

tions the said interlocutor be, and the same is hereby affirmed. And it is further ordered, That the cause be remitted back to the said Lords of Session to proceed as is just.

For the Appellant, *Wm. Adam, Henry Erskine, Ad. Gillies, Geo. Cranstoun, F. Horner.*

For the Respondent, *David Boyle, John Connell.*

NOTE.—This and other cases led to the act 48 Geo. III. c. 138, by which the law on the subject of augmentations is now regulated.

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The EARL OF WEMYSS,	<i>Appellant ;</i>
ALEXANDER CARRE, ESQ.,	<i>Respondent.</i>

House of Lords, 24th May 1808.

BILL—PAYMENT—ACQUIESCENCE.—Circumstances in which it was held, that a bill granted by a party for £500, and which bore, by relative letter, to be granted in order to be discounted for his accommodation, was not due as a debt against that party, it appearing that he had expended the £500 in serving the appellant's political interests, and those of his family, this being supported by acquiescence, no claim having been made upon the bill for six years after it fell due, and after the death of that party.

The respondent's brother possessing great political influence in the burgh of Jedburgh, &c., had exerted it on several occasions in securing the election of the appellant and his family for the burghs of Haddington, Jedburgh, &c. That influence had been influential in securing the return of Lord Elcho his son in 1780. In consequence of serving the appellant's family in their political interests, he had involved himself in pecuniary embarrassments.

He died in 1798, and, in consequence of these embarrassments, the respondent had to serve *heir cum beneficio inventarii* to his brother in 1799. Soon thereafter the appellant brought the present action against the respondent, concluding for payment of the sum of £500, said to have been advanced by him to the late Mr. Carre fifteen years before, conform to bill dated 31st Jan. 1784, drawn by Mr. Carre on the appellant, accepted by him, and discounted at the banking house of Sir William Forbes and Co. in Edin-

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burgh, by James Stormonth, writer in Edinburgh, the appellant's political agent. Applicable to this bill, there was the following letter granted by Mr. J. Carre :

“ Sir, Edinburgh, 31st Jan. 1784.

“ As you have, of this date, accepted a bill
 “ drawn by me upon you for £500 Sterling, payable six
 “ months after date, *without any value*, being for the pur-
 “ pose of discounting *for my own accommodation*. There-
 “ fore I hereby engage to take up said bill when due, and
 “ deliver it to you, to cancel your subscription therefrom, and
 “ to free and relieve you of all consequences thereof.—I am,
 “ Sir, Yours, J. CARRE.”

From various circumstances, in particular, from the form of the bill, in which the appellant appeared as debtor, and from the fact that there existed no other than a political connection between them, and also from the application of the proceeds of the discount of this bill,—the inference was, that the transaction had been gone into to forward the political views of the appellant. And this conclusion was strengthened by the circumstance of no judicial claim having been made against Mr. Carre till nearly six years after the date of the bill; while, four years after its date, he had written the late Mr. Carre the following letter, which is quite inconsistent with the supposition that such debt was due.

“ Dear Sir, Retreat, 8th Sept. 1780.

“ I have just now an express from Mr. Stormonth,
 “ along with which he sends me your letter of the 4th to
 “ him, *I here enclose you £200, which you will please em-
 “ ploy where you think it proper for our interest*; and as
 “ you have, in so uncommonly and friendly a manner, taken
 “ us by the hand in our business in your part of the coun-
 “ try, may I hope you will still continue to give us your
 “ advice and support in this affair. *I want words to express
 “ the obligations we are under to you*.—I have the honour to
 “ be, dear Sir, your much obliged, and most humble servant,
FRANCIS CHARTERIS.”

The whole money, for securing the son's election, came through the Earl. Mr. Charteris was curtailed in his income, and had little or nothing to give, and had frequently written Mr. Carre, as was shown by letters produced, ex-

pressing his regret at not being able to send him money, having none of his own.

