July 14. 1830. The House of Lords accordingly 'ordered and adjudged, that 'the interlocutors complained of be affirmed.'

Appellant's Authorities.—(3.)—M'Lean, Nov. 15. 1805, (No. 2. App. Reparation); 4. Burrow's Reports, 260.; 3. Campbell's Reports, 17. Grant, Jan. 1. 1791; (Bell's Cases, 319.)

Respondent's Authorities.—(1.)—Ogilvie, Nov. 17. 1680, (13,956.) Drummond, Nov. 10. 1680, (13,958.) Scott, Jan. 3. 1696, (Ib.) Johnston, Dec. 9. 1709, (13,959.) Wood, Nov. 28. 1710, (13,960.) Robertson, July 27. 1725, (13,963.) Rae, July 29. 1741, (Ib.) Goldie, Jan. 4. 1757, (13,965.) Mason, Feb. 14. 1787, (13,967.) Lillie, Dec. 13. 1816, (F. C.); aff. May 25. 1819. Duguid, July 3. 1817, (F. C.) Currie, June 17. 1823, (2. S. & D. 407.) Struthers, Feb. 2. 1826, (4. S. & D. 418.); aff. May 28. 1827, (ante, II. 563.)

RICHARDSON and CONNELL—MONCREIFF, WEBSTER and THOMSON,—Solicitors.

No. 31. JAMES M'GAVIN, (Trustee on JOHN STEWART and Company's Estate), Appellant.—*Lushington—Hunter.*

JAMES STEWART, Respondent.—*Keay—Jarvis—Shaw.*

Process—Proof.—1. Circumstances in which it was held, (reversing the judgment of the Court of Session), that a question, whether a Company had been dissolved and goods sold to a partner or not, should be submitted to a jury, and the parties examined before the Jury Court, notwithstanding that the dissolution had been publicly advertised, and the invoices and bills of lading set forth that the goods were the property of the partner.

2. *Pactum Illicitum.*—Question raised, whether a commercial transaction between parties in Great Britain and America, pending war, or on the eve of war between these countries, was pactum illicitum?

July 14. 1830.

1ST DIVISION. Lords Gillies and Meadowbank.

IN 1803 the respondent, James Stewart, entered into partnership with his brother John, and James White, as manufacturers of cotton goods in Paisley, under the firm of James and John Stewart and Company. He had previously been in the United States of America, and soon thereafter returned to that country. The Company shipped goods to him there for their joint behoof,—the invoices stating them to have been shipped by the Company 'on account of Mr James Stewart, merchant there.' During his residence in that country, he obtained the privilege of an American citizen, with the view, as he stated, to the protection of his person in the event of war taking place with Britain, which was threatened in consequence of the Orders in Council. Although the invoices were expressed in the above terms, the bills of lading granted by the masters of the ships frequently bore,

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that the goods were the property of the respondent alone; and he was described as an American citizen. This, he alleged, was allowed to be introduced by his partners in Scotland, for the purpose of more effectually protecting the insurers against capture by French vessels; the insurances on the goods being made against all risks, and this country being at that time at war with France, while France was at peace with America.

He returned to Scotland in 1807, when a missive of partnership regulating the rights of the parties was executed; and in the course of the same year he again went to the United States, where he remained till April 1809, when, in consequence of the Non-intercourse Act, (which had the effect to exclude all British goods, to whomsoever belonging, from the American market), he returned to Scotland. He remained in this country till July 1812, during which period the commercial operations of the house were, as he alleged, greatly embarrassed by the exclusion from the American market. The goods which they had on hand, he stated, were, from their nature, rapidly depreciating in value, and it appeared probable, unless means could be obtained of converting them into money, that the Company must announce an insolvency.

At this period the political relations of America and Britain stood in a peculiar situation. The Non-intercourse Act was still in force, and indications of war very strong, while, on the other hand, the American Government had announced, that so soon as the Orders in Council were recalled, the Non-intercourse Act would be withdrawn. Proceedings had taken place in Parliament with a view to the recall of these orders, and they were recalled on the 23d of June 1812. Under these circumstances, the respondent stated, that an arrangement was made between him and his partners, by which it was agreed that the Company should be dissolved, but that the public announcement of the dissolution should not be made till after the debts had been paid off;—that he should purchase the stock of the Company and carry it to America, (for which market it had been manufactured);—that it was his intention, if he found, on arriving on the coast of the United States, that the Non-intercourse Act was still in force, (which applied equally to American and British subjects), to proceed to the British port of Halifax, and there await the announcement of the recall of the Orders in Council, and consequent withdrawal of the Non-intercourse Act; and that, on the other hand, if he found that the Act had ceased to be in operation, but that war had taken place, he would land in the United States, as his rights of a citizen entitled him to do, and there dispose of his property.

