observe, from the high rate of interest allowed upon
 " it." It did not appear that the death of Dr. Fyffe was at this time known to any of the parties.

The account commenced in 1786, and was stated on the footing of annually accumulating the interest with the principal, and carrying forward the joint amount, as a capital bearing interest, in next year's account.

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This was done under deduction of one per cent. per annum, in name of commission. The same mode of making up the account was continued after the period of Dr. Fyffe's insanity as before it; but the whole details of the account came then to consist merely of an annual accumulation of interest with principal, as no operations were made on it by any party for Dr. Fyffe. The rate of interest, for several years after the period of Dr. Fyffe's insanity, was nine per cent., but from 1799 till the last entry of the account, in 1810, the rate was ten per cent. The account stopped at 30th April 1810. The account bore a docquet in these terms: "To balance in
 " his favour with Fairlie, Fergusson, and Company, to
 " bear interest at nine per cent. per annum, sicca
 " rupees 17,346. 5." The whole was signed by the firm of Fairlie, Fergusson, and Company.

In 1833 the respondents, David Fyffe of Smithfield and Mrs. Fyffe or Kerr, who were afterwards decerned executors dative qua next of kin of the deceased Dr. Fyffe, and alleged they were also interested under a holograph will left by him, raised an action, in the Court of Session, against John Hutchinson Fergusson, the appellant, as a partner of the firm of Fairlie, Fergusson, and Co., and liable for their obligations. The summons, as amended, concluded for payment of the balance stated as due by that firm 'in the above account, the same being converted into a sum of money sterling, at such rate of conversion as should be determined in the course of the process, "together with
 " interest at the rate of nine per cent. on the foresaid
 " sum, from 30th April 1810 till paid."

The defender alleged, that the word "nine," as denoting the rate of interest in the docquet at the

account, was written on an erasure, and could make no faith; and independently of this, he pleaded, inter alia, that there was no sufficient evidence of the debt being due by Fairlie, Fergusson, and Co.; that the debt being illiquid, it was necessary to call the representatives of all the partners of that firm before the action could proceed against the defender; and that the debt, if it had even been due, was cut off by the English statute of limitations. To these pleas the pursuer answered, that the docquetted account, signed by Fairlie, Fergusson, and Co., and the relative letter by a partner of the firm, amounted to an actual liquidation and written constitution of the debt, and proved Fairlie, Fergusson, and Co. to be directly bound for the amount; that, the debt being constituted, it was not necessary to call any other partner, or his representatives, and that the English statute of limitations did not apply.

The Lord Ordinary (26th November 1835) “re-
 “pelled the defences; found that the pursuers are
 “entitled to the sum of 17,346. 5. sicca rupees, con-
 “tained in the docquetted account of the 1st of May
 “1810, converted, at the present rate of exchange, into
 “sterling money, with interest at the rate of nine per
 “cent. on said sum of sicca rupees, as so converted,
 “from the 30th day of April 1810 till decree; and
 “decerned for the same accordingly, with the legal
 “interest on the sum so decerned for until payment;
 “and ordained the pursuers, within fourteen days, to
 “give in a state of their claim, made up in terms of
 “this interlocutor; and found the pursuers entitled to
 “expenses.”

In the state which was given in under this inter-
 locutor, the pursuers, who stated the debt due at

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30th April 1810 at little more than 1,700*l.*, now claimed a sum of 15,732*l.*, as having arisen out of annual accumulations of interest, which they alleged to be allowed according to the practice in such accounts, as was exemplified in this account itself from the commencement of it in 1786. The defenders not only denied the practice as to such an account as the present, but pleaded that both the summons and the record were so prepared as to embrace no conclusion or plea except for simple interest, and to contain no averment as to practice.

The Lord Ordinary, “in respect that the interlocutor of the 26th of November last decerned for the interest only, without accumulations, and that it is incompetent for the Lord Ordinary to alter that interlocutor, refused the claim so made, and appointed the state to be rectified accordingly.”

The defender reclaimed against the first of these interlocutors, and the pursuers reclaimed against them both, in so far as refusing to allow annual accumulations of interest.

The pursuers also, in 1835, raised a supplementary summons, which expressly concluded for a balance computed on the principle of annual accumulations of interest: this action was reported to the Court. A case was then allowed to be laid before English counsel, whose opinion instructed, *inter alia*, that the English statute of limitations did not, in the circumstances, apply; and that the account and docquet, signed by Fairlie, Fergusson, and Co., together with the letter of William Fairlie, dated July 5th, were sufficient to establish, by the law of England, “that the firm of Fairlie, Fergusson, and Co. became directly bound to

“ Dr. Fyffe and his representatives, to pay them the
“ debt therein mentioned.”

