

JAMES ORR and RALPH HARWOOD, Appellants.

No. 28.

HANCE, SON, and WEISE, Respondents.

Composition Contract—Competition.—Held ex parte, (reversing the judgment of the Court of Session), That cautioners and assignees under a composition contract were preferable to creditors acceding to that contract on a fund belonging to the bankrupts, in the hands of a party who, for their accommodation, had drawn bills on the competing creditors, by whom they had been accepted.

PATERSON and HARWOOD, hat-manufacturers in London, were in the practice of employing Peter Morton as their agent in Glasgow; and having got into pecuniary difficulties, they made arrangements with him for raising money by means of accommodation bills. With this view, and by their instructions, he drew bills in their favour on Hance, Son, and Weise, merchants in London, by whom they were accepted and paid. Among other bills were two,—one for L.479. 3s. dated 23d June 1815, and another for L. 294. 17s. dated 24th July 1815. Paterson and Harwood having stopped payment, called a meeting of their creditors on the 11th of September 1815, and the following resolutions were entered into:—‘ It being proposed by Messrs Paterson and Harwood, to pay a composition of 10s. in the pound on their several debts,—9s. in the pound to be secured to the creditors by three bills of exchange, drawn by Mr Ralph Harwood, of Kirby Moorside, Yorkshire, upon and accepted by Messrs Paterson and Harwood, for the amount of 3s. in the pound each, payable at four, eight, and twelve months, and by the promissory-note of Messrs Paterson and Harwood for 1s. in the pound, payable at ten months’ date, the last of the three bills of exchange to have the indorsement of Mr James Orr, of Size Lane: We do agree to accept of the said composition, on all the creditors of Messrs Paterson and Harwood agreeing thereto, and to give a release to Messrs Paterson and Harwood, on all the creditors so coming in, and on the several bills and notes being duly paid, and to execute a proper deed for that purpose; such deed to be prepared at the expense of Messrs Paterson and Harwood.

‘ We creditors not having had a sufficient opportunity of satisfying themselves as to the responsibility of Mr Ralph Harwood, his security is accepted only subject to the approbation of Mr Ryle, Messrs Hance and Company, Messrs White, Custon and

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Lord Pitmilley.

May 27. 1825. ‘ Company, and Messrs Cook and Metcalf, to be signified by their
‘ first signing the proposed deed.

‘ Resolved, That the following gentlemen be deputed to obtain
‘ the concurrence of such bill-holders and other creditors as are
‘ not now present, to the above propositions, viz. Mr Hance, Mr
‘ Watt, Mr Metcalf, and Mr Paynter.’

It was alleged by the appellants, that Hance, Son, and Weise,
concurred in these resolutions.

On the 16th of October, (at which time the bill for L. 294. 17s.
was in the circle), Morton wrote to Hance, Son, and Weise, in
these terms:—‘ My draft on you for L. 294. 17s. due on
‘ the 27th instant, drawn by me by desire of Messrs Paterson
‘ son and Harwood, and remitted them for their accommo-
‘ dation, I beg to know whether you retain funds of theirs to
‘ pay it when due, or that it will return upon me for pay-
‘ ment. I am,’ &c.—To this they answered on the 19th:
‘ We are this day favoured with yours of the 16th current;
‘ and in reply to its contents beg to apprize you, that Mr
‘ Paterson, of the firm of Paterson and Harwood, left here on
‘ Sunday last by the smack; and we should presume, that ere
‘ this comes to hand he will have arrived at Glasgow, and fully
‘ explained to you the situation in which we are placed in regard
‘ to your draft for L. 294. 17s. due the 27th instant. Should he
‘ however not have arrived, we will state to you the particulars
‘ for your guidance. Instead of retaining any funds belonging
‘ Paterson and Harwood, we are creditors under their estate
‘ to the amount of L. 1600, or thereabouts, for goods and money
‘ advanced them; and that certainly without your assistance we
‘ shall be placed in a very unpleasant situation; for we cannot,
‘ both for your credit and our own, let the bill go back, as we un-
‘ derstand from Paterson and Company that you hold back from
‘ them funds sufficient for the payment of this acceptance, till
‘ you know whether it is paid or not. The better plan will be,
‘ for the preservation of our credit, for you to remit us the
‘ amount, in order that the acceptance may be duly honoured,
‘ or else enable Paterson to do so, and which you may fully rely
‘ will be only appropriated to that purpose. However, on this
‘ subject we doubt not but Mr Paterson will be able fully to
‘ satisfy you.’ The bill was retired by Hance, Son, and Weise.

