June 15. 1824. Lords on occasion of the first appeal; and could only be founded upon when the case returned to the Court of Session; the respondents had a manifest interest in the decree, and the Court of Session were as much bound to give effect to it, as if an actual discharge had been produced under the hands of the appellant; and therefore that Court acted correctly in finding it unnecessary to proceed with the remit. And,

2. That if that decree had the effect to deprive the appellant ab initio of any right in the bill, then he could not competently demand the expenses of any part of the proceedings adopted by him in order to enforce that right.

The House of Lords found, 'That the Court of Session ought 'to have applied the judgment of this House in the terms there-'of; and as by that judgment the interlocutor of the 16th of 'January 1812 was, with other interlocutors, reversed, the ap-'pellant, upon the cause being remitted to the Court of Session 'according to the said judgment, was entitled to a repetition of 'the costs paid by him in pursuance of that interlocutor. It is 'therefore ordered and adjudged, that the interlocutors com-'plained of in the present appeal be reversed; and it is further 'ordered, that the cause be remitted back to the Court of Ses-'sion, to proceed therein according to the judgment of this House 'pronounced on the 4th of July 1815.'*

J. DUTHIE— FRASER,—Solicitors.

*(Ap. Ca. No. 60.)*

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No. 46. ROBERT DAVIDSON, Appellant.—*Abercromby.*

GEORGE LOCKWOOD and Company, Respondents.—*Jeffrey—Buchanan.*

*Bankrupt—Sequestration.*—The trustee on a sequestrated estate having obtained a decree of reduction of a bill, on which a party claimed against the estate; and that party having brought a reduction reductive of the decree; and a majority of the creditors assembled at a meeting having resolved that this action should not be opposed, and that the decree should be allowed to be set aside; and the Court of Session having found that a majority had no power to do so;—Held, (reversing the judgment), That the majority had that power, and that their resolution was binding on the minority.

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* See Lord Gifford's Speech. p. 365.

June 15. 1824.

1st Division. Lords Glenlee and Robertson.

THIS case was connected with the preceding one, to which reference is made. After the remit there mentioned by the House of Lords, Davidson brought an action of reduction reductive of the decree of reduction of the bill which had been obtained by the trustee of Mason, Baird and Company, and appearance was made by the trustee as a defender. On the 15th of June 1816 a meeting of the creditors of Mason, Baird and Company, was held for the purpose of choosing a new commissioner, and upon this occasion the creditors resolved, that the trustee should withdraw any further opposition to the action of reduction reductive, and should rank Davidson upon the estate for the amount of the bill. No complaint was made of this resolution, and Davidson having founded upon it in the action of reduction reductive, Lord Alloway, before whom it came, reported the case to the Court, 'in respect of the resolution of the meeting of creditors 'of 15th June 1818, and of the other proceedings depending in 'the Inner-House, in consequence of a remit from the House of 'Lords.' On advising the cause, their Lordships 'superseded 'the consideration thereof, until the trustee calls another regular 'meeting of the creditors to consider the matters at issue, upon 'due notification given of the special purpose for which it is to 'be held.' A meeting was accordingly held on the 2d of July 1819, when, after various objections were stated hinc inde to votes, a majority of the creditors 'agreed to the resolution of 'the former meeting of creditors, held on the 15th day of June '1818, agreeing to withdraw any further opposition to the action 'of reduction at Mr Davidson's instance.' Against this resolution, Lockwood and Company, as creditors on the estate, presented a petition and complaint, in which they prayed the Court to 'find, that the proceedings of the said meeting have been 'irregular, void, and null; and that the pretended resolution to 'abandon the decree of reduction, and to offer no further opposition to the action of reduction reductive, is ultra vires of the 'persons joining in and supporting the same, and is not binding 'on the petitioners or the creditors at large, but is radically null 'and void, and that the trustee is bound to go on with the case; 'or, at all events, that the petitioners, who are willing to do so 'at their own expense, are entitled to an assignment to the debt 'and diligence on that condition.'

