July 14. 1830.

'Court, it is ordered and adjudged, that the cause be remitted 'back to the Second Division of the Court of Session, to consider and state their opinion whether that Court had, by the law 'of Scotland, any jurisdiction, upon a bill of advocation, to find a 'defender liable in penalties under the Acts in the pleadings in the 'said cause mentioned, or either of them, such defender not being 'convicted before a Justice of the Peace; and the said Second 'Division of the Court is hereby required to take the opinion of 'the Judges of the other Division of the Court, and of the permanent Lords Ordinary, upon this question.'

D. CALDWELL—J. FRASER,—Solicitors.

No. 29.

PAGE KEBLE, Appellant.—*Lushington—Crowder.*

TRUSTEES of the late THOMAS GRAHAM, Respondents.
Pemberton—Dundas.

Et e contra.

Appeal—Debtor and Creditor.—1. The House of Lords having found a debtor entitled to 'deduction of the charge of remittance' of money from India;—Held, (reversing the judgment of the Court of Session), that under the above finding the debtor was not entitled to deduction of one year's Indian interest from the debt; and, 2. (affirming the judgment), That although the Court of Session had of consent found the debtor entitled to deduction of property-tax from 1808 till 1813; and the creditor did not appeal, but the debtor appealed the whole cause; and the House of Lords found it deducible only from and after 1813; the debtor could not claim deduction from an earlier period than 1813.

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2d DIVISION.
Lord Cringletie.

IN the year 1785 the late Page Keble of Calcutta, the father of the appellant, deposited in the hands of Graham, Crommeline, and Moubray, merchants there, certain bonds due to him by the East India Company, for a considerable sum in current rupees. The leading partner of the house was the late Thomas Graham, Esq. who resided in Calcutta, but was possessed of the estate of Kinross in Scotland. Mr Keble died, having appointed Mr Graham to be his executor. In 1803 the appellant (who was the son of Mr Keble) raised an action against Mr Graham, then resident in Calcutta, concluding against him for payment of L. 4768. 8s. 6d., being the amount of the bonds in sterling money, converted at the rate of two shillings the rupee; and for interest at eight per cent, being that stipulated in the bonds, till 1791, (when he alleged the amount should have been paid to him), and

thereafter for twelve per cent, being the ordinary Indian interest from that period till payment. On the dependance of this action Mr Keble raised and executed inhibition against Mr Graham's estates. In the month of March 1808, the Court of Session decerned in terms of the libel, reserving consideration of the rate of interest; and Mr Graham (who in that year returned to Scotland) having appealed, the House of Lords affirmed the judgment on the 10th of November 1813.* July 14. 1830.

On the case coming back to the Court of Session, two questions arose;—1. What rate of interest Mr Graham was liable for, and the period from which it should be calculated? and, 2. What were the deductions to which he was entitled? On the part of Mr Keble, interest was claimed in terms of the conclusions of his summons; while Mr Graham demanded deduction of property-tax from 1803, when the statute imposing it was passed, till its expiration, and also the expense of remittance from India to Britain, which he stated to be one per cent commission, and Indian interest for the period of a twelvemonth. Lord Craigie decerned for a specific sum, including interest at twelve per cent from 1791 till the 11th of November 1813, and with interest at five per cent on this accumulated sum till payment. Mr Graham having reclaimed, the Court on the 8th of March 1816 found, 'of consent, that on pay-'ment the petitioner (Mr Graham) is entitled to deduction of the 'property-tax from the period of his return from India to the 'term of Martinmas 1813, when the debt was accumulated, and is 'also entitled to deduction of the property-tax from the interest 'of said accumulated sum from the said term of Martinmas till 'the same is paid.'

Against these judgments Mr Graham appealed; but no cross appeal was entered by Mr Keble; and Mr Graham having thereafter died, his trustees were sisted as parties in his place. The House of Lords, on the 21st of July 1820, pronounced this judgment:—'It is declared by the Lords Spiritual and Temporal in 'Parliament assembled, that the appellant is to be charged with 'interest at the rates following, viz. with interest at the rate of L. 12 'per cent upon the balance of any account which shall appear to 'have been stated and signed, and which is mentioned in the sum-'mons in this action; such interest to be calculated from the date 'of the account so stated and signed to the 10th of November '1813; and with interest of the several bonds in the proceedings 'mentioned, at the rate per cent which they respectively bore,

* See 2. Dow, 17.