On the 11th of November the creditors (including Hance, Son,
and Weise) entered into the following agreement:—‘ Memorandum.
‘ It being proposed by Messrs Paterson and Harwood to
‘ pay a composition of 6s. in the pound upon their several debts,

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' secured in the following manner, viz. two shillings at four
 ' months, two shillings at eight months, and two shillings at
 ' twelve months, in three bills of exchange, drawn by Mr Ralph
 ' Harwood, of Kirby Moorside, Yorkshire, upon and accepted by
 ' Messrs Paterson and Harwood; the last of the three bills to be
 ' additionally secured to the creditors by the indorsement of Mr
 ' James Orr, of Size Lane, London, and which bills are to be
 ' dated the 22d instant:—We do hereby agree to accept of the
 ' said composition of 6s. in the pound, on all the creditors of
 ' Messrs Paterson and Harwood agreeing thereto on or before the
 ' 22d, (at the same time it being left in the power of Mr James
 ' Hance, Mr George Ledger, and Mr R. Heath, to extend the
 ' time to a period not exceeding fourteen days, should they deem
 ' it advisable); and to give a release to Messrs Paterson and Har-
 ' wood, on condition of all the bills being duly paid, (but in case
 ' either of the three bills shall not be duly paid, each creditor shall
 ' be at liberty to proceed against Messrs Paterson and Harwood
 ' for the full amount of their respective debts), and to execute a
 ' proper deed for that purpose; such deed to be prepared at the
 ' expense of Messrs Paterson and Harwood.' A regular deed in
 these terms was extended, and subscribed by Hance, Son, and
 Weise; and, on the 22d they prolonged the time for obtaining
 the consent of all the creditors, which was eventually procured.

In December, Hance, Son, and Weise raised an action before
 the Magistrates of Glasgow against Morton, for payment of the
 bills for L.479. 3s. and L.294. 17s. drawn by him in favour of
 Paterson and Harwood, and accepted and paid by Hance, Son,
 and Weise, on the allegation that they had done so without having
 received any value from Morton. On the other hand, Paterson
 and Harwood, (in whose right the appellants, as assignees, now
 stood), founding on a holograph account by Morton, brought an
 action also before the Magistrates, for payment of a balance of
 L.620. 1s. 1½d.; so that, in this way, a competition arose between
 Hance, Son, and Weise, and Paterson and Harwood, for the
 fund which Morton admitted to be in his hands, and which the
 Magistrates ordered to be consigned. In the latter of these pro-
 cesses appearance was made by Hance, Son, and Weise, and after
 conjoining them, and a great deal of procedure, the Magistrates
 pronounced this judgment:—' Find, that the compearers (Hance,
 ' Son, and Weise) have declined adducing any further proof:
 ' Find, that in the special circumstances of the case, as ap-
 ' pearing from the admissions of parties, and the written evi-
 ' dence adduced, the compearers have not established any claim

