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CAMPBELL, &c. *v.* MACNAIR, &c.

JAMES CAMPBELL & Co., and Others, Creditors on the sequestrated estate of Campbell, Ruthven, and Lindsay, Merchants in Greenock, - - - - - - } *Appellants;*

JOHN MACNAIR, Agent for the Bank of Scotland in Greenock, Trustee on the said sequestrated estate, and ALEXANDER LEARMONTH, Merchant in London, one of the Commissioners thereon, and THOMAS ALLAN, Banker in Edin., another Commissioner, } *Respondents.*

House of Lords, 11th July 1805.

BANKRUPTCY — REMOVAL OF TRUSTEE AND COMMISSIONERS — MANAGEMENT—CONJUNCT AND CONFIDENT.—This was a petition and complaint presented to the Court, for the removal of a trustee, on the ground of gross mismanagement of the estate, and for the removal of the three commissioners, on the ground of personal objection as to one of them, and as to the other two, that they resided in Edinburgh, while the trustee, and the bankrupts and bankrupt estate were resident in Greenock. (1.) Held that no sufficient evidence had as yet been adduced to authorize the removal of the trustee, or Mr. Learmonth, the commissioner first alluded to. (2.) But that the two other commissioners were not duly chosen, in respect they did not reside in Greenock, where the business must be chiefly conducted, and where the trustee himself resided. The first question was alone appealed to the House of Lords, and the case was remitted for re-consideration, with considerable doubts expressed as to the judgment of the Court of Session, and special directions as to the points to be reviewed.

This was a petition and complaint to the Court, presented by creditors for removal of the respondents, as trustee and commissioners on the sequestrated estate of Campbell, Ruthven, and Lindsay, West India merchants in Greenock, in the following circumstances:—

The bankrupts were West India merchants in Greenock, having estates in the West Indies, and also in possession of several vessels to carry on their extensive trade.

The company of Learmonth and Lindsay, merchants in London, were agents and brokers for the company of Campbell, Ruthven, and Lindsay in London, and, in this capacity, had made advances for, and became their creditors to the extent of £50,000.

In 1801, it was stated that this was the amount of their debt against the company of Campbell, Ruthven, and Lindsay, when the following mode of transaction was proposed by them. Learmonth and Lindsay directed their debtors to draw bills on them, payable in London, at two or three or four months date, and to discount these bills, and remit the proceeds to Learmonth and Lindsay; and, when these bills became due, to provide for them by drawing other bills, and discounting these in Scotland, and remitting the proceeds in the same manner.

Robert Allan and Son, bankers in Edinburgh, were the one brother in law, and the other nephew to Learmonth; and, in order to facilitate these bill transactions, which were bills for the accommodation of Learmonth and Lindsay, he introduced Campbell, Ruthven, and Lindsay, to these gentlemen as bankers, and it was arranged that these bills should be transmitted for discount to Allan and Son, that they might discount and remit the proceeds to London. It was alleged, that many bills so remitted were never discounted, nor the proceeds transmitted, although this was pretended to be done. The object by this transaction was, to keep the large capital of £50,000 constantly afloat by accommodation bills, which in the end was ruinous to the bankrupts. Thus, when a bill was drawn at Greenock, and transmitted to Messrs. Allan, they charged, in the first place, the whole interest from the date of receiving that bill to the day it became payable in London. 2d, They charged a half per cent. upon the whole amount of the bill. 3d, They charged one half per cent. for a bill on London to be remitted to Learmonth and Lindsay for the proceeds, payable at three days sight. 4th. They charged the stamp for that bill. 5th, They carried the transaction into a general account, upon the gross amount of which they charged a quarter per cent. 6th, On this bill Messrs. Learmonth and Lindsay, on their own account, charged the interest from the time of its being presented for acceptance until it was paid; and, 7th, They charged one half per cent. upon the amount of it. Thus the debtors were constantly paying at the rate of 16 or 18 per cent. upon the whole sum kept afloat, by which means the debt was increased in a few years to £60,000.

Mr. Learmonth foreseeing that this mode of transaction must ultimately ruin the company of Campbell, Ruthven, and Lindsay, came to Greenock, looked into the whole concerns of the company, took the chief management himself for eighteen months, and, perceiving distinctly that bank-

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ruptcy was inevitable, he persuaded the company to grant him absolute conveyances to all their heritable property which they possessed, and also all the ships belonging to them, and thus obtained preferences to the amount of £20,000 or £30,000, to secure their large usurious debt.

