

March 25. 1830. refused the reclaiming note, both on the merits and competency.*

On appeal, the discussion at the bar embraced the state of the accounting between the parties, and the import of the evidence afforded by the *res gestæ* of the case, the appellant strongly relying on the fact of the two promissory-notes in question having been found in his possession.

LORD CHANCELLOR.—The weight of evidence is against the appellant. I would therefore propose to your Lordships, that the interlocutors complained of be affirmed, with L.50 costs. A cause in this shape ought not to be brought to the bar of this House. It is like a *nisi prius* case.

The House of Lords therefore ordered and adjudged, that the interlocutors complained of be affirmed, with L.50 costs.

Appellant's Authorities.—3. Ersk. Inst. 4, 5.; Ferguson, Nov. 29. 1793, (1488.)

ALEXANDER DOBIE—Solicitor.

No. 12. Honourable WILLIAM MAULE, Appellant.—*Attorney-General—Murray—Brown.*

Major-General Honourable JAMES RAMSAY, Respondent.
Lushington—Spankie—A. McNeill.

Presumption.—Circumstances under which a gratuitous bond of annuity, granted by one brother to another, during the joint lives of the parties, found in the custody of a person who was the ordinary agent of the granter, and had also acted as agent for the grantee, was held (affirming the judgment of the Court of Session) to be a delivered deed.

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2D DIVISION.
Lord Cringletie.

THE trust-disponees of the late Alexander Duncan raised an action of multiplepinding, in which they narrated, that they had found among the papers which had been in his possession, in his professional character of writer to the signet, two bonds;—1st, A bond of annuity, bearing date the 19th February 1805, granted by Mr Maule of Panmure in favour of his brother-german, Major-General James Ramsay, whereby, for love and affection, and for certain other good causes and considerations, Mr

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Maule bound and obliged himself, his heirs and successors, to make payment to General Ramsay, or his assignees, of an annuity of L.300 sterling yearly, clear of all deductions, and that at two terms in the year, Martinmas and Whitsunday, by equal portions, beginning the first half-year's payment as at the term of Martinmas then last bypast, for the half-year immediately following that term, and so forth half-yearly thereafter, during their joint lives, with penalty and interest:—2dly, A bond bearing date the 14th day of January 1808, granted by Mr Maule to General Ramsay, for an annuity of L.500 in similar terms, the first term of payment being the first Whitsunday for the half-year following; and bearing, that in the event of General Ramsay surviving Mr Maule, by which the above annuity would be no longer payable, then he (Mr Maule) bound and obliged himself, his heirs, executors and successors, to make payment to General Ramsay, and his heirs, executors or assignees, of the sum of L.5000 sterling money at and against the first term of Whitsunday or Martinmas next after his (Mr Maule's) decease, with penalty and interest. The summons farther set forth, that the pursuers had been called upon by General Ramsay to exhibit and produce the said bonds, that they might be given up to him, to be used and disposed of by him as his own proper writs and evidents in all time coming: That the pursuers had reason to believe, that Mr Maule, several years ago, directed Mr Duncan to discontinue the payment of the annuity contained in the bond of the 14th January 1808, on the ground that the bond had remained in the custody of Mr Duncan as the private agent of Mr Maule, and that the same was never delivered, nor meant to have been delivered, to General Ramsay; and payment of the annuity was discontinued accordingly since Martinmas 1819: That the pursuers were desirous to deliver up the two bonds to the person having the best right thereto; and concluding in common form.

Appearance having been made by General Ramsay and Mr Maule, the former stated, that the bonds had been granted to him, and placed for his behoof by Mr Maule in the hands of Mr Duncan, who was the agent of the claimant as well as of Mr Maule; that the annuity was regularly paid by Duncan to the claimant, viz. L.300 half-yearly, from 1805 to 1808, and L.500 half-yearly from 1808 to Martinmas 1819; that the payments were entered in Duncan's books to the credit of the claimant, and to the debit of Mr Maule; that, previously to the granting of any bond, Mr Maule had allowed the claimant L.300 per annum; that he had also granted a bond for L.5000 to another

March 25. 1830. brother, Colonel John Ramsay, which had been permitted to remain in Duncan's hands, and which was conceded by Mr Maule to be a delivered evident; that in the different matters of law business in which the claimant was engaged, Duncan uniformly was his agent—among others, in buying and making up titles to a vote in Forfarshire; that in consequence of some family disagreement, Mr Maule gave orders to Duncan to desist paying the annuity, and that on the claimant requiring from Duncan delivery of the bond, he did not deny that he held it as a delivered evident for the claimant's behoof. The claimant therefore contended that the bond belonged to him, and that he was entitled to delivery and possession of it.

On the other hand, Mr Maule stated, that Duncan was his confidential agent, and was not the agent of General Ramsay; that the General never paid Duncan any business accounts, and even the expense of the vote in Forfarshire was defrayed by Mr Maule himself; that the bond was purely gratuitous, and was executed at a time when Mr Maule was executing a variety of family mortis causa settlements; that he was under no obligation to grant it; and so little, after the lapse of a few years, did he believe that he lay under any legal obligation to pay the annuity, that he had forgot that he had ever executed such a bond, and expressed himself in a letter to Duncan as if no such bond existed; that he never gave instructions to Duncan to hold it for the behoof of General Ramsay, and he never intended that it should be so held; and that when Duncan was applied to by General Ramsay, he did not venture to assert that he held it for him; that when properly considered, the bond for the annuity of L.500, (the only bond under any view now operative), was merely a mortis causa donation; and as to the payments, there was no more necessity of connecting them with the bond, than with the voluntary inclination of Mr Maule independent of all bond; and that the bond to Colonel Ramsay stood altogether in a different situation. From these facts Mr Maule inferred, in point of law, that he had the only good right to the delivery and the possession of the bond.*

The Lord Ordinary issued the note printed below,† and or-

* A great deal of correspondence was produced, but was not explicit, and the material parts are noticed in the speeches of the Judges.

† ' It is an admitted fact, that Mr Maule granted two bonds to his brother, the purchaser; the first dated 19th February 1805, for an annuity of L. 300, during the joint lives of the parties; and the second bond on 14th January 1808, for an annuity of

dered Cases to the Court, who, on the 15th January 1828, found March 25. 1830.

