

LORD CHANCELLOR.—Everything is reversed since the verdict.

LORD BROUGHAM.—Consequently the interlocutor giving costs in the Court below is reversed.

The following was the *order* of the House of Lords made in the case:—“Declared, that the verdict returned by the jury on the trial of the issues in the pleadings mentioned is uncertain, inasmuch as it does not shew whether the jury considered that the pursuers (appellants) had failed in proving both the issues, or only in proving one of them: And it is ordered and adjudged, that the said interlocutors of 23d November 1853 and 15th February 1854, complained of in the said appeal, be, and the same are hereby reversed: And it is further ordered and adjudged, that, as respects the remainder of the interlocutors appealed against, the said petition and appeal be, and is hereby dismissed this House: And it is further 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 and judgment.”

Appellants' Agents, Shand and Farquhar, W.S.—*Respondents' Agents*, Webster and Renny, W.S., and Adam and Kirk, W.S.

AUGUST 13, 1855.

THE BLAIR IRON CO., *Appellants*, v. ALEXANDER ALISON, *Respondent*.

Bill of Exchange—Liquid ground of Debt—Compensation—Authority of Manager to Sign Bills—Trading Company—*An action for payment, proceeding on a liquid ground of debt, (a bill of exchange,) having been brought by the payee against a mercantile company, it was met by the defence of want of authority on the part of the company to grant the bill, of want of consideration, of fraud, of payment, and of compensation.*

HELD (affirming judgment), *That (1) as the company's deed authorized A the manager to sign bills, and as A and a director signed this bill, it bore sufficient evidence of authority. (2) that as the fraud of the drawer alleged was subsequent to the pursuer becoming the bonâ fide holder of the bill it was no defence. (3) that an illiquid counter claim against the pursuer was no defence.*¹

This was an action for payment of a promissory note for £1120, and a bill of exchange for £5000, the former made by two directors of the Blair Iron Co., and the latter accepted by them as the directors of the Ayrshire Malleable Iron Co., which was amalgamated with the Blair Company.

Various defences were set up, all of which are noticed in the interlocutor of the Second Division, 22d June, 1853, as follows:—“The Lords having advised the reclaiming note for Alexander Alison, and heard counsel, and having resumed consideration of this case, which the parties arranged should be disposed of in the Inner House, find that, on the statements and admissions made on record, it must be taken, in a question with the defenders, that the bill libelled on for £1120, for the value admitted to have been actually received by the Blair Iron Co., was validly signed by Alexander Alison, junior, on behalf of, and with authority from, the said Blair Iron Co., and is binding on said company: Find that no valid defence has been stated against the payment of said bill: Find that the defenders represent, and are liable for, the debts and obligations of the said company; therefore, find the pursuer entitled to enforce payment of the said sum of £1120, with the legal interest thereon from and after 21st January 1848, and decern for the said sum and interest; allow said decree to go out as an interim decree: Further, as to the bill of £5000 libelled on, find that authority was expressly given by the defenders, the partners of the Blair Iron Co., to Alexander Alison, junior, who, it is admitted by them on record, took the chief management of that business and of the subsequent Ayrshire Iron Co., to grant to the pursuer, in return for, and as the consideration of, a discharge of his real security for £23,000 over the lands of Pitcon, bills for the several sums of £5000, £5000, £3000, and £10,000 respectively: Find that bills for the said several sums were accordingly granted on behalf of the said company by the said Alexander Alison, junior, and that the said company received a discharge in their favour of the said real burden over the said estate, and thus became bound to pay the said sum of £23,000: Find that the bills for the said sums of £5000, £5000, and £3000, were paid out of the funds of the said company, in satisfaction of the bills for the same: Find that the defenders have not averred, and have not proved, that the bill for the sum of £10,000 was paid by them, or on their behalf: Find that the said bill remained in the possession of the pursuer, and has been produced by him; and although, when produced, it exhibits the acceptance cancelled, yet it has also on it a marking by the creditor that the said bill for £10,000 was exchanged for two bills of £5000 each: Find that it is admitted on record that one of the said

¹ S. C. 27 Sc. Jur. 614.