Lord Glenlee, as Ordinary on the Bills, granted warrant of service; and Lord Robertson, also as officiating on the Bills, reported the case to the First Division, when their Lordships, on

June 15. 1824.

the 18th November 1819, 'sustained the petition and complaint, 'and found the proceedings of the meeting of creditors on 2d of 'July last are void and null, and cannot set aside or otherwise 'affect the interest of Messrs Lockwood and Company, the pe- 'titioners in the decree of reduction presently depending in 'Court, and found them entitled to expenses.'* Davidson then entered an appeal against this judgment, and maintained,—

1. That as, by the Bankrupt Act, a majority of the creditors have right to give directions to the trustee, relative to the management, disposal, and recovery of the estate, and as a resolution of the majority binds all the other creditors, it was within the power of a majority to instruct the trustee to abandon the decree of reduction; and as a majority had come to that resolution, and as the right of doing so belonged to the creditors alone, it was not competent for the Court of Session to controul the majority in the exercise of that right; and therefore the judgment finding that the resolution was void and null, was contrary to law, and was an assumption by the Court of the power vested in the creditors, or the majority of them, by the statute. And,—

2. That the meeting had been called by the orders of the Court itself, to consider and decide upon the propriety of abandoning the decree; which necessarily implied, that if the creditors came to a resolution to do so, it would be good and effectual; whereas, by the judgment complained of, the Court had found that the meeting could not come to such a resolution, which was inconsistent with their own order.

To this it was answered,—

1. That in truth there was not a majority in support of the resolution; but supposing there had been so, a majority had no power to surrender or abandon the decree of reduction, which was a security belonging to the trust-estate, and, like any other part of its property or effects, could not be relinquished without the unanimous concurrence of the creditors. And,—

2. That at all events the respondents were entitled, without the consent of the creditors of Mason, Baird and Company, to support the decree of reduction, and to resist the attempt of the appellant to set it aside.

The House of Lords 'ordered and adjudged, that the interlocutors complained of be reversed; and it is further ordered, 'that the petition and complaint of the respondents be dismissed.'

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* Not reported.

June 15. 1824.

LORD GIFFORD.—There were two cases before your Lordships some time ago, in which Robert Davidson was the appellant, and Lockwood and others were the respondents, in which there were appeals against certain interlocutors of the Lords of Session, which are brought before the House under the circumstances which I shall state to your Lordships. My Lords, this case was before your Lordships' House in the year 1815, in consequence of various interlocutors which had been pronounced by the Court of Session, in a proceeding between these parties—Mr Davidson, the appellant, claiming to recover the sum of L.1492. 14s. 9d. as the indorsee of a bill of exchange, which had been indorsed to him by his brother, Mr Andrew Davidson, being previously indorsed to Mr Andrew Davidson by Mason, Baird and Company, as acting for Lockwood and Company. My Lords, in consequence of that appeal to your Lordships' House, your Lordships pronounced a judgment in the month of July 1815, by which the interlocutors complained of in the appeal, so far as they sustained the bill of suspension of William Carlier, were reversed; and with respect to the bills of suspension of John Robertson, and Lockwood and Company, as conjoined with the process of multiplepoinding, the several interlocutors complained of were reversed; and it was ordered, that the cause be remitted back to the Court of Session, to receive such evidence as might be properly offered with respect to the two bills of exchange in question; and particularly to receive evidence upon the facts stated in the appellant's condescendence, and in the answers of the respondents, Lockwood and Company, as to the nature of their dealings with Mason, Baird and Company, and the authority which Mason, Baird and Company had to indorse the bill of exchange as by procuration for Lockwood and Company, so as to make the respondents liable to the payment as indorsers of the bill, or in any manner to transfer such bill to Andrew Davidson, notwithstanding the indorsement made by Mason, Baird and Company in favour of Lockwood and Company, either by striking out the indorsement in favour of Lockwood and Company, or otherways, without making Lockwood and Company liable as indorsers of the bill.

Your Lordships therefore perceive, that by this judgment of the House, the interlocutors complained of in the appeal were reversed; and it is worthy of attention, that by one of those interlocutors costs had been awarded against the appellant, Mr Robert Davidson, which, in the course of these proceedings, had been paid before the appeal was brought to your Lordships' Bar.

