only the question of law, but the questions of fact. I would now propose, therefore, to postpone the further consideration of this case till Monday next. In the meantime, I will prepare the form of the remit to the effect I have expressed to your Lordships. May 22, 1826.

Appellants' Authorities.—Burgh of Rutherglen, 4th June 1575. Burgh of Lanark, 28th June 1594. Balfour's Practicks, p. 73. Brewers of Glasgow, 20th Jan. 1761. Bakers of Glasgow, 5th June 1792. 1 Craig, 10. Hutchison's Justice of Peace, 2. 46. 3 Ersk. 8. 72. 1 Juridical Styles, 551. Bell's Treatise on Conveyance to Land, p. 120. 2 Ersk. 9. 27. Dixon, Feb. 1, 1823, (2 Shaw and Dunlop, No. 161.)

Respondents' Authorities.—1 Bankton, 561. 1 Juridical Styles, 8. § 1. 2 Stair, 3. 38. 2 St. 3. 17. 2 Ersk. 4. 8. 2 Ersk. 3. 36. 1 Craig, 10. 31. and 36. 1491, c. 36—1593, c. 185. Hope's Minor Practicks, page 321. Wight on Elections, 209. Cathie, 30th June 1752, (2521.) Dean, 3d July 1752, (2522.) 1 Bell on Deeds, 466. Town of Inverness, 14th July 1674, (10893.) 1 Stair 4. 45. 5. 4 Ersk. 2. 36. Town of Perth, 16th Jan. 1711, (11861.) 2. Ersk. 9. 27. Duke of Buccleuch, 25th June 1767, (16053.) Yeaman, 17th Nov. 1759, (16044.)

J. RICHARDSON—A. MUNDELL—Solicitors.

ROBERT SPIER, Trustee on John Dunlop's Sequestrated Estate, No. 22. Appellant.—*Adam.*—*Jas. Campbell.*

JAMES DUNLOP, Respondent.—*Shadwell*—*Buchanan.*

Bankrupt—Stat. 1696, *c.* 5.—A Jury having found, that within sixty days of an admitted bankruptcy, the indorsee of a bill accepted by a bankrupt, did not enter into an agreement or concert with the bankrupt for the purpose of obtaining security and payment of the bill; but that the indorsee, by means of a sale of the bankrupt's heritage, did within the 60 days obtain from him a sum of money as a provision for payment of the bill when it became due; and the Court of Session having held this transaction not to be reducible under the act 1696,—the House of Lords remitted this latter point for reconsideration.

THE affairs of John Dunlop, grocer and baker in Stewarton, in the county of Ayr, having fallen into embarrassment, his estate and effects were sequestrated under the bankrupt statute, and Spier was appointed trustee. In this capacity, he thereafter raised an action against James Dunlop, the bankrupt's nephew, stating that the bankrupt and another nephew had got involved together in money transactions; that finding it necessary to raise money, Ferguson drew a bill, on the 6th of September 1820, on the bankrupt for £220, which was accepted by him, payable three months after date, in favour of James Dunlop, who indorsed and discounted it with the agent for the Commercial Bank at Beith: That thereafter, and during the currency of the bill, Ferguson having become bankrupt, and James Dunlop having learned that May 22, 1826.

2D DIVISION. Lords Mackenzie and Eldin.

May 22, 1826. his uncle John was insolvent, entered upon a collusive contrivance with him, to obtain a partial preference over his other creditors, by which it was arranged that the bankrupt should, by means of a private sale of certain houses and land belonging to him, raise a sum to be put into the hands of James, for his security and relief: That accordingly James prevailed on Dunlop of Fairfield, who was also his uncle, to give him a bill for £600, with power to apply the contents in making a purchase in name of Fairfield, of the property belonging to the bankrupt, upon an assurance from James, that he would warrant the subjects to be worth upwards of £600: That James immediately prepared a disposition of them, to be executed by the bankrupt in favour of Fairfield, which disposition he got extended by a man of business, and proceeded to Stewarton, the residence of the bankrupt, who subscribed it on the 18th October 1820: That James, having discounted the £600 bill, paid the proceeds to the bankrupt, who immediately out of that money gave to James £220, in relief of the bill which was due on 9th December following: That the bankrupt's estate and effects were sequestrated on the 2d of December: That James was a conjunct and confident person; and that the transaction, being intended to bestow a partial preference on James, was reducible, both at common law and in terms of the statute 1696, c. 5.