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The Court afterwards “ conjoined the original and
“ supplementary actions, and appointed mutual cases to
“ be prepared on the points not embraced in the
“ opinion of English counsel.”

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The Court (25th May 1838) pronounced the fol-
lowing interlocutor: — “ The Lords, having resumed
“ consideration of this cause, with the opinion of
“ English counsel, and revised cases, and heard counsel
“ for the parties, find that the pursuers are entitled to
“ the sum of 17,346. 5. sicca rupees, being the balance
“ due on the docquetted account, converted at the rate
“ of exchange current in Calcutta by the latest
“ accounts, together with interest on the said sum so
“ converted at the rate of nine per cent. per annum,
“ and accumulated annually at the same rate, from the
“ 30th day of April 1810 to the date of citation in this
“ action, and with interest on the accumulated balance
“ at the foresaid rate from the date of citation to the
“ date of final decree, and interest on the accumulated
“ balance from the date of final decree until payment,
“ at the legal rate of interest; find, that the defender is
“ entitled to deduction from the annual accumulations
“ of interest of one per cent. for commission, and that
“ he is further entitled to deduction of the necessary
“ expense of remitting the money from India to this
“ country; find neither party entitled to expenses in
“ this process; alter the Lord Ordinary’s interlocutors
“ of 26th November and 15th December 1835, and
“ repel the whole defences, so far as at variance or
“ inconsistent with the above findings, and decern;

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“ appoint the pursuers quam primum to prepare and
 “ lodge a state of their claims against the defender,
 “ in terms of the findings contained in this inter-
 “ locutor.”

The defender appealed.

Appellant's
 Argument.
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Appellant.—The appellant cannot be sued by virtue of any original liability. It may be assumed that Dr. Fyffe, who confessedly was non compos in 1793, was in that state when the appellant became a partner on 1st May 1793; the account after that was an open account. Now Dr. Fyffe was clearly no longer in a situation to contract or to adopt any contract with the successive new firms of 1793, 1795, and 1810, nor to release the firm with which he had originally contracted; and there is no ground for making the new firms liable unless the old be released. The transfer of the account could only be with consent of the debtor and creditor. The principle which pervades the whole of the cases¹ is, that where there is a creditor on the one hand and a bank on the other, which has undergone changes in its partners, and the customer continues to deal with the partners, the sole question is, if the party depositing money with the former firm has by any act discharged that firm, for the new firm does not become bound, unless by express agreement, or circumstances from which an express agreement to release the former firm can be inferred. The case of *Gouch v. Davies*² at common law bears strongly on this view; see the

¹ Gow on Partnership, pp. 301, & 242, 243, and cases cited.

² 4 Price, 200.

opinions of Barons Graham and Wood, and see a case in equity to the same effect.¹ If a balance had been struck in Fyffe's lifetime, and if he knowingly had assented, the case might have been different.

The acknowledgment in the letter rendering the account in 1812, cannot bind the partners. There must be mutuality of contract. It was never assented to by the party capable of making it a contract; and no answer having been returned to the letter, it was a mere proposal, withdrawn by non-acceptance. Besides, the material feature in this part of the case is, that the account was not rendered to any agent or representative of the creditor authorized or entitled to assent on his behalf.

It is agreed that the present case is determinable by the law of England, and accordingly the statute of limitations was well pleaded in the Court below. There was a cause of action previous to the insanity in 1793; and if the statutory period of six years once begin to run, no subsequent disability shall stop its running; so that, although the disability ceased by the death of the party in 1810, a right of action could not arise in favour of the individual to whom the account in 1812 was sent, and therefore *Murray v. East India Company*² and *Douglas v. Forrest*³ will not apply. In the latter case the cause of action did not exist in the lifetime of the party, and did not accrue till after his death.

The appellant is not bound to answer individually to this action, particularly as there are other parties liable

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Appellant's
Argument.¹ *Heath v. Percival*, 1 P. Wms. 682.² 5 Barn. & Ald. 204.³ 4 Bing. 686.

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in contribution. In Scotland all the partners, or their representatives, must be called.¹ The respondents admit this as to illiquid obligations; but in considering such a defence, the non-constitution of the debt must be admitted or assumed: *M'Tavish v. Lady Saltoun*² arose out of a liquid obligation.