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'until the times when they were respectively paid and discharged, 'or indorsed away, and value was given for the same; and with 'interest at L.12 per cent from and after such times respectively 'to the said 10th day of November 1813, when the former appeal 'was dismissed in this House; but that the appellant is to have 'proper and just allowances and deductions made in respect of 'partial payments, if any, which he can instruct to have been 'made, and in respect of interest thereof; and also a deduction 'of the charge of remittance to Great Britain, of the consolidated 'amount of the debt which shall be constituted against him, up 'to the said 10th day of November 1813: And it is further de-'clared, that the appellant is chargeable with interest at L.5 per 'cent upon such consolidated amount of debt, from the said 10th 'day of November 1813 until payment thereof; but with a due 'deduction of the property-tax upon the amount of the interest 'of such consolidated amount of debt, so long and at such rates 'as the same were chargeable upon the appellant's property in 'Great Britain: And it is ordered, that, with these declarations, 'the cause be remitted back to the Court of Session in Scotland, 'to do therein as is just and consistent with these declarations.'

When the case returned to the Court of Session, a dispute arose as to the meaning of the judgment;—Mr Graham's trustees contending, 1. That under the words 'deduction of the charge of 'remittance,' they were entitled to credit, not only for one per cent commission, (which was not disputed to be a legitimate charge), but also to usance or interest on the amount of the debt for one year, viz. from the 10th of November 1812 till the 10th of November 1813, being the term of payment in Britain fixed by the judgment; and, 2. That, agreeably to the consent of Mr Keble, and consequent judgment of the Court of Session on the 8th of March 1816, they should be allowed deduction of the property-tax from 1808 till 1813. To this it was answered by Mr Keble, 1. That the words of the judgment of the House of Lords were expressly limited to 'deduction of the charge of re-mittance,' which must be held to signify the usual commission; and the words could not be extended to embrace an allowance of interest or usance which was not a proper charge of remittance; and, 2. That the consent given in reference to the judgment of the 8th of March 1816 had been given without due authority; and that having been brought under the review of the House of Lords, and they being satisfied that Mr Graham was not lawfully entitled to deduction of property-tax as there found, had restrict-ed that deduction till the period subsequent to November 1813.

Lord Cringletie, before answer, remitted to Mr Scott Moncrieff, accountant in Edinburgh, 'to report to this Court what in 'his opinion ought to be allowed as the charge of such remittance.' In the discussion which then took place before the accountant, both parties founded upon a proof in relation to a similar question which had occurred in an action at the instance of Major Ramsay's executors against Mr Graham, but in which the judgment of the Court was pronounced of consent. Mr Moncrieff reported inter alia in these terms:—1*st*, 'It appears from the proof 'above-mentioned, that it has been the practice for houses of 'agency in Calcutta to charge a commission of one per cent, in 'making remittances of money to Great Britain. This charge 'has been made and admitted, both in the present case and in 'the parallel case of Ramsay's executors. If, therefore, it is to 'be held, as maintained by the pursuer, that the House of Lords, 'in allowing to the defenders a deduction of the charge of re-'mittance, meant to allow nothing more than the commission 'usually charged for making remittances from India, the ac-'countant has only to report it as his opinion, that a commis-'sion of one per cent on the consolidated amount of debt on 10th 'November 1813, is the deduction to which the defenders are 'entitled in terms of the above judgment. 2*d*, It seems esta-'blished by the proof alluded to, that, in making remittances from 'Bengal to Great Britain, it is the practice to purchase bills 'payable in this country twelve months after date, or six months 'after sight, and that no interest runs on these bills during their 'currency;' but he 'reported it to the Lord Ordinary as his 'opinion, that the practice of making remittances from India 'to Great Britain, by purchasing bills payable twelve months 'after date, or six months after sight, during which no interest 'runs on them, does not confer any advantage upon the debtor 'of the nature of a charge for remittance; and therefore, that 'the allowance claimed by the defenders of a year's interest 'of their debt, does not fall within the terms of the deduction 'to which they are entitled by the judgment of the House of 'Lords, and on which alone the accountant is called to give 'his opinion by the Lord Ordinary's interlocutor. The ac-'countant cannot take upon him to say, whether or not a lower 'rate of commission may not be usually charged by houses of 'agency in Bengal, in consideration of the above practice of 'drawing bills at twelve months' date; but he humbly submits 'his opinion, that one per cent is the usual commission charged 'upon remittances to this country, and he has not seen any

