No. 2. JAMES THOMSON, Appellant. — *Lord Advocate (Jeffrey)* — *John Campbell.*

CAMPBELL'S TRUSTEES, Respondents. — *Lushington* — *David Dundas:*

Partnership—Held (reversing the judgment of the Court of Session), that when there is no conclusive written evidence fixing the proportion of profits to be drawn by partners, the question is one for a Jury; and a remit made to try an issue accordingly.

Feb. 14, 1831.

1ST DIVISION. Lord Meadowbank.

CAMPBELL'S Trustees raised an action before the Court of Session against James Thomson, Writer to the Signet, setting forth that their constituent, the late Archibald Campbell, "in "the year 1798, after having served an apprenticeship to a "Writer to the Signet, entered into the office of Mr. James "Thomson of Bogie, W. S., defender, as a clerk, with whom he "continued for a series of years: That, after being some time in "the defender's office, the said Archibald Campbell, at or prior "to the year 1805, came to have the principal and most con- "fidential situation in the defender's office as head clerk, and "in that situation had the chief charge or superintendence "of his whole business: That Mr. Campbell thereafter devoted "himself so exclusively to those departments of the business "usually performed by the master or his partner, that his gains "by writings were inconsiderable, and totally inadequate to "form a sufficient remuneration either to Mr. Campbell or to "any person of his education and standing in his profession: "That it has been alleged by the defender, that Mr. Campbell "continued in the defender's office as a clerk twelve years "or more: That during the said period the said Archibald "Campbell rendered the most effectual service to the defender "in his extensive and lucrative business; but no settled account "ever took place between the defender and Mr. Campbell in "that capacity: That thereafter Mr. Campbell was assumed as "a partner by the defender; and although the precise date of "the assumption has not yet been accurately ascertained, yet it "will be established, by a writing under the defender's own hand, "particularly from a letter addressed by him to the 'Numerous "and respectable tenantry of Auchterarder,' on the 13th day of "February 1813, that the said Archibald Campbell was assumed

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" a partner prior to that date: That the said Archibald Campbell " continued a partner with Mr. Thomson, devoting his whole " time exclusively and assiduously to the labours of the business, " down till the period of his death in January 1823: That no " settled accounts ever took place between the defender and " Mr. Campbell as partners; in consequence of which the " claims of Mr. Campbell, both as a clerk and a partner of the " defender, fell to be adjusted between the defender and the " pursuers, as Mr. Campbell's executors and trustees: That, " subsequent to Mr. Campbell's death, various propositions " were made by the pursuers to the defender for a settlement " of the above claims on reasonable and liberal principles, " which were all rejected or evaded by the defender: That " thereafter, when previous offers of adjustment made to the " defender by the pursuers, and by the said Warren Hastings " Sands, one of their number, acting as agent for them, had been " declined, the defender himself proposed that the books should " be laid before Mr. James Renton, accountant in Edinburgh, " to make up a state of the profits appearing from the books to " have been made on the same business, to which the pursuers " at once consented; and, accordingly, after a labour of nearly " two years, Mr. Renton prepared a state, to be produced in " the process to follow hereon, from which it appeared that the " net realized profits of the said concern, from the 1st day of " January 1813 till the 28th day of January 1823, the period of " Mr. Campbell's death, amounted to £23,955 17*s.* 3*d.* Ster- " ling, exclusive of progressive interest, and exclusive also of " Mr. Campbell's share of £1,409 7*s.* 2*d.* of profits and outlays " still outstanding, but which will be ultimately realized by the " defender." They therefore concluded to have it found and declared, " that the said Archibald Campbell was a partner of " the defender, at least from and since the 1st day of January " 1813, and as such that he is entitled to one-half of the profits " and emoluments realized by the concern from that date down " to the dissolution of the partnership by Mr. Campbell's death " on the 28th day of January 1823; and that the said Archibald " Campbell was entitled to a fair and adequate remuneration " from the defender for the charge and superintendence taken by " him of the defender's extensive business, as clerk, prior to the " said partnership, according to the rate of payment which shall

" be declared just and reasonable by persons of experience and " integrity in the same profession."