‘ L. 500 during their joint lives ; and in the event of his predeceasing the pursuer, for
 ‘ L. 5000, payable at the first term of Whitsunday or Martinmas after his Mr Maule’s
 ‘ death. 2d, It is an admitted fact, that prior to the granting each of these bonds, Mr
 ‘ Duncan, as agent for Mr Maule, paid to the pursuer the annuity expressed in each
 ‘ of these bonds, before the periods respectively warranted by them for such payment;—
 ‘ that is, by the first bond, the first half of the annuity of L. 300 was to be payable at
 ‘ Martinmas 1804, for the half-year immediately following that term ; but Mr Dun-
 ‘ can paid the pursuer, at the term of Martinmas 1804, a whole year’s annuity, instead
 ‘ of the half allowed by the bond, which was not granted till 19th February 1805. In
 ‘ the same way, by the second bond, the annuity of L. 500, which came in place
 ‘ of the other for L. 300, the first term’s payment was at Whitsunday 1808, for the
 ‘ half-year immediately following : But Mr Duncan paid a half-year’s annuity of
 ‘ L. 250 to the pursuer at Martinmas 1807. Mr Duncan must therefore have made
 ‘ these payments, unwarranted by the bonds, by orders of Mr Maule. 3d, It is also
 ‘ an admitted fact, that Mr Maule granted to his other brother, the Honourable John
 ‘ Ramsay, a bond dated 12th March 1804, for L. 5000, payable the first term of
 ‘ Whitsunday or Martinmas after his (Mr Maule’s) death, with the legal interest there-
 ‘ of from the term of Whitsunday 1804, till the aforesaid term of payment of the prin-
 ‘ cipal sum. 4th, It is an admitted fact, that these bonds in favours of the pursuer and
 ‘ his brother John were in the hands of Mr Duncan, who paid the annuities regularly
 ‘ half-yearly to the pursuer. 5th, It is proved by a letter from Mr Duncan to Mr
 ‘ Maule, No. 2. of the printed Record, that in answer to a demand from Mr Maule,
 ‘ for delivery to him of the bond to the pursuer for L. 300, Mr Duncan sent him that
 ‘ bond : “ Luckily, (said Mr Duncan), however, it is not delivered, and now I enclose
 ‘ it.” The bond, however, was returned to Mr Duncan, for in his custody it was
 ‘ found ; and as there is no direct evidence why this bond was returned to Mr Duncan,
 ‘ or why the other for L. 500 was given to him, the question at issue between the par-
 ‘ ties is, Whether, under all the circumstances of the case, the latter bond must be held
 ‘ to have been delivered to the pursuer ? Mr Maule pleads, and it is an admitted truth,
 ‘ that Mr Duncan was his agent, and that the bond of annuity of L. 500 was only one of
 ‘ a number of family settlements executed by him on the same day, all of which were
 ‘ revocable : That the bond contained an obligation for L. 5000 mortis causa, and that
 ‘ he cannot be considered to have made such a grant to his brother beyond power of
 ‘ revocation, since that obligation would compete with his onerous creditors. He ar-
 ‘ gued, that if the bond had been simply a mortis causa deed for L. 5000 at his death,
 ‘ it could not have been held to be a delivered evident, and, consequently, that it could
 ‘ make no difference that it contained an obligation for an annuity of L. 500, because
 ‘ still the deed remained in the hands of his agent, who he denied was agent for the pur-
 ‘ suer. He pleaded, that the annuities had not been paid in virtue of the bonds, be-
 ‘ cause they had been paid before any such bond existed. The Lord Ordinary con-
 ‘ fesses, that he is not convinced by the arguments for the defender, which were urged
 ‘ with great force and ingenuity ; and such is the construction of his understanding, that
 ‘ he thinks that the circumstance of the annuities having been paid before the bonds
 ‘ were granted, is one of the strongest ingredients to demonstrate that Mr Maule in-
 ‘ tended to put out of his own power to withdraw the annuities. For, if he did not in-
 ‘ tend the bonds to be obligatory, for what reason were they granted ? An order to
 ‘ Mr Duncan to pay the annuities till Mr Maule should forbid farther payments, was
 ‘ quite enough. But instead of such revocable order, the bonds were granted, were
 ‘ put into Mr Duncan’s hands, who acted on them, and regularly paid the annuities.
 ‘ In particular, the first bond was sent to Mr Maule himself. If it was not to be

March 25. 1830. ' the claimant, the Honourable Major Ramsay, entitled to delivery

' binding, why did he not keep it? Why send it to Mr Duncan as the warrant for
 ' payment of the annuity? It is proved, that when Mr Maule was offended at his two
 ' brothers, the pursuer and John, he wrote to Mr Duncan to stop the pursuer's annui-
 ' ty, because he had forgotten having granted a bond; and in another letter he wrote,
 ' " Colonel John Ramsay may thank his stars that he has a bond." This is evidence to
 ' the Lord Ordinary, that Mr Maule considered his bond to have been delivered; for,
 ' though it was only so in the self-same way that the pursuer's was, both having been
 ' given to Mr Duncan, he decidedly considered the bond to John to have been delivered
 ' to him, and acted on, and therefore did not order his annuity to be stopped, although
 ' that bond, too, made a mortis causa grant of L. 5000, as well as that of the pursuer.
 ' The Lord Ordinary shall suppose that Mr Maule had given a grant of a farm to the
 ' pursuer during their joint lives, as a provision to him, and infestment had been taken
 ' on it, he thinks that this would have been delivery, though the deeds remained in Mr
 ' Duncan's hand; but the regular payments of annuities for eleven years were to the
 ' self-same effect—they constituted possession and delivery as much as the infestment
 ' would have done.—2. The Lord Ordinary is of opinion, that it is made out by evi-
 ' dence that Mr Duncan acted as agent for the pursuer; and although he made no
 ' charge against him for payment, this does not remove the character of agent. 1st,
 ' He acted as banker or cashier for the pursuer. He regularly drew from Mr Maule
 ' payment of the annuities half-yearly, placed them to the pursuer's credit, and paid
 ' them to him in portions of L. 100, of L. 50, and on some occasions more or less.
 ' 2d, He made out the deeds for a freehold qualification to the General, the expense
 ' of which he placed to his debit in account. It is true that Mr Maule generously
 ' paid that expense, on which occasion the articles in the pursuer's account were trans-
 ' ferred to Mr Maule's; but that is nothing to the purpose in disproving Mr Duncan
 ' to have acted as the pursuer's agent. 3d, The pursuer consulted Mr Duncan upon
 ' a sale of the freehold qualification which the pursuer held, and would have employed
 ' that gentleman to sell it for him, if he had not persuaded the pursuer not to sell it
 ' without previously informing Mr Maule of the intended sale; and, meantime, the
 ' title-deeds of the qualification remained in Mr Duncan's possession. On all these
 ' grounds, the Lord Ordinary has no doubt that Mr Duncan was the agent of the pur-
 ' suer, although from friendship, regard, and perhaps gratitude to the family, charged
 ' nothing for his trouble; and that, in the whole circumstances of the case, he must be
 ' considered to be the depositary of the bond of annuity for the pursuer's behoof. Ob-
 ' servations were made by the honourable defender on the correspondence of Mr
 ' Duncan with Mr Maule and the pursuer, that in some instances it was contradicto-
 ' ry, and in general rather sacrificed the interest of the former to the latter. The Lord
 ' Ordinary does not think that there is ground for this latter conclusion. For the
 ' other there is more reason: Mr Duncan does seem to have made a contradiction, when
 ' in one letter he said that the bond was the only warrant for his paying the annuity, and
 ' in another, that he had forgotten its existence. But this is of little moment; Mr
 ' Duncan was then a very old man retiring from business, and the affair about which
 ' he was writing was of so old a date, that even Mr Maule himself, though compara-
 ' tively a young man, had himself forgotten it, and therefore Mr Duncan may well be
 ' excused for a slight misrecollection of fact. The Lord Ordinary thinks, that the
 ' conduct of that gentleman in the whole transaction does honour to his heart as well
 ' as his judgment; and the defender will see that the Lord Ordinary's opinion rests on
 ' the evidence in the cause, and not on any leaning of Mr Duncan to the one party or
 ' to the other.'