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In entering into this arrangement, he stated, that the leading object of all parties was the payment of the debts of the Company, for which he was to make remittances from America; but that the goods were bona fide sold to him, and the whole risk of loss was imposed upon him, while, if there was profit, it was to belong to him exclusively.

The invoices, which were delivered and subscribed by the Company, bore, that the goods were 'on the proper account 'and risk of Mr James Stewart, merchant, New York,' and the bills of lading were expressed in the same terms. The policies of insurance were taken subject to a qualification, that the insurer should not be liable in the event of American capture; an exemption from liability which the respondent alleged was introduced because the goods were his property, and that, as he was an American citizen, he would be entitled to vindicate them. Previous to his departure, the books of the Company were balanced.

On his arrival on the coast of the United States, he found that the Non-intercourse Act was still in operation, and that war had been declared. The crew of the ship (which was American) refused to proceed to Halifax; and the goods on board of her were seized, under the Non-intercourse Act, by an American revenue cutter. Subsequent shipments were made by the Company; the invoices and bills of lading bearing, that the goods were shipped on the proper account and risk of the respondent. These goods were captured by an American vessel as prize of war, on the allegation that they were truly the property of British subjects, and so liable (independent of the Non-intercourse Act) to capture. After certain judicial proceedings in the Courts of America, (in the course of which the respondent made oath that the goods were truly his property), and after granting bond for their value in the event of it being discovered that they belonged to British subjects, he made sales, sent remittances of part of the proceeds to the Company, and required the public announcement of the dissolution. His partners in Scotland accordingly advertised in the Gazette, and in the local newspapers, that 'James Stewart ceased 'to be a partner of J. and J. Stewart and Company, merchants 'and manufacturers in Paisley, on the 2d of July 1812.'

After disposing of all the goods, and remitting the proceeds to his former partners, to be held, as he alleged, (after deduction of the debts of the Company prior to the date of the dissolution), for his behoof, he returned to Scotland in 1814. The Company (which now assumed the firm of John Stewart and Company) then rendered him an account, in which they debited themselves

with a balance as due to him of L.2492. At a subsequent period, however, they made a claim against him for a share of the profits on the goods which had been shipped to him in 1812, and which they alleged belonged to the old Company. He thereupon raised an action against John Stewart and Company, and John Stewart and James White, the partners, before the Sheriff of Renfrewshire, for payment of the admitted balance, which was met by the above defence. The Sheriff sustained the defence, and assoilzied; whereupon the respondent brought an advocation to the Court of Session. July 14. 1830.

In the meanwhile, the estates of John Stewart and Company had been sequestrated under the Bankrupt Act, and the appellant, M'Gavin, was appointed trustee. In this character he brought an action of count and reckoning against the respondent, before the Court of Session, in which, after libelling on the missive of partnership, he set forth the grounds of his action as follows:—'That, in 'terms of this agreement, the pursuers and the said James Stew-'art carried on business as partners and copartners in trade, under 'the aforesaid firm of James and John Stewart and Company; 'and, in order the better to manage the said business, the said 'James Stewart, as had been originally provided for in the said 'agreement, went to America, to conduct the concerns of the 'Company, as often as circumstances required. That in the month 'of July 1812, when the said James Stewart was going to America, 'and during the period that he was there, subsequent to that date, 'and down till the month of February 1814, the said James and 'John Stewart and Company consigned to the said James Stewart 'various parcels of goods, for the purpose of his disposing of the 'same, as one of the partners of the said Company, and for the ge-'neral behoof of the concern. That to enable the said James Stew-'art to dispose of the said goods, and to secure the same against 'seizure and otherwise, in the course of the year 1807 he obtained 'himself entered as a citizen of the United States; and it became 'necessary that the said James and John Stewart and Company, 'of which concern the said James Stewart was one of the indi-'vidual partners as aforesaid, should make out the invoices in 'the name of the said James Stewart, as the purchaser from 'the said James and John Stewart and Company. That in the 'month of July 1812 the Non-intercourse Act between America 'and Great Britain was in force, and the greatest caution and 'prudence was necessary on the part of British merchants, as 'well to secure the property which they had in that country, as to 'carry on the business in which they had previously been engaged. 'That the said James Stewart, defender, was fully aware of the