In defence Thomson admitted, that Campbell had been a clerk with him from 1798 till 1813: That in April of that latter year he admitted him as a partner to the extent of one-third share; and he stated, that at the same time he had settled with him for all claims prior thereto as clerk. Campbell's Trustees denied that there had been any settlement relative to Campbell's claims as a clerk; averred that he was admitted as a partner in January 1813; and they founded on a letter addressed by Thomson to the tenantry of one of the estates of which he had the management, dated February 1813, in which he stated, that " it being inconvenient for me to leave " Edinburgh, I have sent my assistant and partner, Mr. Archi- " bald Campbell W. S., to collect the rents," &c. This, they maintained, proved the fact of the partnership; and that, as it was not alleged that there was any special contract, the rule of law was, that each partner was entitled to one-half of the profits.

To this Thomson answered, that there was no such rule of law as that alleged: That there was merely a presumption that the profits were to be divided in proportion to the stock or skill contributed: That this was a question of fact to be fixed by a jury; and that Campbell having contributed neither capital nor superior skill, nor brought any adequate or proportional increase of business, and being a young man, with the prospect of succeeding to an established business, it was impossible to presume that he was to have one-half of the profits.

The Lord Ordinary, in respect of its being admitted, not generally, but under different qualifications, which are denied, that Mr. Campbell was assumed as a partner by Mr. Thomson, and the evidence to establish a co-partnery being otherways incomplete and defective, while (assuming that there was a partnership betwixt the parties) there is no evidence whatsoever of any agreement as to the extent of the interest of the parties respectively in the profit and loss of the alleged concern; and being necessary that all these different points should, before further procedure, be fixed and determined; found that this case must be remitted to the Jury Court, in order that issues, exhausting the said matters, may be prepared and sent for the determination of a jury.

Campbell's trustees reclaimed, and prayed the Court to alter and find that as Campbell was a partner at least from January 1813, he was legally entitled to one half of the free profits and emoluments realized by the concern from that date down to the dissolution of the partnership by his death: That he was entitled to a fair remuneration for his services as clerk; and that on these different claims the defender was bound to hold count and reckoning, and to pay as concluded for in the summons. Feb. 14, 1831.

The Court remitted to the Lord Ordinary to reconsider whether the case should be remitted to the Jury Court, or reported upon cases in the usual form; and his Lordship having reported, their Lordships, on the 26th of May 1829, found, "That it is "established by written evidence that a copartnery was entered "into in January 1813, in respect of which all previous claims "on the part of Mr. Campbell must be pronounced to have "been passed from and discharged. Further, that the presump-"tion of law is, that there was to be an equal participation in "the profits of the business between the two partners;" and remitted to the Lord Ordinary to hear parties farther in the cause.*

Both parties appealed.

Appellant and Respondent (*Thomson*).—The Court below have misapprehended the rule laid down by the institutional writers. That rule is, not that there shall be an equal participation of profits, but that the profits shall be divided on a principle of equality, having reference to the amount of the stock contributed. Thus, if one partner shall contribute two-thirds and another a third, and there is no stipulation as to the proportion in which the profits are to be divided, the law does not presume that they shall be equally divided—that is, that each partner shall receive one-half, but that they shall be divided on the principle of equality, meaning that the one shall get two-thirds and the other one-third. But where the parties are at issue as to the value of the amount of the stock contributed, the question must be submitted to a Jury, who will take all the circumstances into consideration, arising either from the relative position of the partners, their comparative skill, experience, means of enlarging the business, and the probabilities of the one succeeding to the

* 7 Shaw and Dunlop, No. 338.

