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to define what shall be held to be bankruptcy. There must be diligence against him. He must be imprisoned, &c. But nothing of all this took place here. So that neither of these statutes apply. And the circumstances of the origin of this debt by the one brother to the other, is so clearly established, as to preclude all notions of fraud, and all objections on the ground of being conjunct and confident.

After hearing counsel, it was
 Ordered and adjudged that the interlocutors be, and the same are hereby affirmed.

For Appellants, *Wm. Adam, Wm. Alexander.*
 For Respondents, *Henry Erskine, John Clerk, David Cathcart.*

NOTE.—Unreported in the Court of Session.

[Fac. Coll. XIII. App. No. 8.]

<p>JAMES MARSHALL, Writer to the Signet ; WILLIAM TELFORD, Esq., Cashier of the Stirling Banking Co. ; Messrs. CAMPBELL, THOMSON, and Co., Bankers in Stirling ; and WM. PATERSON, Merchant there, Cre- ditors of JAMES STEIN, late Distiller, &c.</p>	}	<p><i>Appellants ;</i></p>
<p>JAMES STEIN,</p>	<p>.</p>	<p><i>Respondent.</i></p>

House of Lords, 27th May 1803.

BANKRUPT—DISCHARGE—NO OBJECTION THAT THE BANKRUPT IS RESIDING IN A FOREIGN COUNTRY—COMPETENCY OF APPEAL.—In this case, the bankrupt, fourteen years after his bankruptcy, and when he was residing in Poland, to which country he had removed after his bankruptcy, presented a petition to the Court, with the usual concurrence of creditors in number and value, for his discharge. Some creditors appeared, and objected that he was not entitled, as a resident of another country, to sue for his discharge here ; and that he had not accounted for the great deficiency in his assets as compared with his debts. The Court of Session repelled these and other objections. In the House of Lords this was affirmed. 2. No objection was stated to the competency of the appeal ; but Lord Eldon thought it would be more expedient that the jurisdiction in bankruptcy were final.

A sequestration was awarded of the estate of James

Stein in February 1788, under the bankrupt act. His debts amounted to £220,974. 9s. His assets, £55,248. 9s. His creditors had this sum divided among them, in five separate dividends, the last of which was paid on 27th December, 1797.

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Fourteen years after the sequestration, the bankrupt, then at the time residing in Poland, applied to the Court, by petition, for his discharge, founding on the bankrupt act, § 43, setting forth that he had undergone the statutory examinations, that he had exhibited inventories of his estates, and conveyed them to his trustee in the usual form; that of the 114 creditors, whose claims were above £20, ninety-five concurred in the application in terms of the act; and showing also, that of the creditors ranked (£199,497) £163,073. 18s. 2½d. concurred.

The act provides, “ That the bankrupt shall, in such cases, “ be discharged, unless the creditors appear and object, “ and be prepared to show that he has not made a fair “ surrender of his estate, or refused to grant a disposition “ to the trustee, as ordered by the Court, or has wilfully not “ attended the diets of examination, or has been guilty of “ any collusion, or that his bankruptcy did not arise from “ innocent misfortunes or losses in business, but from culpable or undue conduct.”

In this application, appearance was made for the appellants, creditors, who gave in the following objections to the petition :—1. That, by retiring to a foreign country, without the jurisdiction of the Court, and beyond the reach of his creditors, the application was made incompetent—no person being entitled to avail himself of the laws of a country from which he had absconded to avoid execution. 2. That there was no evidence of the concurrence of four-fifths of the creditors, as the persons subscribing the deed of concurrence do not produce their titles, whether as executors or assignees, or mandatories or agents. 3. That the 43d section of the act, called on the bankrupt to show how the enormous deficiency of his funds arose, so as to show innocent misfortune; and, 4. That the creditors concurring in the application are promised reward for their concurrence.

The Lords pronounced this interlocutor :—“ Having re- Nov. 10, 1802.
“ sumed consideration of this petition, and advised the same,
“ with the preliminary objection formerly lodged on the
“ part of James Marshall, (*i. e.* the first objection above
“ stated), they repel the objection, and find the absence of

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“ the petitioner no bar to his obtaining the discharge prayed
 “ for. Appoint the new and additional objections this day
 “ given in to be printed and put into the boxes, and allow
 “ the petitioner to answer the same *quam primum*.”

The papers that followed were confined to all the objections after the first. To the 2nd objection, the respondent answered, that the act did not require the concurrence of creditors to be proved by legal evidence. If the petition appears in the names of four-fifths, duly authorized, that is enough. 3d. By the terms of the act, the creditors appearing to object to his discharge are not warranted to call upon him, to instruct that his bankruptcy arose from innocent misfortunes. They are only entitled to state certain objections, and “ the Court shall judge of these objections, and “ allow a proof of them if thought necessary.” And the act further does not say, that deceit practised before the bankruptcy, for the purpose of obtaining credit, as alleged, shall bar the discharge; and as to the fourth objection, it was too irrelevant and vague to deserve any notice.

