

June 13, 1827. 2; 1644, c. 31; 1649, c. 45; 1663, c. 21. Anderson, 17th Dec. 1664 (5121.) Fullerton, Dec. 1779 (5123). Williamson, March 26, 1685 (5121). Dunfermline (1), 30th June, 1750 (8504). Linlithgow, March 5, 1802 (in a note to report of Dunfermline, *infra*). Dunfermline (2), 19th Nov. 1805. (N. 1. Ap. Manse). Barclay, 15th Feb. 1795 (F. C.) Boyd, 24th Jan. 1769 (7617).

*Respondent's Authorities.*—Hailes's Canons of the Church, 13; 1563, c. 72; 1572, c. 48; 1612, c. 8; 1644, c. 31; 1649, c. 45; 1663, c. 21. Dunfermline (1), 30th June, 1750 (8504.) Elgin, Feb. 28, 1769 (8508). Muttar, June 16, 1784. Linlithgow, 5th March, 1802 (see Dunfermline (2)). Dunfermline (2), 19th Nov. 1805 (No. 1, Ap. Manse). Ersk. Inst. 2. 10. 56; 1. 2. 29.

RICHARDSON and CONNELL—J. CHALMER—MONCRIEFF and  
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No. 53. STEPHEN ROWAN CRAWFORD, Esq., Appellant.—*Wilson—  
John Campbell.*

WILLIAM BENNET, Insurance-Broker, Glasgow, Respondent.  
—*Adam—Keay—Kaye.*

*Minor.*—A minor, in trade, having given a receipt for L.3000 sterling, but which was not a trade transaction, having been found liable in repetition for the whole amount, although he alleged that truly he had not received L.3000 sterling, but only certain items and orders, some of which had been paid, and others not; the House of Lords (reversing the judgment of the Court of Session, except as to an admitted sum,) ordered an inquiry as to the amount *de facto* received, or what might, without the party's wilful default, have been received, in respect of the receipt.

June 19, 1827.

1ST DIVISION.  
Lord Alloway.

JOHN CRAWFORD, Esq. of Broadfield died, leaving a large heritable and moveable property, which, by his deed of settlement, he divided among his family,—enjoined his eldest son, as heir-at-law, to make up titles to the heritage, and convey as directed; and appointed his three eldest sons, and his widow, executors. In this succession, Stephen Rowan Crawford, the fourth son, was entitled to a money provision of L.3000; heritage, valued at L.9600; and personal funds, amounting to L.2434, 13s. 4d., to equalize his share,—in all L.15,034, 13s. 4d.

Shortly after his father's death, Stephen R. Crawford, then about seventeen years of age, went to Lisbon to attend the mercantile counting-room of his brother Joseph, then carrying on business under the firm of Joseph Tucker Crawford and Company. The partners of that house, the three eldest sons, had also a house at Port-Glasgow, under the firm of John Crawford and Company.

Unexpectedly, the house of John Crawford and Company failed, bringing down with it the house of Joseph T. Crawford

and Company; and, on this event, it was disclosed that neither the debts of the testator, nor the provisions to his family, had been paid, and that the firm, being composed of three of the appointed executors, had appropriated nearly all the executory funds to the purposes and exigences of their trade, and in lessening heavy balances owing by them, on their business account, to a house in London. William Bennet was appointed trustee. Stephen formed a connexion in business under the firm of Stephen R. Crawford and Company. June 19, 1827

Stephen R. Crawford, as a creditor of John Crawford and Company, to the extent of his money provisions, and of the eldest son, for the heritage, took legal advice in Lisbon, and under it sought redress in the Lisbon Court, and obtained an embargo order in the hands of Joseph T. Crawford, of all funds belonging to John Crawford and Company, (and of Joseph Tucker Crawford's private fund, if he broke the embargo,) 'in security of L.3000 that were left to Stephen R. Crawford by the will of his father, and that remained, according to the same in possession of the said house of John Crawford and Company;' and an attachment followed,—'of whatever property might be found in possession of Joseph T. Crawford, partner in the house of John Crawford and Company, of Port-Glasgow, for payment of L.3000, and costs of a sentence obtained against him.' On the attachment being enforced, Stephen Rowan Crawford gave his brother, as partner in the house of John Crawford and Company, a receipt for the amount, L.3000.

Bennet instituted proceedings in Lisbon against Stephen Rowan Crawford, alleging incapacity *ex minorennitate*, to act without express concurrence of his curators; and on his arrival a few months after in Scotland, raised another action against him in the Court of Session, subsuming collusion with Joseph Tucker Crawford, and in both concluding for repetition of L.3000 sterling.