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other, and will arrive at the result as to what is the true contribution of stock, whether consisting of capital, money, clients, &c., and from that be able to fix the proportion of the profits which ought to be drawn by each of them. This was the course followed in the English case of Peacock *v.* Peacock, which is in accordance with the doctrines of Stair and Erskine, and the decision of the Court of Session in the case of Anderson *v.* Russell. But the Court below, proceeding on a misapprehension of the word equality, have found, from the mere fact of partnership, that there must be an equal participation of profits; and this they did without taking any evidence as to the comparative value of the stock contributed.

2. In regard to the cross-appeal, the appellant was always ready to go into an inquiry as to the matter of fact, whether all claims by Campbell as clerk had not been settled; but on this there was satisfactory evidence before the Court.

Respondents and Appellants (*Campbell's Trustees*).—Where there is no special contract between partners fixing the rate at which the profits are to be divided, the established rule of the law of Scotland is, that they shall be equally divided. It is so laid down by Lord Stair and by Erskine, and was so decided in the cases of Brock and M'Whirter; and in England was recognized by Lord Eldon in the case of Peacock.

2. Although the respondents were willing to have acquiesced in the judgment of the Court below relative to Campbell's claims as a clerk, yet, in order to keep the question open, they have appealed, on the ground that the decision was pronounced without any evidence, and merely on the supposition that, because Campbell was admitted a partner in January 1813, it was probable he would renounce all previous existing claims. This was a gratuitous assumption not warranted by the facts.

Lord Wynford.—My Lords, it appears to me that the cases to which counsel have referred are decisive of that now under your Lordships' consideration. The judgment of the Court of King's Bench, in the case of Peacock *v.* Peacock, does not seem to me to be at all affected by the decision of my Lord Eldon in the Court of Chancery. I have looked also to another authority, greater than that of the noble Lord's I have mentioned. In questions of Scotch law, the opinions of Scotch lawyers ought to prevail over that of the highest legal authorities in this country. The opinion

of my Lord Stair is directly opposed to that of the Court of Session. The question, my Lords, is, Whether, when there is no agreement as to any specific share of partnership property, the Court is bound, upon a presumption of law, to say that the profit and loss must be divided into equal shares? In the Court below the Lord Ordinary had decided that it ought to be sent to a jury, to consider, under all the circumstances of the case, what the proportion should be. The Court of Session, however, considered the decision of the Lord Ordinary incorrect, and took upon themselves to declare that it must be taken as a clear principle of law, that where there is no express contract fixing the rights of the parties, the partnership property and the partnership profits must be equally divided. My Lords, I cannot help thinking, that if that were the law, it would be highly fit that it should be well understood, in order that the consequences of that legal presumption might be guarded against; the application of such a principle will prevent many partnerships, which are beneficial to both parties, and especially to the party who takes the smaller share, from being formed. What person who is in the possession of an established business, and of the good-will of that business, would take a clerk into partnership with him, if, by the mere effect of taking him into partnership, he was to confer upon such clerk an equal share of all the profits, and a portion of the good-will which he had acquired, and which he might sell valuable consideration? Such a law must prevent young men from being advanced from the situation of clerks to the more respectable and more permanent situation of partners. My Lords, whatever the convenience and inconvenience of the rule may be, if the law is so settled, your Lordships, sitting judicially, must decide according to it. I cannot, however, think that it is so settled; the contrary appears to be clearly the understanding of Lord Stair. Lord Stair says, "Society," that is partnership, "may be described a contract for communicating the profit or loss of that which is brought into the society proportionably, according to the share and interest of each partner;" so that if they have different shares or interests, a division according to the proportion of partnership in each share or interest must be made. "It is true," says that learned writer, "that if there appear no inequality in the stock of the partners, when no proportion is expressed, equal share of profit and loss are understood." He was writing before there was a Jury Court in Scotland, when the Judges were called upon to decide the question of law and fact; and I take Lord Stair to say nothing more than that which I ventured to intimate to your Lordships a long time ago as my opinion, that if I was to direct a jury, or I was sitting in a situation to exercise an opinion, both upon the law and the fact, I should say, "If there be no evidence to guide