Prior to the institution of this action, James Dunlop had been examined judicially on oath, under a provision of the bankrupt statute, and in substance deponed agreeably to the statement made in the summons, but denying collusion.

Lord Mackenzie, as Ordinary, after ordering a condescendence and answers, and disregarding a note by the pursuer, praying to be heard on the evidence arising from James Dunlop's oath, and other evidence in process, remitted the case to the Jury Court. An issue was then sent to the Jury in these terms: 'It being admitted that a bill for £220, dated 6th September 1820, payable three months after date, and due on the 9th of December 1820, accepted by John Dunlop, was indorsed by James Dunlop, and discounted at the branch of the Commercial Bank at Beith, previous to the 18th October 1820: It being also admitted that the estate of the said John Dunlop was sequestrated on the 2d day of December thereafter: It being also admitted that the said John Dunlop sold to William Dunlop, uncle to James, certain houses for the sum of £600, on 18th October 1820.

'Whether, within sixty days of the admitted bankruptcy of the said John Dunlop, the defender, James Dunlop, did enter

'into an agreement, or concert, with the said John Dunlop, the bankrupt, for the purpose of obtaining security or payment of the aforesaid bill for £220, and did for that purpose contrive and assist in carrying into execution the sale of the bankrupt's heritable property, aforesaid? And whether the defender, by means of the said sale, did obtain from the said John Dunlop the sum of £220 out of the proceeds of the said sale, on the said 18th day of October 1820, or previous to the 9th day of December 1820, in satisfaction of the said bill, or as a provision for payment of the said bill, when it became due?' May 22, 1826.

The Jury found, 'That within sixty days of the admitted bankruptcy of the said John Dunlop, the defender, James Dunlop, did not enter into an agreement or concert with the said John Dunlop, the bankrupt, for the purpose of obtaining security, or payment, for £220; and that the defender, James Dunlop, by means of the said sale, did obtain from John Dunlop, by the hands of his wife, £220, on the said 18th October 1820, as a provision for payment of said bill, when it became due.'

This being a special verdict, went back to the Lord Ordinary to be applied, when Lord Eldin, who had come in place of Lord Mackenzie, 'in respect of the defender's admission that he applied to his uncle, William Dunlop, to purchase the subjects in question; that William granted the bill for £600 as the agreed-on price of the subjects, which bill the defender discounted at the Paisley Bank, and did so with an extraordinary degree of haste, at a late hour of night, for which he has not sufficiently accounted; and that the defender having paid over the money to the bankrupt's agent, who paid it over to the bankrupt himself, the defender some hours after received £220 of the same money from the bankrupt, for the admitted purpose of relieving the defender of a bill to that amount, which had been indorsed by him, and discounted by the Bank; that the sale of the subjects and payment to the defender took place within 60 days of the bankruptcy; but the bill of which the defender was so relieved was not payable until the 9th December, more than seven weeks after the date of the sale and payment to the defender; that the defender evidently had a view to his own relief in the transacting of the sale, and that the verdict of the Jury, though it is silent with respect to some of these circumstances, contains nothing sufficient to take off their effect:' Found, 'that the sale and payment to the defender was an evasion of the act 1696, and that it would be dangerous to give legal effect to a transaction of such a nature. And in respect of the decision

May 22, 1826. 'of the Court in the case of Barbour v. Johnstone, 30th May '1823,' reduced, declared, and decerned in terms of the libel, and found the defender liable in expenses. Thereafter his Lordship, 'In respect that a material part of the verdict is against the re-'presenter (the defender), found that he had no claim to the ex-'penses incurred in the Jury Court, or to any of his previous 'expenses.' Found, 'That the issues in the Jury Court did not 'comprehend all the points in dispute between the parties, and 'that upon the verdict, and the facts admitted by the representer, 'and the other circumstances, there were sufficient grounds for 'the interlocutor reclaimed against.'