My Lords,—On the case going back to the Court of Session, for the purpose of having some inquiries made, and in order that when those inquiries were made, a decision might be come to,—it appears that when the case got back to the Court of Session, it was stated on the part of Lockwood and Company, that in the mean time, or rather before the appeal, an action had been brought by Thomson as trustee on the sequestrated estate of Mason, Baird and Company, for the pur-

June 15. 1824.

pose of reducing the bill of exchange as against Mason, Baird and Company, and that judgment had been given in that action in favour of Thomson, reducing the bill of exchange. My Lords, it seems that on their setting up this decree in this action of reduction, it had been thought prudent on the part of Mr Davidson to endeavour to obtain a reduction of the decree in an action of reduction. 'On the present case coming before the Lord Ordinary, to apply the terms of your Lordships' remit, the Lord Ordinary pronounced an interlocutor of the 31st May 1816, stating, 'that in respect the petitioner, 'Robert Davidson, has failed to bring into Court the action of reduc-'tion reductive of the decreet of reduction of the bill libelled on, 'therefore suspends the letters simpliciter in the suspension at the in-'stance of Lockwood and Company against Robert Davidson, and 'decerns: Finds the letters and charge at the instance of Lockwood 'and Company, against John Robertson, and John Robertson and 'Company, orderly proceeded; and prefers Lockwood and Company 'to the sum in medio in said multiplepoinding, and decerns in the 'preference, and for payment accordingly: Finds Lockwood and 'Company entitled to their expenses; appoints an account thereof to 'be given in, and when lodged, remits to the auditor of Court to tax 'the same and to report.'

My Lords,—A representation against this interlocutor was given in for the appellant, on advising which, with answers, Lord Cringletie, before whom the cause had come in the room of Lord Reston, pronounced a second interlocutor, stating, that 'in respect that the bill 'for L. 1492. 14s. 9d. was made by Mason, Baird and Company, as 'drawers thereof, and indorsers to the representer; and that their 'trustee, in their right, has set aside that bill by a regular decree of 'reduction thereof, obtained against the representer, and all other 'parties interested in the same, declaring it to be, and to have been 'from its date, void and null; finds, that the respondents are entitled 'to found upon that decree, because, were they to pay the bill, they 'would have no relief against Mason, Baird and Company, the prior in-'dorsers; nor from the acceptor, because their right of relief is also cut 'off against the drawers, to whom the bill was accepted without value, if 'the other bill for L. 1492. 4s. 8d. be effectual; but as the said decree 'of reduction took away the title of the representer to insist in his appeal 'in the House of Lords, as it is now pleaded to do in this Court, as it 'is dated above two years prior to the discussion of the appeal, and 'has on it a certificate for the purpose of enabling the parties to found 'on it in that Right Honourable House, the Lord Ordinary appoints 'parties to be ready to debate on the question, whether, as to the 'respondents and the other parties in this cause, any plea arising on 'the said decree is not to be held either as proponed or repelled, or 'as competent and omitted.'

My Lords,—Against certain of these findings the appellant gave in a representation, and the Lord Ordinary having, in the mean time,