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my judgment, I will make the division equal; I will look at the circumstances, and I will infer from the circumstances the intention of the parties; but if there is no circumstance inducing the Court to give more to one than to the other, then the shares should be equal." But let us see what Lord Stair says farther: "Or if the skill or industry of some of the partners be of great importance, the society may consist in these terms,—that those persons shall have no share of the loss, and shall have such a share of the profit, according to the sentence of Sulpitius; but if such inequality of industry, &c. appear not"—that is, if no such circumstance appear —" the sentence of Mucius rejecting such inequality of shares is just, and there is no contrariety between the opinions of both." If the circumstances of both parties are the same, their shares are to be equal. If one brings more capital, or if one was in possession of a business to which he admits the other to a participation, it is to be considered whether these advantages do not entitle him to a larger share of the profits of the concern. Now, in this very case, a man in an established business takes a young man into partnership; the good-will which the first partner has is a marketable article, as much as any part of the stock in trade. Does not that advantage create an inequality? Again, it is fair to presume that he who has been in the business a long time has more knowledge of the business than the young man just admitted into the concern. There were those circumstances, therefore, to be considered by the Court, in deciding whether the share should be equal or unequal; and I cannot help thinking it would be gross injustice if, in such a case, the question of the amount of share be not sent to a jury. Your Lordships cannot take upon yourselves to settle the proportion of the parties. I think, with humble deference, that if you did, your Lordships would be assuming a duty you are unequal to the discharge of. Perhaps I have had as much experience in these matters as most of your Lordships, but I profess myself totally incompetent to settle such a question. The fittest persons to decide a case of this sort are a jury of merchants. The case of Brock *v.* Brown is referred to, but that case does not appear to me to affect this question. The Court of Session did not decide that they would not give unequal shares; all that was decided in that case was, they could not allow one of the partners to claim for labour performed. I think the Court were perfectly right in that decision; for the moment a partnership is established there is an end of any implied contract for service, and the parties could be considered only as partners, and not as master and servant. The opinion of Lord Stair is supported, by the judgment of Lord Ellenborough, which is expressly in point upon the present occasion. It is supposed Lord

Eldon's opinion differs from that of Lord Ellenborough. If it had appeared to me that there was ground for that supposition, I should have thought that this case ought not to be decided till we had an opportunity of consulting Lord Eldon, but I think that is not the case. Lord Eldon must have thought that a different proportion might be given, or his Lordship would not have directed an issue to ascertain the amount of the shares of the parties. His Lordship must be taken to have held that the jury were to decide upon the quantum. When the case came back his Lordship was surprised at the quantum found by the jury. What led the noble Lord to express that surprise I do not know. It cannot be taken from hence I think that he thought that the jury had nothing to do with the quantum at all, but merely that the apportionment which they found was not a just one. Under these circumstances, my Lords, unless my noble and learned friend on the woolsack should differ with me, I should humbly move your Lordships that this interlocutor be reversed, and that the matter be sent back to the Court of Session, with a direction to send an issue to the Jury Court to ascertain, under all the circumstances of the case, what is the fair proportion of this business to which this party was entitled. Feb. 14, 1831.

LORD CHANCELLOR.—My Lords, I so entirely agree in the view which the noble Lord has just taken of this case, that I should not have troubled you with a single observation, further than doing myself the honour of seconding his proposition, had not not this been a case where the opinion of your Lordships does not go to affirm the judgment; and your Lordships are aware that in such circumstances it is generally deemed fit, for the satisfaction of the parties, and out of respect to the Court below, to assign reasons for the reversal. I shall therefore shortly follow my noble and learned friend in stating my view of the case. My Lords, the point to which I wish to call the attention of the House is this: It is said to be the presumption of law, that where there is a partnership, there is to be an equal participation in the profits of the business. Now, my Lords, for this, as a presumption of law, it is correctly stated by my noble and learned friend, that there exists no ground. If it had been put as a presumption of fact, I could have better understood the statement. If I were trying at Nisi Prius the question, what proportion the partners in a concern were severally entitled to,—that being the question of fact sent to a jury by Lord Eldon in Peacock *v.* Peacock, and tried afterwards by Lord Ellenborough,—I should be disposed to advise the jury, that the matter of equal division would be a convenient doctrine of fact, and form the ground for a convenient inference to be drawn in the absence of other evidence; but that would be only supposing there was no other evidence in the cause—that

