

could only order a new election, and not hold the complainer as duly elected one of the commissioners. No. 23.

The Court, upon advising the petition and complaint, with answers, were clearly of opinion, that there was no ground for the interpretation of the statute on which the complaint was founded; and that there was no reason why a trustee for a creditor might not be equally well qualified for the office of commissioner, as if the debt had been originally constituted in his person, for his own behoof.

They therefore dismissed the complaint, and found the complainer liable in expenses.

For Petitioner, *Gillies*. Agent, *Jo. Phillips*, W. S. Alt. *W. Erskine*.
Agent, *Geo. Tod*. Clerk, *Mackenzie*.

J.

Fac. Coll. No. 214. p. 477.

1805. June 26.

RICHMOND and FREEBAIRN'S TRUSTEE, against The PELICAN INSURANCE-OFFICE.

THE Directors of the Pelican Insurance-Office, in 1798, appointed Richmond and Freebairn their agents in Edinburgh. The instructions required "the agent to remit immediately all sums received for new policies, or renewals, when the payment exceeds £50 on one number, and is to transmit the balance of his account quarterly, within one month after each quarter-day, either in money, in bank-bills, or in good bills, at a short date." Of this date, (5th September 1801), Richmond and Freebairn were rendered bankrupt.

The account with the Pelican Office at this time stood thus:

Dr.—PELICAN LIFE OFFICE, London, in Account with RICHMOND and FREEBAIRN, Insurance-Brokers, Edinburgh. Gr.

1801.	£.	s.	d.	1801.	£.	s.	d.
March 4. To Sundries,	135	14	0	Feb. 9. By cash,	6	9	0
July 14. To cash,	19	19	8	12. By ditto,	2	5	0
Aug. 31. To profit and loss				April 1. By ditto,	7	7	9
for commission,	16	19	7	May 21. By ditto,	8	12	9
To James Carnegie,				June 10. By ditto,	5	13	6
ridge, for drift,				July 6. By Charles Freebairn,	127	0	0
on him,	465	0	0	14. By cash,	107	18	0
				14. By ditto,	4	13	9
				22. By ditto,	41	10	0
				By ditto,	86	19	0
				Aug. 6. By ditto,	188	2	6
				31. By J. Richmond, for Life			
				Policy,	£30	18	4
				By Charles Free-			
				bairn,	12	14	0
					43	12	4
				By balance to new account,	1	8	8
					£631	13	3
					£631	13	3

No. 24.

Payments by bills of exchange, made within sixty days of bankruptcy, good in the case of a running account, operated upon to an equal extent, on both sides of the account.

No. 24. The trustee for Richmond and Freebairn's creditors brought a reduction of the two bills for £13. 19s. 8d. and £465. as having been remitted within sixty days of the bankruptcy, contrary to the provision of the act 1696.

On the 16th December 1802, this interlocutor was pronounced: "The Lord Ordinary having heard parties' procurators on the libel, reasons of reduction and defences, sustains the defences; repels the reasons of reduction; assoilzies the defenders from the conclusions of the libel, and decerns."

The trustee reclaimed; and

Pleaded: The spirit of the bankrupt-act 1696, is to incapacitate the debtor from hurting some of his creditors, by preferring others, at a time when his approaching insolvency might lead him not to do equal justice to all. In order to accomplish this purpose, it does not inquire into the *bona fides* of the favoured creditor, nor the nature of the debt, but annuls whatever the debtor has done for the purpose of discharging it, for sixty days preceding bankruptcy, unless it be by a payment in money. The debt contracted by the agent to his employer, is in no different situation from any other debt. If it had been known that he was to become bankrupt, and could not discharge this debt, he certainly would not have been employed; but neither would a creditor have lent his money, if it had been conceived, that, on the stipulated day of payment, the debtor would be incapacitated from discharging the debt. In both cases, the personal credit of the debtor has been trusted; and in both, every assignation or other deed, in security or satisfaction of the debt so contracted, must be set aside, if within the statutory period; *Gampbell against Graham*, 16th January 1718, No. 192. p. 1120; *Manson against Angus*, 1771, APPENDIX, PART I. No. 7. p. 15. *h. t.*; *Machutcheon against Welsh*, 29th January 1794, (not reported, See APPENDIX, PART II.)

Answered: The statute was never intended to regulate cases such as this, where the transactions have been carried on down to the date of bankruptcy, on both sides of a current account. The question here is not about a security given for an antecedent debt, but it is a case of mutual debit and credit, under a running account, which must be taken altogether as one transaction; the different articles *hinc inde* being counter parts of one another, and not to be disjoined. It would be great injustice, if, in such a case, all the indorsations of bills and transmissions of securities during sixty days were reduced; while all the engagements undertaken on the faith of these securities, already deposited, or of their being sent at some future time, are held effectual obligations. It has been already found, that such was not the intention of the act 1696; *Stein's Trustee against Sir William Forbes and Company*, 1st March 1791, No. 204. p. 1142; and this must hold, so long at least as no preference is granted within sixty days, that is, as long as the payments made are not more than those received; by which the fund for the other creditors is not more diminished, but remains just as it did, at the period of sixty days previous to the bankruptcy. If it were otherwise, the agent would be allowed to receive mo-

ney, which he cannot repay to his employers residing at a distance; and, by doing so, he commits a fraud against his employer, if the law will not allow him to send it to its real proprietor. By such conduct, the agent himself could not profit; neither can those who derive right from him. If the creditors seek equity, they must give equity; they cannot convert an equitable rule to an unjust purpose.

No. 24.

The Court adhered.

Lord Ordinary, *Glenlee*.
Agent, *Tho. Scotland*, W. S.
Agent, *W. Molle*, W. S.

Act. *H. Erskine, Wolfe-Murray*.
Alt. *Solicitor-General Blair, Forbes*.
Clerk, *Pringle*.

F.

Fac. Coll. No. 215. p. 178.

1806. February 28. THOMSON'S TRUSTEE, Petitioner.

HENRY THOMSON, corn-merchant in Newburgh, purchased 200 bolls of wheat from James Kinnear, tenant in Lord'scairnie, and 85 bolls from John Balfour, tenant in Ferneybarns. The wheat was delivered on 5th and 6th June 1804, on the last of which the money was to be paid. This, however, was not done. At last, on 11th June, Balfour, who acted also for Kinnear, called again for the money, but was obliged to accept of an indorsed bill for £290 in part payment, for which he granted the following letter:

No. 25.

In a contract of sale for ready money, payment, by means of an indorsation to a bill of exchange, a few days after the bargain, and within sixty days of bankruptcy, cannot be reduced by the other creditors.

“ Mr. Henry Thomson,	“ <i>Newburgh, 11th June, 1804.</i>
“ I acknowledge to have received from you, George Maclagan's and Com-	
“ pany, Kirkaldy, bill of	£290 0 0
	“ Off discount, 3 10 0
	<hr/> £286 10 0
“ For which I promise to be accountable, in the following	
“ manner:	
“ For myself,	£86 10 0
“ For Mr. James Kinnear, Lord'scairnie,	200 0 0
	<hr/> £286 10 0
“ And I am, Sir, yours, &c.	JOHN BALFOUR.”

On the 14th of June, Henry Thomson stopped payment, and his estate was sequestrated on the 22d.

The trustee brought a reduction of the preference obtained by Balfour and Kinnear, concluding for setting aside the right, and for repetition of the money.

The Lord Ordinary (21st December 1805) pronounced this interlocutor: “ Having considered this condescence, with the answers thereto, and whole process, and observing that the pursuer does not undertake to prove that the