Geddes and his assignees having appealed, the House of Lords 'ordered and adjudged, that the appeal be dismissed, and the interlocutors complained of affirmed, with L.200 costs.'

June 4. 1824.

Respondents' Authorities.—Cullen's Bankrupt Law, 24, 25.; 2. Bell, 558.; 54. Geo. III. c. 137. § 22.; Maitland, March 4. 1807, (F. C.)

ADLINGTON and GREGORY—T. SMITH,—Solicitors.

(Ap. Ca. No. 48.)

No. 34.

JOHN TAYLOR, Esq. Appellant.—*Jeffrey—R. Bell.*

SAMUEL LONG, Heir of RICHARD CROP, Respondent.—*A. Wood.*

Agent and Client—Fraud.—An agent having been employed to recover a debt for a client, (for whom he was also trustee), which at one time had been considered almost desperate; and having got a decree for upwards of L. 1400, and a warrant for payment of L. 1000; and having informed the client of this latter circumstance, and requested to know what he would allow him for having realized so large a part of the debt, and incurred so much risk, trouble, and expense; and having narrated the circumstances in a power of attorney, which the client executed in his favour, but not having transmitted his account of expenses, which amounted to only L.18; and the client having agreed to discharge him on paying L. 500, and to allow him to keep the residue;—Held, (affirming the judgment of the Court of Session), That the discharge was not binding, and that the client was entitled to recover payment of the balance of the debt.

'a sequestration, therefore, applied for, and the first deliverance recorded, before the 'application for a commission, must form a mid-impediment to the effect of preventing 'the issuing of the commission itself, or at least prevent it from striking against the 'sequestration. That the retrospective effect given to a commission duly issued, with 'reference to the date of the act of bankruptcy, was not intended for such a case, but 'merely to prevent fraudulent or improper conveyances by the bankrupt himself, to 'the prejudice of his creditors; but that a sequestration was not a conveyance to the 'prejudice, but for the benefit of creditors, being the appointment of a system of judi'cial distribution for the behoof of all concerned. That a retrospective effect of the 'same kind was given in Scotland to a sequestration, which cut down or equalized all 'private diligence by creditors, and entitled the trustee to set aside all conveyances 'for payment of debt within a certain period previous to its date; but that no one had 'ever thought of maintaining, in a competition between a Scotch sequestration and an 'English commission of bankrupt, that the effect of the judicial assignment in Scotland 'was to draw back to the period within which secret or fraudulent conveyances might 'be set aside; that bona fide transactions with the bankrupt, in the course of trade, were 'saved in both countries within the retrospective period; and that therefore, on all these 'grounds, the competition in this case would have been regulated by the date of the 'first sentence of the Court in either country, and not by the date of the act of bank'ruptcy, had it been a case in which otherwise there were grounds for supporting the 'title of the English assignees.'

May 28. 1824.

2d Division.
Lords Reston and Cringletie.

The York Buildings Company, with the view of raising money, issued bonds in 1724, each for L.100. Of these six were acquired by Richard Crop, merchant in London, so that he thereby became a creditor of the Company for L.600, with interest from and after 1724. Soon thereafter the affairs of the Company became embarrassed; certain proceedings were adopted by the creditors in the Court of Chancery in England; and an action of ranking and sale of their estates, situated in Scotland, was raised in 1752. In 1768 Crop assigned his bonds in trust to William Ward, solicitor in London, and the late John Russell, writer to the signet, who in the same year obtained a decree of adjudication for the accumulated sum, principal and interest, amounting to L.1687. 11s. The funds of the Company being insufficient to meet the extensive claims of their creditors, an arrangement was proposed, by which the Company stipulated, that, on payment of certain sums to the creditors, the latter should renounce all claim against the Company, and reconvey to them the whole estates which had been attached by their diligence. A deed was accordingly executed on the 2d of June 1786, called the *Crown and Anchor Agreement*, (from having been made at the Crown and Anchor Tavern in London), but which was at a subsequent period abandoned. The late John Taylor, writer to the signet, acted as agent in Scotland for several of the creditors, and Thomas Lloyd, an attorney in London, acted for them in England; a Mr Andree was the solicitor employed in London by Crop. The Crown and Anchor Agreement had been brought about by Taylor and Lloyd, and it was subscribed by Crop. In 1787, and during the subsistence of that agreement, an assignation of Crop's bonds, (which were held in trust by Ward and Russell), was, with his consent, executed by these gentlemen, ex facie absolutely in favour of Taylor. In virtue of this assignation, Taylor, with consent of the Company, obtained an interim warrant in the process of ranking and sale for L. 2154. 15s. 10d. Of this sum L. 1900 were paid by Taylor to Crop, and the balance was retained, with Crop's consent, on account of expenses. Thereafter the Company, alleging that Taylor had acquired the bonds on their behalf, presented a petition and complaint to the Court against him, and he thereupon executed a deed, declaring that he held them in trust for Crop. The creditors and the Company having quarrelled, and the Crown and Anchor Agreement having been abandoned, a new arrangement was proposed in 1792, which was carried into effect, and made into