bills for £5000 was paid by the Ayrshire Iron Co., as coming in place of the said Blair Iron Co. : Find that it is not averred by the defenders that the other bill for £5000 was paid : Find that in lieu of the said bill for this second sum of £5000, still unpaid as aforesaid, the pursuer produces and founds upon a bill for £5000, of date the 9th November 1847, after the Ayrshire Co. had been formed by amalgamation with, and representing the Blair Iron Co., and which bill is drawn by the pursuer, and accepted by two directors of the Ayrshire Iron Co., entered in the books of the Blair Iron Co. as transferred from their obligations, and as due to the pursuer, on 12th February 1848 : Find that the defenders have not averred that the power to sign bills for the said Ayrshire Co., either generally, or for obligations due by, and constituted against, the Blair Iron Co., and so debts due by the Ayrshire Co., was limited to any particular directors or individual, or that there was any other manager than Alexander Alison, junior, and have given no explanation whatever as to the parties who had authority to sign bills for them : Find that the bill libelled on is addressed to the Ayrshire Iron Co., and is accepted by the said Alexander Alison, junior, and by John Hamilton, both directors of the said Ayrshire Co., for a sum which, it appears, was really and truly a debt due by the said Ayrshire Co. : Therefore, in the whole facts of the case, find that the said bill is a valid and binding document of debt by the defenders, and that the pursuer, so long as the said document of debt is not reduced, is entitled to decree for payment of the same : Therefore repel the first seven defences stated in the pleas in law for the defenders : Find that the allegations in the record in this action, as to alleged counter claims said to arise to the defenders on account of some frauds, averred generally to have been entered into against the defenders by the said Alexander Alison and the pursuer, cannot competently be stated against the said liquid document of debt libelled, being a bill for £5000, bearing to be for value received : Therefore repel the eighth and ninth pleas, so far as they are stated as defences against the present action : But in respect the pursuer is secured by caution in payment of the said sum of £5000, and that the defenders aver their intention to institute a reduction of the said bill on the ground of fraud on the part of the pursuer, or in which he was participant, as to the origin and concoction of the bills, of one of which the said bill is a renewal, supersede the further disposal of this action until the 15th February next, in order that the defenders may institute an action of reduction of the said bill, and allow the same to be repeated in the present action ; reserving all defences thereto.” (Signed) “ J. HOPE, *I.P.D.*”

The *defenders* then appealed, maintaining in their *case* that the interlocutor should be reversed—1. Because the defence stated for the appellants ought to have been sustained ; or at least they ought to have been allowed a proof of their averments. 2. Because, at all events, the action of the respondent ought to be sisted until an action of reduction and count and reckoning shall be brought by the appellants.

The *respondent* argued in his *printed case* that the interlocutor ought to be affirmed, because—1. The sums sought to be recovered being liquid debts, constituted by bill or note granted for behoof and by authority of the appellants, they are liable in payment. 2. The defence of want of authority from the appellants to grant the bills being disproved by their own writ, or by their admissions upon record, the said defence was properly repelled by the Court below. 3. There having been no offer by the appellants to prove the defence of *no value* by competent evidence, and the same having been moreover disproved by the respondent, it was properly repelled by the Court below. 4. The defence of payment of the £1120 note having been disproved both by production of the note in the hands of the respondent, the creditor in the same, and by the books of the respondents the Blair Iron Co., the debtors in the note, it also was properly repelled by the Court below. 5. The defence of compensation, set up by the appellants, in respect of claims uncertain in amount, and illiquid, was incompetent, and irrelevant as a defence to an action for liquid debts, and was properly repelled by the Court below.

Sir F. Kelly Q.C., and *Rolt Q.C.*, for the appellants.—The promissory note for £1120 is not valid and binding on the Blair Iron Co. The name of that company being merely descriptive, the signature of it to a bill is no signature at all without the name of some one authorized and purporting to sign on behalf of the company.—*Culcreuch Cotton Co. v. Mathie*, 2 S. 47 ; *Kerr v. Clyde Shipping Co.*, 1 D. 901. As to the bill for £5000, granted on 9th November 1847, the Blair Iron Co. had ceased to exist, and therefore an acceptance not in the true style of the partnership, even by partners, will not bind the copartners.—*Kirk v. Blurton*, 9 M. & W. 284. Besides, an authority to accept a £10,000 bill confers no authority to substitute for it two distinct bills. Nor was any value given for the bill ; on the contrary, the counter claim against the pursuer exceeds the amount sought to be recovered. And the lease itself expressly states that the company had paid for the filling of the pits. The company set up a defence of fraud and collusion against the pursuer, and they ought to be allowed to prove it. It is said that want of value can only be allowed to be proved by the writ or oath of the debtor ; but though, as in England, value is always presumed in a bill, still there are exceptions where the party suing may be put to the proof of value, and when such proof is not confined to the writ or oath. Thus, where the circumstances under which the bill was granted wear a fraudulent complexion—*Goodfellow v. Madder*, M. 1483 ; or where the pursuer has retired the bill as agent for the party for whose