‘ of the bond in question ; and, in the whole circumstances of the case, preferred him in the multiplepointing.’* March 25. 1830.

* 6. Shaw and Dunlop, No. 114. p. 343.

The following Opinions were laid before the House of Lords:—

Lord Justice-Clerk.—This appears to me to be a question rather of fact than of law. If, upon the evidence on the record, it be satisfactorily made out that the bond in question, which is a bond of annuity granted by Mr Maule in favour of his brother General Ramsay, for L. 500 per annum, was placed in the hands of Mr Duncan for behoof of General Ramsay, there does not appear to be much room for doubt with regard to the application of the law. If a bond is granted, and placed by the granter in the hands of a person who is agent both for himself and the grantee, and has been held in law for behoof of the grantee, it is of no material importance that the agent is also the agent and cashier of the granter. Lord Stair, alluding to the point, puts the case, that where a bond has been placed in the hands of a party, it is competent to refer to the oath of the depositary, the purpose for which the bond was so placed in his hands. That reference cannot take place here, because the depositary is no longer in existence. But we must endeavour to collect from the letters of Mr Duncan, from the nature of the entries in his books, from his situation in respect to the parties, and from the whole circumstances of this case, what were the purposes, and for whose behoof, the bond was so lodged with him. We sit here as in the jury box, endeavouring to collect from the circumstances of the case, what are the fair presumptions with regard to the matter: our opinion must be made up upon the evidence on the record, and we cannot listen to any averment with regard to other evidence which may remain behind, but which is not before your Lordships. And in considering these circumstances, I differ from the Dean of Faculty in the inference which he has drawn from one part of the arrangement between Mr Maule and Mr Duncan, and the manner in which the payments to General Ramsay took place. It is said, that these payments are not payments made in conformity with the bond, and that that is evident from the circumstance, that the same payment is made before the bond is granted at all; and therefore it is inferred, that these payments are not to be held referable to the bond. I draw a very different inference from this circumstance. I think that the fact, that a payment had been made by Mr Duncan, for General Ramsay's behoof, is a strong circumstance in favour of the subsequent completion of the transaction by the granting of a bond. Mr Maule may naturally have wished to put it even beyond his own power to alter the generous intentions he at that time felt in favour of General Ramsay. Having resolved upon making his brother an allowance, he at first tells his agent to pay to General Ramsay the sum he intended to allow him; but, not content with this, he afterwards wishes to bind himself by a formal bond, and he superadds to the annuity, which was to be payable during the joint lives of the parties, the sum of L. 5000 payable at his death. The first payment had been made without the bond; but when the bond is granted, the subsequent payments are made in conformity with it. If Mr Maule had thought that the verbal order under which the first payment had been made had been sufficient, and had no wish to render the payment of subsequent annuities obligatory upon himself, what necessity was there for directing the bond to be executed at all? Matters might just have been left upon the footing on which they stood, and the payment might have been made half-yearly by Mr Maule's directions without any formal obligation. And therefore it seems to me, that the granting of the bond for the annuity of L. 500 and the principal sum of L. 5000, which is quite without meaning in any other way, becomes quite distinct and intelligible when you keep this in view. A second circumstance in this case, which I think is of material importance, is the evidence

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Mr Maule appealed.

Appellant.—An unilateral obligation for a sum of money, or an annuity, is not effectual to a grantee, unless delivered;—not

