"My Lords, the next objection made in the Court below, was, that the bankrupt had been himself buying the concurrence of his creditors. With reference to that, the Court of Session were of opinion that he had not done so, and gave them leave to condescend upon particulars; and, when they did so, the Court of Session were of opinion, the condescendence they put in did not contain sufficient grounds of complaint, and your Lordships, upon reading the papers, will agree with that opinion. It appears to me, this is an appeal dictated upon corrupt motives, and brought forward by persons who have been dealing corruptly; and every case which is brought under such circumstances, is to be looked at with great jealousy and suspicion. I say it is wise and proper to do so. In addition to that, your Lordships will allow me to say, that although this jurisdiction does exist, and that it is competent for Mr Marshall, or any other person, who has a debt of 16s., to draw a bankrupt here, even when it is an appeal from the unanimous decision of the Court of Session, under such circumstances as appear in this case, it is grave matter for your Lordships' consideration, whether such right of appeal should continue. It is particularly so in the case of a bankrupt, under all the disadvantages I have alluded to; and, therefore, in a case where there are creditors, in number and value, enough to give a sanction for the certificate, and the bankrupt has complied with every requisite imposed upon him—in a case where the acts have come under the review of the Court of Session, and that Court has unanimously been of opinion that the bankrupt ought to have his certificate—in a case where there is suspicion that the objecting creditors have been dealing, not for the justice of the country, to withhold the certificate, but that they have been dealing for the proportion of dividend they ought to have; in such a case as that, it is not too much to say, that a bankrupt who is brought here by appeal from the Court of Session in Scotland, and who receives the confirmation of your Lordships, should come here without being put to any expense; and, under such circumstances, unless your Lordships should be of opinion that the case made out by the appellants at the bar, calls for the reversal of the decision of the Court below (for which, it appears to me, there is no ground), I conceive that decision should be affirmed with £150 costs."

SAMUEL STIRLING, and Others, . *Appellants;*

ROBERT FORRESTER, Esq., Treasurer to the Governor and Company of the Bank of Scotland, ... *Respondents.*

1821.

STIRLING, &c. *v.* FORRESTER.

House of Lords, 19th March 1821.

CAUTIONER—DISCHARGE OF.

This case is reported in Mr Shaw's Appeal Cases, vol. i., p. 37. It had reference to the question whether sureties who had guaranteed the payment of bills, were liberated from their cautionary obligation by the creditor taking other bills from the debtor, and giving up those they had guaranteed, and where it was held that one of the cautioners, whose consent had not been obtained to this, was discharged.

The LORD CHANCELLOR said,

"My Lords,*

"There is another case argued before your Lordships, and extremely well argued, I mean the case of Stirling and Others, *v.* Forrester. On looking through all the circumstances of that case, and giving the best attention I have been able to give, to what I take to be the doctrine of the law of England, which certainly also is the doctrine of the law of Scotland, as to the acts of the principal creditor towards a surety, and likewise with respect to the acts of sureties as among themselves, it does appear to me, as at present advised, that the judgment which has been given in the Court below, cannot stand in all its parts. It will, however, be necessary, or at least expedient, that the House, in framing its decree, should be extremely cautious and careful with respect to the doctrines it shall state, as doctrines to govern cases of this kind. It has seemed to me, therefore, to be necessary, in using that caution, to request that before this judgment be given, the agents on each side being furnished with a copy of the paper which I now have in my hand, should give an answer when they are able to do it (probably in the course of two days), to the following inquiries,—What has become of the several bills drawn by James and George Spence upon and accepted by David Paterson, by Tod and Company, and Robertson and Stein respectively, and Whether these bills respectively, have been proved against the estates of all the several parties, to those bills or any, and which of them and by whom they have been proved, and what dividends have been received on each and every of those bills from the several estates of James and George Spence, David Paterson, Tod and Company, and Robertson and Stein respectively, besides those which are expressed and mentioned in the account that is delivered, and by whom and in what state the proof on those bills

* From Mr Gurney's short-hand notes.

stand, and particularly who is or are now entitled to receive the dividends thereon, if any future dividends of those estates should be made? My Lords, having the result of these inquiries, if a satisfactory result, we shall be able, probably, to give a more satisfactory judgment; if not a satisfactory result, I will then take the liberty to propose to your Lordships such a judgment as, under the circumstances under which we may be placed, may best meet the case. The question is certainly an extremely important one, as affecting co-sureties in Scotland, and I should hope, therefore, your Lordships will not think it improper that I should ask for answers to these inquiries before we proceed to judgment. I had better, perhaps, adjourn it to Friday, or to this day week."

SIR JAMES MONTGOMERY, Bart., and Others, *Appellants;*

WALTER FRANCIS, DUKE OF BUCCLEUCH AND QUEENSBERRY, and Others, . *Respondents.*

AND

JOHN HYSLOP, ... *Appellant;*

WALTER FRANCIS, DUKE OF BUCCLEUCH AND QUEENSBERRY, and Others, . *Respondents.*

House of Lords, 29th June 1821.

ENTAIL—LEASE—PURGATION OF IRRITANCY.

These appeals had reference to the Queensberry leases which in the former appeals (*vide ante*, p. 520 *et* 540) were found to be beyond the powers of the heir of entail. On the case going back to the Court of Session, the executors contended that, supposing the leases to be a contravention of the entail, yet it was competent for them and the tenants to purge the irritancy, but the Court, 25th February and 6th July 1820, refused purgation of the irritancy; stating that as the Duke was now dead, no contravention or forfeiture could be declared against him. *Vide* Shaw's Appeal Cases, Vol. i., p. 59.

The LORD CHANCELLOR (ELDON) said,

"My Lords,*

"In these two causes, on account of the many interests involved

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* From Mr Gurney's short-hand notes.