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' against the defender Morton personally, on the ground of the
 ' bills in question having been drawn by the defender, and ac-
 ' cepted by the compeers for the defender's accommodation; or
 ' of the defender having indirectly derived benefit from the ac-
 ' ceptance by the compeers of the said drafts; or of the de-
 ' fender having thereby virtually interposed his credit or guaran-
 ' tee for the pursuers, or otherwise, so as to render the defender,
 ' the drawer of the bills, liable to the compeers, the acceptors;
 ' or so as to render the defender liable to the compeers for the
 ' debts of the pursuers; and to entitle or bind the defender to
 ' retain the funds which he formerly held belonging to the pur-
 ' suers, and which are now in medio, in relief of his own engage-
 ' ments, or of the engagements of the compeers on account of
 ' the pursuers. Farther find, that, in the circumstances of this
 ' case, as appearing from the admissions of parties and the written
 ' evidence adduced, the compeers have not established any pre-
 ' ferable claim to the said funds which the defender formerly held,
 ' and which are now in medio in a competition with the other
 ' creditors or assignees of the pursuers, through the medium of
 ' the said bills, drawn by the defender, and accepted by the com-
 ' peers, or by the use of legal diligence, or otherwise; and ap-
 ' pear also to be precluded from insisting in any such preferable
 ' claim by the arrangement which the pursuers are stated to have
 ' made with their creditors, and to which the compeers are
 ' stated to have been parties. Accordingly, prefer the assignees
 ' of the pursuers to the funds in medio, reserving to the com-
 ' peers their right to prove, and to be ranked *pari passu* on the
 ' estate of the pursuers. Further, find the defender seems to be
 ' entitled to expenses, inasmuch as he was interpellated from pay-
 ' ing the funds in medio to the pursuers or their assignees, by the
 ' action against him at the instance of the compeers. And, be-
 ' fore issuing any order with regard to the payment of the funds
 ' in medio, remit to the auditor to tax the defender's expenses.
 ' Finally, find that, in the circumstances of the case, there do
 ' do not appear to be sufficient grounds for subjecting the com-
 ' peers in the expenses occasioned by their urging a preferable
 ' claim to the funds in medio.'

Hance, Son, and Weise, having advocated, the Lord Ord-
 nary pronounced this interlocutor:—' Finds, that the defen-
 ' der, Peter Morton, was bound to relieve the advocators of
 ' the engagement which they came under, by accepting and
 ' retiring the two bills in question, drawn by him upon them,
 ' without value, for the accommodation of the defender and

‘ of Paterson and Harwood, for whom he acted as agent: Finds, May 27. 1825.
 ‘ that the said defender was bound to retain in his hands, and
 ‘ thereafter to remit to the advocators, the funds which came in-
 ‘ to his possession belonging to Paterson and Harwood, in pay-
 ‘ ment of the bills which had been accepted by the advocators,
 ‘ trusting to the security of these funds, and to the defender’s hold-
 ‘ ing goods of Paterson and Harwood sufficient to pay the bills
 ‘ which he drew on the advocators: Finds, that the advocators are
 ‘ not barred from insisting in their claim on the money which was
 ‘ consigned by order of the Magistrates, or in their claim against
 ‘ the defender, Peter Morton, arising out of the nature of their
 ‘ transactions, and out of the correspondence between them, by
 ‘ the alleged arrangement with the creditors of Paterson and
 ‘ Harwood.’ Thereafter, his Lordship decerned in terms of the
 libel at the instance of Hance, Son, and Weise, and ordained
 the consigned money to be paid to them. To these interlocutors
 the Court adhered on the 8th December 1820, and 9th February
 1821.*

Orr and Harwood, assignees of Paterson and Harwood, ap-
 pealed; but no case was lodged by the respondents.

Appellants.—The funds in the hands of Morton belonged to the
 bankrupts, Paterson and Harwood. Hance, Son, and Weise,
 were creditors of the bankrupts, and had no right to any pre-
 ference over these or any other funds belonging to them. They
 acceded to the composition contract, and have received payment
 in terms of it; and by that accession they discharged all claim
 on the funds. But the appellants were the cautioners under the
 composition contract, and as such received an assignation in relief.
 They alone, consequently, are entitled to the fund in question.

The House of Lords ordered and adjudged, ‘ that the inter-
 ‘ locutors complained of be reversed; and the Lords find, that
 ‘ the appellants, James Orr and Ralph Harwood, assignees of
 ‘ Paterson and Harwood, are entitled to the funds in medio:
 ‘ And it is further ordered, that the cause be remitted back to
 ‘ the Court of Session, to do further therein as shall be consistent
 ‘ with this judgment, and as shall be just.’

E. PARTON,—Solicitor.

* Not reported.