the form of a deed on the 12th of April, called the *General Agreement.* By this deed the Company, on being discharged of the claims against them, agreed to give up the whole of their estates to the creditors, to be divided among them in such manner as they thought fit; and, on the other hand, the creditors entered into a submission, as among themselves, to certain arbiters, in order to ascertain the amount of their respective debts and claims of preference over the estates. On the same day certain of the creditors who had acceded to the General Agreement, entered into an arrangement among themselves, called the *Restrictive Agreement*, by which, with the view of accomplishing an immediate and equal division among themselves, of the funds which they might recover in virtue of the decrees to be pronounced in the submission, they agreed to lay aside all claim of priority or preference inter se; that each should restrict his debt to a modified sum, which each should be entitled to draw out of the common fund thus created; and that if there was any surplus, it should be equally divided among them, in proportion to their respective debts; but declaring that, in a question with the creditors who did not accede to the Restrictive Agreement, their debts and preferences should be held effectual to the fullest extent. To this deed Crop acceded, there being still due to him, over and above the payment which he had received, a sum which, under this arrangement, he restricted to L. 950.

Proceedings then took place before the arbiters in relation to the several claims, and a sum was found due to Crop of L. 1445. 5s. 10d. as at Whitsunday 1794. For payment of L. 1000 of this sum, an interim decree was issued by the arbiters; and Taylor, who acted as Crop's agent and attorney, then presented a petition to the Court, in the process of ranking and sale, and obtained a warrant on the fund in medio for payment of L. 1000, with interest. In order to uplift this money, he prepared a new power of attorney by Crop in his favour, in which the proceedings were recited, and, particularly, the amount of the sum for payment of which the warrant had been got. Taylor was also agent for a person of the name of Skutt, and for a great number of the acceding creditors to the Restrictive Agreement; and, on the 4th April 1794, he wrote to Mr Andree the following letter, and transmitted to him at the same time the power of attorney to be executed by Crop:—'I informed you in the course of the Session, that I meant 'to apply for Crop and Skutt's money. I have accordingly made 'this application, and succeeded, and got an order for payment,

May 28. 1824. 'which I hope will be complied with soon; but in order to enable me to receive, I wish to have the enclosed powers of attorney executed, which I beg you will lose no time in getting accomplished, and I shall then receive and remit. The sums subscribed to the agreement, in respect of these debts, was for Mr Crop L. 950, for Mr Skutt L. 960. The sums in these warrants exceed a little these sums, and the excess will go to the general trust; and out of these subscribed sums, these gentlemen will please say what they are to allow for expense and trouble in bringing the business to such a fortunate issue for them, and at such a risk, expense, and trouble. You know what others have done in similar circumstances. You know, also, that both of these gentlemen assigned their debts to me absolutely, when I made them the last payment; but as the debts have far exceeded what we had then in view at the time of that transaction, and circumstances are totally changed, I neither have nor intend to make any use of that assignment, but leave it entirely to the feelings of gratitude of those creditors to do as they think proper in respect to the money now to be paid. Only say how you settle, and I shall remit accordingly. You know the whole business; but in the mean time, as it will take some little time to pave the way to prepare to get the money, let me entreat you to lose no time in getting the powers executed and returned.'