Interest, which is generally allowed as a penalty, is not here chargeable; it was through default of the creditor that the debt was not paid. From 1810 till 1833 the appellant was guilty of no neglect in not paying the debt; there was no one entitled to receive it; see *Murray v. East India Company*.³ If interest at nine per cent. be asked, on the footing that the parties had the use of the money, a court of equity would inquire if the money had been used since 1810, which is denied. The erasure in the docquet in the figure "9," by the law of Scotland, deprives the document of all faith.⁴

There is no ground for accumulation of interest or annual rests. It cannot be attempted in a court of law, and a court of equity will only listen to such a demand in cases of gross breach of trust. In merchants accounts compound interest is charged, not because as such it is allowable, but on the principle that you convert interest into capital by special contract⁵; but from a banker or merchant having a balance in hand, ordinary interest is only due, there being no

¹ A. v. B. 26th Feb. 1741, Mor. 14,560; *Reid and M'All. v. Douglass*, 11th June 1814, Fac. Coll.

² See Respondents Argument.

³ Rep. in 5 Barn. & Ald. 211.

⁴ Ersk. 3. 2. 20; *Tait on Evidence*, p. 143—147.

⁵ *Ex parte Bevan*, 9 Vesey, 223.

account going on. The cases¹ show that only simple interest, at the rate chargeable in the country where the debt was contracted, was allowed. The case of Palmer's Assignees v. Glas² is admitted to be the only precedent apparently hostile to the appellant; but there the question was raised by the original creditor. The party had the use of the money, and there were transactions till within a few months of the rendering of the account, and the balances might have been received at any moment. Besides, that decision is a doubtful one, for the proof of usage upon which the Court went was questionable.

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Appellant's
Argument.

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Respondents.—The account rendered is evidence of the account as stated in the books. It is headed with the name of the appellant's firm in 1793, and signed by the firm in 1812. The appellant did nothing to discharge his liability when he retired; and as to discharging members of the former firms, the Court now presumes, upon the slightest evidence—the assent by a creditor, to a partner's discharge.³ Here the account was rendered by the appellant's firm; no assent by the creditor was necessary, for the firm took upon themselves the debt, as stated in the account; it was the receiving the balance, having it, using it, and acknowledging it, that made them liable.

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The law of England must be looked to as to what

¹ Wilkinson, 28th June 1821, 1 S. & B. 89; Maxwell, Hyslop, & Co., 16th June 1824, 2 Sh. App. 451; Keble v. Graham's Executors, 4 W. & S. 166.

² 13 S., D., & B., 309.

³ Hart v. Alexander, 2 Mees. & Wels. 484; Kirwan v. Kirwan, 2 C. & M. 617; 4 Tyr. 491; Thomson v. Percival, 3 Nev. & Man. 167.

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relates to the constitution of the obligation, but as to the remedy, the law of the forum where the remedy is sought will rule.¹ Now, as to the length of time, no Scotch prescription will apply², and the English statute of limitations is irrelevant as well as, in the circumstances, inapplicable.³ As to the action being well directed against the appellant, *M'Tavish v. Lady Saltoun*⁴ is conclusive.

Interest is due, not as a penalty, but under a contract of loan, by which the company, receiving the money and using it as assets, were liable at the rate actually allowed in their books, as proved by the account, which, if it were fraudulently erased, the fact might be proved by production of the books, not however called for. The case of *Palmer's Assignees v. Glas*⁵ was well decided, upon the custom in India; and accumulation ought to be allowed in calculating interest on this account.

Judgment deferred.

Ld. Chancellor's
 Speech.
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LORD CHANCELLOR.—My Lords, in this case Dr. Fyffe, who resided in Calcutta, in the year 1786 opened an account with the then firm of Fergusson and Fairlie, and continued it with Fairlie, Reid, and Company, which was the firm adopted by the house upon a change of partners in 1790. On the 1st of May 1793

¹ Story, Conf. Laws, p. 482; *Don v. Lippman*, 2 Sh. & M'L. 682; *Bulger v. Roche*, 11 Pickering (American) Rep. 36.

² Ersk. 3. 7. 18.

³ *Douglas v. Forrest*, 4 Bing. 686; *Rhodes v. Smethurst*, 4 Mees. & Wels. 42.

⁴ 3d Feb. 1821, Fac. Coll.

⁵ 13 S., D., & B., 309.

the appellant, Mr. Fergusson, was admitted a partner into the firm of Fairlie, Reid, and Company, and continued a partner in the business from that time till 1820, when he retired; the house having in 1795 assumed the style of Fairlie, Gilmore, and Company, and in 1810 that of Fairlie, Fergusson, and Company, and in 1818 that of Fergusson, Clark, and Company. Mr. Fairlie, who was a partner when the appellant was admitted in 1793, continued to be so till 1818. Throughout all the changes of partnership the account of Dr. Fyffe was carried on in the books of the new firm, and it was a debt appearing upon the books of the several firms of which the appellant was a partner during the whole period of his continuing in the house.