It was in these circumstances, and in the beginning of the year 1784, when it was necessary to support the interest of appellant's family, that the sum of £500 was raised by the bill above mentioned, in order to supply some urgent demands of the town council of Jedburgh, and defray some law proceedings attendant on the election matters.

A letter before this bill was concocted, and a letter after it was cashed, demonstrated that it was to serve the political purposes of the Earl's son. On 5th February 1784, after its date, Lord Elcho writes from London, stating, "It is so far
" lucky, as, from a letter I got from Mr. Stormonth last
" night, I find you are more, at your ease than you was
" when you wrote to me; whatever my father and Mr.
" Stormonth approve of as a proper plan to be pursued, will
" be agreeable to me."

It was also proved that Mr. Carre sent £300 of this sum to the treasurer of the town council of Jedburgh, to be distributed to the several trades, and that £153. 11s. 9½d. was paid to a writer in Jedburgh for political expenses—the balance went to discharge other disbursements. When a demand too was made for the bill, he wrote the Earl, stating these facts, and, in answer, received a letter from Mr. Anderson, written on 4th February 1791, by the instructions of the appellant, admitting that the money had been expended in serving his political interests, and holding out a promise that, if Lord Elcho did not pay, that he would not allow him to be the sufferer. Accordingly, the respondent lodged defences setting forth these facts.

The Lords, after several interlocutors, varying in the judgment come to, finally sustained the defences, and assoilzied the defender, and found the appellant liable in expenses. Feb. 20, 1804.

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

Pleaded by the Appellant.—The obligation which the late Mr. Carre came under, by his letter above quoted, in regard to this bill, to retire it when it fell due, is perfectly clear; and there is no evidence whatever of any private understanding inconsistent with, or contradictory to, the terms of that obligation. On the contrary, the whole evidence proves the reverse. When the bill falls due, it is allowed to lie oyer at his request. At a distance of four years he pledges himself to the bankers that he would soon discharge

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the bill in whole or in part. And when, finally, it was paid by the appellant, and demand made upon him for payment, his language is not that of a person who had any ground in law or equity to resist the demand, or who had a pretence for saying that the appellant was even in honour bound to abstain. He pleads his services, and throws himself entirely on the appellant's generosity, alleging that he had spent the money in supporting Lord Elcho's interest in Jedburgh. But, supposing this latter explanation to be proved, which it is not, he has produced no authority from the appellant for the expenditure. And the whole correspondence and circumstances are confirmatory of the debt, supported by the bill and relative letter. Nor is it any answer to this to object, that the letter, or obligatory writing, is improbativ and ineffectual, not being written by, or holograph of Mr. Carre, and no witnesses having testified his signature; because it is obvious that such objection is elided by the fact, that it is a document to which law gives the general name of *res mercatoria*. And even if the document were not of a privileged nature, still this objection would be completely done away both *rei interventu* and by homologation.

Pleaded for the Respondent.—The appellant, from the beginning, was aware that the £500 raised by the bill was not really intended for Mr. Carre's individual and private accommodation, but to be applied for political purposes in the burgh of Jedburgh, in which the appellant and his son were jointly engaged; and that the missive granted by Mr. Carre was merely intended as a means of calling him to account for the expenditure of the money, which the appellant has acknowledged he was convinced had been expended by Mr. Carre in supporting the interest of Lord Elcho, which is identified with his own. In the letter written by Mr. Anderson, 4th Feb. 1791, by the desire of, and afterwards homologated by the appellant, he enters into an express obligation, in case Lord Elcho should, on application to him, refuse to do Mr. Carre justice, to relieve him of the debt. Application was made to Lord Elcho by Mr. Stormonth, and his Lordship refused to do Mr. Carre justice, not because he was unwilling, but because he was unable. The condition under which the appellant came under the obligation to relieve Mr. Carre being fulfilled, the appellant is now bound to implement the obligation.