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July 14. 1830. 'reason to hold, that any other charge of remittance should be 'allowed in the present case.'

Of this report Lord Cringletie approved, and issued the subjoined note of his opinion.* Mr Graham's trustees having lodged

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* 'The Lord Ordinary has attentively considered these objections; and, after every 'view of the case, feels it quite impossible, in consistency with the express words of the 'judgment of the House of Lords, or even with justice, to allow the claim of deduc-'tion of a year's interest of the money. In the first place, it is admitted that the debt 'was an Indian one, and payable in Calcutta; as a consequence of which, the interest 'was Indian, and at the rate of 12 per cent, as long as the debt remained unpaid. On 'the principle of its being an Indian debt, the House of Lords found interest at 12 'per cent to be due; but it limited the period to 10th November 1813, after which '5 per cent interest only was declared to be payable, instead of declaring that interest 'at the rate of 12 per cent should be due as long as the debt should remain unpaid; 'which is obviously the principle of accounting between the parties, after the point of 'law is once ascertained, (which was done in this case), that a debtor, by coming from 'India to Britain, does not liberate himself from the obligation of discharging an obli-'gation contracted in India, or, in other words, of paying the interest due by the law 'of India, or the terms of his bond granted there, as long as the principal sum remains 'in his hands. Now, from the dates specified in the state made out by the accountant, 'it appears, that although the House of Lords limited the payment of interest at the 'rate of 12 per cent to the 10th November 1813, not a shilling of the principal was 'paid till 3d February 1816, and then no more than L.2000; the next payment of 'L. 9000 was on 28th May in that year; and after that the next was a consignment of 'L. 6000, not however made till 3d June 1818, more than five years after the course 'of interest at 12 per cent had ceased. Now, the judgment of the House of Lords 'being on 21st July 1820, it is highly probable, that, taking all this into view, that 'Right Honourable House allowed no deduction of interest for the period during 'which the money contained in the Indian bills was not payable, justly thinking that 'no deduction was due, owing to its being compensated by interest at the rate of 5 'per cent being payable only after 10th November 1813, instead of 12 per cent, 'which the capital should have borne as long as it remained unpaid.

'But, 2dly, The express words of the judgment itself preclude any allowance or 'deduction of a year's interest, because, immediately after the words 'deduction of the 'charge of remittance to Great Britain, of the consolidated amount of the debt which 'shall be constituted against him up to the said 10th day of November 1813,' follow 'these words: 'And it is declared, that the appellant is chargeable with interest at 'L. 5 per cent upon such consolidated amount of debt, from the said 10th day of No-'vember 1813 until payment thereof, but with a due deduction of the property-tax on 'the amount of the interest of such consolidated amount,' &c. Deduction is there-'fore given of the charge of remittance to Great Britain of the fund constituted as on 'the 10th November 1813, when interest at 12 per cent ceased; but no deduction is 'specified from the interest, which is declared to be due at 5 per cent only from 10th No-'vember until payment of the principal. The very finding of 5 per cent interest only 'due after 10th November 1813, in a judgment dated July 1820, proves, that the House 'of Lords considered the debt to be a British debt, payable here after 10th November '1813, as is admitted by the objectors in their replies, p. 20.; and of course, when 'that interest is declared to be payable as long as the principal remained in the hands 'of the debtor, or, as the words of the judgment express it, 'until payment thereof,' it 'is impossible to discount a year's interest on account of remitting the money from India.'

a representation, his Lordship ordered it to be answered, and explained his views in the note printed below.* On resuming consideration of the cause, his Lordship pronounced this interlocutor:—'The Lord Ordinary having advised this representation, 'with the answers thereto, and whole procedure, is satisfied that 'it is the mere expense of the remittance of the money to Britain 'that is allowed by the House of Lords, and that the Right Ho- 'nourable House having found that continuous interest is due by 'the representers at the rate of 5 per cent from 10th November '1813, it is not competent to disallow any part thereof under the 'expense of remittance; therefore on that point refuses this repre- 'sentation.'