The power of attorney was executed by Crop on the 5th June 1794, and at the same time he transmitted through Andree the following letter to Taylor, which, with the exception of the sum and his signature, was in the hand-writing of Andree:—'I agree to accept and receive of John Taylor, Esq. the sum of L.500, in full of all money due, and to become due, on the debt of the York Buildings Company to me, and to allow the remainder, and all the interest, if any, to come for costs and trouble.' It afterwards appeared that the total amount of the account due to Taylor, in regard to this matter, was only L.18. 5s. 2d.; but of which no information was given. The L.500 were paid to Crop on the 28th of August following, and the remainder of the debt was afterwards recovered by Taylor, who retained it to himself. Crop died in 1796, and was succeeded by the respondent, Long, as his heir-at-law, who was then, and for several years afterwards, in minority. In 1811 Taylor died, and his successor was his eldest son, the appellant, John Taylor. An action was then brought by Long against the appellant, concluding for an accounting in relation to the sums which had been recovered by his father,

over and above the L. 500. In defence, the appellant rested on the letter, which he alleged was an effectual discharge by Crop of all further claim against his father. In answer to this, Long maintained, that the letter had been granted under the influence of such misrepresentation and concealment as amounted to deception on the part of Taylor; more especially seeing that he was acting as the agent of Crop, and therefore the letter could not be binding upon him. On the other hand, the appellant alleged, that Crop was fully aware of the whole circumstances, both from the terms of the power of attorney, and of a printed schedule of the debts which had been circulated among the creditors. Long then brought a reduction of the letter, which was conjoined with the process of accounting; and after various proceedings, Lord Reston, in respect 'of the terms of the letter of the late Mr Taylor to the late Mr Andree of 4th April 1794,—that a printed 'schedule of the sums to which each creditor was entitled seems 'previously to have been distributed,—of the terms of the deed 'under reduction,—of the death of the original parties concerned, 'and long acquiescence before the present action was raised,' assoilzied the appellant. A representation having been lodged by Long, and the case having been remitted to Lord Cringletie, on the death of Lord Reston, he adhered to the interlocutor, 'In 'respect that by the power of attorney, dated the 5th June '1794, the same date with the letter of the late Richard Crop 'under reduction, it appears, or must be held, that he was aware 'that a warrant had been obtained from this Court for a dividend 'on his debt of L.1000; and yet knowing that, he agreed to 'accept L. 500, and give up the rest to Mr Taylor; and that 'Mr Crop died without challenging this act of munificence.'

Another representation was then given in by Long, on advising which, Lord Cringletie, for the reasons explained in the following note, decerned in the reduction, and found the appellant 'liable 'to account for his father's intromissions, as attorney for the deceased Richard Crop, Esq.; but that, in accounting therefor, he 'is entitled to credit for L. 500 paid to the said Richard Crop 'on the 19th of August 1794; and also to any expenses laid out 'by the late Mr John Taylor in recovering the money due to 'said Richard Crop, with a just recompense for his trouble; and 'appointed the defender (appellant) to lodge in process an account of such expenses and trouble.'

The note alluded to, as containing the opinion of his Lordship, was in these terms:—'In these answers for Mr Taylor it 'is argued strenuously, that when a client challenges a settle-

May 28. 1824. 'ment made with his attorney, for the purpose of setting it aside, 'it is necessary that he should prove imposition and extortion, 'in order to support the action; and to this the Lord Ordinary 'readily assents; but he considers that, in our law, as he sup-'poses in that of every other civilized country, there is the known 'maxim, that there may be dolus in re ipsa; that the settlement 'with the attorney is of such a nature as to require explanation 'to support it; and the Lord Ordinary confesses, that the pre-'sent appears to him to be of that description.

'That Mr Crop should, by the arbiters, be found entitled to 'L.1445. 5s. 10d.; that, in the mean time, in March 1794, he should 'have actually obtained a warrant for L.1000, with interest, at 'the rate of 4½ per cent, from Whitsunday 1793, with a right 'to a dividend which was afterwards, viz. in 1802, drawn to the 'amount of L.82. 5s. 6d.; and that Mr Crop should have accept-'ed of L.500 in full, leaving to Mr Taylor all the rest for costs 'and trouble, seems so strange and unaccountable a settlement 'between Mr Taylor, a Scotch writer, and Mr Crop, an English 'banker, unacquainted with our laws and customs, and admitted 'to be a stranger to Mr Taylor, as to constitute an apparent 'dolus in re, loudly calling for an explanation from Mr Taylor 'how it came to pass.