It was stated, that Learmonth had desires after the trade of Campbell, Ruthven, and Co., and wished to supplant them in it; and, with that view, soon after he got his firm so far secured for their debt, he proposed to Campbell a trust deed for behoof of his creditors, in which he was to be vested as trustee for these creditors with the whole estate, and to carry on the West India trade, but this the company refused; and, upon threats of Learmonth and Lindsay, they thought it proper to apply for sequestration of their estates,

July 4, 1804. of this date.

Learmonth then endeavoured to get the management of the bankrupt estate into his own hands, and those connected with him in those transactions. He was appointed interim factor. He was anxious to get himself appointed trustee; but ultimately, Mr. Buchanan (who refused to accept and resigned) and Mr. M'Nair, were elected trustees, Mr. Learmonth and Mr. Allan becoming their sureties. Thereafter, Mr. Learmonth, Mr. Allan, and Mr. Haig, were appointed commissioners. These appointments were opposed, on the ground that these persons having an interest adverse to the other creditors, were incapable of judging impartially of those legal questions, which their own transactions with the bankrupts, immediately before the bankruptcy, made it necessary to investigate, but this opposition was unsuccessful.

It appearing to the creditors, from various transactions, that the whole management of the bankrupt estate was delegated on Mr. Learmonth, and that the creditors had little hope of obtaining the illegal preferences and large usurious debt of Learmonth and Lindsay reduced, they were under the necessity of praying the Court to remove the trustee and commissioners from their respective offices. The objections against Mr. Learmonth were, that he was ineligible to this office, as being conjunct and confident with the bankrupts; that he was unfit for the management, in respect of the nature of the claims reared up for Learmonth and Lindsay, and Allan and Son, and in respect of the fraudulent preferences he had obtained immediately before the bankruptcy. In addition, it was objected to Mr. Allan and Mr. Haig's appointment as commissioners, that they resided in Edinburgh and not in Greenock, and could not superintend

the actings of the trustee. In regard to the removal of the trustee, they averred that his appointment had been obtained by corrupt means—that he had abandoned the management of the estate to Mr. Learmonth,—that he had fraudulently disposed of monies belonging to the estate, instead of placing them in bank for general distribution, in terms of the statute. The respondents answered the complaint separately, in which they denied the facts, and maintained there was no fraud, and no legal ground for authorizing the Court for interfering.

Mr. Learmonth had been interim factor; and it appeared that, after the appointment of the trustee, he had disposed of sugars belonging to the bankrupt estate, amounting to £3072, at a disadvantage, and had taken bills for the price, and discounted them with Mr. M'Nair's bank. The answer to this was, that this step was necessary, in order to pay off certain claims on the bankrupt estate, which could not stand over.

The Court pronounced this interlocutor:—" Find no suf- Feb. 26, 1805.
" ficient cause yet shown for removing John M'Nair from
" the office of trustee, which he at present holds, in conse-
" quence of having been elected by a majority of the credi-
" tors, in terms of the statute. They also find, that no suf-
" ficient cause has yet been shown for discontinuing Alexan-
" der Learmonth, who was chosen by the same majority, as
" one of the commissioners: Find, That Thomas Allan and
" James Haig were not duly chosen, as the other two com-
" missioners, in respect that they do not reside in the town
" of Greenock, where the business must be chiefly con-
" ducted, and where the trustee himself resides; and, be-
" fore further answer, allow the complainers, on or before
" Tuesday next, to put in a condescendence, in terms of the
" act of sederunt, specifying the charges which they mean
" still to insist on against the said John M'Nair and the
" said Alexander Learmonth, or either of them, and the
" mode of proof by which they propose to substantiate the
" same. And, lastly, appoint a meeting of the creditors to
" be held at Greenock, upon the 15th day of March next, in
" order to name two commissioners, in place of Thomas
" Allan and James Haig; and, in the meantime, ordain John
" M'Nair to proceed, as trustee in the execution of his office,
" in terms of the act of Parliament, without any advice or
" interference of commissioners, until the said nomination of
" new commissioners, in place of the two who have been
" found disqualified, shall take place."