July 14. 1830. 'delicacy and danger which attended an open communication with 'the pursuers, his partners; and therefore, during the period sub- 'sequent to the month of July 1812, while he remained in America 'managing the concerns of the Company, he cautiously observed, 'and enjoined the pursuers, his partners, to observe the greatest 'secrecy in their concerns, and to obey his instructions in con- 'ducting the business of the Company, and holding him ostensibly 'and publicly as the purchaser of the goods shipped by the said 'Company, and to regard and consider him as a citizen of the 'United States, and to hold out that he was noways connected 'with the said Company; (of which he was, nevertheless, a 'partner, and had been sent to the United States for the sole pur- 'poses of executing and managing the affairs of the said Company 'in that quarter). That, with the view of more effectually se- 'curing the property of the said James and John Stewart and 'Company, and for the better security in carrying on the said busi- 'ness in future, the said James Stewart directed, that the pursuers, 'as his partners in the foresaid concern, should insert in the Edin- 'burgh Gazette an advertisement or notice importing a dissolution 'of the said Company, and to forward to him copies of the said 'Gazette, to the effect, and exclusively for the purpose of more 'easily securing the property of the said Company, which had 'been captured as belonging to a British subject, and of affording 'a protection to any continuation of the consignment of goods by 'the pursuers as his partners; to the end that the goods might be 'brought to a safe and advantageous market, for the behoof of the 'Company. That, in compliance with the directions of the said 'James Stewart, the pursuers followed his instructions, from a 'conviction on their part that they were furthering their own in- 'terest, as well as that of the defender himself; and they accord- 'ingly inserted the following notice in the Edinburgh Gazette:— '(the advertisement was then quoted.) That the defender, the 'said James Stewart, did not subscribe this advertisement; but 'the said John Stewart adhibited the name 'James Stewart' to 'it, in compliance with his advice and desire, and for the sole 'purpose of fulfilling the object and intention so anxiously recom- 'mended by him, in order to save the goods, or to redeem cer- 'tain bonds that might have been granted for the relief and de- 'livery thereof. That this notice was inserted in terms of the 'request of the said James Stewart, and exclusively for the special 'purposes aforesaid; but the pursuers, nevertheless, kept their 'books, and carried on the business of the said concern, in the 'same name, and under the same firm of James and John Stewart

'and Company, in terms of, and agreeable to the original missive of 'agreement before quoted. That the whole business was conducted 'by the pursuers from and in the belief and conviction, on their 'part, that the said James Stewart was to receive a rateable and full 'proportion of the profits of the said concern, agreeable to the share 'which he held in the Company's business, notwithstanding these 'acts and deeds; and they held and believed, that they were en- 'titled to, and would be furnished with, the accompts of sales of 'the goods of the Company so sent to him, and to receive their 'proportionable share of the profits and proceeds of such sales.' July 14. 1830.

In defence the respondent stated,—1. That the goods had been bona fide sold to him, and the Company dissolved; and in support of this he founded (independent of other evidence) upon the terms of the invoices and bills of lading as conclusive in his favour, unless redargued by his writ or oath; and, 2. That, assuming the allegations set forth in the summons to be true, (but which he pointedly denied), he maintained, that the Court could not sustain such a summons, because it set forth a contract or agreement to carry on trade by secret and fraudulent means during war, which was contrary to the public policy and law of the country.

Lord Gillies in the advocation remitted simpliciter; but thereafter recalled this interlocutor, and granted diligence for recovery of writs in both actions. After a great deal of procedure, Lord Meadowbank (who succeeded Lord Gillies) repelled the defences, and ordained the respondent to lodge an account of the proceeds of the goods. Against this judgment the respondent reclaimed to the Inner-House; and their Lordships found, 'that in the event of 'the petitioner (James Stewart) being found ultimately liable to 'account for any part of the goods sent to America, the pursuers 'are bound to guarantee him against any bonds which he may have 'granted, or responsibility which he may have incurred, to the 'American Government, as captors, for the value of the goods now 'claimed by the pursuers;' and remitted to an accountant to investigate the books, and report. The accountant having reported in favour of the respondent, the Court, after ordering condescendences by the parties, and advising them, altered, and in the action of count and reckoning assoilzied the respondent, and in the advocation decerned in terms of the libel, and found him entitled to expenses in both actions.*

M'Gavin appealed.