'The Lord Ordinary cannot consider the English cases quot-'ed as precedents, similar to the decisions of this Court, but he 'regards them as great authorities, founded on principles of ge-'neral law and expediency, and sound sense of morality; because 'almost in every case between client and attorney, the latter be-'ing possessed of all the knowledge, both of the law and of the 'facts, and being, with this advantage, placed in a confidential 'situation, is in duty bound to make full disclosure of both to his 'constituent, to enable him to judge for himself in making a 'settlement of matters between them: and, as a consequence of 'this, if the attorney be detected in the least misrepresentation of 'any material circumstance, he ought not to be suffered to derive 'the advantage of any settlement made under any such decep-'tion, farther than a due recompense for his costs and trouble. 'Accordingly, in the case of Harris v. Tremenhere, Lord Eldon 'sustained the transactions brought under challenge, but declar-'ed, that "if he could find the slightest hint, that the defender "laid before the testator an account of the value of the premises "that was not perfectly accurate, that would induce me to set "them aside, whatever the parties intended, upon the general "ground, that the principal never could be safe if the agent could

" take a gift from him upon a representation that was not most " accurate and precise."

' The same doctrine is laid down by the great Lord Hardwicke ' in Walmsley *v.* Booth ; and the Lord Ordinary thinks, that the ' Scottish nation is justly entitled to as much security in their ' dealings with their men of business as are their southern neigh- ' bours ; but that principles ought to be adopted and established ' which lead to purity of manners in practitioners of the law, ' and to maintain that consequent honourable respect with which ' they ought to be regarded by their country.

' When the Lord Ordinary last advised the cause, he proceed- ' ed on these ideas : he called on Mr Taylor to produce a power ' of attorney alluded to in his father's letter to Mr Andree, 4th ' April 1794 ; and Mr Taylor having produced that power which ' was executed by Mr Crop, and specially mentioned that his ' father had obtained a warrant from this Court for L. 1000, the ' Lord Ordinary thought that Mr Crop was sufficiently inform- ' ed of his having a right to L. 1000, and accepted of L. 500 in ' full knowledge of the circumstances of the case, and therefore ' pronounced the interlocutor brought under review ; but he con- ' fesses that, on a reconsideration of the whole, added to the late ' Mr Taylor's account, produced with the representation, of the ' expenses of obtaining Mr Crop's warrant, he has altered his ' opinion.

' Mr Taylor, in numerous passages of his answer to the repre- ' sentation of Mr Long, presses on the Lord Ordinary's atten- ' tion, that the late Mr Taylor was not in the confidential rela- ' tion to Mr Crop of attorney and client—that he had not even ' a right to address Mr Crop, Mr Andree being interposed be- ' tween them, to whom Mr Taylor communicated every thing ; ' and, consequently, that Mr Crop having been shielded from ' imposition by the knowledge and experience of Mr Andree, the ' principles of the English cases do not apply to the present.

' Now, in the *first* place, Who was this Mr Andree ? A person ' of the same description as Mr Lloyd, a confederate of the late ' Mr Taylor, agent for some creditors who did not employ Lloyd, ' acting on the same plan as did the latter, and associated with ' Mr Taylor in dividing equally between them what could be ' obtained from the creditors ;—such a person was no shield nor ' protection, but, on the contrary, equally interested as Mr Tay- ' lor in preventing a full disclosure of facts necessary to guide his ' client in his allowance for his trouble.

' But let it be supposed that Mr Andree was a disinterested

May 28. 1824. 'person, it will scarcely be denied, that misrepresentation to him 'was just the same as to Mr Crop: and here the Lord Ordinary 'cannot omit to bring into view the great facts which have in-'duced him to alter his opinion.

'Immediately after Mr Taylor had obtained the warrant for 'L.1000, with interest from Whitsunday 1793, he wrote to Mr 'Andree, communicating that he had obtained a warrant for 'L.950—and a little more, which little amounted to L.95—in 'which he desired Mr Andree to get Mr Crop to say what sum 'he would allow to his agent, for his trouble in obtaining the 'warrant. To a certain extent this was a misrepresentation; but 'it is of little importance, as will appear in the sequel. Perhaps, 'however, there ought to have been no difference in the mode of 'dealing in this case, more than in any other in which Mr Tay-'lor would have sent his account to his employer, thereby shew-'ing the extent of business and cost, and left him to insert a sum 'for trouble. But what did Mr Taylor instruct Mr Andree to 'inform Mr Crop, in order to enable him to fix the allowance? 'He first says, that Mr Crop will judge what he is to allow "for 'expense and trouble in bringing the business to such a favour-'able issue for them, (viz. Mr Crop, and another creditor called 'Skutt), and at such risk, expense, and trouble." He then tells, 'that both of these creditors had assigned their debts absolutely 'to him; that he neither had made, nor intended to make, use of 'that assignment; but, says he, "leave it entirely to the feelings 'of gratitude of those creditors to do as they think proper, in 'respect of the money now to be paid to them."