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would be supposing, above all, that if there was any other evidence which could be found to alter the proportions, that evidence must furnish the rule; and that would be an additional ground for saying, that it must be a presumption of fact, and not of law; but here the Court confound, as it appears to me, the presumption of fact and the presumption of law, and make that a presumption of law which, if admitted, excludes all question of fact; *cadit questio* as to the fact the moment you allow that, in the absence of a written contract, the law holds the shares to be equal. My Lords, this is a proposition as to which I think the Court have been misled by a case which does not appear to have been very explicitly stated, and which does not seem to have excited very great attention. Their doctrine goes this length, that whatever the circumstances,—taking, for instance, the case of a banker's clerk who is admitted into the house,—unless there be a special contract to exclude the legal presumption, the legal presumption shall give him an equal share of the profits, and shall exclude all evidence of the fact, and all consideration of the particular circumstances of each case. To that doctrine which this interlocutor has embodied I cannot, any more than my noble friend, accede in point of law. My noble and learned friend, if he was sitting at Nisi Prius directing a jury, would very probably take that for the ground of his direction, as being the convenient division, in the total absence of other evidence to break in upon it. It is, certainly, the line I should adopt, in dealing with the question of fact, and having taken the opportunity afforded by one of the learned Chief Justices, sitting near us, as the argument proceeded, I find that he has no doubt upon this subject. When a case appears so clear, which has been otherwise decided below, a person doubts sometimes whether he is not taking too confident a view of the case; and I wished to know whether the opinion and judgment of that learned judge confirmed my own; and I have received an intimation, that his clear opinion is precisely the same as that stated by my noble and learned friend, and to which I entirely accede, that where there is no evidence—not shutting out evidence, but where there is none—he should in all cases direct a jury to take into consideration the fairness of an equal division, but not discountenancing evidence—rather courting evidence—rather regretting that there was no evidence—and only having recourse to that presumption, in the last resort, for want of evidence. This is not the doctrine of the Court below; for they say, we do not court evidence—we, on the contrary, rather shut it out; for we conceive we are bound to give effect to this, as a legal presumption to overrule it. My Lords, it is more satisfactory, in deciding on appeals from the Scotch Courts, where it can be done, to refer to cases in the Courts of Scotland than in those of England. Nevertheless, the greatest deference is due to