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Against these interlocutors Mr Graham's trustees reclaimed to the Inner-House, who, after ordering condescendence and

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* 'The Lord Ordinary has had money in loan in India, and knows that when it 'was paid it was sent to him by a bill, whereby he lost a year's interest. The Lord Or- 'dinary does not see how the remitting the money can be of any advantage to the debtor: 'He pays it to the banker, who gives the bill for it, after which he has no power of 'using the money; and by thus paying it, he is liberated from paying interest any longer 'to his creditor. Now, in this case, the Lord Ordinary came to be Judge of this cause 'just when its last issues were to be tried, and he feels greatly the difficulties occurring 'in it from his unacquaintance with the particular circumstances of the former parts of 'it, decided both here and by the House of Lords. He sees, that the 10th of Novem- 'ber 1813 has been fixed by both Courts as the period at which Indian interest is to 'cease and British interest is begun to be due; and this, notwithstanding that the prin- 'cipal debt appears to have been then nearly all outstanding due. The Lord Ordinary 'wishes to know on what principle this was done. His difficulty lies here. If Indian 'interest had continued to be exigible till the money was paid in India, that is, till the date 'of a bill for it, payable a year after date, then it is clear that the debtor would have been 'relieved of interest of any kind thereafter. But interest at five per cent has been de- 'clared to commence on 10th November 1813, the very instant when Indian interest 'ceased, and consequently the debtor continues to pay interest uninterruptedly until the 'principal debt should be paid. What, therefore, at present appears to the Lord Ordi- 'nary to be the justice of the case is, that the debtor ought to be relieved of a year's 'interest at 5 per cent of the consolidated fund on 10th November 1813, either from 'that day till the 10th November 1814, or at least from the date of such remittance for 'a year, at 5 per cent, because that is the rate of interest which he is found liable to pay; 'and, if he pays interest for that year, he bears the expense of remittance, which the 'House of Lords have expressly found him entitled to deduct. The Lord Ordinary is 'inclined to doubt the solidity of his own reasoning in his note prefixed to the interlo- 'cutor complained of, beginning with the words 'But, secondly,' which contains the 'idea that the terms of the judgment of the House of Lords excluded any allowance of 'interest. That judgment certainly finds Mr Graham's estate liable for interest con- 'tinuously; but it also finds it entitled to deduction, from the consolidated fund, of the 'charge of remittance to Great Britain of that fund,—and the deduction of interest is 'only a mode of calculating or estimating that charge. All these doubts may however 'be removed, by an explanation of the anterior proceedings above alluded to, and other- 'wise explaining to the Lord Ordinary that his present ideas are erroneous.'

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answers, and memorials, pronounced this judgment:—Find, 'that, under a just interpretation of the judgment of the House 'of Lords, the petitioners are entitled, under the terms 'the 'charge of remittance,' to a deduction of the actual costs, by 'loss of interest or otherwise, attending the making the remit- 'tances of the consolidated debt from India to Great Britain; 'and to that extent recall the interlocutors of the Lord Ordi- 'nary complained of; but, before answer as to the amount of 'the said charge of remittance, allow the respondent to put in 'a special condescendence, in terms of the Act of Sederunt, of 'what he avers and offers to prove as to the said remittances from 'India to this country.'

Mr Keble then contended, that as the sum specified in the summons had been converted at a time when the rupee was worth only 2s., and as it had increased in value in 1812 and 1813 to 2s. 6d., he was entitled to set off that increased value against the claim of interest made on behalf of Mr Graham. To this it was answered, that this was truly an attempt to amend the libel, which could not be done without opening up the final judgments of the Court and of the House of Lords, which was incompetent.