'On reading this letter alone, no man can doubt Mr Taylor's 'intention was to lead Mr Crop to believe that his warrant had 'been obtained with great risk, expense, "and trouble;" and 'that Mr Taylor had abandoned an absolute assignment of the 'debt in his favour out of mere generosity to Mr Crop, thereby 'imposing on him a large debt of gratitude; whereas there was 'not the least risk; and the account of expenses now produced, 'which is not pretended to have been ever communicated to Mr 'Andree or Mr Crop, amounting to L.18. 5s. 2d. part of which 'is a charge of L.5. 5s. for trouble, proves the extent of the 'trouble and expense necessary in Mr Crop's case. And as to 'Mr Taylor's abandoning the assignation in his favour, he did 'so in consequence of a complaint to the Court by the late Mr 'Robert Mackintosh, in name of the York Buildings Company, 'against him, for purchasing debts of the Company in his own 'name while acting for them. It was therefore an act which he

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'could not avoid, and for which no gratitude was due to him.
'Nevertheless, under the representation made to Mr Andree, and
'by him to Crop, of the gratitude for his payment, and the
'risk, expense, and trouble in obtaining the money, Mr Crop
'granted the letter under challenge, agreeing to accept of L.500
"in full of all the money due, and to become due, on the debt
"of the York Buildings Company to me; and to allow the re-
"mainder, and all interest, if any, to come for costs and trouble."
'The words "interest, if any," shew that Mr Crop did not per-
'fectly understand the nature of the warrant, as the money is
'declared to bear interest at 4½ per cent from Whitsunday 1793,
'and even afford room for suspecting that he signed the power
'without reading it; but laying that aside, it is plain, that even
'according to Mr Taylor's own statement, he drew for costs and

'trouble, - - -	L.450	0	0
'A year's interest on L.1000, at 4½ per cent,	45	0	0
'And the last dividend of 1802, besides interest,	82	5	6
	L.577	5	6

'Had Mr Crop been aware that he was under no debt of gra-
'titude—that there was no risk—and that the trouble and ex-
'pense of procuring the decree and warrant for his debt was
'absolutely trifling,—the Lord Ordinary, with much deference,
'conceives it to be incredible, that Mr Crop could have given up
'more than one-half of his debt; but whether this idea is cor-
'rect or not, is of less importance. It is enough that induce-
'ments were held out to Mr Crop to guide him in the allowance
'to his attorney, which were not accurate, and by which he must
'be held to have been misled.

'Much has been said about the lapse of time, and the long ac-
'quiescence since the settlement; but in this instance, as in every
'one of the sort, no great stress is due to that circumstance. In
'occult cases, it is difficult to get at the truth; and surely that
'difficulty ought not to confer any benefit on the person who de-
'rives advantage from having hidden and misrepresented it, when
'accident happens to produce a disclosure. If it was wrong
'in the late Mr Taylor to act as he did, it is nowise removed
'by the lapse of time, and the difficulty of discovery. Besides,
'that the late Mr Crop died soon after the transaction, it is said
'in 1796, leaving the respondent, Mr Long, his heir, in minority,
'who, of course, could know nothing of this transaction.

'The late Lord Reston was also moved by the idea of a sche-
'dule having been circulated among the creditors, containing a

May 28. 1824. 'list of the sums to which each was entitled, which his Lordship 'thought had conveyed sufficient information to Mr Crop of the 'extent of his rights. But in the after pleadings, that schedule 'was admitted to be of no importance whatever, and was not even 'pretended to have been sent to that gentleman;—at any rate, 'it is certain that it may now be laid out of the question, because 'it is established, that a power of attorney was sent to, and sub-'scribed by Mr Crop, in which the amount of the sum for which 'warrant had been obtained in his favour, was specified. To 'that extent, therefore, he was informed; but the Lord Ordinary 'has fully explained his reasons for considering that the benefit 'of such information was annulled by contemporary misinforma-'tion.' Against this judgment the appellant reclaimed to the Court, but their Lordships, on the 8th June 1821, adhered.*