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* 6. Shaw and Dunlop, 738.—In the meanwhile, both John Stewart and James White had died.

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Appellant.—There are two questions of fact on which the parties are at issue:—1. Whether the Company was dissolved in July 1812? and, 2. Whether the goods shipped to America were the property of the respondent or of the Company? Both of these questions ought to have been submitted to a jury, whereas the Court of Session have assumed the functions of that tribunal, and allowed their judgment to be regulated by the opinion of an accountant. But if the evidence be inquired into it will appear, from the documents in process, that although ex facie there was a dissolution, and the goods were ostensibly the property of the respondent, yet this was merely assumed in consequence of existing political circumstances; and, in point of fact, there was no dissolution till 1814, the goods belonged to the Company, and on that footing remittances were made to them by the respondent.

The pleas which he has maintained in defence are both unjust and unfounded. He pleads, that the transactions were of an illegal character, and therefore, (while it is thus conceded that the goods belonged to the Company), founding on his own turpitude, he attempts to withhold the profits. But in truth the transactions were not illegal; for although the goods were shipped in Scotland posterior to the declaration of war by America, yet the existence of that declaration was not then known in Britain. Besides, the respondent himself landed the goods in the United States after he was aware of the declaration of war, although it had been arranged that in that event they should be carried to Halifax; and therefore he cannot maintain his present plea. Neither is his other defence better founded. He says, that he is entitled to the privileges and character of a trustee, or at least that the trust must be established by his writ or oath. If this were correct, then no commercial transactions between consigner and consignees could safely be carried on. But the documents existing anterior to those in question shew, that the latter were mere simulate papers. It was by means of such documents that the greater part of the commerce of Britain was transacted during the war.

Respondent.—1. The pleas imputed to the respondent are entirely misrepresented. He does not plead, that in point of fact the transaction was of an illegal nature. On the contrary, his defence is, that it was a legal transaction—the goods having been bona fide sold to him before he sailed from Scotland. His preliminary plea is rested entirely on the terms of the *summons* of the appellant. It is there set forth, that an arrangement was entered into between

the parties to carry on trade between this country and America, during a period when hostilities were in existence; that the documents were conceived in the terms in which they are expressed, to defeat the public policy of the country; and that this was to be accomplished by means of fraud on the British Government, and by perjury on the part of the respondent. The question, therefore, which he submitted for the judgment of the Court of Session, and submits to this House, is, whether, assuming the allegations in the summons to be true, (but which he has pointedly denied), such an action can be maintained in a Court of law? He does not, therefore, plead his own turpitude, because his preliminary defence rests entirely on the mode in which the appellant has thought fit to libel his summons. July 14. 1830.

His other defence is equally misrepresented. He does not maintain that he is a trustee. On the contrary, he avers that the goods were actually sold to him; and in evidence of this he refers to the bills of sale or invoices, which form the proper writ of the Company, and which prove that they sold the goods to him. To elide the effect of these documents, the appellant alleges that the respondent held the goods in trust; so that the averment that he is a trustee is that of the appellant, and not of the respondent. His answer to this allegation is a denial of the fact, and a reference to the statute 1696, c. 5. by which it is enacted, that an allegation of this nature can only be established by writ or oath,—a rule which was enforced in regard to bills of lading, in the case of Wilson *v.* Keay, 26th February 1787.

Neither is this a case which required to be submitted to a jury; for where there are written documents which can only be overcome by the writ or oath of party, it never has been the practice of the Court of Session, nor does the statute require that such a case should be sent for trial by jury. The investigation in the Court below was properly confined to an inquiry into the books of the parties; and it is customary in such cases to avail themselves of the assistance of an accountant.

2. But in truth neither the Company nor the appellant have any proper title or interest to insist in this action; and at all events they are bound, ante omnia, to relieve the respondent of any claim under the bonds granted to the American Government. It is not true that the goods were placed within the power of that Government by the act of the respondent, or that it was arranged that he was to carry them to Halifax in the event of war. He made a provision with the insurers for liberty to go to Halifax; but this was with reference to the possibility of the Non-intercourse Act

July 14. 1830. being in force. The vessel, however, was seized under that Act; and it was only because the goods were held to be the property of the respondent, an American citizen, that they were ultimately restored to him. The other goods were captured as prize of war; and it was for the same reason, and on granting bond to the captors, that they were restored to the respondent. If therefore it shall be found, by a judgment of the Courts of this country, that these goods belonged not to the respondent but to British subjects, the American Government and the captors will, agreeably to the law of nations, be entitled to the value of the goods; so that the appellant could take nothing by this action.