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the authority of English Courts, whether of common law or of equity, in mercantile questions; because our law, in that, purports to proceed on the same principles as theirs; and I should with difficulty attempt to select any one chapter of the Scotch mercantile law which differs in its principle, or is intended to differ in its principle, though there may be in some respects a difference in its details, from the law of England. Undoubtedly, if the cases in the Scotch Courts had been founded on different principles, and running in an opposite direction to ours, we should have been bound to prefer their authority; but there appears to be no distinction. I will first say a word with respect to the authority of the civil law, for I see that is adverted to in some of the text writers. I deny that the civil law is of direct authority in the Scotch, any more than it is in the English common law. Much respect is due to the wisdom of the makers of and the practisers under that venerable system of jurisprudence, recommended by its great antiquity—by the number of ages during which it existed — by the numberless millions of people whose various concerns it regulated during those ages, and above all by its beautiful symmetry — by its unexampled precision and fulness — by the consistency in principle with themselves of all the arrangements of that code; nevertheless, it has no direct weight as an authority in the Courts either of Scotch or English law, whatever deference it may claim as a monument of the wisdom of old times, and the ability of learned men. But if there is any one department in which the authority of the civil law shall not be taken to rule points in our day, it is that of mercantile jurisprudence, where the defective nature of ancient commercial dealings and commercial institutions connected with them, and growing out of them, necessarily makes that code of far less weight than in other cases. I deny not that the rule laid down in this interlocutor was the rule of the civil law—it may be taken to have been so; and that, in order to exclude the equality of shares of profits, it was requisite that there should be an express stipulation, in the absence of which an equal division was held to be the presumption—I may say the presumption of law—not to the extent of excluding an express contract, but to the extent stated in this interlocutor. But I not only deny the authority of the civil law as a direct authority; I deny the weight of it—the general deference to it—in a question of mercantile law, in mercantile times, and in a mercantile country. Then the authorities of the English law are the other way. Permit me to observe, that as to questions of partnership though one Court in this country has peculiarly the cognizance of these—namely, the Court of Equity—inasmuch as at law partners are considered as one and the same person—yet when that difficulty is got over by sending an issue to trial, the question of the shares of the partners came with

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peculiar advantage under the cognizance of a learned judge like Lord Ellenborough, and a jury of merchants in the city of London, than which judge no one had ever greater experience in mercantile law, and than which juries no men are better enabled to decide on such matters by their judicial experience as well as by their mercantile habits. It appears in the report of the case of Peacock *v.* Peacock, that Lord Ellenborough entertained no doubt whatever—he excluded at once the idea of equal division, and directed the jury to take all the circumstances into their account, who found one-fourth, on the grounds stated and the facts proved, to be the proper division. And it is not Lord Ellenborough's decision alone on which I proceed here, but Lord Eldon's—for he sent the very question to a jury; but if he had held that there was, in the absence of a written contract, a presumption of law in favour of equality, it would have been fruitless to have done more than send the question—Are A. and B. partners? for the first branch of the issue; and then for the second—Is there any thing in their connection with each other to alter by special contract the presumption of law in the absence of an express agreement? These would have been the questions Lord Eldon would have sent to the jury; and when the record came back, instead of merely making an observation in disparagement of the verdict—for it amounted to no more—he would at once have said, they had determined a question he had never sent to them; but if he had said so, it would have been in disparagement of his own order in directing the issue, for he had directed them to inquire what was the share and amount; and all he appears to have said on the matter afterwards coming before him was, "I do not exactly see on what ground the jury came to that conclusion." If his Lordship had known as much as my noble and learned friend, or as Lord Ellenborough, of what passes in Guildhall, he would not have expressed his surprise; for it is not uncommon in London that the fourth part should be the proportion in the case of father and son. There was no new trial directed by Lord Eldon. It is said the party acquiesced in it, and therefore he was satisfied; but it appears that it was only as to the question of fact—the exact proportion of one-fourth—that Lord Eldon felt a doubt, not seeing how that was established. But if he had not intended to send that to the jury as a question of fact, as it appears to me, Lord Eldon would have set it right when it came before him. Now, my Lords, such being the only matter laid before us with respect to English law, how stands the Scotch law, as it appears from cases or the authority of text writers? Lord Stair has been alluded to—the high authority of Lord Stair—by my noble and learned friend. Erskine's is nothing in derogation of that authority, when accurately viewed. Lord Bankton's is an express affirmance of it;

and then your Lordships have the case which has been cited here, and to the accuracy of that report I hear no objection urged on the other side of the Bar—the case of Russel *v.* Anderson. There you find the learned judge is dealing with this very proposition. He does not accede to the proposition of law as a general one; for he considers it to apply only to the case of parties associating on equal terms, both in stock and labour. In point of law, the party founds his plea on the equal rights of partners, from which he derives those funds,—that, if there be not indisputable evidence of a different arrangement, equal rights must be presumed. What is meant by equal rights strictly applies to the shares you have equal rights to—shares which may be equal or unequal, according to the circumstances of the case. He deals with this as the proposition. He cites Lord Stair and Lord Bankton; he then states, that where there is room for doubt, it must be sent to the Jury Court. He then cites Peacock *v.* Peacock; and he supposes the case of a clerk admitted as a partner into Sir William Forbes's Banking House, and holds that it could not be supposed in such a case—though for this the respondent must contend—that he would be entitled to an equal share of the profits with the heads of that house. This is an authority on all-fours, and there is no decision on the other side. Feb. 14, 1831.