with regard to the delivery of the first bond, which was superseded by the bond for L. 500. I certainly did not understand with the Dean of Faculty, that Mr Fullerton maintained that the first bond was a delivered deed previous to the date of Mr Duncan's letter of the 6th of March; and if that argument had been maintained, I certainly could have given no countenance to it. For unquestionably, at that date, Mr Duncan writes that the bond had not been delivered, and encloses it to Mr Maule. But what I go upon is this, that after the bond is sent to Mr Maule, and his attention expressly called to it by the terms of Mr Duncan's letter, it is again returned by Mr Maule, and is found in the possession of Mr Duncan at his death. That is the circumstance which gives weight to the plea, that the first bond is to be considered as a delivered document, not that it is to be held as delivered at the time when it was discovered and transmitted by Mr Duncan to Mr Maule. Another circumstance to which I look, is Mr Maule's own understanding with regard to delivery. When this misunderstanding unfortunately takes place between himself and his brothers, a good deal of correspondence takes place between him and Mr Duncan with regard to this matter. And I allude the more particularly to Mr Maule's own ideas upon the subject, because I think they go to explain and account for some things which were commented on in the letters of Mr Duncan. Speaking of his brothers, and alluding to Colonel John Ramsay, he says, 'he may thank his stars that he has a bond,' while he evidently forgets that he had granted any bond in favour of General Ramsay. Here then is Mr Maule himself, a gentleman in the vigour of life, totally forgetting the fact of his having granted two bonds in favour of General Ramsay; and if this was possible, it certainly is not surprising that Mr Duncan, a man advanced in years, should have fallen into some mistakes with regard to the matter. But the important point is this, that Mr Maule evidently holds the bond in favour of Colonel John Ramsay to be a deed by which he was effectually bound: And yet that deed had been no farther delivered than the other two; they were all merely placed in the hands of Mr Duncan;—and therefore it does appear to me that the inference follows plainly, that if Mr Maule had recollected that he had granted a similar bond to his brother General Ramsay, he would have considered that bond also as effectual against him. But, in the next place, my Lords, I think that there is evidence that Duncan acted as the agent of General Ramsay. He acted as his agent in making up the freehold qualification granted by Mr Maule to his brother. The account for the expenses in that proceeding was rendered as against General Ramsay, and regularly charged against him. No doubt Mr Maule, acting with a degree of liberality very creditable to him, afterwards directed that account to be charged against himself; but the account was originally charged against General Ramsay as the proper debtor; and I do not see that the character of that agency can be changed by the subsequent transference of the account to Mr Maule's debit. I know very well that it sometimes happens, as the Dean of Faculty insinuated, that in making up freehold qualifications, parties find it to be for their interest to have the account of expenses charged against the person in whose favour the qualification is made up, though the account may be truly paid by another party. I perfectly well understand that, in the case of life-qualifications, where the objection of nominal and fictitious is apprehended, parties may be very desirous to shew, by producing an account of this nature, that the expense of making up the title was not defrayed by the granter of the vote, though the agent knows very well that he is the real party, and looks to him for payment. But who ever heard of such an objection against a convey-

that the clause of execution should bear that the deed was delivered, (as is necessary in English instruments), but that the deed be

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ance of fee? A gratuitous fee, for the mere purpose of constituting a vote, is altogether out of the question; and therefore, whatever weight might be due to that surmise, if this had been the case of a different qualification, I can see no possible motive in the present case for charging the expense of that vote against General Ramsay, except that he was really Mr Duncan's employer. Then observe the nature of the entries in his books. He opens an account in name of General Ramsay; he states half-yearly the payments which he makes him, debiting him with the amount; he answers his drafts and orders, and acts throughout as his agent, banker, or cashier would have done. No doubt it is said he does not make a charge for his agency. Is this so surprising? Is it so uncommon for agents, who have acted perhaps for a lifetime as the men of business of a great family, who have perhaps enriched themselves by their agency, to shew their gratitude by making no charge against a younger brother of that family, a soldier of fortune like General Ramsay? I will venture to say, that fifty instances of such forbearance are in the recollection of your Lordships, and that, even if the business done had been more troublesome than it was—consisting principally of making occasional payments, and transferring these half-yearly from one brother's account to that of the other. Then, is there any thing in Mr Duncan's letters from which we can collect what his understanding was as to this bond? I must say, as to the letter of November 17th, that I cannot draw from it the same unfavourable inference which the Dean of Faculty does. It is argued, that when Mr Duncan says, 'it may be said' that the bond was not delivered, he means it may be said with truth. I do not think that the words warrant that inference. Mr Duncan just states the arguments that probably would be used on both sides, and suggests an intermediate way of arranging the matter. What could be more natural than that he should wish to avoid a collision of this kind between the two brothers? He had been the agent of the family since 1782, and wished to avoid taking any direct part one way or other. But observe, this letter says also, 'when he executed and delivered it to me, he certainly meant it should be obligatory; and accordingly it has been acted upon ever since.' And this shews pretty plainly, that Mr Duncan did not mean to say that it would be said with truth that the bond was never delivered to General Ramsay. Then observe, in his letter of 19th June 1821, he tells Mr Maule, that, if an action for delivery should be brought, he cannot take upon himself to say what would be the result. Is this the language of a man who positively knew that the bond had not been delivered to him for behoof of General Ramsay? If he had known that Mr Maule could say with truth the bond had never been delivered, would he have hesitated about the matter, or thought the issue doubtful? As to the charges which seem to be made against Mr Duncan, of having had an undue bias in favour of General Ramsay, and consulting his interest at the expense of that of his constituent Mr Maule, I cannot see that there is any ground for such allegations; and, whatever may have been his inclination to serve General Ramsay, it is plain that his interest was still stronger in favour of Mr Maule; for there can't be a doubt, that if he had delivered the bond to General Ramsay, he would, in all likelihood, have immediately forfeited Mr Maule's agency. Mr Duncan appears to have been an old man, and his memory somewhat weak, and he might very naturally forget the circumstances connected with the granting of these bonds. But even then his memory is not more defective than that of Mr Maule himself, who, you find, had forgotten even the fact that he had granted the bonds at all. But whenever the circumstances are recalled to his memory, he states the result to Mr Maule, that the bond had been found among the papers, and that this bond had been the authority under which the payments had been made. On the whole, I can draw no other conclusion

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from the circumstances of this case, than that the bond had been placed in the hands of Mr Duncan for behoof of General Ramsay, and is to be held a delivered deed.

Lord Pitmilley.—This is perhaps a case of nicety; but I am disposed to concur in opinion with your Lordship, that this bond must be held to have been delivered to Mr Duncan as agent of General Ramsay, and for his behoof. We must first attend to the nature of the bond. It is not a mortis causa deed, but a deed of annuity, to be payable during the joint lives of the grantor and the grantee, with a farther payment of L. 5000 after Mr Maule's death. If this conveyance of the L. 5000 had been the only one in the deed, I would have thought this case stood in a far more unfavourable situation. I would have thought it a difficult matter, in such a case, to make out delivery from the circumstance of the bond's being placed in the hands of one who was agent for both parties. But here the annuity is to take effect immediately, and the bond is actually acted upon and payments made; so that this case stands in a totally different situation. In looking at the different presumptions in this case, I must say, I am more strongly impressed by the manner in which the accounts were kept by Mr Duncan, than by his having acted as agent for General Ramsay in other matters. I have looked attentively at these, and I see that these accounts must have been shewn to Mr Maule, and approved of by him; and that he must have seen that Mr Duncan acted in some respects as the agent of General Ramsay. If Mr Maule, after granting the bond, had kept it in his own hands, and had merely given directions to his agent to pay the annuity half-yearly to General Ramsay, the payments made by Mr Duncan, and the entries in his books shewn to Mr Maule, might have been of little importance. But when the bond is delivered out of the grantor's own hand, and the money paid in consequence of the bond by the agent, who retains the bond as his warrant; and these payments go on for such a number of years, the accounts of these payments being exhibited from time to time to Mr Maule,—I do think, without going over a second time the grounds stated by your Lordship, that there is sufficient evidence that this is a delivered deed.