The defender petitioned, and the Court, on advising petition and answers, recalled the interlocutor complained of, and found that 'the judgment in this case must proceed on the verdict of 'the Jury alone, and appoint parties to be heard in presentia on 'the import and effect of the verdict, reserving consideration of 'the petitioner's present demand for expenses, and all other 'claims for expenses, on either side, till the issue of the cause.' Counsel having accordingly been heard, the Court, on the 16th June 1825, repelled the reasons of reduction, assoilzied the defender from the conclusions of the libel, and decerned, and found the defender entitled to expenses.*

Lord Pitmilly.—In deciding this case, we must be governed entirely by the verdict of the Jury. Perhaps a remit to the Jury Court was unnecessary, as the pursuer had a much better case under the admissions of the defender. But the verdict is exclusive of every other evidence, and therefore we must look to it alone. Now the verdict completely negatives the allegation of concert or contrivance; and all that remains as a ground of reduction, is the payment of money to retire a bill not yet due. Payment of money, however, is one of the exceptions from the act 1696, unless when accompanied by fraud, which is now out of the question in this case. The only difficulty arises from the payment having been made before the bill fell due; but that is not a relevant circumstance. The only effect of it would be as a proof of fraud, which, however, is negatived by the Jury; and in no other view can it have the effect of bringing the payment under the act 1696.

Lord Glenlee.—I rather think that the admissions of the defender were not sufficiently broad to decide against him before the remit; because the material circumstance which is proved by the verdict is, that the money was given to him as a provi-

* See 4 Shaw and Dunlop, No. 74.

sion for payment of this bill when it should fall due. There may possibly be cases where payment of a bill, before it becomes due, is not suspicious: as, when a party has money in his hands for which he has no immediate use, he may perhaps purchase up his own bill before it becomes due. In this case, however, the money was not given to the defender to take up the bill at the time, but as a deposit, that he might take it up when it did become due. It was a depositation, to secure him against eventual loss, in case the bill should not be paid; and this depositation cannot be sustained, without establishing the doctrine, that a bankrupt may, within 60 days of his bankruptcy, give money to persons bound for him in cautionary obligations, to secure their relief when that obligation is actually operated on. May 22, 1826.

Lord Robertson.—I entirely concur in what has been said by Lord Pitmilly.

Lord Alloway.—I was not present when the interlocutor was pronounced finding that this case must be decided entirely by the verdict; but I completely concur in that judgment, and also in the opinion which has now been delivered by Lord Pitmilly. We, therefore, cannot travel out of the verdict, and must confine ourselves to it alone. But the verdict negatives the allegation of fraud and contrivance, and consequently we must lay that out of view. The question thus comes to be, whether a payment in order to retire a bill before it falls due, be struck at by the act 1696? But it has been established, that payments in cash are exceptions from the rule of it; and if an obligation be in existence, I cannot see why a payment in cash, made with a view to its extinction, should be liable to be set aside. Perhaps it might have been a circumstance in support of the allegation of fraud, that the payment was made before the debt was due; but that allegation is negatived. In any other respects, it is of no importance, and particularly in a question under the statute, because it is admitted on all hands, that payments in cash, as to subsisting obligations, are not subject to be reduced.

Lord Justice-Clerk.—It is clear that the Court cannot go beyond the verdict in deciding this case. They are, however, bound to look at the summons, which is important, as establishing the defender to have been a creditor at the date of the payment in question; and it is not stretching this too far to adopt the explanation made by the defender's counsel, that he had paid the bankrupt £220 for the bill, and then discounted it. He was therefore a creditor at this time, and cannot be viewed in the light of a cautioner; for, if he was to be so considered, Lord

May 22, 1826. Glenlee's observations would have great weight; but being a creditor, and receiving payment in money, without any fraud or contrivance, as must be held under the verdict, the transaction is neither objectionable at common law, nor under the act 1696.

Spier appealed.