Stephen R. Crawford, in defence, stated, that he was indisputably a creditor of the Company, seeing that the Company had intromitted, and of the eldest son, as an individual partner, and as heir; that he had acted under legal advice; that Joseph T. Crawford had not at the moment funds to meet the Lisbon order; but, to prevent execution, he induced him to grant a receipt, for which the consideration was to be given at a future time; that continuing without sufficient funds of John Crawford and Company, Joseph soon after delivered to him various orders on other parties, some of which were honoured, others were not, and still remained utterly unproductive; that great

June 19, 1827. part of the consideration was the property of Joseph, on whose estate Bennet was not trustee, Joseph not having been sequestrated as an individual; that before raising the action, he had offered to enter into an accounting with Bennet, to refund whatever was due to the estate of John Crawford and Company, and to place that estate exactly, in this matter, as it stood before the receipt was granted; that this offer was refused, Bennet insisting for payment of L.3000 cash, whatever had been the amount, or whosoever had been the property, of the items composing the consideration; that the defender was entitled to show what, de facto, had been truly given under the embargo; that this would have been the law in a question with a major, the passing of the receipt merely throwing the onus probandi of the amount on the defender, which otherwise would have been on the pursuer; but that, a fortiori, the receipt was not conclusive when the granter was a minor, having guardians, who had not consented, and where the transaction had no connexion with his trade or mercantile dealings.

On the other hand, Bennet stated that there had been collusion between the brothers and other relations; that the receipt was conclusive as to its amount, and could not be opened up. By means of it, Joseph T. Crawford and Company had retained L.3000 money, part of the assets of John Crawford and Company; that this state purporting to enumerate the items of the consideration, was altogether unsatisfactory and unconfirmed; that even if correct, the estate of John Crawford and Company was not to suffer from the defender's negligence, in not cashing all the orders; and that the plea of minority had no place in the question.

The Lord Ordinary found, 'That the defender, having granted the receipt libelled on to Mr Tucker Crawford, as a partner of the house of Messrs John Crawford and Company of Port-Glasgow, he is accountable for the amount thereof to the pursuer, as trustee on the sequestrated estate of the said John Crawford and Company; therefore decerned against the defender for the principal sum, and interest libelled.' Stephen Crawford then reclaimed, and prayed the Court, to find him only bound to account for what he actually received, and to afford him the means of substantiating the amount by the books of Joseph T. Crawford and Company, or by other competent evidence. The Court, however, refused his petition. He again reclaimed, producing certain states, certified to be extracts from the books of Joseph T. Crawford and Company, and repeating the prayer, as to the extent of accounting; and the Court, 'in

‘ respect it is admitted in the petition that the sum of L.1080 is due to the pursuer,’ adhered to that extent and quoad ultra appointed answers; and thereafter, on resuming consideration of the petition, with answers, on the 28th May 1819, adhered to the Lord Ordinary’s interlocutor, with expenses.\*

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Stephen Rowan Crawford appealed.

*Appellant.*—Throughout the whole of this transaction, the appellant acted with perfect bona fides. Being unaware of the precise legal rights of parties, he did not move a step without the advice of counsel. If he has drawn funds which belong to other persons, he was always willing to restore them to the parties who were in the true right of them; and he had, in every stage of the litigation, made that offer; but no proposal would be acceded to, but payment of L.3000 cash; that Bennet pressed for that sum, in the perfect knowledge that the appellant had not received that amount from the funds of John Crawford and Company, or of any other Company; that there was no excuse for this oppressive conduct, since it could be demonstrated from the books of Joseph T. Crawford and Company, (at this instant in Bennet’s hand) that there was not cash or assets to be handed over. Production of these books had been refused, otherwise every allegation by Bennet could have been instantly disproved. The charges as to collusion with the family are irrelevant and calumnious, and were known to Bennet to be utterly unfounded.

*Lord Chief-Baron.*—The appellant need not say anything on that part of the case.

*Wilson.*—Then, that leaves little more to be stated than the legal effect of the receipt. The receipt is not conclusive. It may be opened up; and here it cannot be seriously denied, that the sum contained in it did not pass: at all events, a receipt is not conclusive against a minor; and this plea is open to the appellant’s *vi exceptionis*, as he had curators who did not consent. The price of being restored, is restitution,—and that the appellant has over and over again offered. There is no warrant for the pretence, that any of the orders became unproductive through the mora of the appellant. Many of them were so, because the debtors in them had counter claims to a greater amount, and proponed compensation.

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\* Not reported.

