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decide upon; but I will go as far as I can. Therefore do not entertain an idea, that I have a notion that the way prescribed may not be in accordance with the law of Scotland; and if what I decide is the law of Scotland, it must stand till somebody thinks proper to alter it. And as to the question, whether the principle of it fail, I am very far from being one of those who examine into the principles for the sake of overturning the constitution of any place; much less of a country that has flourished for so many ages, and has risen to that height of greatness and prosperity under that constitution. I should take him to be a bold man that would undertake, upon any abstract proposition whatever, to new model the constitution of a country under such principles as these, unless he can state that these principles are false. I give no opinion upon that subject. The humble advice I propose, goes upon as perfect a conviction as any solid reason can establish, that I am speaking the law of Scotland, and not from any private zeal, or public wishes, or any private objects upon that subject. In consequence of which, I move your Lordships to reverse the interlocutor, and to declare that the defendant shall confess or deny the truth of the several matters contained in the averments."

It was ordered and adjudged, that the interlocutor complained of be reversed; and it is further ordered, that the respondent do confess or deny the averments in the appellants' pleadings.

For Appellants, *Tho. Erskine, Alex. Wight.*
 For Respondent, *Sir J. Scott, Wm. Tait.*

WILLIAM WADDEL of Easter Moffat, universal disponee of Wm. WADDEL of Calderhead.	} <i>Appellant;</i>
ELIZABETH, AGNES & ANN WADDELS, Sisters of the Deceased HENRY WADDEL,	

House of Lords, 20th Dec. 1790.

PROOF—EVIDENCE—BORROWED MONEY.—A party held no vouchers or documents of debt, for sums of money lent to his brother. The only evidence of these being some jottings in the brother's account book, and other separate accounts.—Held, that these were not sufficient evidence to support the claim made after the death of both.

This was an action raised by the appellant, against the

respondents, representatives and executors of the deceased Henry Waddel, for the sum of £3438. 17s. with the legal interest thereof, &c., conform to the deceased Henry Waddel's account books, pocket books, and other writings, which belonged to the said deceased Henry Waddel, all in the possession of the respondents.

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It was stated that William Waddel had been in the practice of lending large sums of money to his brother Henry, without taking any voucher or document of debt for them. In return, Henry was to pay 4 per cent. interest; but it was alleged that Henry lent out this money along with his own, and made it yield 5 per cent. At the close of the year 1773 an account was exhibited, in the handwriting of Henry, showing a balance due William Waddel of £784. 4s. 1d., and between that time and 1782, Henry had received other sums amounting to £1222. 10s. 10d.

But such being the unbounded confidence placed by William in his brother Henry, no voucher or acknowledgment was taken by him for these sums. William even executed a settlement in his favour, which was destroyed before his death, and one executed in favour of the appellant, his nephew, and son of George Waddel of Easter Moffat, the elder brother of William and Henry.

On a special call to that effect, the Lord Ordinary ordered Dec. 4, 1784. "the defenders to exhibit and produce in this process "the whole writings, account books, and jottings libelled on "and called for by the pursuer."

After the record was made up and closed upon these productions, the Lord Ordinary pronounced this interlocutor:—"Finds that the jottings and accounts founded on Dec. 23, 1786. "by the pursuer, do not afford any evidence that *Henry* "Waddel was, at the time of his death, indebted to his "brother; therefore assoilzies the defenders, and decerns."

The appellant lodged a representation against this interlocutor, and insisted that the commissary clerk of Glasgow should be ordained to transmit a trunk belonging to the deceased Henry Waddel, containing, in particular, a made up account of sums received from William Waddel, and other papers. The Lord Ordinary granted this request "for July 23, 1786. "recovering the account said to have been made up by the "late William Waddel."

Upon these, it was contended for the appellant, that though he was not possessed of any documents signed by Henry Waddel, yet his claim was supported by the most

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unexceptionable evidence, the written acknowledgments of Henry himself, found after his death, locked up in his repositories. There were produced two books kept by Henry Waddel; the one a receipt book, in a part of which he entered the interest of the money lent out by him as it was received, and the principal sums when paid, generally mentioning the uses to which these last were applied; and in another part of the book he entered the receipt of his rents. The other book was an account book, the only ledger Henry kept, in which he opened accounts with his clients. In this last book there was an account opened with his brother *William*, commencing 2d July 1755, ending 1759, and discharged thus: "28th Nov. 1759, Received from Wm. Waddel of Pepperhills £12. 1s. 6d. in full of all demands I can charge him on any account."

There was next engrossed in this book several sums marked "borrowed from you," between 31st July 1760 and "4th August 1761, amounting to £250.

These entries in Henry's book were deleted by scorings drawn through them.

The next account opened for William Waddel, had the words "borrowed from you," and in it the several sums lent from 26th Nov. 1764 to 8th June 1782, amounting to £2056. 10s. 3d, were respectively stated.

There was also the account on separate paper, which brought out the balance, after deductions, of £784. 4s. 1d., as above mentioned, commencing 3d December 1761, and ending 8th January 1773.

The respondents answered, that these were not sufficient evidence that the sums of money libelled were borrowed by the deceased Henry Waddel from his brother William, and that the whole case rested therefore on certain suppositions and conjectures emanating from the appellant. That, in point of law, the book and accounts kept by Henry was not sufficient to support such a demand. The book was not a formal or accurate ledger, but a small pocket book, relating to Henry's business as an agent.

Jan. 20, 1789. The Court adhered to the Lord Ordinary's interlocutor,
 Feb. 10, ——— notwithstanding two reclaiming petitions.

Mar. 3, ——— Against these interlocutors the present appeal was brought to the House of Lords.

After hearing counsel,

LORD CHANCELLOR THURLOW said,—

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“ I must lay aside all the computations and comparisons of William and Henry Waddel’s fortunes, and the allegations as to abstraction or concealment of papers, no such thing having been proved. That the sole question was, Whether Henry’s account pocket book, and the paper containing the account in 1773, were evidence to support the demand? That they afforded strong ground of suspicion that Henry died possessed of William’s money to a considerable amount, was beyond all question; but I cannot consider these documents as amounting to legal evidence. It was not this cause alone which he had to consider, but the danger of such a precedent of introducing loose evidence. He therefore moved to affirm.”

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It was therefore ordered and adjudged that the interlocutor complained of be affirmed.

For Appellant, *R. Dundas, Thomas Macdonald.*

For Respondents, *J. Anstruther, Wm. Adam.*

[Mor. p. 4949.]

HENRY JAFFREY and Others, Partners of the Stirling Banking Company, (Stein’s Creditors,)	} <i>Appellants ;</i>
MESSRS. ALLAN, STEWART & Co.,	
	<i>Respondents .</i>

House of Lords, 23d Dec. 1790.

BANKRUPTCY — SALE — DELIVERY — RESTITUTION — FRAUD — STOPPING IN TRANSITU.—A party, a distiller, had entered into a bargain for the purchase of an extensive quantity of grain from the respondents, while he was verging towards, and on the eve of bankruptcy. The grain was furnished; and, up to the date of the bankruptcy, between 20 and 30 cargoes stood thus: 1. The greatest quantity was delivered more than three days before bankruptcy; 2. Several cargoes were delivered within the three days of bankruptcy; and, 3. At the date of his becoming bankrupt, several cargoes had arrived at the port of delivery, but were not then landed, but lay in the ships before being carried to the warehouse of the buyer. The respondents claimed restitution of the whole; in regard to the first, on the ground of presumptive fraud. In regard to the second, on the ground of positive fraud; and in regard to the third, on the ground of their right to stop *in tran-*