Appellant.—The Court have not judged correctly in restricting the pursuer to the facts which have been found by the verdict, and thereby excluding him from any aid which may be derived by him from the judicial and solemn admissions made by the respondent on oath. Although the Jury found that the defender did not enter into an agreement or concert with the bankrupt, that cannot exclude the pursuer from showing, by the defender's own judicial admissions, that he accomplished this sale by a fraudulent contrivance or device. Besides, supposing the appellant is to be restricted to the verdict, the issues did not embrace all the points of the case, and therefore new issues of a more comprehensive nature ought to be sent to a Jury. But even taking the verdict as it stands, the facts there found are sufficient to entitle the appellant to decree in terms of the libel, in virtue of the statute 1696 c. 5, which applies to every deed or transaction by which a bankrupt attempts to confer a preference on any of his creditors to the prejudice of the others, within sixty days of his bankruptcy. The present is not a case of bona fide payment in the ordinary course of business. The money has been found to have been obtained 'as a provision for payment of said bill when it became due.' But that is just another expression for a deposit in security. The bankrupt was the acceptor of a bill payable at a future date, and for this bill the respondent was liable in the event of the bankrupt's failure to pay it; and therefore the act of the bankrupt, in putting into the respondent's hand money before it was due, as a provision to retire it when due, is a fraud at common law, and struck at by the statute.

Respondent.—The issue sent to the Jury was prepared on the suggestion, and with the approbation, of the appellant himself. The verdict has been acquiesced in. If he had been dissatisfied, he should have applied for a new trial; but not having done so, the Court were bound to assume the verdict as the sole basis of their judgment. The verdict negatived every charge of fraud, and, therefore, is conclusive against any challenge at common

law. For where there is no fraud, a creditor is entitled to take payment in money of a just debt, whenever that payment is offered him by the debtor. Even on the statute 1696, the transaction is not challengeable. Payments in cash are not deeds within the meaning of the act. It is no answer to say, that the bill was not due. The respondent had advanced its contents; and the bankrupt was his debtor as much as if the bill had been past due. Besides, a creditor is entitled, in many instances, to sue his debtor, although the time of actual payment may not have arrived. The statute merely strikes at conveyances to creditors in security of debts. But payment before the day of payment is only anticipated payment, not security; and the statute only strikes against voluntary securities. May 22, 1826.

The House of Lords ordered, 'That the said cause be remitted back to the Court of Session in Scotland, to review the interlocutors complained of, and to consider whether, consistently with the findings of the Jury, the payment or deposit of the £220 was or was not reducible under the provisions of the statute 1696, or otherwise; and after reviewing the said interlocutors complained of, that the said Court do and decern in the said cause as may be just.'

Lord Gifford.—My Lords, another case, to which I shall call your Lordships' attention, is that of Spier *v.* Dunlop, which it is my painful duty to ask your Lordships to remit to the Court of Session, being of opinion that there are questions remaining in that case to be considered by the Court of Session.

When I say I ask your Lordships with reluctance to come to this conclusion, I only do that which I think the Division of the Court of Session, before which the cause originally came, would have done, if they had viewed the case in the light I am proposing to do. If they had so viewed it, they themselves would have done it: but they considered themselves shut out from so looking at it, by the finding of certain issues directed to a Jury.

My Lords, the circumstances of the case are shortly these:—A Mr John Dunlop was a baker and grocer, residing in Stewarton, in the county of Ayr, where, in 1794, it appears he acquired certain property, consisting of houses and other things. The Case states, that he was engaged in trade; and having carried it on for some time with success, he afterwards, in consequence of a connexion between him and a man of the name of James Ferguson, his nephew, became involved in difficulties, which finally led to the bankruptcy of John Dunlop, whose trustee, Robert Spier, the appellant, is. In consequence of the speculations into which John Dunlop had entered with Ferguson, he became embarrassed

May 22, 1826. and he and Ferguson were obliged to endeavour to raise money. John Dunlop accordingly applied to the respondent, a Mr James Dunlop, his nephew, and who, it appears, was educated as a writer or attorney, and is a notary public, and was for a considerable time agent for the Commercial Bank at Beith, and discounted bills as a private banker in the town of Irvine. The respondent acceded to this request; and the way in which he afforded assistance to John Dunlop, his uncle, was as follows:—Ferguson drew a bill upon John Dunlop in favour of the respondent Mr James Dunlop, for £220, payable three months after date. That bill was drawn on the 6th of September 1820; and, as your Lordships will perceive, by adding three days grace; it would become due on the 9th December 1820. The bill was accepted by John Dunlop, the bankrupt; James Dunlop indorsed and discounted it with the agent for the Commercial Bank at Beith, and by means of that discount advanced the money so raised upon the bill to John Dunlop.