accommodation the bill was accepted.—*Campbell v. Dryden*, 3 S. 320; or where the bill was obtained by fraud.—*Hunter v. George's Trustees*, 7 W.S. 339; or by unfair dealing.—*Macdonald v. Langton*, 15 S. 303; or similar exceptional circumstances.—*Burns v. Burns*, 3 D. 1273; *Little v. Smith*, 8 D. 265. Here we allege collusion and fraud against the pursuer, and we are within the exception of the above cases. At all events the action ought to be sisted until we can raise an action of count and reckoning.

R. Palmer Q.C., and Anderson Q.C., for the respondent.

Cur. adv. vult.

LORD CHANCELLOR CRANWORTH.—The appellants in this case are the Blair Iron Co. and the Ayrshire Iron Co., together with the individual members of those firms, or persons representing them. The appeal is against an interlocutor of the Court of Session of the 25th of January 1853, finding the appellants liable to the pursuer on a promissory note of the Blair Iron Co. for £1120, and on an acceptance of the Ayrshire Iron Co. for £5000.

The material facts are as follows:—The pursuer had become the purchaser of a valuable property at Pitcon, subject, however, to real burdens to the amount of £10,000, for which he had paid or become liable to pay £36,000, including the £10,000 so affecting the lands in question. In March 1845 the pursuer sold certain pits, engines and machinery, on the said property, which were used for working the mines and minerals under the same, to the Blair Iron Co., for a sum of £3000, that Co. having previously acquired from the pursuer a lease or tack of the same materials for a term of 20 years.

The machinery, &c., thus sold to the Blair Iron Co. had been included in the purchase made by the pursuer, so that he was in effect in advance only to the extent of £23,000 beyond the £10,000 constituting the real burden.

The purchase of the machinery, &c., by the Blair Iron Co., was agreed to be treated as if made on the 18th of January 1845, from which day the purchase money was to bear interest at 4 per cent., and provision was made by the Blair Iron Co. for payment of the £3000, by their giving three promissory notes, payable on the 18th of January 1846, the 18th of January 1847, and the 18th of January 1848; the first for a sum of £1040, the second for £1080, and the last for £1120. The two first notes were paid when at maturity. The last has not been paid, and is the note to which the interlocutor refers.

The circumstances relating to the other part of the pursuer's demand—that is, the bill for £5000—are these: After the sale of the machinery to the Blair Co., the pursuer agreed to sell to the said Alexander Alison, junior, and to James Alison, the whole of his interest in Pitcon for a sum of £23,000, to be made a real burden on the property, and this agreement was carried into effect by a deed dated the 1st of January 1846, on which infestment duly followed.

In the following month of September the pursuer executed a deed of discharge and renunciation to the said Alexander Alison, junior, and James Alison, of his right over the said land, in consideration of their handing over to him four promissory notes of the Blair Iron Co. for the following sums, *i. e.*, £5000 at two months, £5000 at four months, £3000 at nine months, £10,000 at twelve months. It is alleged by the pursuer that he agreed to this arrangement in order to enable the said Alexander Alison, junior, and James Alison, who were parties in the Blair Iron Co., to raise money from the bankers for the purposes of the company.

The three first notes were paid as they became due; but pending the currency of the £10,000 note, (that is, the fourth note,) it was agreed that, by way of substitution for it, the Blair Iron Co. should give to the pursuer two notes for £5000 each, bearing the same date as the £10,000, *i. e.* the 22d of September 1846. This was accordingly done on the 9th of April 1847, and one of these two last mentioned notes was duly paid at maturity. The other note was not paid when due.

Some time in the spring of the year 1847, the Blair Iron Co. and another company, called the Ayrshire Malleable Iron Co., agreed to amalgamate together and form a new company, to be called the Ayrshire Iron Co., and this arrangement was carried into effect by a deed executed by both companies, by which it was stipulated that the new company should be deemed to have been constituted and commenced on the 19th of February 1847, although the deed was not executed for some weeks afterwards.

I have stated that one of the two £5000 notes given in substitution for the £10,000 note was paid at maturity; the other was not paid; but the pursuer agreed to give an extension of time, and accordingly, on the 9th November 1847, he drew on the Ayrshire Iron Co. a bill for £5000, at three months date, which was accepted by John Hamilton and Alexander Alison, junior, as directors of that company. This bill was not paid when due, and is the £5000 bill to which the interlocutor refers.