My Lords, upon these grounds, taking it simply as a question of Scotch law, deciding nothing further—as it ought to be our rule in no case to go further than the question before us—saying nothing at all about Peacock *v.* Peacock, except to explain the discrepancy which is inaccurately supposed to have existed between the Court of Equity and the learned judge at Nisi Prius—saying nothing respecting the law, except as a question of Scotch law, established by the decision of a learned judge, established by the text writers of the greatest eminence—upon these grounds I concur with my noble and learned friend in advising your Lordships to reverse the decision, and remit the cause to the Court of Session, in order that they may send the question to the Jury Court, as they were in the course of doing, but for the impediment thrown in their way by the erroneous position laid down. But I would strongly recommend to the parties to make an arrangement themselves and take one-third, and then we shall hear no more of it, and they will save a great expense.

The Lord Advocate submitted, that on the cross-appeal, whatever this House might do in regard to the question of partnership, they ought to decide that Mr. Campbell had waived all claims for further payment for his services as clerk when taken into partnership.

Lord Chancellor.—This appears to be also a matter of fact proper to be submitted to a jury; both questions should be disposed of in the same way, by reversing the interlocutor, so far as appealed

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from in the original and in the cross-appeal, and remitting the cause to the Court of Session, with an instruction to them to direct an issue or issues to be tried by a jury with regard to the whole matters in dispute between the parties.

The House of Lords ordered and adjudged, That the interlocutors, so far as complained of, be reversed; and it is further ordered, That the cause be remitted back to the Lords of Session, of the first division, in Scotland, with instructions to them to direct an issue or issues to be tried by a jury, which issue or issues shall include the whole matters in dispute between the parties in this cause; or to proceed otherwise in the said cause as they shall deem just, and shall be consistent with this judgment.

Appellant's Authorities — Anderson, May 22, 1828 (6 Shaw & Dun. 836); Peacock, 16 Vesey junior, 49; 2 Campbell, 45.

Respondents' Authorities.—1 Stair, 16, 3; 3 Ersk. 3, 19; Brock, Dec. 9, 1696 (14,563); M'Whirter, Feb. 14, 1822 (1 Shaw and Dun. 3 Gow on Partnership, 9; Struthers, May 19, 1826, (ante Vol. II. 153.

J. CHALMER—SPOTTISWOODE and ROBERTSON,—Solicitors.

No. 3. GEORGE PENTLAND, Appellant.—*Robertson—M'Neil.*

Hon. J. WOLFE MURRAY, and Others, (for the Hon. ALEX. OLIPHANT MURRAY,) and TRUSTEES of Lord and Lady ELIBANK, Respondents.—*Lord Advocate (Jeffrey)—Walker.*

Landlord and Tenant. — Circumstances in which it was found (affirming the judgment of the Court of Session) that a party had acquired no real right to a farm under an improbative lease.

Feb. 15, 1831.

1ST DIVISION. Lord Meadowbank.

THE Hon. Alexander Oliphant Murray, eldest son of Lord Elibank, is the proprietor of the entailed estate of Pitheavlis, (situated in Perthshire,) subject to a reserved right of liferent in favour of his mother. For some time prior to 1818 the appellant Pentland was in possession, under a lease, of certain parts of the estate called Greenyards and Unthank. On the 13th of April 1818 Lord Elibank (then the Hon. Mr. Murray,