heard parties on the effect of the decree of reduction, as formerly appointed by him, pronounced another interlocutor, by which he directed, 'that the parties should prepare memorials for the Lords of the First 'Division on the points alluded to in the representation; viz. first, 'Whether the respondents are, or not, entitled to plead on the decree 'of reduction of the bill for L. 1492. 14s. 9d. obtained by the trustee for 'Mason, Baird and Company, for their behoof? and, secondly, Whether 'by the judgment of the House of Lords, the respondents are, or are 'not, precluded from setting up any plea on that decree, owing to its 'being properly to be considered a plea either competent and omitted 'in that Right Honourable House, or proponed and repelled by it?' The memorials were accordingly given in, and the Lords of Session, on the 7th June 1817, pronounced an interlocutor, whereby they found, 'that as the bill is now reduced, it is unnecessary to proceed in the 'remit from the House of Lords: find Lockwood and Company entitled to expenses of process; allow an account thereof to be lodged, 'and remit to the auditor to tax the same.' Against this interlocutor a short petition was presented, on which the Lords pronounced this interlocutor:—'The Lords having heard this petition, supersede consideration of the same, and of the whole cause, until the first sederunt 'day of January next.' A petition having been presented by Lockwood and Company against this interlocutor, the following judgment was pronounced on the 10th of July 1817:—'The Lords having resumed consideration of, and advised this petition, with the petition of 'Robert Davidson; and having also heard Counsel on both sides, they 'recall their interlocutor reclaimed against by Lockwood and Company, refuse the prayer of the petition for Robert Davidson, and adhere to their interlocutor of 7th June, finding it unnecessary to proceed in the remit from the House of Lords in hoc statu, and finding 'Robert Davidson liable in the expenses of process.' The appellant considering himself materially aggrieved by the interlocutors I have mentioned to your Lordships, presented a reclaiming petition, and the Court thereupon pronounced the following interlocutor:—'The 'Lords having heard and considered this petition, they recall their 'former interlocutor now reclaimed against; and in respect the bill 'is now reduced and set aside, they find it unnecessary to proceed 'in the remit from the House of Lords, and decern.'

June 15. 1824.

My Lords,—It appears, therefore, that the Lords of Session, under a notion that the bringing this action of reduction, which had taken place previous to the former decree of your Lordships, had done away with the necessity of proceeding in the action, they have undoubtedly abstained from executing your Lordships' directions, with respect to the inquiry which this House thought it necessary should be instituted for the purpose of determining this case between the parties; and they have also abstained from proceeding on two interlocutors actually reversed by your Lordships' House, by means of which interlocutors, costs, as I have stated to your Lordships, had been awarded against

June 15. 1824. the appellant, which the appellant, in the course of that proceeding, had actually paid, and which interlocutors were actually reversed in toto by your Lordships. The consequence has been, the appellant has not only derived no benefit from the inquiries directed by your Lordships, but has been deprived of the benefit of your Lordships' judgment in respect of those interlocutors as to the costs, which have been reversed. My Lords, I have no doubt the Lords of Session, in this case, have proceeded on the principle that they were doing justice to these parties, and that, under the circumstances of this case, it was unnecessary to conform to your Lordships' judgment; but it does appear to me, that the Court of Session, notwithstanding that decreet of reduction, on which a great deal might be said, (for although the bill is reduced against Mason, Baird and Company, that will not prevent the appellant having recourse to Messrs Lockwood and Company, the prior indorsers of this bill), have not adopted the course which the circumstances required. I apprehend, the course of the Court of Session should have been, to consider your Lordships' judgment as the step from whence they were to proceed in this cause; and that they were bound to proceed to apply your Lordships' judgment as your Lordships directed them. Undoubtedly, too, my Lords, they ought to have relieved Mr Davidson from the costs he had already paid. My Lords, I do not apprehend that the Court of Session, in this case, meant to disregard your Lordships' judgment: No such thing, I dare say, was intended by them: They considered, that what had taken place previous to the appeal before your Lordships' House, and which they supposed was not known to your Lordships at the time that appeal was heard, (whether it was or not, does not distinctly appear)—they considered, if it had been known, it would have prevented the appellants having relief at your Lordships' Bar; and that therefore they should prevent the appellant having the benefit of the judgment pronounced posterior to that judgment. It appears to me, the Court of Session have taken an erroneous view of your Lordships' judgment; and that, in this case, the appellant must be relieved from the interlocutors they have pronounced; and the case, if there is to be further litigation between the parties, must go back to the Court of Session, in order that those inquiries may be instituted which your Lordships have positively directed. I shall therefore, my Lords, take the liberty of proposing to your Lordships a judgment to that effect, taking time to consider the form of the judgment to be pronounced. It appears to me your Lordships will find, that the Court of Session ought to have applied your Lordships' judgment, by which the former interlocutor of the Court of Session was reversed; and that the cause being remitted to the Court of Session, the appellant was entitled to repetition of the costs incurred by him; and that your Lordships should therefore reverse these interlocutors, and remit the cause to the Court of Session to proceed according to the principles of the judgment of 4th of July 1815, if the parties shall further litigate this question after

they hear what your Lordships' judgment will be in the next appeal; for I am sorry to say, that, in consequence of this proceeding in the Court of Session, a second appeal has been brought before your Lordships' House; and a third appeal, which has not been heard, which I understand it was not wished should be heard, if the judgment of this House on the second appeal should be favourable to the appellant. June 15. 1824.

