July 7. 1830.

could be done under the trust. According to the decision and opinion of the Court below, he, having once accepted the trust, could not withdraw from it, so as to defeat the object of the trust; and it appears to me that this opinion is confirmed by the law of Scotland. But, according to some suggestions which were stated at the bar, it was conceived that there was no authority to support such a doctrine. On the contrary, it was submitted that there were authorities the other way. But, after diligent examination, I have found nothing in any text writer, or any case, to establish this position. At the bar no passage was quoted—no opinion referred to—no such case was shewn to exist. Therefore I feel it my duty to advise your Lordships to concur in the decision of the Court below, the effect of which is to uphold this trust, and to give effect to it, and to compel the appellant to act in discharge of it, in the manner stated in this decree;—that is, to concur in all lawful and necessary acts, for the purpose of giving effect to the trust to which he was a party, and which he had regularly accepted. Under these circumstances I should humbly advise your Lordships to affirm this decree.

The House of Lords accordingly 'ordered and adjudged, that 'the interlocutors complained of be affirmed.'

Appellant's Authorities.—Holmes, (2. Cox, 1.) Walker, (3. Swanstoun, 62.); Order of House of Lords, May 22. 1799. Marquis of Montrose, Jan. 27. 1688, (14,679.) Aikenhead, June 24. 1703, (14,701.) Watts, Dec. 10. 1792, (14,700.) Campbell, June 26. 1752, (14,703, and 7,440.) King's College of Aberdeen, Jan. 27. 1741; (Elchies, Jurisdiction, No. 21.) Sir Alexander Dick, Jan. 22. 1738, (7446.) Merchant Company of Edinburgh, Aug. 9. 1765, (7448.) Wotherspoon, Dec. 15. 1775, (7450.) M'Dowall, Nov. 20. 1789, (7453.) Carstairs' Trustees, Nov. 28. 1775; (Brown's Synopsis, vol. v. p. 526.) Whitson, May 28. 1825; (4. S. & D. 42.); 1. Merivale, July 6. 1816; 2. Vesey, p. 319.; 6. Mad. 123. Montgomerie, (4. Dow, p. 109.)

Respondents' Authorities.—1. Bell's Com. p. 31. Stothard, June 30. 1812, (F. C.) 1. Ersk. 7. 25.

SPOTTISWOODE and ROBERTSON—MONCREIFF, WEBSTER and THOMSON,—Solicitors.

No. 26.

EDWARD ERRINTON TURNER, Appellant.—*Wilson.*
GIBB and MACDONALD, Respondents.

Possession—Proof.—Circumstances in which (affirming the judgment of the Court of Session) the presumption of property arising from possession was held to be overcome.

July 7. 1830.

1ST DIVISION.
BILL-CHAMBER.
Lord Newton.

TURNER, who described himself as having for many years been extensively engaged in mercantile concerns, presented a petition

to the Sheriff of Edinburgh, setting forth that he had sent from London, to his own address in Edinburgh, four boxes containing various sorts of yarn, his own property: That the proprietors of the London waggon gave him a receipt for them in his own name; and on their arrival in Edinburgh, he had, in his own name, received a notice that they lay at the carrier's for delivery: That, on applying at the office for delivery, he was informed that they could not be delivered up, in consequence of an attachment or arrestment, at the instance of Gibb and Macdonald, silk manufacturers in Edinburgh, against Messrs Paul, Wathen and Co. of Woodchester in the county of Gloucester, or against Sir Paul Baghott, knight, whose property it was alleged these goods were: That the petitioner was not a partner of that Company, or in any way responsible for them, or under any engagement with them whatever; and that he was ready to depone that the goods were solely and exclusively his own property, and that the said Company, or Sir Paul Baghott, had no right whatever to the goods, or any claim or interest therein; and praying that the arrestments might be withdrawn, and the goods delivered. Gibb and Macdonald answered, that Turner was the clerk or servant of Sir Paul Baghott; that the goods were the property of Sir Paul; that they had large claims of damages against him; that they had arrested them to found a jurisdiction; and that Turner's present claim was a device to withdraw the goods from the jurisdiction of the Court of Session. July 7. 1830.

In the course of the procedure before the Sheriff, Turner was judicially examined; but he declined to give any information how he became proprietor of the yarns. Thereafter, the Sheriff, 'in 'respect that the presumption of the goods being the property of 'the pursuer is very much weakened by the different productions 'shewn to the pursuer when under judicial examination, and by 'the manner in which he declined to answer several questions 'put to him when under examination, found it incumbent on him 'to condescend on the person from whom he alleges that he purchased the goods in question, and on the manner in which the 'said goods, according to his allegation, became his property.' Turner, resting on the legal presumption of property arising from possession, declined to condescend, and called on the defenders to make out their case. The Sheriff pronounced the subjoined judgment, refusing the prayer of the petition.*

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* 'Finds it admitted by the pursuer in his judicial declaration, that different invoices 'of goods sent by Paul, Wathen and Company, to the defenders Messrs Gibb and Mac-

July 7. 1830. Turner having unsuccessfully petitioned the Sheriff for leave to present a bill of advocation on juratory caution, and decree for expenses having been extracted, and a charge of horning given, presented a bill of suspension, but which was refused by the Lord Ordinary on the Bills. This judgment Turner brought under review of the Inner-House, but their Lordships adhered.*

Turner appealed, and repeated his averment that the goods in question were his sole and exclusive property; that the presumption that they were his property arose from his possession; and that the proof of the contrary fact lay on the respondents, but which fact they had not established.

