

For the Appellant, *Wm. Adams, Sir Samuel Romilly,*
John Clerk.

For the Respondent, *Tho. Plumer, M. Nolan.*

1812.

M'NAIR
 v.
 FLEMING.

NOTE.—This case is not reported in the Court of Session. Professor Bell, in his Commentaries, vol. ii. p. 670, refers to the case, and states that Sir Samuel Romilly, who was counsel in it, afterwards gave an opinion in a subsequent case, in which he gives, what he understood to be the grounds of the above judgment in the House of Lords, thus: “ The question was, who became the debtor of Mr. M'Nair by the signature of Hugh Mathie and Company to the bills? The House of Lords was, as I understood that decision, of opinion that where several partnerships, consisting of different individuals, carry on business under the same firm, and enter into negotiable securities under the same signature, the holder of such securities has a right to select which of these partnerships he chooses for his debtors. But it never, as I conceive, entered into the minds of any of the Lords, that he could take all the partnerships as debtors. The signature of H. Mathie and Co. being equivocal, and being sometimes used for *Mathie, Parker, and Jameson*, and sometimes used for *Mathie, Fleming, and Home* (Howie), the Court was finally of opinion that the *holder of the bills* had an option to say, which of those partnerships he would understand to be meant. The Lord Chancellor Eldon, during the argument, expressed great doubts even upon this point, and a very strong inclination of opinion against it; and said he believed that there was no authority for such a decision but a *Nisi Prius* case before Lord Kenyon, which was cited to him in the course of the argument. And his Lordship, in the strongest terms, stated that it was impossible that both partnerships should be the debtors. There never was a partnership of *Mathie, Parker, Jameson and Home* (Howie), those five persons, therefore, never could all become bound by the signature of Hugh Mathie and Company.”

JOHN M'NAIR, Agent for the Bank of Scot- } *Appellant* ;
 land in Greenock,
 ARCHIBALD FLEMING, Merchant in Greenock, *Respondent.*

House of Lords, 12th July 1812.

PARTNERSHIP—LIABILITY AS PARTNER.—Held, in the circumstances of the previous case, that after the bank agent wrote Hugh Mathie to know who were his partners, so that he might know on whose credit he discounted the bills, he must be presumed to have received in answer correct information on the subject, and that after *that* he could no longer act in the belief that Mr. Flem-

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ing was a partner in the general business of Hugh Mathie and Company, and therefore that he was not liable for the bills.

In the preceding appeal the circumstances of this case are detailed. The question with reference to five of the eight bills in the hands of Mr. M'Nair, was separately tried. These bills amounted to £3999. In addition to the facts already set forth, it was stated by the appellant, that the insurances for goods belonging to the Nassau concern were effected by the respondent, under the firm of Hugh Mathie and Co. Bills of exchange drawn by the agent of the store at Nassau were drawn upon Hugh Mathie and Co. The bills of exchange for the business of the trade, and the invoices for the goods furnished to the concern, as well as the policies of insurance of such goods, were all in the name of Hugh Mathie and Co. Fleming contended, that as it was proved Mr. M'Nair wrote for information from Hugh Mathie early in the month of February 1803, to know who his partners were, and which information, it was maintained, he must be presumed to have received at that time, these five bills, which were discounted with him subsequent thereto, could not be a claim against the respondent, as Mr. M'Nair, after that information, could no longer *act* under the *belief* that Mr. Fleming was a partner in the general business of Hugh Mathie and Company,

These bills were as follows:—

1. Hugh Mathie and Co.'s promissory note to William Mathie and Archibald M'Guffie, discounted 5th March 1803,	£1500 0 0
2. Caleb Blanchard's acceptance to Hugh Mathie, discounted 10th Feb.	1490 0 0
3. Hugh Mathie and Co.'s acceptance to Wm. Mathie, dated 22d February	476 0 0
4. Buchanan and Lyle's acceptance to Hugh Craig, discounted 8th March	246 10 3
5. Wm. Shirra's acceptance to do., discounted 18th March	287 0 0
	<hr/> £3999 10 3