My Lords,—In the second appeal it appears, that in consequence of this process of reduction brought by Mason, Baird and Company, to reduce this bill of exchange, putting a difficulty in the way of Davidson, Davidson, finding the difficulty thus interposed to his claim upon the bill, thought it right to call a meeting of the creditors of Mason, Baird and Company, in order for them to determine whether they would resist this action of reduction reductive, in order to get rid of this decreet, which it was supposed by the Court of Session stood in his way. In consequence of that, my Lords, a meeting of creditors was called, and took place on the 15th of June 1818. It appears from the minutes of this meeting, that the creditors recommended and authorized the trustee to withdraw any further opposition to the action of reduction reductive sued against him by Mr Davidson, and to rank him upon the estate for the amount of that bill to which I am about to call your Lordships' attention. There had been a meeting of creditors, which had not been regularly convened, for the purpose of considering this question; and therefore, when the matter came before the Lord Ordinary, he directed informations to the Court on the cause, which were accordingly lodged for the parties; on considering which, the First Division of the Court pronounced that the trustee should call another regular meeting of the creditors to consider the matters at issue, upon due notification given of the purpose for which it was to be held. They considered, that with respect to the previous meeting there had not been that notification given of one of the purposes, or at least one of the subjects, which was a matter of consideration at that meeting, which ought to have been given; and therefore they directed that there should be another regular meeting of the creditors called, to consider the matters at issue, upon due notification given of the purpose for which it was to be held. Now, my Lords, I call your Lordships' attention to this interlocutor, because, undoubtedly, the inference from that interlocutor is, that, in their opinion, the subject-matter to be discussed at this meeting was a proper matter for the creditors, and on which they had a right to decide. (His Lordship then read it).

My Lords,—In consequence of this interlocutor another meeting was held, on the 2d of July 1819, of the creditors of Mason, Baird and Company, whose trustee, as I have stated to your Lordships, was the pursuer in this action of reduction; and at that meeting, by a majority of creditors present, it was agreed, that the resolutions of the former meeting of creditors, held on the 15th of June 1818, agreeing to with-

June 15. 1824.

draw any farther opposition to the action of reduction reductive at Mr Davidson's instance, should be adhered to. My Lords, the result, therefore, of the opinion of the creditors, supposing that was properly collected, was, that no further opposition should be made to Mr Davidson in reducing the judgment in the action of reduction; and the consequence would be, if no further opposition was offered to that proceeding, that judgment in the action of reduction, which stood in the way of Mr Davidson in the view of the Court of Session, would be removed. However, my Lords, against this resolution a petition and complaint, in the name and on behalf of the respondents, was presented to Lord Glenlee, Ordinary officiating on the Bills, 'praying for a 'warrant of service on the creditors who supported the resolution; 'and thereafter, on advising the complaint, with or without answers, 'to find, that the proceedings of the meeting have been irregular, void 'and null; and that the pretended resolution to abandon the decree 'of reduction, and to offer no further opposition to the action of reduc-'tion reductive, is ultra vires of the persons joining in and supporting 'the same, and is not binding on the petitioners, or the creditors at 'large, but is radically null and void; and that the trustee is bound to 'go on with the case; at all events, that the petitioners, who are will-'ing to do so at their own expense, are entitled to an assignment to 'the debt and diligence on that condition; or to do otherwise, and give 'the petitioner such other relief in the premises, as to his Lordship 'should seem fit.' It appears, that on advising this petition and complaint, on the 31st July 1819, Lord Glenlee pronounced an order for service.