Lord Alloway.—I certainly at first felt considerable difficulty in this case; so much so, that I have twice gone over the whole circumstances; but I am now disposed entirely to concur with the opinion delivered from the Chair. I agree with your Lordships generally in the observations made as to both bonds. I don't think there can be any reasonable doubt that the first bond must be held to be a delivered deed, more especially when returned in the way it was by Mr Maule, after his attention had been called to it. And I think there is a great deal in the letter of 6th March 1805, to shew that Mr Duncan thought, even before, that it was a bond to which General Ramsay had right. For he tells Mr Maule, that General Ramsay had called on him for a bond. He says, 'I think he told me, you had bid him call at me for a bond I was to deliver to him; but on searching for the bond I could not find it.' Was this the language of a person who thought General Ramsay had no right to the bond? The only excuse he makes to him is, that he can't find it. If he had found it, it is plain he means to say he would have given it to him. I think the second bond stands very much in the same situation with the first. I conceive the payments made under that bond to be decisive as to the matter. I think this bond must be considered very much of the nature of an ordinary bond, payable by instalments; and that the payment of twelve years' annuities under it renders the presumption of delivery, perhaps, even stronger in this case than as to the first bond. If, then, the bond is placed in the hands of an agent, and payments repeatedly made on that bond for

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effectual without delivery, (being always, de jure, revocable); but in regard to inter vivos unilateral bonds, the rule is absolute. The burden of proving delivery lies on the grantee, especially if the bond be gratuitous: until he prove it, his character of creditor has no existence. But the respondent has not proved delivery. If the fact be as he represents it, proof of delivery, actual or constructive, should not be difficult. It may be ascertained by the examination of the attesting witnesses.

Lord Wynford.—If that be so, and further evidence can be obtained, is there any objection to this case going back to the Court of Session? It is very clear that, if there be means of getting evidence, establishing the purpose for which these bonds were placed in the agent's hands, that ought to be inquired into. We are not in possession of sufficient facts to decide.

Dr Lushington.—The appellants are in a mistake. The witnesses to the bonds can give no information. Scotch instruments do not require to bear an attestation that they were delivered.

Lord Wynford.—Be it so. But there may be matter otherwise proved which would show the purpose of delivery. I am not impugning the judgment of the Court below. But further information would be desirable for this House. If the case be as it is represented, must not our decision ultimately be, that we have not sufficient facts before us on which to decide.

Dr Lushington.—The appellants know perfectly well that there is no other evidence than what is in the cause already. If there were, why did they not avail themselves of it?

Attorney-General.—That was no part of our case. The onus probandi lay on the respondents.

Lord Wynford.—You may proceed with your argument.

Appellants.—The bonds never were in the respondent's hands at all. Indeed, he is only now seeking to obtain their possession. They were all along in the appellant's hands; that is, in the hands of Duncan, holding them for the appellant. It is not pretended that Duncan ever received authority to deliver these bonds;

General Ramsay's behoof, I think the slightest additional presumption will be sufficient to prove the delivery of the deed. And that presumption I find in the fact, that the agent was the agent of both parties. I concur with what your Lordship stated as to the freehold qualification; and I am still farther influenced, by what I see of the mode in which these books of Mr Duncan were kept. On the whole, I think there is sufficient evidence that the bond in question is a delivered deed.

Lord Glenlee concurred, without delivering any opinion.

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and the evidence clearly shows, that, at all events, Duncan was unable to say that he held them as agent for the respondent. But where a deed is in the hands of the granter's private agent, who is also agent for the grantee, there will not be held to be delivery for the grantee's behoof, unless the holder can say that such was the avowed purpose of the deed being placed and allowed to remain in his (the holder's) hands. Without such evidence, the presumption of law is, that the holder holds for the granter. If the rule were otherwise, all confidence would be destroyed, and the express intention of parties defeated. The passage cited by the respondent from Erskine's Institutes (3. 2. 43.) can only be held to import, that a deed put by the granter into the possession of one who is the doer both for the granter and grantee, is presumed to have been given to that person for behoof of the grantee, where such a presumption is warranted by the facts of the case. Unless such a qualification be admitted, no person could make an agent a holder of a deed, without the danger of consequences ensuing the very reverse of what the granter intended.

At all events, both bonds are not due: but under the judgment of the Court below, the respondent's claim to both is sustained.

Respondent.—This is, in point of law, a very plain and simple case. Even if the facts were not, as they are, sufficient to show the distinct intention of the custody being for the respondent's behoof, the principle has long been settled, that where a deed is delivered to a person who is agent both for donor and donee, the presumption is that he holds for the donee. From this presumption, no doubt, the donor can relieve himself by evidence, if the fact be contrary. But that evidence must be adduced by the donor, and cannot be thrown on the donee. In this case, the appellant has totally failed in proving that Duncan held solely for him. On the contrary, the appellant himself has proved, that every probability exists for drawing the conclusion, that the custody was given to Duncan for the behoof of the respondent.

The House of Lords 'declared,' that the respondent is entitled 'to delivery of the bonds, dated respectively the 19th of February 1805 and the 14th January 1808, in the pleadings mentioned; but that, in consequence of the execution and delivery of the said bond dated the 14th of January 1808, the obligations of the said bond of the 19th of February 1805 ceased and became void.'

‘ And with this declaration it is ordered and adjudged, that the in- March 25. 1830.
 ‘ terlocutors complained of be affirmed.’

