May 26. 1824.

was introduced merely to prevent disputes, in case the workings should be accidentally extended into the lands of the appellant, but which it was never contemplated could go beyond the Capon Craig-gall, which was then considered as an impenetrable barrier; and that, accordingly, in the contract of 1783, the only part of that property which was let, 'was that lying east of the 'Capon Craig-gall.' In support of this interpretation, the appellant referred to various judicial statements, which had been made by the respondent Warner in a former process, where he found it his interest to contend for this construction.

On the other hand, the respondents maintained, that by the original contract liberty was granted to work the whole coal in Saltcoats Campbell, so far as the levels would admit of this being done, which it was proved by the report of an inspector could be accomplished throughout the whole lands by means of pits in Warner's ground; and that, as this contract was, in the whole articles thereof, expressly prorogated by that of 1783, the original power remained in full force.

The House of Lords found, 'That the company or copartnery 'are only entitled to the coal in and under the appellant's lands 'of Saltcoats Campbell, to the east of the Capon Craig-gall, 'during the period of the endurance of the copartnery. And it 'is therefore ordered and adjudged, that those parts of the interlocutors complained of, which are inconsistent with the above 'finding, be reversed. And it is further ordered and adjudged, 'that such parts of the interlocutors complained of, by which 'expenses are given against the appellant, be also reversed. 'And it is further ordered, that the cause be remitted back to 'the Court of Session, to do in the conjoined processes as shall 'be consistent with this judgment, and as shall be just.'

SPOTTISWOODE and ROBERTSON—A. DOBIE,—Solicitors.

(Ap. Ca. No. 54.)

No. 33. GEORGE GEDDES, and J. G. GELLEN and Others, his Assignees, Appellants.—*Hart—Shadwell.*

CÆSAR MOWAT and WILLIAM SPENCE, Respondents.—*Skene—Maidment.*

Bankrupt—Sequestration—Commission of Bankruptcy—Stamp.—A domiciled Scottish merchant having, after contracting debts in Scotland, gone to England, and there

committed an act of bankruptcy, and a petition for sequestration having been presented to the Court of Session, founding on a bill written on a wrong stamp, and an affidavit to the verity of the debt; and a deliverance having been written on the petition prior to the issuing of a regular commission of bankruptcy;—Held, (affirming the judgment of the Court of Session), 1. That the sequestration was preferable to the commission of bankruptcy; and, 2. That the affidavit to the verity of the debt was sufficient to support the petition, accompanied by the bill.

June 4. 1824.

1st Division.
Lord Hermand.

THE appellant, George Geddes, was a native of Stromness, in Orkney. He carried on business in Liverpool till 1810 along with a Mr Hay, under the firm of Geddes, Hay and Company, when, having become insolvent, he settled with his creditors by a composition, and returned to Stromness. His father had been a banker there, and on his death in 1821, Geddes commenced business also as a banker, in the course of which he contracted debt to a large amount. Among others, he was indebted to the respondents, Mowat and Spence, in L.323, for which he granted his promissory-note, dated 30th September 1819, payable two months after date. This bill was written on a five shillings stamp, in consequence (as appeared from a marking on the bill) that no stamp of the proper value could be got at Stromness. In the month of November thereafter, he secretly conveyed his whole estates and effects to two of his brothers-in-law, and in December he went to London by sea, where he arrived towards the end of that month. On the 4th of January 1820 he committed an act of bankruptcy, and a commission was issued against him on the 18th of the same month. On the 26th, the respondents, founding upon the promissory-note and affidavit, in which they deponed that Geddes was indebted to them in the sum there specified, presented a petition to the Court of Session, praying for sequestration of his estates. A warrant of service was granted on the following day, the 27th, which, together with the petition, was immediately recorded, and served upon Geddes by leaving a copy at his house in Stromness, with his agents in Edinburgh, and by citing him edictally.

It having been discovered that the commission of bankruptcy was irregular, a new one was issued against him on the 15th March 1820; and in the month of April thereafter the appellants, Geller and others, were appointed assignees under the commission. Appearance was then made by Geddes and the assignees, who resisted sequestration being awarded, on the ground, 1. That the promissory-note being written on a wrong stamp, could not form the foundation of any legal proceeding; and, 2. That as a commission of bankruptcy had been issued, it had the effect to vest

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the whole effects of Geddes in his assignees, so that a sequestration was incompetent. Lord Hermand, however, as Ordinary on the Bills, awarded sequestration on the 16th August 1820. A petition was then presented by Geddes and the assignees, praying for a recall of the sequestration, in support of which it was argued, that, independent of the irregularity of the bill, (which was of itself sufficient to render the proceedings inept), the commission of bankruptcy, which had been issued on the 15th of March 1820, had a retrospective effect to the act of bankruptcy committed on the 4th of January that year; and as the first deliverance on the petition for sequestration had not been pronounced till the 27th of that month, it must be held to be posterior to the commission of bankruptcy.