Mar. 2, 1803. “ The Lords having resumed consideration of this petition,
 “ and advised the same, with the objections, answers, re-
 “ plies, duplies, with the minutes this day given in on the
 “ part of the Stirling Bank, and other proceedings had in
 “ this cause, upon the petitioner’s making oath in terms of
 “ the statute, they find him entitled to be freed and dis-
 “ charged of all debts contracted by him before the date of
 “ the first deliverance upon the petition for sequestrating
 “ his estate; and for that purpose, grant commission to the
 “ Judge Ordinary of Carsun, in Poland, or the Judgeordi-
 “ nary of any other place in Poland or Russia, where the
 “ petitioner may be, and, in case of his return to Britain
 “ before executing this commission, to any of his Majesty’s
 “ Justices of Peace in England, or any of his Majesty’s Jus-
 “ tices of Peace or Sheriffs-depute in Scotland, or their Sub-
 “ stitutes, to take the said oath at any place within their
 “ respective bounds, any lawful day betwixt and the
 “ day of next, and assigns that day for report-
 “ ing.”

Against these interlocutors the present appeal was brought by the creditors objectors.

Pleaded for the Appellants.—The appellants here repeated their objections as pleaded below, viz.—1. That the respondent, residing out of this country, is incompetent, and barred from availing himself of this provision of the bank-

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rupt statute for the purpose of obtaining his discharge. 2. That it was not proved that the persons subscribing the deeds of concurrence as executors, assignees, or agents, had any title to subscribe. 3. That the respondent has not proved that the great deficiency of his funds arose from innocent misfortunes. 4. The appellants offered, and ought to have been permitted to prove, that some of Mr. Stein's creditors had received a compensation for signing the concurrence.

Pleaded for the Respondent.—1. There is no foundation in law for the objection, that the respondent is not entitled to the benefit of his discharge, because he at present resides in a foreign country. 2. The statute has been most studiously avoided in the argument by the appellants. They do not specify any objection embraced within the act, but others which the statute does not include. A great many irrelevant averments are stated, calculated to raise up unfavourable impressions and suspicions, in reference to his dealings before the bankruptcy; but it is clear that they have not proved that he has not made a fair surrender, or has not undergone his examination, or refused to convey the estate to them, while the concurrence of four-fifths utterly refutes all presumptions of unfairness. But, 3d. Where objections, relevant in their nature, are stated, the Court, by the act, is empowered to allow proof of them, from which it humbly appears, that the *onus probandi* of proving such averments lies on the objectors. They have not done this in the present case, and therefore their objections must fall; and, 4. The charge of collusion with the concurring creditors is both irrelevant and calumnious, and the Court did right in repelling it *in toto*.

After hearing counsel,

THE LORD CHANCELLOR ELDON said,

“ MY LORDS,

“ I am apprehensive it cannot be denied, that it is competent to appeal. But I choose to mark the case, because I cannot but entertain a doubt, which may (if it shall appear to be well founded) require some consideration, Whether this jurisdiction, as to bankruptcy, should not be made final in the Court of Session; because you will see, if, after a bankrupt has undergone all the judicial inquiry of the Court of Session, which has concluded in an unanimous opinion with the four-fifths of his creditors, who had previously judged he had done right, a creditor for £6 or £20 can bring under the review of this House the concurrence of the creditors, so followed by the decision of the Court of Session—in such a case,

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where a bankrupt is friendless and penniless, your Lordships must see at once that he had better submit. Indeed, he must submit to the attempt to deprive him of his discharge, whether there be any sound reason for it or not, instead of coming to the bar to support his claim to that discharge, which four-fifths of his creditors, and the unanimous opinion of the Court of Session, have declared he is well entitled to."

It was ordered and adjudged that the interlocutors complained of be affirmed, with £150 costs.

For Appellants, *C. Hope, Wm. Alexander.*

For Respondent, *Wm. Adam, Henry Erskine, John Clerk.*

[M. App. Insurance, No. 4.]

MESSRS. GEORGE LOTHIAN, ANDREW PATON,
JOHN TELFER, ANDREW MACMILLAN, JAMES
MILLER, HUGH LOVE, and Others, Mer- } *Appellants ;*
chants in Glasgow, all Underwriters,

MESSRS. HENDERSON, RIDDLE, & Co., Mer- } *Respondents.*
chants in Glasgow, Agents and Attorneys
of Messrs. Henderson, Ferguson, and Gib-
son, Merchants and Partners in the State of
Virginia, Citizens of New York, America,

House of Lords, 8th June, 11th and 13th July 1803.

INSURANCE—WARRANTY—FOREIGN SENTENCE OF CONDEMNATION
—COMITAS—RELATIVE AGREEMENT.—The appellants, as under-
writers in Glasgow, insured the respondents' ship as an *American*
vessel, belonging to them, as American citizens, which was then
in America, together with her cargo, on voyage from America to
Rotterdam. The war with France was then pending. She sailed
from America to Rotterdam, with all the necessary documents on
board which American vessels were in use to carry in terms of
existing treaties between America and France, as well as the law
of nations applicable to neutrals. But it not being known at
Glasgow, when the insurance was effected, or in America when
the ship sailed, that a Muster Roll, or Role d'Equipage, which,
by a recent ordinance or Arrêt of the French Government, was
also necessary to be carried by such vessels, she was captured in
the course of the voyage, and condemned in the French prize
courts as enemies' property, in consequence of not having this do-
cument. In an action for the sum in the policy, three questions
were argued, 1st. Whether the policy itself contained a warranty