He then entered an appeal to the House of Lords, in support of which he maintained, That as, from the desperate state in which the affairs of the York Buildings Company had been at one time placed, few of the creditors expected to realize any part of their debts at all; and as funds had been made effectual by his exertions, and the measures suggested by him; and as Crop was fully aware that he was indebted to him for having obtained for him, first the L. 1900, and thereafter the warrant for L. 1000; and as he had been informed of the amount for which that warrant had been granted, and was aware of the whole circumstances; it was plain that he had considered himself under a great obligation of gratitude to Mr Taylor, and on that principle had made over the residue of the debt to him, not merely on account of the trouble which he had experienced in procuring that warrant, but of so unexpectedly obtaining payment of so large a part of his debt; and, therefore, it was not relevant to allege, that the account of the expenses incurred in relation to that warrant had not been laid before him.

To this it was answered, That as Taylor stood in a confidential relation to Crop, (being his man of business), it was his imperative duty to have made the latter fully aware of the whole circumstances in regard to the matter committed to him; and that as the law was extremely jealous of any advantage or profit being taken by an agent or attorney from his employer, beyond that to which he was legally entitled, it was sufficient to set aside the transaction, that Taylor had represented that be had incurred great risk, expense, and trouble, in bringing the matter to what

* See I. Shaw and Ballantine, No 69.

he denominates 'such a fortunate issue,' when, in truth, he had incurred no risk, and little trouble, and the whole expense amounted to only L.18. 5s. 2d.: That it was his duty to have informed Crop that such was the amount of the account, which he did not do; and that he ought further to have mentioned, that the sum for which decree had been given by the arbiters was L.1445. 5s. 4d., whereas he only communicated to him, that he had got a warrant for L.1000; and therefore, as there was such a concealment and misrepresentation as had the effect to lead Crop to suppose that a greater risk, expense, and trouble, had been incurred, and a smaller sum awarded, than was consistent with the fact, the obligation had been obtained by means of deception, and therefore could not be effectual. The House of Lords 'ordered and adjudged, that the appeal be dismissed, and 'the interlocutors complained of affirmed.'

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Lord Gifford.—My Lords, This is a proceeding by the representatives of Mr Crop, one of the individual creditors of the York Buildings Company, to recover from Mr Taylor's representatives, or to bring him to account for a large sum of money received by him as a sum due to Mr Crop under the Restrictive Agreement, and out of which the sum of about L.500 was deducted by Mr Taylor, as a compensation for his trouble. My Lords, in entering upon those observations I have to make upon this case, I would state to your Lordships, that no case in which I have had the honour of rendering my humble assistance to your Lordships has given me more anxiety than this case. I have been looking it over and over again; and undoubtedly, my Lords, though, in the result, I have at last come to the conclusion that I think the interlocutor right, yet I do assure your Lordships, that I have come to that conclusion with considerable difficulty, and with considerable hesitation.

I will not trouble your Lordships at any great length on the circumstances of this case. Mr Crop was a creditor to a very considerable amount of this York Buildings Company;—he was applied to, I believe, just about the time of the Crown and Anchor Agreement, or shortly after, to come into that agreement: at that time there was an assignment, which Mr Taylor afterwards chose to state was an assignment for his benefit; and I advert to that particular circumstance, because I think it forms a very material ingredient in this case, with respect to the ultimate settlement which took place between Mr Taylor and Mr Crop, through the medium of Mr Andree, who was the agent of Mr Crop. My Lords, it is sufficient to state, that under the Restrictive Agreement, Mr Crop was to receive L.950, his debt being considerably more. It appears that, in the year 1794, a letter was written by Mr Taylor to Mr Andree, who was a gentleman concerned in London for Mr Crop, which is set out in page 3. of the appellant's case, in which he says,—'I informed you in the course of the Session, that I meant to