My Lords,—Answers to this petition and complaint were lodged for the appellant; and, on advising these pleadings, Lord Robertson, Ordinary officiating on the Bills, by an interlocutor of the 26th of October 1819, appointed the parties to print the petition and answers, and box the same for the Lords of the First Division. This order having been complied with, the cause came to be advised, when the Court, on the 18th November 1819, pronounced the following interlocutor:—'The Lords having advised this petition and complaint, 'with answers for Robert Davidson, they sustain the petition and com-'plaint; find the proceedings of the meeting of creditors on the 2d day 'of July last are void and null, and cannot set aside, or otherwise affect 'the interest of Messrs Lockwood and Company, the petitioners in 'the decree of reduction presently depending in Court, and decern: 'Find the respondent liable in expenses of process; allow an account 'to be put in, and remit to the auditor of Court to tax the same.' Against this interlocutor the appellant has appealed to your Lordships, conceiving that the Court of Session in this case have come to a very wrong conclusion.

My Lords,—Great objections were made at your Lordships' Bar, and made below, to the regularity of proceedings at this meeting, on the ground of some persons voting on one side, and others on the

other, who were interested in the question, and who therefore ought not to be permitted to vote. My Lords, attending to the objections made, it appears to me, that even if the objections were sustained on the part of the respondents, still there would be a sufficient majority of the creditors voting upon that occasion, to justify the resolution arrived at by those creditors. The principal question was, whether, supposing that to be the case the resolution come to was one justified by the Bankrupt Act, enabling the creditors at their meeting to determine matters relative to the bankrupt estate. My Lords, by the 54th George III. cap. 137. the Act regulating sequestrations for Scotland, it is declared, that 'all resolutions of the creditors at their general meetings shall be final and conclusive, unless objected to and complained of, by a petition to the Court of Session, within thirty days after the meeting.' Mr Bell, in his Book on the Bankrupt Laws, states, that by the practice under this statute in Scotland, 'in electing the factor, trustee, and commissioners, in giving directions relative to the management, disposal, and recovery of the estate, in all ordinary resolutions of the assembled creditors, and even in the removal of the trustee at a meeting called for the purpose, a majority in value or extent of debt is decisive of the question with respect to the disposing and management of the estate.' Now, my Lords, undoubtedly it was a material question for those creditors, whether or not they should continue this litigation in the action reductive, or whether it was not for the benefit of the estate that that action should not be continued on behalf of the creditors; but that under all the circumstances they should abandon the action as far as the trustee was concerned, and enable Mr Davidson in that action to obtain a reduction of the former judgment. It appears to me, that under the Bankrupt Act this was a question which it was clearly competent for the creditors to decide, and the Court itself had directed this meeting. Their former interlocutor certainly shews, that, in their judgment, it was a matter competent for the creditors to decide. They thought it had not been regularly decided at the first meeting, and therefore, in order that the creditors might have a due notification of what they were called upon to decide, they directed that another meeting should be regularly convened for the purpose. That meeting was regularly convened; a large body of creditors were present; they differed in opinion; it was put to the vote, and as I have already stated to your Lordships, (it is unnecessary to go through the particulars, but it is quite clear), that the majority of the creditors were in favour of this resolution, supposing the parties interested on both sides are put out of the question. If there were some parties interested in the decision of the question one way, there were undoubtedly parties who voted who were interested in the decision in the other; but even if these parties were struck out of the list, there would still be a majority of the creditors in favour of the decision which was arrived at. Then, my Lords, was this a matter which was within the

June 15. 1824.

jurisdiction of those creditors to determine? It appears to me this was a matter respecting the estate of the bankrupts, which it was competent for them to decide upon; and consequently, if so, that the resolution they came to, so far as regarded the trustee, was a resolution which it was competent for them to make.