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On reclaiming petition, along with the condescendence ordered to be given in, and also a petition to interdict John M'Nair from selling the heritable property belonging to the bankrupts, the Court pronounced this interlocutor:—"Of "new ordain, and hereby authorize the said John M'Nair to "proceed in the meantime as trustee in the execution of "his office, in terms of the act of Parliament, in manner "mentioned in the interlocutor reclaimed against, and in so "far refuse the desire of these petitions, but *quoad ultra* "appoint answers to be given in to said two petitions and "condescendence, the same to be printed and boxed."

Against these interlocutors the present appeal was brought to the House of Lords.

Pleaded for the Appellants.—1. The Lord Ordinary ought not to have confirmed the election of John M'Nair, because, by the statute 33 Geo. III. c. 74, a conjunct or confident person with the bankrupt is ineligible to the office of trustee or commissioner; and John M'Nair having corruptly bargained and agreed with Mr. Learmonth, a person conjunct and confident with the bankrupts, to possess himself of the office of trustee, with the view of devolving the management on him, whereby Mr. Learmonth might the better serve his own interests on the estate, his election ought not to have been confirmed. 2. The Court ought to remove him, because of his devolving the management of the estate on Learmonth; of his allowing Learmonth to appropriate large sums to his own purposes, in place of lodging these in bank, and because of his having acted as Learmonth and Lindsay's agent, in procuring for them preferences, to the prejudice of the trust estate. 3. The Court ought, in these circumstances, to have appointed an interim manager, and ordered a meeting of creditors to appoint a new trustee and commissioners, and to have found, that those creditors, whose debts had been objected to upon specific grounds, and who had an obvious interest to introduce a system of management hostile to the general interest of the trust estate, should have no vote at such meeting. 4. At least, the Court ought not to have authorized M'Nair to proceed without the advice or interference of the commissioners, because the doing so, in this case, was conferring powers upon the trustee not authorized by, but in express contradiction to the statute—powers which ought, in no case, to be conferred on a trustee, especially where his conduct is arraigned by so large and respectable a body of creditors offering to prove their averments *instanter* by the

most unexceptionable evidence. 5. Because the Court of Session have an inherent right to interpose their authority for the ends of justice in such cases, though not specially provided for by the statute or common law; and therefore ought, in this case, either to have nominated a proper person to the office of trustee, or to have appointed the creditors to meet and choose a trustee, and it is competent to the Court, and in accordance with former practice, so to regulate the matter.

Pleaded for the Respondent M'Nair.—The bankrupt statute having declared the right of election to be in the majority in value of the creditors, the Court have no power, either to name a trustee or to disqualify any of the creditors who had proved their debts, from voting. By the statute, 33 Geo. III. c. 74, (and 39 Geo. III. c. 53, and 43 Geo. III. c. 24), § 20, it is enacted, that, at the meeting for electing the trustee "the "majority of creditors in value or extent of debt present at "the meeting shall determine who is to be trustee." And by sec. 59, it is enacted, "that it shall be competent at any "time for *one-fourth* of the creditors in value to apply sum-"marily to the Court of Session for having him removed, "upon cause shown; a majority of creditors in value, at any "meeting to be advertised for the purpose, shall likewise "be entitled to remove and accept of the resignation of "any trustee." These are the only provisions of the act with respect to the appointment and removal of the trustee; and as the respondent has been duly elected, and the appellants do not amount to one-fourth of the creditors in value, it is not competent to them to apply for his removal. 2. The grounds upon which the appellants rest their application for removal of the trustee consist entirely of allegations of mismanagement, and converting the trust funds to his own use, or permitting Mr. Learmonth to receive and appropriate the same to the prejudice of the appellants. On the supposition that all this were true, which assuredly it is not, the particular procedure applicable to such case is also laid down in sec. 59 of the bankrupt act, which declares, "that the interim manager, and likewise trustee, shall, at "all times, be amenable to the Court of Session, by summary "application to that Court, to account for his intromissions "and management, and answer for his conduct, at the instance "of any party interested." By which it is plainly seen that the appellants, who do not amount to one-fourth of the creditors, may oblige the trustee to render an account of intromissions to that Court, when, if he shall be found to

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have misapplied the funds, he may be made liable for the loss; and as the trustee has found ample security to the extent of £10,000, nearly to the full amount of the whole debts due the appellants, and is quite willing to account, there seem no grounds for removing him from the office.