After hearing counsel,

THE LORD CHANCELLOR ELDON said,

“ My Lords,

“ It may be proper to mention why we have paused so long to give judgment in this case. There were two contradictory judgments in the Court below. The Court at one time were of opinion that the action could be sustained; and, finally, that it could not; and, in the course of procedure, individual judges changed their opinions.

“ The cause was ably argued at your Lordships’ bar; and we were exposed to some risk of trying the question more by an individual than by our judicial feelings. The whole matter at issue was only £500; and, if we affirmed the decision, we must either give costs, or see a reason why they were not to be given.

“ The action arose in consequence of the following transaction:— In 1784 there was occasion to borrow £500, to be applied to election purposes at Jedburgh. A bill of exchange for this sum was drawn by Mr. Carre upon the Earl of Wemyss, which he accepted, and Mr. Carre then signed an acknowledgment, of the following terms. (Here his Lordship read the missive of 31st Jan. 1784).

“ It was argued, and, I think, on sound principles, that if it consisted with the knowledge of the Earl of Wemyss that the money was to be applied for election purposes for himself or his family, no action would lie on this matter against Mr. Carre.

“ From the best consideration I can give to all the transactions, as appearing from the correspondence, it appears to me that there is a considerable degree of evidence, if not satisfactory evidence, that the money was immediately applied to such election purposes. The meaning of the counter argument appears also to have been, that the money was to be repaid, if recovered out of some funds expected to be effectual in Jedburgh.

“ The only question was, if this source of payment failed, whether the money was to be paid from the private funds of Mr. Carre? The natural course, in this view of the matter, would have been, that a demand should have been made on Mr. Carre for repayment when the bill became due, and was taken up by the Earl of Wemyss.

“ But, in point of fact, nothing appears to have been said of this demand from 1784 down to 1790. At this period an assignment was taken in the name of a third person, and an action brought against Mr. Carre.

“ The question comes to be, if, on the acquiescence from 1784, and the evidence furnished by the letter of Mr. Anderson, Lord Wemyss’ agent, it is or is not to be presumed that his Lordship knew that the money was applied for these election purposes?

“ I have had considerable doubts as to this, but I incline to think that his Lordship was aware of this. I therefore cannot advise your Lordships to reverse the judgment; but, on account of the varying

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judgments in the Court below, and the difficulty of the case itself, I cannot advise your Lordships to give costs."

On his Lordship's motion the judgment was affirmed.

It was, therefore,

Ordered and adjudged that the appeal be dismissed, and that the interlocutors complained of be, and the same are hereby affirmed.

For the Appellant, *Wm. Adam, Thos. Thomson, F. Horner.*

For the Respondent, *A. Colquhoun, Sir Sam. Romilly.*

NOTE.—Unreported in the Court of Session.

ARCHIBALD, DUKE OF HAMILTON & BRANDON, *Appellant* ;
Rev. JOHN SCOTT, Minister of the Parish of } *Respondent.*
Avondale, }

House of Lords, 30th May 1808.

AUGMENTATION OF STIPEND—JURISDICTION OF COURT OF TEINDS.—

Held that the minister was entitled to a second augmentation of stipend ; and the Court, as a Commission of Teinds, had power to grant such.

This case involves precisely the same question of law raised and decided in the Prestonkirk case, p. 210.

The facts here were, That the respondent obtained a decree of augmentation of his stipend in July 1786, whereby the stipend, computing meal and barley, at the increase but still moderate rate, of £1 per boll, was brought up to £151.

In 1804 he brought a second process of augmentation. Whereupon the appellant stated the same objections to the want of power in the Court, as a Commission of Teinds, to grant such augmentation, precisely as argued in the Prestonkirk case.

Feb. 26, 1806. The Court pronounced this decree : " Having advised
" the scheme of the rental, and prepared state, and being sa-
" tisfied therewith, and with the hail steps of procedure in
" this process, well and ripely advised, they modify, decern,