LORD WYNFORD.—My Lords, This is an action of account and reckoning, which was brought by the appellant in the Court of Session in Scotland against the respondent. The judgment pronounced in the Court of Session was in favour of the respondent. I have to state to your Lordships, however, that the decision was not unanimous, but the judgment was pronounced by a majority of the Court. The pursuer sought to recover, by that action, the profits of a partnership from 1812 to 1814. It was admitted, that up to 1812 a partnership existed; but it was insisted by the respondent that it was determined in that year, and that the pursuer was not entitled to any account of profits from that year to the year 1814. The respondent also set up the unrighteous defence, that the partnership in which he had been concerned was illegal, and therefore that no action could be maintained against him by his partners to recover any thing that had become due to him on account of such partnership. If the business in which these parties were engaged was illegal, or against the acknowledged policy of the law of Scotland, however ungracious such an objection might be, coming from one of the partners, I should feel myself bound to tell your Lordships that it must prevail. No Court of justice can assist a party who has been engaged in a transaction which the law does not allow. But with respect to some of the transactions out of which this cause arises, there is no pretence for saying that they are illegal. These parties are Scotch manufacturers, who had been in practice of exporting their goods to America. The respondent resided in America, to conduct the sale of these goods. He had in 1809 returned to Scotland, and in the year 1812 he left Scotland for America, taking with him a considerable quantity of goods on account of the copartnership. This country was then, in consequence of the recall of the Orders in Council, at peace with America. But when the respondent arrived on the coast of America, he found that war had been declared between Great Britain and America; and he doubted whether, although he had taken the certificate of an American citizen, and the property appeared as American property, he should be safe in landing the goods in the United States, and thought of taking them

to Halifax. He however resolved, or the sailors resolved, to carry the ship to New York; and on the way she was seized by an American revenue cutter. At this time there was nothing illegal in exporting goods from Scotland to America; there was nothing in such a transaction against the policy of our laws;—on the contrary, by exporting our manufactures at that time, these parties were promoting the interest of Great Britain. After the goods were landed in America the respondent found it necessary, or pretended that it was necessary, that he should represent himself, upon papers formerly obtained, an American citizen, and should represent these goods to be his sole property, and that the partnership between him and the house in Scotland had been dissolved in 1812. I am not aware that any goods were exported after it was known here that we were at war with America. If any goods were exported flagrante bello, and such exports were not covered by a license from our Government, the pursuer cannot recover for any profits made from the sale of such goods; for all trade with an enemy without the King's license is illegal. If this case should go before a Jury, it may be ascertained whether any part of the profits sought to be recovered were made from the sale of goods exported, after it was known in this country that we were at war with America; and for such profits the pursuer should not be permitted to recover, unless they were exported under a license from the King of Great Britain. Such a license renders the exportation legal as far as this country is concerned, and removes the objection to any action brought in our Courts on account of such goods. With respect to the goods exported before the war began, although not sold in America until afterwards, nothing has been done against the law of Scotland. The sending goods to an enemy is illegal, because war puts an end to all communication with a hostile country, unless such communication as is permitted by the King of Great Britain; it being considered dangerous to our country that an unrestricted communication with a hostile country should be permitted. But if the property of British subjects be in a foreign country before a war breaks out with this country, or be sent there afterwards under a license from our King, there is nothing illegal in having recourse to any artifices that can be practised without perjury, or other means grossly immoral, to prevent the enemy from knowing that such property belongs to subjects of this country. The power to seize the goods of unoffending persons, sent under the safeguard of that policy which protects commercial intercourse between all civilized nations, because a war breaks out with the State to which those persons belong, is such as men are justified in defeating by almost any means. When Buonaparte attempted, by the Berlin and Milan decrees, to prevent us from having any trade with the Continent of Europe, it was thought right to permit that attempt to be defeated by simulate papers, as they were called. By these papers, ships that came directly from Great Britain, loaden with our manufactures and our colonial produce, ap-