The question therefore is—whether the Blair Iron Co. and its partners, or their representatives, and the Ayrshire Iron Co. and its partners, or their representatives, were rightly held to be liable on the two securities for £1120 and £5000. With respect to the note for £1120, the appellants rested their defence on several grounds. *First*, they said that the note was not so signed as to

bind the Blair Iron Co. The note is in these terms :—“*Glasgow, 28th of March 1845.*—£1120 sterling.—On the 18th day of January 1848, we promise, jointly and severally, to pay to the order of Alexander Alison, Esquire, of Blair Castle, at our company room here, the sum of £1120 sterling, for value received in pits, machinery, &c. (Signed) THE BLAIR IRON CO. ALEX. ALISON, junior.—21st January 1848.” The argument of the appellants was, that it ought to have been signed “Alex. Alison, junior, for the Blair Iron Co.,” and not “The Blair Iron Co.,” which is not a legal corporate name. There is nothing in this objection. The Blair Iron Co. was not a corporate body or a joint stock company. It was a mere trading firm, consisting of five partners, of whom Alexander Alison, junior, was one. Any form of signature whereby he indicated that he signed as the acting partner of the firm was sufficient to bind them. And that they understood themselves to be bound is manifest, not only from their bill-book produced by the appellants, in which the note is entered as an unpaid bill due from them; but further, from the circumstance that the two preceding notes of £1040 and £1080, which stood on precisely the same ground as the note now in question, were duly paid at maturity by the Blair Iron Co., as appears by their books. The next objection made was, that the company received no value for this note; and it was attempted to shew this by referring to the lease or tack of the minerals, which followed immediately after the sale of the machinery, and in which it was stated thus :—“It is hereby acknowledged that the engines, machinery, rails, fittings, and other implements, at and about the pits presently going on the said lands, belonged to the said Alexander Alison exclusively; but, excepting the Pitcon Railway aforesaid, he agreed to give, and has given, and the said lessees obliged themselves to take and pay for, and have taken and paid for, the same, and also for the value of the said pits themselves, and the roads leading to and from the same; and that upon the 18th January 1845, at the sum of £3000 sterling.” It was contended, that this is in effect a declaration that the machinery sold by the respondent to the Blair Iron Co. had been taken and paid for by them; and if it had been paid for, the note for £1120 could not be unsatisfied. But I think this argument can hardly be seriously stated.

The property in question had been in a sense paid for, *i. e.* the Blair Iron Co., as partners, had so far paid for it, that they had given promissory notes for the amount. The pursuer had therefore no further claim for the price of what he had sold, if he were to treat these notes as cash. But unless they were paid as they became due, it is plain the price was not paid.

It is clear that the value given for the three notes, including that note in dispute, was the machinery, pits, and engines sold by the pursuer to the Blair Iron Co. The defence, therefore, as to the £1120 note, founded on want of consideration, is not made out.

These were the only defences pleaded as to the £1120 note, except what I shall presently refer to being relied on as a defence to both demands. I proceed, therefore, to consider the grounds on which payment of the bill for £5000 is resisted. This bill was accepted by John Hamilton and Alexander Alison, junior, describing themselves as directors of the Ayrshire Iron Co.; and the point made is, that they had no authority to accept such a bill, so as thereby to bind the company. The Ayrshire Iron Co. was not, like the Blair Iron Co., a mere trading firm, trading as ordinary partners, but was a joint stock company, whose capital was divided into shares, transferable in the ordinary manner of such associations. This company was formed by the union of two previously existing companies, *i. e.* the Blair Iron Co. and the Ayrshire Malleable Iron Co., and was to be managed by five directors, to be chosen from time to time by the shareholders, the commencement dating from the 19th February 1847. By the 9th clause of the deed the first five directors were named, and they included the names of the two persons who accepted the £5000 bill, *i. e.* John Hamilton and Alexander Alison, junior, John Hamilton being named as the chairman of the directors.

The question is—whether this appointment enabled them to accept the bill in question. By the 21st clause of the deed the directors are required to appoint a manager; and by clause 35 it is provided, that all bills to be signed on behalf of the company shall be signed by the manager or some other officer of the company having authority for that purpose from the directors. The question is, whether, in these circumstances, the signatures of John Hamilton and Alexander Alison, junior, to the acceptance in question, bound the company. The Court of Session held that it did, and, I think, correctly so held.