My Lords, presently after, Ferguson absconded, and John Dunlop became a bankrupt, but not till after the transaction to which I am about to call your Lordships' attention. It appears that John Dunlop, as I have stated to your Lordships, was possessed of houses and a piece of ground at Stewarton. It was therefore proposed, that he should convey this property to another uncle, Mr William Dunlop, who is the proprietor of a considerable estate, at the price of £600; that the £600 should be paid as the price of the property; and it appears that that transaction was accordingly completed, and no attempt has been made to set aside that sale so made by John Dunlop to Mr William Dunlop for £600. It appears that a bill to the amount of £600 was given by William Dunlop, the purchaser; that that bill was discounted, and that £220, being part of the amount of that bill, was deposited or delivered to Mr James Dunlop, the present respondent, to secure him against the consequence of the indorsation of the bill for £220, which would become due on the 9th of December. This, my Lords, took place on the 18th of October. Soon afterwards, on the 19th of October, a sequestration issued against Ferguson, and a petition was presented on the 29th of November, under the statute of 54 Geo. III. chap. 137, at the instance of a creditor for the sequestration of the estates of John Dunlop, on which sequestration was awarded on the 2d of December. It is sufficient for me to state, that the sequestration issued between the 18th of October and the 9th of December, when the acceptance of John Dunlop, the bankrupt, became due.

The appellant having been appointed trustee on the sequestrated estate of John Dunlop, raised an action against James Dunlop the respondent; and in the summons he states, &c.—(Here his Lordship read the terms of the summons and conclusions.)

My Lords, upon this case coming before the Lord Ordinary, he remitted the case to the Jury Court; and issues were directed to the following effect.—(His Lordship here read the issues.)

These issues, my Lords, were tried at Ayr, and the Jury found. 'That within sixty days of the admitted bankruptcy of the said John

'Dunlop the defender, James Dunlop did not enter into an agreement or 'concert with the said John Dunlop the bankrupt, for the purpose of ob- 'taining security or payment for £220;' and then they find, 'That the 'defender James Dunlop, by means of the said sale, did obtain from John 'Dunlop, by the hands of his wife, £220, on the said 18th October 1820, 'as a provision for payment of said bill, when it became due.' May 22, 1826.

My Lords, upon this verdict being returned, the case was sent back to the Court of Session, and came before Lord Eldin, who had by this time taken his seat on the bench as Lord Ordinary, and he pronounced an interlocutor, finding, 'That the sale and payment to the defender were an 'evasion of the act 1696, and that it would be dangerous to give legal 'effect to a transaction of this nature.'

A representation was put in by the respondent against this judgment, and it coming again before Lord Eldin, he pronounced an interlocutor, adhering to his former one, and refusing to the respondent the previous expenses which he claimed. That decision of the Lord Ordinary was brought under the consideration of the Second Division of the Court of Session, and they, in the month of December, in the same year, were pleased to pronounce this interlocutor: 'The Lords ha- 'ving considered this petition, with the answers, former proceedings, heard 'the counsel for the parties viva voce, and advised the whole cause, recall 'the interlocutors complained of, and find, that the judgment in this case 'must proceed on the verdict of the Jury alone, and appoint parties to be 'heard in presentia, on the import and effect of the verdict.' It afterwards came on again before the Court, and a majority of the Court having adopted the view of the respondent, the following judgment was pronounced: 'The Lords having again resumed the consideration of this 'petition, with the answers thereto, and in terms of the last interlocutor 'of Court, having heard counsel for the parties in their own presence, on 'the import and effect of the verdict of the Jury, and having advised the 'whole proceedings, they repel the reasons of reduction, assoilzie the 'defender from the conclusions of the libel, and decern; find the defender 'entitled to his expenses, allow an account thereof to be given in, and 'remit the same, when lodged, to the auditor of Court, to tax and to re- 'port.' It is against that judgment, my Lords, that an appeal has been brought to your Lordships' House.