Pleaded for Mr. Learmonth.—In regard to Mr. Learmonth, the same objection to the competency of the interference of the Court applies. He has been duly elected to the office of commissioner by a majority of the creditors in value, as directed by sec. 28 of the act; and no power is given by the said act to remove a commissioner who has been duly elected. Even if it were competent so to remove him, there were no grounds in fact, for so doing.

After hearing counsel,

LORD CHANCELLOR ELDON said, *—

"My Lords,

"This appeal of Campbell and Others *v.* John M'Nair and Alexander Learmonth, is a case of very great importance, and your Lordships are, for the first time, called upon to consider the proceedings of the Court of Session in Scotland—proceedings as they term them—by sequestration of the bankrupts' estates. My Lords, the case which has been submitted to your Lordships' consideration, and the topics urged, I can venture, upon my experience, to state to your Lordships, would not have consumed a quarter of an hour in the Court of Chancery in this part of the Island, with reference to the question, Whether certain individuals (one of whom has been chosen a trustee, and the other a commissioner, of the sequestrated estates), should continue with the characters that belong to a trustee; the commissioner being, as well as the trustee, a trustee for all the creditors, and who ought therefore to be capable, and clearly capable, beyond all suspicion, of acting with indifference, liberality, and impartiality, to all the creditors? It has been laid down here, for a considerable time, as a clear rule, if a person is elected to the situation of assignee, who has an interest beyond that which belongs to him as an ordinary creditor under the commission, that is to say, if he possessed himself by conveyance, where the conveyance is not perhaps effectually questionable, but reasonably questionable, by taking pledges of real property, and possessing himself of personal property, by being much engaged in complicated transactions with the bankrupt, which should be examined, such a creditor, being clothed with the character of assignee, is thought to be invested with a character which enables him to discuss those questions, with reference to the other creditors, with great and undue advantage to himself. He must act as trustee to the body of the creditors completelyin every transaction relative to the bankrupt's estate; and, on

* From Mr. Gurney's short-hand notes.

the other hand, as an individual interested for himself, defending his own transactions with himself, and bound not to impeach, but to support his own character as assignee. The Court, therefore, does not trouble itself to inquire into the question, Whether there has been any actual misconduct after he has been elected into the situation of assignee or trustee? But it says, and says upon general principles, that he has an interest to support, which is likely, undoubtedly, to influence and bias him against the general body of creditors. And though the act gives a certain number and value of the creditors to elect whom they will, the construction of that act has been, that, in making that election, they are, nevertheless, upon general principles, bound to elect some person who will be as indifferent in respect to himself, as he will be to all the other creditors; and, if he has an adverse interest to support, the fact of his having an adverse interest to support, is thought sufficient to call upon the Court to declare, that within the intention and meaning of the act, he is a person not capable of being elected to that trust. My Lords, we have gone farther than that, because, in respect to the misconduct of an assignee, we hold most clearly, that when we remove him, he shall not be permitted to vote in the choice of another trustee: and your Lordships will see, upon the same principle, that it could not be within the meaning of the act, when it enabled the creditor to vote in the choice, to give such *a creditor a power, whose vote* in the election *would annihilate all choice;* and if the ground of removing an assignee is, that he has misconducted himself, or that he is in the situation in which the law will suppose, from general incidents, (perhaps supposed incorrectly), with regard to the individual, that he has not acted with the same evenness towards others as he would act towards himself, then, in removing him, they take care to protect the general body from a careless assignee, and against the influence of his vote in the choice of another assignee; because, if his vote determines, and if the *quantum* of his debt will enable him to choose another who is his creature, it is exactly the same thing as if he was assignee himself. In this case, therefore, without examining at present whether similar objections were stated against the other creditors, as are here stated against Learmonth, who is chosen a commissioner, without entering into the question, Whether similar objections may be applied to the other creditors, it would be enough to say, there is no further complaint before the Court alleging the other creditors have any interest?

"My Lords, it has been contended at your bar, that, according to the true intent and meaning of the act relating to sequestration, that if a person is appointed the trustee,—if he is chosen a trustee by a majority of creditors in terms of the act, that in that office in which he is thus placed he must remain, and, therefore, upon general principles, it is contended, that the Court of Session cannot remove him.