Alexander Alison, junior, was the principal manager of the affairs of the company, as is stated by the appellants. It does not appear whether he had been duly appointed manager according to the 21st section. If he had, then he was, under clause 35 of the deed of partnership, the proper person to accept bills for the company. And the validity of his acceptance cannot be affected by the circumstance that John Hamilton, another director, joined in it as a co-acceptor. Even if he was not duly appointed a manager, according to the terms of the clause I have referred to, yet I think that, as between this company and third persons, the acts of the directors who, in fact, acted as managers, must be treated as valid, always assuming that the act done has been done in the ordinary course of business. The pursuer had a right to consider this acceptance as given in the ordinary course of business. For it was given in consideration of a sum of

equal amount due from the Blair Iron Co., which had been amalgamated with, or rather absorbed in, the Ayrshire Iron Co., which gave the acceptance.

What the arrangements were between the two amalgamated companies, as to their respective liabilities before their amalgamation, does not appear. But after the Blair Iron Co. and the Ayrshire Malleable Iron Co. had, by reason of their union, ceased to have any separate existence, third persons who had any valid demands on either of the companies were entitled to act under the assumption, that a renewed bill given by the amalgamated company must be as valid as if it had been given by the old company, and no amalgamation had taken place. The Ayrshire Iron Co. contained in itself the Blair Iron Co., and a creditor had a right to consider that in dealing with the former he was in truth dealing with his own debtor.

I can have no doubt, therefore, that the giving of the acceptance for £5000 was within the scope of the ordinary dealings and duties of those whose duty it was to manage the Ayrshire Iron Co., and that John Hamilton and Alexander Alison, junior, were competent to accept bills binding the company.

This, then, brings me to the next point insisted on, which was, that the transactions which gave rise to the £5000 bill were so tainted with fraud, that the pursuer could not recover on such a bill. The fraud alleged was this:—The Blair Iron Co. authorized the giving of notes to the pursuer in their name to the amount of £23,000, on an arrangement with their partners, Alexander Alison, junior, and James Alison, that in consideration of such notes the pursuer should discharge his real burden on the Pitcon estate, then belonging to the said James Alison, and Alexander Alison, junior, and so that the estate, being free from this charge, should be made available as a security for money due by the company to their bankers. It is alleged that this agreement having, so far as the company was concerned, been completed by their giving to the pursuer the notes for £23,000, and the pursuer having accordingly, on the receipt of these notes, released Pitcon from the real burden, Alexander Alison, junior, and James Alison, instead of performing their part of the agreement, by making the property a security for the debt to the bank, applied it for purposes of their own, and of their relations, including the pursuer. And it is averred on the record that this fraudulent misapplication of the Pitcon estate had been arranged before the notes of the company had been given.

It is plain, assuming, as we must do for the present purpose, this statement of the case to be correct, that a gross fraud was practised on the Blair Iron Co., and if it had been distinctly averred on the record that the pursuer had been a party to this fraud, *i. e.* that he had obtained the notes, knowing the nature of the consideration which the company was to receive for them, and having previously arranged with the owners of the estate, that instead of carrying into effect their agreement with the company, they should raise money for their own private purposes—if, I say, this had been the statement on the record, it would have suggested a good defence to any action on the notes, and consequently to an action on the £5000 bill, accepted as a substitute for part of the sum secured by the notes. But on examining the record attentively I can discover no such averment. And (though that is immaterial) I do not believe they could have averred it; if they could have averred it I think they would. The object of the company in giving the notes is distinctly stated; and it is further stated, that when the real burden had been discharged, Alexander Alison, junior, instead of fulfilling his engagement with the company, raised money on the estate in concert with the pursuer, for his own purposes, and those of his relations, including the pursuer himself. It is further stated that this fraudulent arrangement had been agreed on before the bills were given. But it is not said that the pursuer was party to, or cognizant of, any such previous arrangement. The averment on the record may mean only that the matter was previously settled between Alexander Alison, junior, and James Alison, or between them and their bankers.

Now I take it to be a clear principle of law, that the acceptor of a bill of exchange cannot defend himself against the drawer by shewing subsequent fraudulent conduct on his part, which may give the acceptor a good right of action against him. There is nothing here stated which is inconsistent with the hypothesis, that, until after the pursuer had become the *bonâ fide* holder of the notes, he had no suspicion that the contract between the company and Alexander Alison, junior, and James Alison, would not be honestly performed, and that being so, there is nothing stated which is an answer to a demand founded on the bill.