My Lords, the decision of the Court of Session proceeded upon this principle, and, I apprehend, a correct principle, that the finding of the Jury was conclusive upon the issues directed to them, and that it was not competent for them to go into any consideration of facts or circumstances contrary to the finding of the Jury. Some of the learned Judges seem to have thought (and probably with a great deal of reason), that the case never should have been sent to a Jury at all, but that there was ample ground for the Court to determine the question without sending an issue to a Jury; but they admitted (and it must be admitted) that issues having been sent, the finding of the Jury is conclusive as to the facts which were so put to them. But then this question arose whether or not,

May 22, 1826. consistently with the findings of the Jury (allowing them to be conclusive as far as they go), and whether, admitting that there was no concert and agreement between James Dunlop and John Dunlop, as to the payment or the deposit of the £220 with James Dunlop; and he being at that time merely the indorser of a bill of exchange, payable at a future day, before which day John Dunlop, the accepter, became bankrupt; Whether, I say, consistently with the findings of the Jury, the voluntary deposit of that sum in his hands, for the purpose of covering the bill when it should become due; and that transaction taking place within 60 days of the bankruptcy of John Dunlop; did not (independently of any concert or agreement that might exist between James and John) vitiate the transaction under the statute 1696; or Whether it might not be considered as a voluntary payment by John Dunlop, in contemplation of his insolvency, and as such a transaction to be considered as a fraud, by the common law of Scotland; and therefore that the trustee under this sequestrated estate, for behoof of the creditors, would be entitled to recover back from James Dunlop the sum of £220, as the amount of such deposit. The Court of Session thought that the finding of the Jury was conclusive upon the question of a fraud, and therefore they could not go out of it; and were further of opinion that the interlocutor pronounced had gone out of that finding, and had gone out of the facts, contrary to what the Jury had found to be the fact, and the majority felt themselves in this situation:— They considered that the pursuer, the present appellant, had put his case upon an issue sent to the Jury, and that this being found against him, they were bound not to look to any other circumstances in the case, but that they were bound to decide against the appellant. I observe, from the papers in the proceedings below, that the respondent felt a little difficulty in his case arising from these circumstances, for he said you ought not to go into that part of the case, without first indemnifying me for the expenses of the Jury trial, because, consistently with the finding of the Jury, there was not sufficient grounds for the Court to hold that this transaction was struck at by the statute of 1696, or was reducible by the common law as a voluntary transaction between the parties. He said, that before the institution of the Jury Court, the inquiry might have been made by the Court of Session, in which, if it had found one way, it would have entitled the appellant, in this case, to a judgment in his favour;—it being admitted, that if they had found there had been a fraudulent agreement between John and James Dunlop, then the whole transaction must have been considered null and void;—and therefore, as the reverse had been found, he, the respondent, was entitled to his expenses. Upon this subject I would say, that if the first issue had been found in the affirmative instead of the negative, it alone might have entitled the appellant to judgment; but, being found in the negative, the question is, whether there is not sufficient remaining in this cause, entitling the Court to look at the transaction, in order to see whether it is not one that falls within the purview of the statute 1696, or struck at as a fraudulent preference given by the insolvent to the respondent, as a favoured creditor? The majority of the

Judges thought they could not do that; and I confess that I felt great difficulty when I came to this part of the case. It was argued at the Bar, that the issues having negatived all fraud, the Judges were precluded from going into any evidence of the subject of fraud. But supposing that fraud had entered into the consideration of the Jury, and that the Jury had negatived the fact of there being any fraudulent contrivance between the uncle and the nephew—still is there not a question to be considered, whether (independently of that fact) this is not a sort of transaction struck at by the statute of 1696, or as a voluntary payment on the part of this person to an individual not an actual creditor, though so stated in the summons; and indeed he was so in this sense, having advanced the sum of £220, which had been received by discounting of the bill in question. But then supposing that he is to be considered as a creditor or cautioner on the bill, which did not become due till the 9th of December, a period following this transaction, are these not questions to be considered in this case, notwithstanding the finding of the Jury, viz.—whether this transaction can stand, reference being had to the statute of 1696;—or to the circumstance of its being a voluntary payment, in contemplation of insolvency? May 22, 1826.

My Lords, if the finding of the Jury had been conclusive with respect to that view of the case, I should have agreed that the opinion pronounced by the learned Judges in the Court below was correct; that their eyes were shut to the consideration of the question; and that they could not go out of the finding of the Jury; but it does appear to me, that it may deserve grave consideration on the part of the Court, whether, consistently with those findings, those questions I have mentioned are not still open. I have cautiously abstained at this moment from giving any opinion upon those questions, because it is due to the Court of Session, in my view of the case, that they should have an opportunity of first considering them; and I think your Lordships ought not to decide upon them (supposing your opinion should be to reverse the interlocutor complained of) upon that view of the case. I think it would not be fit, or proper, or respectful to the Court of Session, to decide those questions, and to reverse their interlocutor, before they had an opportunity of considering those questions—questions certainly of Scotch law, and one of them upon a Scotch act of Parliament; and therefore I think your Lordships ought to have the benefit of their decision before you are called upon to decide those questions.