My Lords,—I observe in the petition below, the petitioners ask in the alternative, either that this resolution may be set aside altogether, or that the petitioners may be entitled to an assignment to the debt, they being willing to do either the one or the other at their own expense. My Lords, whether they are so entitled or not it is not necessary for your Lordships to decide in this case; for all your Lordships are called upon to decide here is, Whether or not it was competent for the creditors to abandon the defence of the action of the reduction reductive, and to authorize the trustee to abandon that action, and to enable Mr Davidson to set aside the former judgment? that is the point your Lordships come to decide upon this appeal:—the question merely is, Whether or not that decision of the creditors was a decision which was within their power to make, as binding on all the creditors of the sequestrated estate of Mason, Baird and Company? for if so, the Court of Session undoubtedly have done wrong in adjudging it to be null and void, which they have done:—they have adjudged that the proceedings of the meeting of creditors on the 2d of July 1819 are void and null; and cannot set aside or affect the interests of Messrs Lockwood and Company in the decree of reduction then depending in Court. My Lords, whether they have decided that this was null and void, on the ground that it was ultra vires of the creditors; or whether they have decided it on the ground that the creditors who voted at the meeting were not properly entitled to vote, I do not know; but if it was upon either of those grounds, with submission to the Court of Session, it appears to me they have not come to a right conclusion;—it appears to me it was clearly within their competence to decide upon that question, and that the decision was come to by a majority of creditors entitled to vote at that meeting. If so, your Lordships cannot sustain these interlocutors. I understood at the time the case was argued at your Lordships' Bar, that if the judgment in this case was in favour of the appellant, your Lordships would not be troubled with the third appeal; and I have some hope, that, after the litigation between these parties, the judgment now pronounced in the first appeal, directing the Court of Session to obey the judgment of your Lordships on the former occasion, and declaring that Mr Davidson must at all events have a repetition of the costs taken from him, and that the action of reduction is no longer to be opposed, will settle the matters in dispute between these parties, and that your Lordships will really not be troubled with the third appeal, but that an end will be put to this litigation, which has continued a great many years, and must have been productive of great expense to the parties on both sides. Your Lordships of course have no controul over that; all that your Lordships can do with

it is to decide upon the points which are presented to you. I shall humbly move your Lordships to come to some special findings on the first appeal; and shall move your Lordships also to direct that the interlocutors in the second appeal be generally reversed; and if so, that will establish the validity of the resolution of the creditors at that meeting; and then, as I have already said, my Lords, I trust, at least I confidently hope, this will put an end to the litigation, which has continued so long to the vexation of these parties. June 15. 1824.

J. DUTHIE— FRASER,—Solicitors.

*(Ap. Ca. No. 61.)*

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ROBERT BROWN, Junior, Appellant.—*More.* No. 47.

WILLIAM MAXWELL and Others, Trustees of Alexander Campbell and James Campbell, Respondents.—*Adam—Ivory.*

*Insurance.*— An insurance having been made on goods to be exported from Leith to Gottenburgh, (at a time when Sweden was at peace with Britain, but when the importation of British goods was prohibited), with power to carry simulated papers, and any flag whatever; and the vessel having sailed on the voyage, but having been captured by a British ship under a mistake, and brought back to Leith; and having afterwards been released; and having, after war was known to have been declared by Sweden against Britain, again sailed to Gottenburgh; and having been captured by the Danes, and, together with the goods, condemned;—Held, (reversing the judgment of the Court of Session), That the underwriters were liable.

June 15. 1824.

2D DIVISION.
Lord Pitmilly.

IN the month of November 1810, the appellant, Robert Brown, junior, a merchant in Glasgow, was desirous to export a quantity of sugar from Leith to Gottenburgh. At this time Britain was engaged in a most active war with France, and Buonaparte had established the continental system with the view of excluding the goods of British merchants from the continent of Europe. In consequence of this, British merchants had recourse to simulated papers, in order to get their goods landed on the continent and sold; and the British Government was in the practice of granting licenses which protected them against seizure by the British cruizers.* Sweden at this time stood in a position of neutrality,

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* The history and origin of these simulated papers were thus explained by the appellant in one of his pleadings to the Court of Session:—'Certain Frenchmen, who had 'emigrated to America, and who were well acquainted with the forms of clearances 'used in the American custom-houses, and with the form of what was called a certifi-'cate of origin, (being a document introduced by the French authorities for the pur-