It seems to have been assumed by both sides that in 1793 Dr. Fyffe became non compos mentis, and that he so continued till his death on 9th May 1810; but as to the precise time at which it commenced, or any circumstances connected with it, I find no other evidence. It does not appear that any proceedings were adopted for appointing others to act in the affairs of Dr. Fyffe on account of his lunacy, and he was during all this time in India; and the house at Calcutta continued to deal with his funds as they had before the period of his alleged insanity. It would therefore be extremely difficult, under any circumstances, for the house to support a case for withdrawing from their customer any benefit to which their mode of keeping the account would have entitled him, if there had not been any question as to his sanity. In the present case I think the house are at all events precluded from so doing.

In 1812 one of the then partners in the house, in which the appellant was also at the time a partner, in

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answer to an inquiry made by a person claiming to be interested in the estate of Dr. Fyffe, communicated the statement of account, as made up in the books of the firm, up to the 30th April 1810, by which a balance of 17,346. 5. sicca rupees was made to be due to him, and to which was appended this note: "To bear interest at nine per cent. per annum." The letter which enclosed it bore date the 5th of July 1812, and was in these words:—"I now enclose you Mr. Charles Fyffe's account from its commencement, which I received some time ago from Calcutta; the balance at 30th of April 1810 was, rupees 17,346. 5., chiefly arising, you will observe, from the high rate of interest allowed upon it."

Administration to Mr. Charles Fyffe was not obtained till 1835, but nothing was done in the mean time to affect the relative situation of the firm and of the estate, and by their summons the administrators assume the account so stated by the firm, and no error or mistake in that account is now established; it is therefore much too late for the house to say that they allowed too high a rate of interest up to the 30th of April 1810, or computed it in a manner too favourable to their customer. I think, therefore, that the amount of debt due by the firm to the estate of Charles Fyffe has been correctly assumed to be 17,346. 5. sicca rupees on the 30th of April 1810. At what rate interest ought to be computed from that date, and whether with accumulations or not, remains to be considered.

It was said that William Fairlie wrote a prior letter to the same person on the 23d of March 1812, stating that the interest of money had fallen greatly in Bengal, and that seven per cent. was then the highest rate

allowed; but that letter, although set out in the summons, is not admitted by the appellant, and has not been produced or proved, and if it had, it could hardly supersede the memorandum at the foot of the account sent on the 5th of July following.

But then it was said that the figure "9" in the memorandum was written on an erasure. The account to which that memorandum is appended purports to be an account current signed by the firm, and if the paper produced has been altered in this figure since it was delivered, it was competent for the defender to have stated and proved the fact, and that it does not, as it now appears, correspond with the books of the firm. But no such proof has been made; it must therefore be considered as the superscription of the firm on the 5th of July 1812, when the account was delivered by William Fairlie, one of the firm, that nine per cent. would be in future the rate of interest which the balance then admitted to be due would bear.

The question of accumulation stands upon a very different footing. Upon that subject the memorandum contains no agreement for the future; indeed it may be considered as excluding all that it does not provide for, and what it does provide for is only payment of interest at a certain rate. It is true that, practically, the account had ceased to be an account current from the year 1793, but up to that time it had been, in the most correct sense, an account current; and it ceased to be so, not by any act or agreement of the parties, but by the cessation of all transactions, arising probably from the situation of Charles Fyffe. The account, however, continued to be carried on in the same manner as before until the 30th April 1810; and when that account was

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made up Charles Fyffe was dead, he having died on the 9th of May 1810. From that time there was no party with whom any account current could be carried on, there not having been any representative of Charles Fyffe for many years afterwards. The accounting parties made up their account to the death of Charles Fyffe, stating their intention to pay nine per cent. upon the balance; and from such mode of making up the account, and such promise to pay nine per cent. upon the balance, the firm are not at liberty to withdraw. But then the inquiry is, whether the accounting parties are to be liable beyond what they have so undertaken, and are to be charged with compound interest. The first question which occurs is, can there be a title to compound interest without a contract expressed or implied, from the mode of dealing with former accounts, or custom? And if not, the absence of any party with whom any such contract can have been made must be fatal to the claim. Generally a contract or promise for compound interest is not available in England, as was decided in *ex parte Bevan*, 9 Vesey, 224, except perhaps as to mercantile accounts current for mutual transactions; a character which this account had lost from at least the death of Charles Fyffe. How, then, can compound interest be chargeable upon any account closed?