May 28. 1824. 'apply for Crop and Skutt's money. I have accordingly made this ap-
'plication and succeeded, and got an order for payment, which I hope
'will be complied with soon; but in order to enable me to receive,
'I wish to have the enclosed powers of attorney executed, which I
'beg you will lose no time in getting accomplished, and I shall then
'receive and remit. The sums subscribed to the agreement, in re-
'spect of these debts, was, for Mr Crop L. 950, for Mr Skutt L. 960.
'The sums in these warrants exceed a little those sums, and the ex-
'cess will go to the general trust,'—(what the excess was, he does not
condescend to state in the letter);—'and of these subscribed sums,
'these gentlemen will please say what they are to allow for expense
'and trouble, in bringing the business to such a fortunate issue for
'them, and at such a risk, expense, and trouble. You know what
'others have done in similar circumstances. You know, also, that
'both of these gentlemen assigned their debts to me absolutely, when
'I made to them the last payment; but as the debts have far exceeded
'what we had then in view at the time of that transaction, and circum-
'stances are totally changed, I neither have nor intend to make any
'use of that assignment, but leave it entirely to the feelings of grati-
'tude of those creditors to do as they think proper in respect to the
'money now to be paid. Only say how you settle, and I shall remit
'accordingly. You know the whole business; but in the mean time,
'as it will take some little time to pave the way to prepare to get the
'money, let me entreat you to lose no time in getting the powers
'executed and returned.'

My Lords,—The only part of the power of attorney which was executed by Mr Crop, in consequence of this letter, to which I will call your Lordships' attention, is the recital; because unfortunately, on that recital, it being set up by Mr Taylor that this assignment was made to him absolutely, on the contrary the recital treats this assignment as an assignment in trust for Mr Crop, and that Mr Taylor had been acting as his attorney in the course of that transaction; it authorizes Mr Taylor to receive the sums which were due to him in respect of this debt, and to do every thing necessary for the receipt of those sums. It appears, that on the 5th of June 1794 Mr Crop signed this receipt,—(his Lordship then read the receipt, see p. 236.) And, my Lords, I cannot but call your Lordships' attention to one circumstance, —the fac simile of this instrument has been set out in some of the proceedings, and the sum of L. 500 appears to have been filled in, in Mr Crop's hand-writing. Your Lordships will see, that the rest of the instrument was evidently drawn up,—by whom, does not appear,—but drawn up previously, and produced to Mr Crop, for him to fill up the sum. Mr Crop is dead,—Mr Taylor is dead,—and the representatives of Mr Crop have brought this action, which is, in its nature, neither more nor less than an action to make Mr Taylor's representatives to account fairly for what he has received, not touching the compensation he ought to receive for the trouble he has had, but denying that they are bound by this receipt.

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My Lords,—Undoubtedly, in this case, if the evidence had shewn that Mr Crop did this with the full knowledge of his situation, and as an act of bounty to Mr Taylor for the services rendered by him, there can be no doubt that Mr Crop would have no right to require it again: but the question is, whether there is not sufficient evidence to shew that he was not fully apprized of the situation in which he stood; and whether it was not Mr Taylor's duty, not only as his attorney, (for his attorney he was), but as a trustee, to disclose to Mr Crop the real situation in which he stood, and the amount of the trouble and expenses really incurred by him, before he could desire Mr Crop to make him this present? Now, my Lords, it is upon that point, that after, as I have already stated, great anxiety,—after having taken considerable pains, —after the fullest investigation of this case, I think the Court of Session have finally come to the right conclusion. In this case, therefore, I apprehend there will be nothing more to be done, than to affirm the interlocutor pronounced in the Court below.

Respondent's Authorities.—15. Vesey, Jun. 38.; 2. Atk. 27. et seq.; 14. Vesey, Jun, 19.; 9. Vesey, Jun. 292.; 6. Vesey, Jun. 626.; 2. Dow, 289.

C. Berry—J. Campbell,—Solicitors.

(Ap. Ca. No. 46.)

No. 35.

John and George Taylor, Appellants.—*Jeffrey—R. Bell.*

Archibald Swinton, W. S. Respondent.—*A. Wood.*

Slander—Reparation.—Circumstances in which (affirming the judgment of the Court of Session) an action of damages, founded on alleged slanderous expressions made use of in judicial proceedings, was sustained.

June 4. 1824.

2d Division. Lords Craigie and Cringletie.

Mr Archibald Swinton, writer to the signet, having been employed as agent for some of the creditors of the York Buildings Company, in the various proceedings that took place in Scotland for the division of their funds; and the late Mr John Taylor, writer to the signet, having been employed in the same capacity for other creditors—Mr Swinton, in 1811, and after the death of Mr Taylor, published a pamphlet or statement, addressed to the creditors in general, in which he represented, that Mr Taylor was accountable to them for large sums; and in which, after suggesting that the creditors should take joint measures for bringing Taylor to an account, he represented, that the creditors need not be afraid that they would run any risk of involving themselves in any unprofitable expense, for he 'begs it to be distinctly understood, that the con-