LORD WYNFORD.—My Lords, This is what is called in the Scotch law a proceeding by multiplepointing, which is analogous to a proceeding that is very familiar to us in this country in a court of equity, namely, a bill of interpleader. My Lords, the nature of this remedy is this :—A party is in possession of two bonds : the party, in whose possession they are, disclaims any right to the bonds himself, but he says there are two parties who claim these bonds : If I deliver them to A, I shall be in danger of a suit by B ; and if I deliver them to B, I shall be in equal peril of a suit at the instance of A. I therefore come to the Court, and I desire the Court to relieve me from this difficulty, by telling me to whom these bonds are to be delivered. Your Lordships are therefore called upon to say, whether the Court of Session in Scotland has done right in directing that both these bonds should be given up to Major-General Ramsay, in order that he might put them in full suit against his brother Mr Maule. It appears to me, my Lords, that two questions will arise in this case ; first, whether these bonds were ever completely executed, so as to render them obligatory on the party giving them ; and, in the next place, whether any thing has occurred which has destroyed the validity of one of these bonds. Now, my Lords, one of the learned Counsel at the Bar has been very severe on the other side, for confounding the Scotch and English law. I am afraid I must bear the severity of that attack, and I do it with perfect good-humour. Undoubtedly I was misled by the difference that exists between the attestation of an English and a Scotch deed. In England, the attesting witness not only declares that he has seen the instrument signed and sealed, but he attests that he has seen it delivered ; for the form of the attestation is ‘ signed, sealed, and delivered in the presence of us.’ If ever the validity of that deed comes into dispute, the witnesses would not only be ready to prove the signing and sealing, but they would be required further to prove the delivery ; as, in the case of a will, they are required to prove not merely the signing, but they are required to prove that the party published that as his last will. Now, my Lords, according to the law of Scotland, certainly the witnesses do not, by the formal act, attest the delivery ; and therefore it is most probable, that what has been stated is correct, that the instant the witness has seen the instrument executed he retires,—he is *functus officio*,—he has done his duty, and may not hear any thing of the delivery of the instrument, or what is to be done with it ; and perhaps this may account for the circumstance of the witnesses I have alluded to in the course of the argument not having been called. My Lords, I mentioned that the question relates to two bonds. The first, my Lords, is a bond, of the date of the 19th of February 1805, in which Mr Maule, who is the

March 25. 1830. executing party to that bond, says, ‘ I do hereby, for the love and affection I bear to the Honourable James Ramsay, my brother-german, and for certain other good causes and considerations, bind and oblige myself, my heirs and successors, to make payment to the said James Ramsay or his assignees, of all and whole an annuity of L. 300 sterling yearly, clear of all deductions, and that at two terms in the year, Martinmas and Whitsunday, by equal portions, beginning the first half-yearly payment as at the term of Martinmas now last bypast, for the half-year immediately following that term, and so forth half-yearly thereafter during the joint lives of the said James Ramsay and me.’ That is a part of this instrument which is extremely material, because it appears to me to answer a very ingenious argument that has been addressed to your Lordships by his Majesty’s Attorney-General. My Lords, if this bond had been binding on the representatives of the obligor, the observation that was made by his Majesty’s Attorney-General might have accounted why this bond was to be kept in the hands of Mr Maule’s agent during Mr Maule’s life; namely, it might have been inconvenient that it should have its full force and operation till the period of his death, and that the intention of the parties was, that it should (for this is the argument of the Attorney-General) come into full effect at the death of Mr Maule, and not till then. Now, it happens unfortunately for that argument, that it cannot come into effect at that time; for, at the death of either of the parties, the validity of that instrument is entirely gone. Now I advert, my Lords, to this circumstance, because, if the Attorney-General found it necessary to account for the making of these bonds, it must have occurred to a man of his understanding, that such an instrument, to be rendered perfect, must be rendered perfect immediately, unless some reason is given to show why it is not to operate as a perfect instrument, and not to have full effect till a future period; but the reason which he has given, from the circumstance I have stated, I humbly submit to your Lordships fails altogether. My Lords, as no reason has been given then, why, when this bond was made, it was not to take instant effect, what effect is it that your Lordships are to say it is to have, but an immediate effect? If I could see, either on the face of the instrument, or from the situation or conduct of the parties, that it was to take effect at a future time, I should humbly advise your Lordships to attend to those circumstances; but I can see nothing on the face of the instrument, and no circumstance (to use an expression which is familiar to us in this part of the island) dehors the bond—out of the bond—that has been proved, which shews that it was to take effect at any other time than at its immediate execution. One circumstance has been stated, as furnishing an argument that it was not to be immediately effective, and which I shall feel it my duty to mention after I have called your Lordships’ attention to the second bond that is produced in this case, namely, that it

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was not delivered to General Ramsay. This other bond is of the date of the 14th of January 1808. The difference, my Lords, between the bond of 1808 and that of 1805 is, that the bond of 1808 secures to Mr Ramsay an annuity of L.500, and, as I mentioned to your Lordships, the previous bond secures an annuity of only L.300. The last bond is for the joint lives of the parties, and also, in the event of General Ramsay outliving his brother, for securing the payment of a principal sum of L.5000. My Lords, I will not repeat to your Lordships the observations I have made upon the other instrument, (as far as they are applicable to it), farther than to say, that this instrument upon the face of it appears to be an instrument calculated to produce an immediate effect. My Lords, I think the object is very apparent, and I think the Court of Session below took the ground which, I should humbly submit to your Lordships, was the proper one on which to decide this case. My Lords, it appears that Mr Maule, (who, it has been stated at the bar, was in possession of a large fortune), thought proper to make an allowance for a younger brother of his, General Ramsay. It was at first a voluntary allowance, and subject for its continuance to his Mr Maule's pleasure, in order to support Mr Ramsay in a manner suitable to his rank in life. In what followed, I am only giving credit to Mr Maule when I state, I believe his object to have been this, to place his brother in a situation in which they could meet, though not on terms of equal affluence, at least on terms of equal independence; that he should not be looking up to him from day to day for the provision which he should receive from Mr Maule, but he was disposed that what originally depended on the continuance of his kind feeling towards his brother should be converted into a legal obligation. I am persuaded that was the intention of this gentleman; and I think the question now is, Whether it is not for your Lordships to effectuate that intention? Before we settle the law, it is necessary to ascertain with accuracy the facts of this case. It appears that both the bonds were left in the hands of a Mr Duncan. Mr Duncan was undoubtedly (to use the Scotch expression) the doer of Mr Maule. It will be material, undoubtedly, to ascertain whether, as well as being the doer of Mr Maule, he was not also the doer of Mr Ramsay. Now, my Lords, the ground upon which Mr Ramsay puts his case, in what is called the condescence in the Scotch Court, is shortly this, and therefore it is material to attend to it—for that is the ground upon which the case is rested by the pleadings, and that is the ground upon which it was decided by the Judges—in his condescence he puts it upon these two grounds:—First, These bonds were placed in the hands of the late Alexander Duncan, (that is, the bond for the L.300 and L.500), writer to the signet, who was the agent of the claimant as well as the Hon. William Maule: Secondly, Subsequently to the execution of these bonds, 'Mr Duncan regularly paid the claimant the said annuity, or gave him credit for it in his accounts.'