The Court of Session appears to have taken a very correct view of the international law upon this subject, in considering the law of the country where the debt is contracted as furnishing the rule by which the nature and extent of the obligation were to be tried. But to carry out that principle to its proper length, the same rule must be applied to the question of interest, as con-

stituting part of the contract expressed or implied, and therefore as affecting the nature and extent of the obligation; and the law of Scotland can be referred to only as to questions concerning the remedy, as the country in which the action is brought, in which must be included the question as to length of time. No Scotch prescription applying to the case, the English statute of limitations is irrelevant; but if it had been material, it would not have afforded any bar, as the time never began to run.

The distinction between the applicability of the *lex loci contractûs* and the *lex fori*, with reference to the nature and character of the debt and the right to the remedy, is well exemplified in the case of the British Linen Company v. Drummond, in 10 Barn. and Cress. 911, in the Queen's Bench, and in Don v. Lippman, in the House of Lords, 2 Shaw and M'Lean, 723. In inquiring therefore into the title to compound interest, Scotch cases are not those which ought to be primarily consulted, and it would not be possible, upon English authorities, to support the claim. It happens that there is a decision of the House of Lords upon this subject, which is conclusive against the claim; I mean the case of Boddam v. Ryley, reported in 1 Brown's Chancery Cases, 239; 2 Brown's Chancery Cases, 2; and 4 Brown's Cases in Parliament, 561. In that case there were partnership accounts and a private account, and in the books the account had been made with Indian and compound interest. At the hearing Lord Thurlow said, "Spencer's representative claims nine
 " per cent. from year to year, upon the ground that
 " the books were so made up, but I think that no such
 " interest can be allowed; for although, where there

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“ are cross accounts, interest is as fair to the one as
“ the other, yet it is not fair after closing the trade.”
From this decision of Lord Thurlow there was an appeal
to the House of Lords, raising distinctly the claim to
compound interest; but the decree was affirmed.

The present is a much stronger case against the claim than that of *Boddam v. Ryley*, because there does not appear to have been in that case such an absence of any party to consent to the mode of stating their accounts as there is in this. On the other hand, and in favour of the claim to compound interest, several cases were cited as decisions of the Court of Session, of which *Keble v. Graham*, 6 *Shaw and Dunlop*, 119, was one; but I do not find that in that case, as there reported, there was any question raised as to compound interest. In *Cruickshank v. the British Linen Company*, 13 *Shaw and Dunlop*, 91, there was a bond, which it was said amounted to a contract for a compound interest, as to the legality of which no question appears to have been raised. *Palmer and Co. v. Glas*, 13 *Shaw and Dunlop*, 308, is the only case in which the point was expressly raised, and in that case the Court of Session certainly decided that compound interest was to be calculated upon the annual balances after the death of the debtor. The Court, however, very correctly considered that question as one to be decided by the law of the country where the debt was contracted, and not by the law of Scotland, where the action was brought. The decision, therefore, is not a Scotch judgment upon a question of Scotch law, but a judgment of a Scotch court upon English law or an Indian custom, and seems to have been founded upon very imperfect information, which the accountant is stated to have received

from some gentleman acquainted with the course of business in India; but how far applicable to the circumstances of the case, or what such information was, does not appear. The Lord Ordinary is represented as having thought it doubtful, whether there should be any accumulation after the death of the debtor; and Lord Medwyn said that he felt a little more difficulty as to the accumulation. It is not possible, I think, to put this decision in competition with the others to which I have before referred.

It appears to me, therefore, that the proper course will be to vary the interlocutor appealed from, by declaring that interest at nine per cent. ought to be calculated upon the balance of 17,346 5 sicca rupees, from the 30th of April 1810 up to the time of the decree, but without any compound interest or annual rests; and that the cause be remitted to the Court of Session, with this declaration.

The House of Lords declared, That interest at nine per cent. ought to be calculated upon the balance of 17,346 sicca rupees 5 annas, mentioned in the appeal, from the 30th of April 1810 up to the date of the final decree to be made in pursuance hereof, but without any compound interest or annual rests: And it is ordered, That, with this declaration, the cause be remitted back to the Court of Session in Scotland, to do therein as shall be just and consistent with this declaration.

FERGUSSON
v.
FYFFE
and others.

4th May 1841.

Ld. Chancellor's
Speech.

Judgment.

OLIVERSON, DENBY, and LAVIE—SIMPSON and COBB,
Solicitors.