There were other objections applicable to the bills themselves. 1. The £1500 bill had been originally drawn as the promissory note of Hugh Mathie, but the pronoun "I" had been erased, and in place of it had been substituted the pronoun "We," and after the signature of Hugh Mathie had been added the words "& Co." 2. The bill for £1490 was payable to Hugh Mathie as an individual, and was indorsed by Hugh Mathie, and also by Hugh Mathie and Co. It

therefore appeared that this last indorsation went merely to pledge the name of Hugh Mathie and Co. for a debt of Hugh Mathie as an individual. 3. In regard to Shirra's acceptance for £287, the appellant could, if he had chosen, operated relief out of large funds of Shirra's in his hands at Shirra's bankruptcy. Since Shirra's bankruptcy he had received several payments from Shirra's friends to account of the several bills held by him. That if the appellant applied these payments to the several bills *pro rata*, the effect would have been to extinguish the debt. 4. To the bill of £246. 10s. 3d. the same objection applied.

The Lord Ordinary, after a proof was led, pronounced June 3, 1806. this interlocutor: "Finds that it is admitted by Mr. M'Nair " that about the beginning of February 1803 he thought it " prudent to write a letter to Hugh Mathie to desire to " know who were the partners of Hugh Mathie and Co. " Finds it proven that Mr. Mathie was frequently in Mr. " M'Nair's office, and in his company there, after the receipt " of that letter, and before the bills in question were dis- " counted: Finds that Mr. M'Nair avers, that at these " meetings Mr. Mathie did not give him, nor did he ask an " explanation about his partners: Finds that Mr. M'Nair " ought not to have rested on such silence; and that after " writing that letter, he was not in *bona fide* to discount any " bills on the credit of the persons whom he had previously " supposed and believed to be partners of Hugh Mathie and " Co.; but ought to have stopped all discounts and other " transactions with Hugh Mathie in the name of that com- " pany: Finds, that having come to the resolution of re- " quiring satisfaction on that head, he ought to have writ- " ten to Mr. Fleming, as even the assertions of Mathie in " his own favour ought not to have been taken as evidence " of the partnership, after doubts were entertained: Finds " it unnecessary *in hoc statu* to determine the other points " of the cause; and, on the above grounds, suspend the " letters *simpliciter* and decerns." On representation the Lord Ordinary adhered; and on two reclaiming petitions to the Court, the Court adhered.

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June 16, 1806.
Jan. 16, and
Feb. 5, 1807.

Against these interlocutors the present appeal was brought to the House of Lords.

Pleaded for the Appellant.—The grounds upon which the respondent is liable for the payment of the bills which form the subject of this appeal, are the same with those upon which the Court of Session has found the respondent liable

1812. for the bills which form the subject of his appeal in the previous case against the appellant; and there is nothing in the specialties which he has attempted to raise that can free him from his liability.

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Pleaded for the Respondent.—It is perfectly clear that the appellant can have no claim on the respondent for payment of the bills amounting to £3999, because, at the date on which he discounted, or advanced money on them to Hugh Mathie and Co., being posterior to the middle of February 1803, he knew the respondent was not a partner of Hugh Mathie and Co., and, consequently, could not be liable in obligations or bills granted by that company in matters with which he had no concern.

After hearing counsel, it was

Ordered and adjudged that the appeal be dismissed, and the interlocutors complained of be, and the same are hereby affirmed.

For the Appellant, *Tho. Plumer, M. Nolan.*

For the Respondent, *Wm. Adam, Sir Samuel Romilly, John Clerk.*

NOTE.—Unreported in the Court of Session.

(Fac. Coll. vol. xiii. p. 403, et Mor. App. 1. “Heir and Executor.”)

JOHN FRAZER of Farraline, who and his Father, the deceased SIMON FRAZER of Farraline, were the Trustees under the deed of Settlement of Miss FALLS,	}	<i>Appellant;</i>
JOHN SPALDING, Esq., surviving Executor of the Will of the deceased Lieut.-Colonel HUGH FRAZER of Knockie, and JAMES BRISTO FRAZER, Factor <i>loco absentis</i> , ap- pointed by the Court of Session over the Estate of his late Father, the deceased JAMES FRAZER of Gorthlic, Esq., another Executor, and Residuary Legatee under the Colonel's Will,	}	<i>Respondents.</i>

House of Lords, 20th July 1812.

HERITABLE DEBT—PAYMENT OF—HEIR OR EXECUTOR—RELIEF—Fo-
 REIGN—DOMICILE.—(1.) A testator by his will, executed in London,