The Court, on the 23d of November 1827, pronounced this judgment:—'The Lords having advised this condescendence, 'with answers thereto, and resumed consideration of the peti- 'tion for the defenders of date the 4th February 1823, and pro- 'ceedings relative to the charge of remittance from India to Great 'Britain of the consolidated amount of the debt as at 10th No- 'vember 1813, repel the plea of the pursuer founded on the 'alleged profit arising from an advance in the value of a rupee: 'Find, that the defenders are entitled to a deduction, as at said '10th November 1813, of one year's interest of the consolidated 'amount of the debt, at the rate of 12 per cent, as part of the 'charge of remittance; and to that extent alter the interlocutors 'of the Lord Ordinary complained of, and remit to his Lordship 'to proceed accordingly.'* The Lord Ordinary thereafter applied these judgments, and the Court adhered.

Mr Keble appealed as to the deduction of interest; and Mr Graham's trustees cross-appealed in regard to the question of property-tax.

Appellant.—1. In applying the judgment of this House, the Court of Session act ministerially, and therefore are not entitled,

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* 6. Shaw and Dunlop, 119.

from any motives of supposed justice or expediency, to enlarge the intent or sense of the judgment. In the present case they have done so. The words of the judgment are, that Mr Graham is to be allowed 'a deduction of the charge of remittance;' an expression which can only refer to the usual charge, which it is admitted on all hands is a certain commission; whereas the Court of Session have, in addition to this, allowed deduction of a year's interest at the rate of 12 per cent. If it had been the intention of this House to allow such a deduction, it would have been so stated; but so far from that being the intention, the House pronounced judgment specifically on the question of interest, and did not find Mr Graham entitled to that which the Court of Session have, not only without any authority, but in opposition to the judgment, allowed him. Besides, in point of justice, Mr Graham had no claim to such a deduction. It was his duty to have paid the debt when due, and he having committed a breach of obligation, and compelled his creditor to sue him in a Court of law, is not entitled to make profit by retention of the interest. At all events, if interest be deducible, it should only be at the rate of 5 and not 12 per cent.

2. In regard to the question of property-tax, the judgment of the House is quite explicit. It declares that Mr Graham is to be entitled to 'deduction of the property-tax, upon the amount 'of the interest of such consolidated amount of debt.' But the interest of the consolidated debt is declared by the judgment not to commence till the 10th of November 1813; so that it is impossible to construe the judgment as allowing deduction of property-tax from interest prior to that period. It is true, that by the interlocutor of the Court of Session on the 8th of March 1816, Mr Graham was found entitled to deduction of the tax on the interest from 1808 to 1813; but that judgment proceeded on an erroneous consent, and being brought under review of this House, was rectified according to the justice of the case.

Respondents.—1. The true meaning of the judgment of the House in 1820 was, to allow to Mr Graham deduction of the loss or expense sustained in sending the money from India to Britain; and with that view they made use of the comprehensive term 'the charge of remittance,' and sent back the case to the Court of Session, to inquire what was embraced under the term 'charge.' It is not disputed in point of fact, and it is proved by the report of the accountant, that in remitting money from India to Britain there is a loss of one year's interest on the amount. If

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the money were sent in specie or in goods, the interest would unquestionably be lost during the period of transmission, and in addition there would be charges for freight, insurance, &c. In such a case the respondents would certainly have been entitled, under the terms of the judgment, to have deducted the charge for freight and insurance as well as of commission; which clearly shows that it cannot be restricted in the manner contended for by the appellant. But since the introduction of bills into commerce, all those charges (which would have been payable on sending the money in specie or goods) have been classified under a general head termed 'usance;' and agreeably to which a per centage, corresponding to the rate of interest at the place of transmission, and for a specific period, according to the relative distances of the two places, has been allowed to be deducted as a proper charge. In the present case, that deduction is .12 per cent for the period of one year. Unless, therefore, this charge be allowed to the respondents, they will be losers to that amount, because it is a mistake to suppose that profit could be made by their remitting the money. Neither is there any ground in point of justice why this loss should be imposed upon them. The debt was payable in India, where the debtor was resident; and it is clear that if the appellant had raised his action there, Mr Graham would have discharged himself by paying the money in that country. It was only by the accidental circumstance of possessing heritable property in Scotland that he was liable to the jurisdiction of the Court of Session; and as the appellant called upon him to make payment, not in India but in Scotland, the appellant must sustain the expense of remitting the money from the one country to the other.