March 25. 1830. It is upon that case he rests. Now, my Lords, let us see whether these propositions are made out; for I should state to your Lordships, that it was upon the ground of these propositions being made out, that the interlocutor, as it is called, was pronounced by the first Judge to whom this case was submitted, and afterwards confirmed by the decision of the whole Court. Now, was Mr Duncan the agent of both these parties? What is necessary to constitute an agency? A man may be agent for another, and yet receive nothing for his agency. We often hear of agency without payment, and of persons being made responsible for the acts of their agents, to a tremendous extent, to whom they pay nothing for their services. If he was acting from motives of affection and regard, or of gratitude to a family with whom he had been long connected, I think that constituted an agency. Now, is not that this case? Probably Mr Duncan never was paid one single farthing by Mr Ramsay: I do not think it is very likely he ever was; but Mr Duncan was engaged for Mr Maule, who is stated to have been in possession of a very large fortune, and therefore was no doubt an exceedingly good client to Mr Duncan; and Mr Maule being so good a client to Mr Duncan, is it a very extraordinary thing that, being paid exceedingly well, perhaps overpaid, by an elder brother, he should condescend to render a small service, (for the state of Mr Ramsay's circumstances were such as not to require any very onerous service);—is it an unusual thing, that, when a man is well paid by one brother, that he should render a service to another? Now, my Lords, that does appear to me to be precisely the situation in which Mr Duncan stood. Mr Duncan does take upon himself, beyond all doubt, (the whole of the accounts shew it), to pay the annuity, receiving the money from the estate of Mr Maule. He pays it over from time to time to Mr Ramsay; and Mr Ramsay also, as he had occasion, gave orders to persons to whom he was indebted upon Mr Duncan, who paid according to those orders. Antecedent to the execution of these bonds, Mr Duncan had placed himself, in my opinion, in the situation of an agent for Mr Maule; and that, as agent for Mr Maule, there is no doubt he placed himself—by undertaking to do the sort of business he appears to have done from the beginning to the end of the account—he placed himself in the situation of agent for Mr Ramsay also. Now, my Lords, if he was agent for Mr Ramsay, then that brings us to the point. What effect has the delivery of a bond of this sort, by committing it to the custody of an agent for both parties? In the Institutes of Mr Erskine, to which we are constantly referred, we have a long paragraph, which, to my mind, most satisfactorily and clearly explains the law upon this subject. Mr Erskine says,—‘A writing, while it is in the granter's own custody, is not ‘obligatory.’ The law of Scotland and the law of England are the same upon that subject. If I were to seal a bond to one of your Lordships, and keep it in my own hands, the very act of keeping it in my own hands shows that I do not mean immediately to put myself

in your Lordship's power. 'For, as long as it is in his own power,' continues Mr Erskine, 'he cannot be said to have come to a final resolution of obliging himself by it. And because one may hold the custody of his writings either by himself or his doer, a deed which appears in the hands of the granter's doer, has as little force against him as if he had retained the custody of it by himself.' So, my Lords, if this bond had been given to Mr Duncan merely as the doer of Mr Maule, it would have been the same as if he had kept it in his own strong-box. But I have stated to your Lordships my reason for thinking that, when he delivered it to the agent Mr Duncan, it was not in his hands as his own doer, but as the doer of Mr Ramsay also. Then we get to a gratuitous writing:—'Thus a gratuitous writing, where it was found in the custody of one who was a stranger both to the granter and grantee, was presumed to have been deposited with him under the tacit condition that it should be returned to the granter if he called for it during his life;' that is, when it is in the hands of a perfect stranger. 'But,' Erskine continues, 'Lord Stair, without distinguishing between onerous and gratuitous deeds, affirms, that all deeds in the hands of a third person are presumed to have been delivered by the granter absolutely for the grantee's behoof.' Now, my Lords, upon that there is great dispute; and I shall not trouble your Lordships with any observations inviting your Lordships to the reconciliation of this dispute, because I think this is not that case, for the reasons I have already mentioned. My Lords, we now come to the precise case in question: 'Unless it shall be proved by the writing or oath of the grantee, that they were deposited in that person's hand under certain limitations or conditions. Accordingly, a deed put by the granter into the possession of one who was *doer both for the granter and grantee, was presumed to have been given to that person for the behoof of the grantee.*'* Now I have stated to your Lordships, that that appears to me to be precisely this case. In this case, the instrument is given to Mr Duncan, who is the doer both of the granter and grantee. If it is according to the law of Scotland (which has been acted upon by the judgment that your Lordships are now called upon to reverse), that the deed is to be presumed to have been given to that person for the behoof of the grantee, this judgment is undoubtedly right. It will be, therefore, for your Lordships to consider, whether that law is impugned by any decision. I have heard no decision cited at your Lordships' bar, (though this case has been argued with uncommon industry and ability), which has the slightest tendency to shake the authority of the passage I have read to your Lordships. Several cases have been mentioned, but your Lordships will find that no one of these cases touch upon this point. I will mention, first, the last case which has been referred to, of Ogilvy and Lord Balmerino, which appears to me to have nothing to do with the present question.

* The passage in Italics underscored by his Lordship.