To this it was answered, 1. That as the respondents had made oath to the verity of their debt, this was sufficient, independent of the bill, to support the petition for sequestration.

2. That as Geddes had carried on business at Stromness, and had there his domicile, and had gone to England with the fraudulent intention of there suing out a commission of bankruptcy, and secretly obtaining his certificate, he must be held to have been a domiciled Scottish merchant; and therefore, even supposing that the commission of bankruptcy had been prior to that of the first deliverance on the petition for sequestration, that commission could not have the effect to carry off the effects of the bankrupt, which, according to a fixed principle of international law, were to be considered as situated in that country where the bankrupt had his domicile, and to be distributed under the law of that country. And,

3. That as the first deliverance on the petition for sequestration was dated on the 27th January 1820, and as it was admitted that the only regular commission which had been issued was dated in March thereafter, the former was entitled to be preferred.

The Court refused to recall the sequestration, and found expenses due; and to this interlocutor they adhered on the 17th of January 1821.*

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* Not reported.—It is stated in the case for the respondents, that 'when the petition 'was moved, it was observed on the Bench, that the date of the issuing of the com- 'mission had hitherto regulated all questions of this kind, and justly so, because it was 'the first sentence of the foreign Court which could have the effect of operating as an 'assignment; that creditors in a different country, where the bankrupt might have had 'a domicile of trade, could know nothing of the date of an act of bankruptcy; and that

Geddes and his assignees having appealed, the House of Lords June 4. 1824.
'ordered and adjudged, that the appeal be dismissed, and the in-
'terlocutors complained of affirmed, with L. 200 costs.'

Respondents' Authorities.—Cullen's Bankrupt Law, 24, 25.; 2. Bell, 558.; 54. Geo. III. c. 137. § 22.; Maitland, March 4. 1807, (F. C.)

ADLINGTON and GREGORY—T. SMITH,—Solicitors.

(Ap. Ca. No. 48.)

JOHN TAYLOR, Esq. Appellant.—*Jeffrey—R. Bell.* No. 34.

SAMUEL LONG, Heir of RICHARD CROP, Respondent.—*A. Wood.*

Agent and Client—Fraud.—An agent having been employed to recover a debt for a client, (for whom he was also trustee), which at one time had been considered almost desperate; and having got a decree for upwards of L. 1400, and a warrant for payment of L. 1000; and having informed the client of this latter circumstance, and requested to know what he would allow him for having realized so large a part of the debt, and incurred so much risk, trouble, and expense; and having narrated the circumstances in a power of attorney, which the client executed in his favour, but not having transmitted his account of expenses, which amounted to only L. 18; and the client having agreed to discharge him on paying L. 500, and to allow him to keep the residue;—Held, (affirming the judgment of the Court of Session), That the discharge was not binding, and that the client was entitled to recover payment of the balance of the debt.

'a sequestration, therefore, applied for, and the first deliverance recorded, before the 'application for a commission, must form a mid-impediment to the effect of preventing 'the issuing of the commission itself, or at least prevent it from striking against the 'sequestration. That the retrospective effect given to a commission duly issued, with 'reference to the date of the act of bankruptcy, was not intended for such a case, but 'merely to prevent fraudulent or improper conveyances by the bankrupt himself, to 'the prejudice of his creditors; but that a sequestration was not a conveyance to the 'prejudice, but for the benefit of creditors, being the appointment of a system of judi-'cial distribution for the behoof of all concerned. That a retrospective effect of the 'same kind was given in Scotland to a sequestration, which cut down or equalized all 'private diligence by creditors, and entitled the trustee to set aside all conveyances 'for payment of debt within a certain period previous to its date; but that no one had 'ever thought of maintaining, in a competition between a Scotch sequestration and an 'English commission of bankrupt, that the effect of the judicial assignment in Scotland 'was to draw back to the period within which secret or fraudulent conveyances might 'be set aside; that bona fide transactions with the bankrupt, in the course of trade, were 'saved in both countries within the retrospective period; and that therefore, on all these 'grounds, the competition in this case would have been regulated by the date of the 'first sentence of the Court in either country, and not by the date of the act of bank-'ruptcy, had it been a case in which otherwise there were grounds for supporting the 'title of the English assignees.'