"My Lords, it does not appear to me that *that* point, which has been argued at your bar, has ever been distinctly before the Court of Session, nor does it appear to me a *fortiori*, that the judges have

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been called upon to consider that point; but regard being had to the decisions in this part of the island, which have been pronounced upon statutes almost in *pari materia*, and almost where the express words of the statute have been controlled by that construction—and regard being had to what has been supposed to be the intent and meaning of the legislature, aiming at giving some person the control over the property to be divided, who would be indifferent as between himself and the other creditors. With reference to this, it has been insisted, that there is an express clause in one of the statutes, that a certain number of creditors must concur in applying to the Court, in order to have a trustee removed. I should entertain a doubt, however, whether that clause can be taken to be a clause destructive of the attempt to construe those acts of Parliament upon general principles, with reference to the question, who is capable of electing or being elected a trustee, or whether, on the other hand, that clause may not be satisfied, by supposing it applies to the case of the election of persons duly nominated, against whom no general principle militates, but afterwards is a person fit to be removed.

"My Lords, the appeal is brought before your Lordships upon the misconduct, and upon the gross misconduct as it is alleged, observed by the commissioner and trustee since their appointment; and it appears to me that the Court of Session have not decided the question at all, if I understand their proceedings, whether the fraudulent conduct so alleged, and that gross misconduct so alleged, has existed in fact, much less have they decided, if it has, that a trustee cannot be removed; but they have ordered the parties to condescend upon the facts, and they have given them leave to go into proof of the facts. There can be no principle upon which the Court could have taken that course, unless they thought, notwithstanding the terms of the act, that they have a power to remove a trustee or commissioner who was guilty of such misconduct. All that the Court appears to me to have done is this, namely, to call upon the party to state the facts, which they say are the facts that make out the allegation of fraud and misconduct, and to allow the proof upon those facts, and they allege they do this according to their act of Sederunt, which your Lordships will recollect, according to the statute, they have a power, legislatively as it were, to pass, for the purpose of supplying the defects of all those acts of Parliament, and adding such relief as is necessary. According to that act, therefore, they have taken this course, and having taken this course according to the act of Sederunt, it is difficult to say, however inconvenient, and however much it may press upon the proper and prompt distribution of the sequestrated estate, it will be difficult to say, that until the proof is given of the facts that are to constitute the fraud alleged, and until the Court shall see that proof, whether it is proper to interfere. It may not be, that they have not taken the most expedient course, though it is a course that may be quarrelled with by way of appeal; and I entertain a strong doubt, whether, according to the proceedings of the Court of Session in Scotland, this appeal brings before

your Lordships a case on which you have the power of determining, what I think is one of the most important questions in this cause, and the question which the Court of Session must sooner or later be called upon distinctly to determine, whether the circumstance of a trustee having an interest adverse to the interest of the body of the creditors, necessarily disqualified him from being originally elected a trustee, or from voting as a trustee or commissioner; and I doubt a great deal, on looking into these proceedings, whether your Lordships can look at them at present as opening to any other questions. Questions, respecting whether subsequent misconduct is a ground for seeking to remove those parties. The appointments have been confirmed, and it will be difficult to struggle with it; but I wish to open the means of doing it, whether the confirmation of the original appointments does or does not shut out the discussion of the great question I have been alluding to,—namely, Whether that adverse interest does not incapacitate those parties to be chosen to those offices they have been elected to? I shall therefore move that this cause be referred back to the Court of Session, with special directions open to all these considerations, and which, if those considerations, according to the form of the proceedings of that Court, be not open, will not delay the decision of the Court, and if they are open, it will call upon the Court to give this great point due consideration; and if they should be of opinion they may exercise the same sort of construction that we do over our bankrupt acts, they would decide this question upon the leading point, without entangling themselves with all the difficulty and delay that belongs to going into proof, before they can come to judgment.

" My Lords, it has been a little difficult to pen such a judgment as I shall advise your Lordships to accede to, in order that the ends at which your Lordships aim may be attained; I move, therefore, to remit the cause back to the Court of Session, and in case that Court shall be of opinion, due regard being had, &c.

(Here the Lord Chancellor read a part of his judgment.)

" Your Lordships will see that the last words I have said will embrace another point which has been agitated, that is, what is the amount of the debt Learmonth has proved? Your Lordships know, in this part of the island, when a man goes as a creditor to prove a debt for a bill, the mere words of the act are, that he is entitled to prove the real amount of the debts he is to swear to; but, on the other hand, if he has property, you will not let him give in any proof at all, unless he will give up that property before he votes, applying the sale of the property he so takes, and then reducing the debt by the amount of the property so sold, and if he chooses to have the benefit of that, he does not rank as a creditor in any proceedings; these words, therefore, will comprehend that point as arising out of the act. In order to call the attention of the Court to the leading principles, with a view not only in this case, but in future cases that may arise, to give an intimation of the principles upon which we proceed,

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I should advise your Lordships to proceed thus:—"But if the Court shall be of opinion," &c.