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July 14. 1830. peared to have cleared out from some neutral port. In policies of insurance upon such ships, power was expressly given to use these simulated papers. If these were allowable to enable us to continue our trade during war, the setting up the pretence that goods admitted into the enemy's country before the war began, are the property of subjects of that country, to prevent the seizure of such goods, is justifiable. But it has been said, that the respondent must have perjured himself to protect those goods, if the interest in the firm had not been fully conveyed to him; for he was obliged to swear that these goods were his property, and that no British subject had any interest in them. He might have evaded the necessity of taking any such oath, if, when he arrived on the coast of America, and found that there was war between that country and this, he had taken the goods to Halifax. Importing the goods into the United States was an act of his own, with which his partners did not interfere. His partners in Scotland did not know, that by the law and practice of America the respondent had placed himself in a situation in which it would be necessary for him to take such an oath. His partners in Scotland did not assent to his taking this oath, nor were they privy to his taking it. The perjury is all the respondent's own. The appellant is not a particeps criminis, and the respondent cannot defeat the appellant by any allegation of his own turpitude. If I had seen a scintilla of proof that the appellant directly or indirectly countenanced the respondent's taking an oath which the appellant knew to be false, I would not advise your Lordships to give him any assistance: although the allowing simulate papers always leads to the commission of perjury, and although I am afraid actions were maintained where perjury had been committed, I will never consent to sanction perjury, even when it is had recourse to in order to deceive the enemies of the country.

Another objection, not more entitled to your Lordships' favourable consideration than the last, has been taken by the respondent, namely, that the respondent is a trustee, and that he has not declared, either in writing or on oath, for whom he is a trustee. If this objection were to prevail, it would destroy the import trade of Scotland. Upon bills of lading it generally appears as if the goods actually belonged to the consignee, although they are to be held by him on account of some other person. If the true owner could not get goods, or the proceeds of goods, out of the hands of a consignee, to whom they are sent under a bill of loading in the form that is used all over Europe, who would send his goods to a Scotch market? But there is, besides the bill of loading, an invoice, which is sent with the goods, and under which the consignee takes the goods. Now, it appears from the invoices in this case, that the goods were not on account of the consignee solely, but on account of the firm to which both these parties belonged. These two papers must be taken together; and then it clearly appears, in a writing which came to the respondent with the goods, to whom these goods belong. This paper is in the handwriting of one of the partners.

All the partners are agents for each other. This writing, therefore, takes the case out of the statute relative to trusts. But this statute has nothing to do with such a case: There is no trust created by the bill of lading: It is a simple deposit of the goods. On whose account that deposit is made, is to be ascertained by looking at the invoice. July 14. 1830.

The last question is a question of fact. Did the partnership, which it is admitted once existed between these parties, terminate in 1812 or 1814?—(Lord Wynford here gave reasons why he thought that this question ought to be submitted to a Jury, before whom the parties should be examined; but as his observations on this part of the case was applied to matters of fact only, we have not reported them.) —His Lordship concluded by moving, That the judgment be reversed;—that the case be remitted to the Court of Session in Scotland, with a direction to submit it to a Special Jury;—and with a direction that the parties in this cause should be examined before such Jury.

The House of Lords accordingly ordered and adjudged, 'that 'the interlocutors complained of be reversed: And it is farther 'ordered, that the cause be remitted back to the Court of Session, 'with directions to submit the question of facts to a Special Jury, 'and that it be an instruction to the Jury Court to examine the 'parties viva voce before them.'*

Appellant's Authority.—Brown, June 24. 1823; 2. Shaw's Ap. Cases, 373.

Respondent's Authorities.—Bynk. Quest. Jur. Pub. lib. 1. c. 3.; 1. Robertson's Reports, 196.; 1696, c. 5. Abercrombie, Dec. 17. 1667, (12,313.) Wilson, Feb. 26. 1787, (12,353).

A. DOBIE—A. MUNDELL,—Solicitors.

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* When this judgment came to be applied in the Court of Session, a difficulty arose as to the practicability of doing so according to the established forms of that and of the Jury Court, and from the circumstance of all the original parties being dead except the respondent. After consulting all the Judges, the Court superseded the matter till a communication should be made with the House of Lords. See 9. S. & D. p. 17. In consequence, a bill was brought into Parliament, (Oct. 1831), to set aside the judgment, and rehear the parties, but was afterwards withdrawn; and, on a search of precedents as to the competency of amending the judgment, the House ordered the instruction to examine the parties to be struck out.