The sum, my Lords, which is in dispute in this case, is not large—it is only £220—but the question is one of very great importance. It appears to me, that I might venture to propose to your Lordships a judgment which will show the Court of Session that you concur with them in opinion that nothing ought to be done in this case which shall be at variance with the finding of the Jury, but leaving it to them to consider whether, consistently with those findings, the payment made by Mr John Dunlop to James, under all the circumstances, was not reducible, so as to entitle the appellant to recover that money back again.

May 22, 1826. My Lords, the language of the judgment should be penned in a way that will require more consideration than I have yet given to it; but I apprehend that you will be of opinion that it will be proper to remit this cause back to the Court of Session to review the interlocutors complained of, and to consider whether, consistently with the findings of the Jury, the transaction of the payment of this money, according to the language of the summons, was or was not reducible according to the common law, or under the statute 1696—leaving the questions entirely open, first, the one which arises upon the statute; and, secondly, the ulterior question, supposing it not struck at by the statute, whether it is not reducible on the ground of being a voluntary payment in the contemplation of bankruptcy. That is the nature of the judgment which I shall ask your Lordships to pronounce.

Perhaps, my Lords, it will be better to adjourn this case till Monday, that I may be quite sure that the language of your Lordships' remit is consistent with the views I have taken of it, meaning to recommend your Lordships to leave the questions quite open, which I apprehend would be considered to arise upon the statute and the common law, with reference to the finding of the Jury, taking that finding as conclusive of the facts found by them, Whether, consistently with these facts, the transaction may not be reduced under the statute, or by the common law, on the ground of its being a voluntary payment in contemplation of bankruptcy.

Appellant's Authorities.—55 Geo. III. c. 42, § 8—Duff *v.* Fife, July 17, 1823, (Ho. of Lords,)—2 Bell, 222. 243.—1621. c. 18.—Moncrieff, February 8, 1694. (1054)—Creditors of Carlowrie, Jan. 15, 1695. (4930)—Bradley, April 26, 1793, 5 Term. Rep. 202.—2 Bell, 227.—M'Math, March 1, 1791. (Bell, Cases, 22)—Forbes, January 27, 1715. (1124.)—Smith, July 19, 1728. (1128.)—Young, June 25, 1783. (1141.)—Durward, Feb. 2, 1700. (1119.)—Campbell, Jan. 16, 1713. (1120.)—Manson, July 16, 1671. (App. No. 7, voce Bankrupt.)—Brown, July 6, 1764. (886.)—Marshall's Trustee, Jan. 21, 1794. (1144.)—Young, July 9, 1736. (Elchies, No. 7, voce Bankrupt.)—Crawford, Nov. 16, 1752. (ibid. No. 28.)—Blaikie, May 9, 1781. (887.)—4 Ersk. 1. 43.—Barbour, May 30, 1823.—2 Shaw and Dunlop, No. 335.—1 Bank. p. 272, 116—Vernon, 2 Term. Rep. 648—Tamplin, 2 Camp. Rep. 312.—2 Bell, 230—Buchanan, Jan. 25, 1733, (1128.)—Forbes, 26, 1751. (1129.)—Bean, Aug. 1, 1760. (907.)—Ferrier, June 2, 1808. (2 Bell's Com. 229.)

Respondent's Authorities.—4 Ersk. 1. 41. 44.—2 Bell, p. 225. 255. 257.—1696. c. 5.—Elchies voce Bankrupt, No. 26.—Durward, Feb. 2, 1700. (1119.) Campbell, Jan. 16, 1713. (1120.)—Buchanan, Jan. 25, 1733. (1125.)—Forbes, Jan. 26, 1751. (Kilk. and 1042)—Bean, Aug. 1, 1760 (907.)—1 Ersk. 3. 63.—Elchies voce Bankrupt, No. 26.

A. MUNDELL—J. RICHARDSON—Solicitors.