2. The claim of deduction of property-tax, which the respondents originally made in the Court of Session, was from 1803, when the statute was passed, till its expiration. From 1803 till 1808 Mr Graham was in India, and the Court had, in consequence of that circumstance, difficulty in finding it deducible during that period. But the appellant himself was satisfied, that, from Mr Graham's return to Scotland in 1808, it was a legitimate charge; and therefore he consented, and the Court found, that it was to be deducted posterior to that period. It is true that Mr Graham appealed against that judgment; but he did so only in so far as it was adverse to him, and certainly not in so far as it was in his favour. It was with reference to the period from 1803 till 1808 that he complained; and as there was no cross-appeal, it cannot be supposed that the House would reverse part of a

judgment which was not submitted to their review, but which, on the contrary, was acquiesced in by both parties. Although at first sight the judgment appears susceptible of the construction contended for by the appellant, yet its true meaning is, that, in addition to the finding of the Court of Session, (which confined the deduction from 1808 to the 11th of November 1813), it was to be allowed posterior to that latter period, and so long as property-tax was exigible.

The LORD CHANCELLOR, after having stated the facts of the case, proceeded:—The principle of the declaration appears to be this, that these bonds, being Indian bonds, deposited in India, and having been misapplied by the house in Calcutta, the debt was to be considered as an Indian debt, bearing Indian interest up to the time when the judgment of the Court below was finally affirmed in this House. At that period, the interest, at the rate of 12 per cent, was to be added to the principal, and was to create, as it were, a judgment debt. Upon this judgment debt, so consolidated of the principal and interest, interest at the rate of five per cent was to be paid by the defender. That was the principle of your Lordships' declaration. The cause went down again, for the purpose of making the calculations and deductions directed by your Lordships; and it has again come here on two points, to which I am about to call your Lordships' attention.—One point is, with respect to the charge of remittance. Your Lordships will find, that in this case there was to be 'a deduction of the charge of remit-'tance to Great Britain, of the consolidated amount of the debt con-'stituted against the defendant, up to the said 10th day of November '1813;' and the question is as to the meaning of this declaration, as far as relates to the deduction for the charge of remittance. My Lords, I conceive that the true interpretation of the judgment of your Lordships' House was, that this case was to be considered as if the money had remained in India up to the period of November 1813, when the judgment of your Lordships' House, affirming the judgment of the Court below, was pronounced. It was to bear Indian interest up to that time. The defender was to be liable for Indian interest, and the plaintiff was to have the benefit of Indian interest. It seems to have occurred to your Lordships, that as the money was thus to be considered as in India, a deduction should be made in respect of the charge of remitting it to England; and I think the meaning of the declaration is, that the charge should be estimated as it would have existed in November 1813, the period at which the Indian interest was to terminate. Now, my Lords, with respect to the charge of remitting the money from India to England, there is a regular charge of one per cent for commission; but it is stated, that, in addition to this charge of one per cent commission, it is usual to draw bills payable a year from the date, and that this is to be considered as part of the

July 14. 1830.