There was a great deal of argument at your Lordships' bar as to how far, by the law of Scotland, any defence resting on want of consideration, or even on the ground of fraud, could be effectually made to an action on a note or bill, unless evidenced by the writ or oath of the party. But I do not think that any such question arises in this case, where the pursuer has a right to say that there is no relevant averment of fraud against him, so far as relates to the circumstances in which the notes and the bill were obtained. I rather incline to the proposition of the necessity of the defence being evidenced *scripto vel juramento*; but I am clear that the point does not arise here, and it is perhaps as well that it does not, for there appears to be no little caprice in the provisions of this head of Scotch law. I should add, that all the circumstances of fraud

alleged, supposing they had been stated in a mode that would have connected the pursuer with them, are wholly denied by him. But with respect to the question of relevancy that is not material.

It was further argued for the appellants, that no such sum as £23,000 was in fact due to the pursuer from the Pitcon estate.

The fifth statement of the appellants in answer to the case of the pursuer was to the effect, that a sum of £11,500, being one half of the £23,000, had been discharged by Alexander Alison before the time when the notes for £23,000 were given by the Blair Iron Co. ; and the statement represents that the sum of £11,500 so paid was paid by Alexander Alison out of the funds of the company. This is wholly denied by the pursuer. But treating it to be true, as we must in considering its relevancy as a defence, it raises no question between the pursuer and the company. The question whether the whole £23,000 remained due to the pursuer, was a question not between him and the company, but between him and Alexander Alison, junior, and James Alison, the owners of the estate.

The only remaining ground of defence relied on by the appellants was, that they had counter claims against the pursuer more than sufficient to countervail his demand, as well in respect of the £1120 note as also of the £1500 bill. But this is certainly not so stated as to afford any valid defence. The transactions relied on are various acceptances said to have been given by Alexander Alison, junior, to the pursuer, and to have been retired and discharged by him as acceptor out of the funds of the company, and also various bills drawn by Alexander Alison, junior, in name of the Blair Iron Co., on, and accepted by, the pursuer. These latter bills certainly constitute no ground of demand against the pursuer, for though he is represented as having been the acceptor, not, indeed, in his own name, but in the name of the Forth Co., of which he was the manager, there is no suggestion that any part of the money raised on these bills ever came to his hands. And with respect to the bills accepted by Alexander Alison, junior, and said to have been paid by him out of the funds of the Blair Iron Co., no demand can arise in favour of the company against the pursuer on these bills, without ascertaining the state of the account between Alexander Alison, junior, and the pursuer, and also the state of the account between Alexander Alison, junior, and the Blair Iron Co. It may be, that on the result of these accounts the pursuer may become liable to the company, but that can only be on the ground of his having been party to a fraudulent misapplication of the funds of the company. An illiquid demand of this nature, to be established as the result of complicated cross accounts, and by proving a knowledge of the fraudulent misapplication of partnership funds, cannot be set off against a plain ascertained sum due on a bill of exchange. There is no direct debt from the pursuer to the company. Their demand on him (if any) is only to be made out by shewing that he is indebted to Alexander Alison, junior, their manager, for money which had been obtained by him, with the knowledge of the pursuer, fraudulently from his employers.

The Court of Session, on a consideration of all the facts of this case, came to the conclusion that there was no relevant defence to the action ; and I see no reason to doubt the propriety of their judgment. I therefore move your Lordships that the appeal be dismissed, with costs.

My Lords, I have to state that I have communicated what I have just read to LORD BROUGHAM, and he authorizes me to say that he fully concurs in the view I have now taken. There was an objection made by Mr. Rolt, which was, that the Blair Iron Co. are not implicated in the whole of this business ; but they have joined as co-appellants, and it is impossible to distinguish the one from the other.

Interlocutors affirmed, with costs.

Appellants' Agents, W. and J. Cook, W.S.—Respondent's Agent, A. J. Dickson.

AUGUST 14, 1855.

JOHN BOYLE GRAY, *Appellant*, v. WILLIAM GRAHAM and Others, Trustees of the deceased Henry Wardrop, and Miss JANET CUNNINGHAM, PATRICK GRAHAM, and WILLIAM FRASER, W.S., *Respondents*.

Law Agent—Hypothec—Retention—Solicitor's Lien—Bona Fides—Personal Exception.

Held (affirming judgment), 1. *That a law agent's right to retain his client's title deeds, does not extend to the expense of judicial proceedings instituted by him, after the termination of his agency, for the purpose of recovering payment of his accounts.*

2. *That such accounts were subject to taxation in a question with competing heritable creditors, though they had been constituted by decrees in absence.*