(Here the Lord Chancellor read the remainder of his judgment.)

"Meaning to say, that if, according to the forms of proceeding of the Court of Session, the time is gone by when the original appointments could be objected to, and the time is now come, when the question about removing those persons, must be a question upon their subsequent conduct, and not upon the capacity, that, in that case, the interlocutor should be affirmed; because, in that case, the ground of removing them, with regard to such subsequent conduct, must be alleged and proved. It appears, therefore, that this way of putting the case will open those questions to discussion, if their forms of proceeding will permit them to be opened; and if those forms will not permit, then to decide that the interlocutor ought not to be reversed. Thus, opportunity will be given to review the interlocutor, with regard to the particulars, as well as with regard to the particular facts alleged, upon which proof has been proposed."

It was ordered and adjudged that the cause be remitted back to the Court of Session in Scotland, and in case that Court shall be of opinion that it is not now competent for the appellants to call in question the original appointment of John M'Nair and Alexander Learmonth, or either of them, in that case, the several interlocutors therein complained of be affirmed; and it is further ordered and adjudged, that if the Court shall be of opinion that it is now competent for the appellants so to proceed, then that said Court, in such case, do review the several interlocutors complained of; and also hear the parties upon the question, whether the respondent, Alexander Learmonth, hath or hath not been ranked and voted as a creditor for a larger sum than he ought to have been ranked, and as to the effect of such fact, if such hath been the fact, and that the Court do hear the parties, in that case also, upon the question how far it is or not by law competent for the Court, at the instance of one or more creditors, to remove from the office of commissioner, or trustee of a sequestrated estate, any creditor nominated a trustee or commissioner, or any person in effect elected to such offices respectively by the vote of a creditor, (whether fraud or misconduct can or cannot be proved against such creditor or person so elected), the legal effect of whose alleged transactions with the bankrupt estate, prior to the bankruptcy, however just as between such creditor and the bankrupt, may appear to be reasonably questionable, and such as fairly to require to be

settled by proceedings in law, or the judgment of persons altogether impartial, and which creditor may have considerable interests of his own to protect, or cause to be protected, against the interests, and to the prejudice of the general body of creditors, (whose interests, nevertheless, a trustee or commissioner of a sequestrated estate, it is contended, is bound to protect as his own) such interests leading to endeavour, as against them, to withdraw, or maintain himself in having withdrawn, from general distribution, for his own particular benefit, parts of the bankrupt's estate, with reference to which he may have had transactions with the bankrupts, before their bankruptcy, fairly questionable as to their validity by the other creditors, even if perfectly just as with respect to the bankrupts themselves, and whether, upon general principles, a person having, or claiming to have interests adverse to, and beyond those of the body of creditors, can be effectually chosen, or can, by the influence of the amount of his alleged debt, in the choice, effectually cause to be chosen, the trustee or commissioner, who, as it may be alleged, ought to act on behalf of all the creditors with perfect indifference and impartiality; and in such case as aforesaid, after the Court shall have reviewed the interlocutors, and heard the parties, the Court is further to proceed to do what shall appear to the Court to be just and according to law, as to removing or not removing the respondent, Alexander Learmonth, from the office of commissioner, and as to removing or not removing the respondent, John M'Nair, from the office of trustee; and as to restraining or not restraining, the respondent, Alexander Learmonth, from voting in the choice of a trustee or commissioner, and to do in all other respects as to all other matters complained of in the interlocutors appealed from, what shall appear to the said Court to be just.

For Appellants, *Sir Samuel Romilly*, *Henry Erskine*, *John Clerk*.

For Respondents, *Wm. Adam*, *W. Alexander*.

NOTE.—Unreported in the Court of Session.—In the case of Furlong and Others *v.* M'Nair and Others, (1st Feb. 1809, Fac. Coll. vol. xv. p. 142,) it is stated that the remit in this case was not applied, Learmonth having settled the cause, after the above judgment in the House of Lords, by purchasing up the debts of the creditors who opposed him.