charge of remittance. My Lords, it appears to me, that the consideration of the period which bills so drawn have to run, must of necessity be taken into account at the rate of exchange; and that the true mode of estimating the charge of remittance is to ascertain, whether, by the purchase of bills, the loss by the interest was compensated by the rate of exchange. Now, it appears by the evidence in this cause, if we are to have reference to the period of November 1813, or, indeed, if we are to have reference to any period within five or six years of that time, that the rate of exchange was such, that, considering the question in this way, no loss whatever could be sustained in the transmission of the money in the shape of bills of that description; and it appears to me, under these circumstances, that no deduction ought to be made in respect of the interest;—and, my Lords, the appellant can have no right to complain of this, as it appears that the original debt was calculated at the price of two shillings for the rupee. This appears to me to be the true interpretation of your Lordships' declaration, that the party should be placed in the same situation as if this money had continued in India during the whole period, when, by the judgment of this House, it is to bear Indian interest, and that then it should be remitted to this country at the charge of the party on whose account that remittance was to be made.—My Lords, the next point for your Lordships' consideration respects the deduction for property-tax. It appears, that, by an interlocutor pronounced in 1816, an order was made, by consent, that the property-tax should be deducted from the year 1808; but against that interlocutor there was an appeal to your Lordships' House. The appellant was dissatisfied with that interlocutor, and that subject was taken into your Lordships' consideration at the time the declaration was made to which I have referred. Now, my Lords, the question with respect to the property-tax will depend entirely on the construction of the declaration. It was not competent for the Court below to go out of the declaration; and the question is, What is the fair import and construction of the declaration? The declaration is, 'that the appellant is chargeable with 'interest at L.5 per cent upon such consolidated amount of debt, from 'the said 10th day of November 1813 until payment thereof; but with 'a due deduction of the property-tax upon the amount of the interest 'of such consolidated amount of debt, so long and at such rates as the 'same were chargeable upon the appellant's property in Great Britain.' Nothing can be more precise than the language of that declaration. It refers to the consolidated amount of the principal and interest, and it is payable from the month of November in the year 1813; and the only deduction to be made, according to the language of this declaration, and which appears to me to have been intended to embrace the whole question, is a deduction of property-tax from that period up to the time when the property-tax should cease to have operation. It appears to me, therefore, that, as far as relates to this part of the case, thed ecision of the Court of Session was perfectly correct, and ought

to be affirmed. I should propose to your Lordships, therefore, that the former part of the decision of the Court of Session should be reversed, and that this part of the decision of the Court of Session should be affirmed. July 14. 1830.

The House of Lords pronounced this judgment:—'It is declared that the respondents are not entitled to a deduction, as at 'the 10th of November 1813, of one year's interest of the consolidated amount of the debt, at the rate of 12 per cent, as part of 'the charge of remittance of such consolidated amount of debt to 'Great Britain; and it is therefore ordered and adjudged, that 'so much of the interlocutor complained of in the said original 'appeal as is inconsistent with the above declaration be reversed; 'and it is farther ordered and adjudged, that the said cross-appeal 'be dismissed, and the interlocutors complained of be affirmed: 'And it is farther ordered, that the cause be remitted back to the 'Court of Session, to do therein as may be just and consistent 'with the said declaration and this judgment.'

Appellant's Authority.—Campbell, Feb. 15. 1809, (F. C.)
Respondents' Authorities.—Rees' Encyclopædia, *voce* Usance; 1. Kelly's Cambist, 22. 29.

RICHARDSON and CONNELL—SPOTTISWOODE and ROBERTSON,—Solicitors.

NATHANIEL STEVENSON, Appellant.—*Spankie—A. M'Neill.* No. 30.

MICHAEL ROWAND, Respondent.—*Knight—Hunter.*

Reparation—Agent and Client.—Held, (affirming the judgment of the Court of Session), that a law agent, employed to prepare a security over a land estate, having inserted an obligation in the bond to infeft a me, and neglected to get it and the sasine confirmed, whereby the security became unavailing, was liable in reparation to the client.

THE respondent, Mr Rowand, having got himself involved in pecuniary obligations to the extent of about L.1000 for Mr Campbell of Lochend, entered into an arrangement, by which, with a view to his relief, an apparent loan to the above amount was to be made by a Mr Wardrope to Mr Campbell, who was to grant an heritable bond over his estate in favour of Mr Wardrope, and he again was to assign this bond to Rowand. The appellant, Mr Stevenson, a writer in Glasgow, was employed by Rowand to carry this transaction into effect, by preparing and July 14. 1830.
2D DIVISION.
Lord Cringletie.