The respondents made no appearance.

LORD CHANCELLOR.—My Lords, In this case, the printed Cases were laid upon your Lordships' table only on one side,—that is to say, on the part of the appellant, and Counsel appeared only on the part of the appellant. I looked in vain, when the case was argued, to ascertain with correctness what were the facts of the case. They were most imperfectly and defectively stated in the printed Case; and as this was an appeal from the Court in Scotland, I conceived that I should not be justified upon the case on one side, namely, on the part of the appellant, and on the arguments urged on the part of the appellant, in recommending to your Lordships to reverse the judgment of the Court below, without looking into the proceedings which are always laid on your Lordships' table—the whole proceedings in the progress of the cause in the Court below. My Lords, I have, since that time, looked into the proceedings in the

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'donald, were written by the pursuer: Finds it instructed, that the letter 25th October '1825, from Paul, Wathen and Company, intimated to the said defenders, they were to 'send the pursuer as their agent to tender to the defenders the goods required by their 'last instructions: Finds it also instructed by the pursuer's letters to the defenders, '19th and 21st November 1825, Nos. 18–25. do. 18–26., that the pursuer was, at the 'date of these letters, acting in Edinburgh as the agent for Paul, Wathen and Com-'pany, in their transactions with the said defenders: Finds it admitted by the pursuer 'in his judicial declaration, that he showed to the said defenders the letter dated No. 16. 'Seymour Street, November 11. 1825, No. 18–24., as applicable to the goods in 'question: Finds there is every reason to presume, that the said goods are the goods 'referred to by Paul, Wathen and Company, in their letter 24th October 1825, No. '18–23.: Therefore, and in respect that the pursuer has not condescended in terms of 'interlocutor of 10th July last, finds that the goods in question must be held to be 'the property of Paul, Wathen and Company, and the goods referred to in the above-'mentioned letters, 24th October and 11th November 1825: Dismisses the original pe-'tition: Finds the pursuer liable in the expenses incurred by the defenders.'

* 5. Shaw and Dunlop, 358.

Court below, and have read them with attention and care; and it would have been very unfortunate indeed if your Lordships had proceeded to pronounce judgment upon the case as stated in the printed papers on the one side, without an opportunity having been afforded to investigate the real facts of the case. My Lords, the question in this case was, whether or not the appellant was the owner of certain yarn which he had sent down from London to Edinburgh? He had sent it down by the waggon in his own name; he went himself to Edinburgh after it; applied for it at the waggon office, and there he found a stop was put upon it by the defendants. That stop they put upon it on the ground that it was not the property of Turner, but that it was the property of Paul, Wathen and Company, and that Turner was acting as their agent;—that they were creditors of Paul, Wathen and Company. If those facts were made out, there is no doubt they were justified in what they did. Now, clearly, prima facie, this was the property of Mr Turner—he had sent the property to Edinburgh to his own address;—he applied at the waggon office—prima facie, this property being in his possession, he would be considered the owner of it; but in the progress of the cause Mr Turner was subjected to what, in Scotland, is called a judicial examination, which is in some manner similar to a bill of discovery in this country. My Lords, I have read through that judicial examination, and I have no hesitation in stating, that no jury in this country would have hesitated for a moment as to the effect of it, if it had taken place before them. It is perfectly impossible to read that examination, and not to see that this was not the property of Turner, but that he was acting as the agent of Paul, Wathen and Company. I should advise your Lordships, under these circumstances, to dismiss the appeal. July 7. 1830.

The House of Lords accordingly 'ordered and adjudged, that 'the interlocutors complained of be affirmed.'

MONCREIFF, WEBSTER and THOMSON,—Solicitors.

JOHN MACLELLAN, Appellant.—*Lushington—Russell.* No. 27.

ALEXANDER NORMAN MACLEOD, Respondent.
Brougham—John Campbell.

Arbitration.—1. Held, (affirming the judgment of the Court of Session), that a reference or submission by a landlord and tenant during the currency of a lease, and on the eve of a break, to a third party, as to a deduction of rent, was constituted by a series of letters; that it related to the period of the tenant's possession posterior to the break, and not to the prior years; and therefore, that the decree, which was confined to the posterior years, was good: And, 2. observed, That even although the reference had