March 25. 1830. That case was decided upon the bona or mala fides of the transaction, and had nothing whatever to do with the character of the person in whose custody the deed was. My Lords, other cases have, however, been mentioned to your Lordships;—one was the case of *Helen Hume v. Lord Justice-Clerk*, 28th June 1671, (*Morison's Dictionary of Decisions*, p. 5688. voce 'Homologation.' But all that was decided in that case was, that the payment of an annual rent did not import a homologation of a bond given by an instrument which was absolutely void, and therefore not capable of being set up by homologation. This case does not bear upon the point now under inquiry. Your Lordships are not now inquiring whether there was a homologation, which is a confirmation; but you are inquiring whether these bonds were executed. The case of *Lady Cumming* has also been mentioned. That was a case in which a Captain Wedderburn, being about to marry a second wife, gave a bond to his daughter, (who afterwards became *Lady Cumming*), as a maintenance for her. The question was raised, whether the delivery of that bond to *Lady Cumming's* father's uncle, was such a delivery as would give validity to the bond? Had the case been decided on that point only, it would have been most important to our present inquiry. Now, it is material in deciding on a case, to look at what the spirit of the decision was, and what the circumstances under which it was pronounced. My Lords, the first thing that strikes one in looking at this case is, that the person that came to set aside that bond was Mr Holwell, a creditor of Captain Wedderburn's,—and he came upon a ground that was unanswerable, namely, that 'Captain Wedderburn, being insolvent, had given a bond, for the benefit of his family, to his (the creditor's) prejudice.' Your Lordships have heard, that, by the law of Scotland as well as by the law of England, a party cannot provide for his family at the expense of his creditors; and that a deed upon a consideration of love and affection, cannot prevail against creditors. It is true that he also insisted, that the delivery was not sufficient to give effect to this bond. It appears from the report, that although some of the Judges thought the whole circumstances of the case afforded evidence that the bond was delivered for behoof of the defender, (that is, the lady), a great majority were of opinion that the action was well founded; and the reporter says, that their decision rested chiefly upon the general presumption pleaded. The majority, therefore, certainly decided upon a ground that is inconsistent with the judgment of the Court of Session in the present case for the pursuer. But when several considerations were operating upon the minds of the Judges, and when, undoubtedly, one of the considerations was abundantly sufficient to justify the judgment,—and your Lordships have only the authority of the reporter that they mainly relied upon the other,—can your Lordships consider a decision as entitled to much consideration in the present case, when that principle, which I think is the only one upon which they were warranted in coming to the decision, has nothing to

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do with this case? It seems to me, therefore, my Lords, that the law laid down by Mr Erskine, and supported by Lord Stair, cannot be disputed. If it cannot, I think the Lords of Session in Scotland were warranted in coming to the conclusion, that this gentleman was the agent of both the brothers, and that a delivery to him was a delivery to Mr Ramsay. Then, unquestionably, both these bonds came into operation immediately upon their execution.

I therefore humbly submit to your Lordships, that both the L.300 bond and the L.500 bond took effect from the time of their execution; and that the judgment of the Court below, as far as relates to that part of the case, should be supported. But, my Lords, the attention of the Court below does not appear to have been called to the circumstance, that the L.300 bond had existence at the time the L.500 bond was given; and your Lordships have been asked this question, ‘Do your Lordships think that it was the intention of this party to pay L.800?’ If the Court below had been asked that question, I think they would have started back, and said, ‘No; we cannot suppose it was his intention to pay L.800;’—they would have said, ‘We think the giving the L.500 bond was in satisfaction of the L.300 bond; it was only intended to raise the bounty from L.300 a-year up to L.500 a-year, and not to add the five and make it an additional sum to the three.’ That is what strikes me; and I am confirmed in this circumstance, because, looking through these accounts, I cannot find that ever more than L.500 a-year was paid. Now, my Lords, if the understanding of the parties was, that, after the year 1808, L.800 was to be paid, your Lordships would have found the accounts running on in that way; but, instead of that, there are two half-yearly payments of L.250, making L.500 a-year; which clearly shews that it was the understanding of the parties, that the L.500 was to be in satisfaction of the L.300, and that the two bonds were not to be enforced. This occurs to me, my Lords, to be the justice of this case; and that you are warranted in coming to that conclusion, as well on the circumstances under which the bonds were given, as upon what appears in the accounts. If that be so, the humble motion I have to make to your Lordships is, to declare that the respondent is entitled to the delivery of the two bonds. Perhaps, my Lords, I ought to explain this. One of the bonds is not desired to be delivered up, and, therefore, it might be either a declaration that the respondent is entitled to the delivery of the two bonds mentioned in the pleadings, or that, (which is the necessary consequence), upon the delivery up of the bond of the 14th of January 1808, the obligation of the bond of the 19th of February 1805 ceased; so that, though it leaves the bond in the hands of the party, it will put an end to its effect; and, with this declaration, dismiss the appeal, and confirm the interlocutor.

There is then, if your Lordships agree with this motion, only one other point for consideration, and that is the costs. Now, I am disposed to advise your Lordships not to give the costs, because it

March 25. 1830. appears to me that the appellant was driven to come here. If the parties had given up the bond for the L.300, and had come here merely to claim the L.500, I think they would have been entitled to costs; but an appeal was absolutely necessary for the purpose of getting rid of the L.300 bond. I therefore humbly submit to your Lordships there should be no costs; and, with your Lordships' permission, I would humbly make that motion.

Dr Lushington.—Your Lordship will allow me to say, that General Ramsay never claimed the L.300 bond. We have admitted, on the face of the record, that that bond was extinguished.

LORD WYNFORD.—If I have been understood as saying, that General Ramsay has been making a claim which he ought not, I beg to observe, nothing of that sort entered into my mind; and if any one word has fallen from me in the course of what I have said, which may convey that idea, I am sorry for it.

Appellants' Authorities.—3. Ersk. 2. 43.; 1. Stair, 13. 4. Hume, June 28. 1671, (5688.) Ogilvie, June 14. 1699. Irving, Nov. 1738, (11,576.) Holwell, May 31. 1796, (11,583.) 2. Fount. 51.

MONCREIFF, WEBSTER and THOMSON—RICHARDSON and CONNELL,—
Solicitors.

MAGISTRATES OF EDINBURGH, and PATRICK SANDEMAN, Appellants.—*Sir Charles Wetherell—Lushington—Simpson.*

No. 13. ALEXANDER M'FARLANE, and WILLIAM BRUCE and OTHERS, Respondents.—*Spankie—Brown.*

Ferry—Harbour—Statute 28. Geo. III. c. 58.—Held, (affirming the judgment of the Court of Session), that Steam boats, carrying only passengers and their baggage, fall within the description of "Ferry boats or Passage boats," in the above statute and relative tables regulating the dues exigible at Leith and the adjacent bounds, and are liable only to pay rates as such.

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2D DIVISION.
Lord Mackenzie.

THE Magistrates of Edinburgh are, by a variety of ancient charters, empowered to exact certain dues from vessels frequenting the ports, stations, and harbours of Leith and Newhaven, on the Firth of Forth, within certain bounds. The material clauses will be found in the foot-note.*

* • Totum et integrum predictum portum estuarium et receptaculum, vulgo the poirt
• hevin and herbrie de Leith, et fundum ejusdem, ac radam et stationem de Leith et per-
• tinen. cum omnibus et singulis propugnaculis, vulgo the peiris, shoris, and bulwarkis
• ejusdem, ac cum omnibus viis plateis, callibus, diverticulis, tramitibus, et passagiis, ad