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*Lord Chief-Baron.*—That may be quite true, but how can this House reach that fact? There has been no evidence led.

*Wilson.*—Of that we complain. The case has been one of broad and unvouched averment on the part of the respondent, where not only was he not obliged by the Court to prove his denied assertions, but the appellant was not allowed to disprove them. But the House can reach them thus: It is alleged by the respondent, that these orders could have been recovered; and if they were not, the loss must fall on the appellant. We answer, that they could not have been recovered, and that the trustee ought not to have stated that they could, since he at least, as trustee, could not be ignorant, that in the ranking for instance of one of the debtors in these orders on the estate of John Crawford and Company, the trustee deducted the amount of the debt due by the claimant to Joseph Tucker and Company, (viz. the debt in the order,)—thus, in effect, making the claimant pay to the trustee 20s. in the pound of the order; and yet, at the same moment, the trustee allows himself to persevere in the statement, that this very sum was either a cash payment to the appellant, or a loss through the appellant's want of vigilance. Our statement obtains relevancy from being an answer to the respondent. The receipt was not made the means of enabling Joseph T. Crawford and Company's retaining L.3000. Such a supposition was known to the respondent to be untrue, and is totally destroyed by the books in his hands, which account for the uttermost farthing of that house's intromissions.

*Respondent.*—Repeated the statement made in the Court of Session.

*Lord Chief-Baron.*—Then your argument is, that this receipt was a contract to purchase all these items, whether they turned out good or bad?

*Adam.*—We maintain that the appellant cannot be permitted to gainsay his own receipt.

*Lord Chief Baron.*—Do you contend that the receipt cannot be opened up at all?

*Keay.*—We consider that a written document cannot be avoided by the mere exception of a party saying, that he has not received what the receipt bears that he has. It is probatio probata until reduced.

*Lord Chief Baron.*—Can you refer the House to any case where a receipt was made the subject of reduction?

*Keay.*—At this moment I cannot.

*Lord Chief Baron.*—Then you rest your case on a fraud on the bankrupt law of Scotland?

*Keay.*—We do—and on the plea that a written receipt is held probative of its contents. That requires no further proof. It cannot be redargued by an inquiry into its component parts. June 19, 1827.

*Lord Chief Baron.*—Here we would hold the receipt as very good presumptive evidence, but nothing further.

*Adam.*—It would be unjust to allow this receipt to be opened up. The appellant alleges, that great part of the consideration given to him has proved unproductive; but is the loss arising from the appellant's mora to fall on the bankrupt estate, or is an offer of restitution now made to be listened to? The plea of minority is not open to the appellant. He cannot be relieved against his own wrong, nor against engagements in re mercatoria. If Joseph T. Crawford had not been aware that this was a transaction that could not bear inquiry, he would have stated that John Crawford and Company were sequestrated, and their funds no longer at their disposal.

The House of Lords ordered and adjudged that the several interlocutors complained of, (with the following exception)—  
 ' be and the same are hereby reversed—And inasmuch as it is  
 ' admitted in the petition of the 12th January 1819, by the said  
 ' appellant, presented to the said First Division of the Court  
 ' of Session, that the sum of L.1080, 1s. 5d. Sterling, is due to  
 ' the said respondent. It is further ordered and adjudged, that  
 ' the interlocutor of the said First Division, bearing date the  
 ' 28th January 1819, be, and the same is, hereby affirmed. And  
 ' it is hereby further ordered and adjudged, that the cause be  
 ' remitted back to the said Court of Session, to inquire, accord-  
 ' ing to the course of the said Court, how much the appellant  
 ' actually received of the effects of John Crawford and Company  
 ' —or Joseph Tucker Crawford and Company—beyond the said  
 ' L.1080, 1s. 5d.—or might, without his wilful default, have  
 ' received in respect of the receipt signed by him; and further,  
 ' to proceed in the said cause as shall be just and consistent  
 ' with this judgment.'

*Appellant's Authorities.*—Cases *voce* 'Minor,' Morison's Dictionary. Thompson, 12 Dec. 1666, (12601.) Corsar, 14th Feb. 1672, (12601.) Dick, 8th July 1824. 3 Shaw and Dunlop, No. 173. Stair's Institutes, (Brodie's edition,) 1, 6, 33. Ersk. Institutes, 1, 7, 34, et seq. Bell's Commentaries, (5th edition,) p. 134. Ratstall, 2 Term Reports, 336.

*Respondent's Authorities.*—Erskine's Institutes, 1, 7, 36, 38. Waddell, 18th Jan. 1812, (F. C.)

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