

GEORGE BROWN, Appellant.—*Spankie—Brown.*

No. 11.

PATERSON'S TRUSTEES, Respondents.—*Dundas—A. M'Neill.*

Presumption—Payment.—Held, (affirming the judgment of the Court of Session), that, in the circumstances of the case, two promissory-notes, although found in the possession of the debtor, were to be regarded as renewals of unretired bills, and not payments.

Process.—An order to consign in the Royal Bank a disputed sum, sustained.

BROWN being indebted to the trust-estate of the deceased Robert Paterson, made several cash payments, and accepted bills drawn on him by, or granted promissory-notes to, Mr Hay, W. S. one of the trustees, and factor for the deceased. An action of accounting having been brought, a question of fact occurred, whether two promissory-notes which were payable by Brown, in his possession, were merely renewals of other bills, or were substantive payments over and above the other bills. A remit to examine into this and other points was made to an accountant, who reported, that although there was no direct or positive evidence of the fact, the inference he drew from the whole evidence before him was, that these two promissory-notes were renewals, and therefore formed no item of credit in Brown's favour.

March 25. 1830.

2D DIVISION.
Lord Cringletie.

The Lord Ordinary approved of the report, and found Brown due to Paterson's trustees the sum of L. 562. 19s. 5½d. ; but, before issuing decree for payment, ordered parties to be heard on certain claims advanced by Brown for legacies alleged to be due to him out of the deceased's estate. Both parties reclaimed; but the Court (16th January 1827) adhered, with expenses.* Thereafter the Lord Ordinary appointed Brown to consign in the Royal Bank of Scotland the above sum, with interest on such proportion of the sum as was principal, upon a deposit receipt, payable to such person or persons as should be preferred thereto at the issue of the process. Brown reclaimed to the Court, on the ground, that as his objections had not yet been heard or disposed of, it was incompetent to order consignment; but having allowed the order to consign to become final, and only reclaiming against an interlocutor prorogating the term, the Court (23d February 1828)

* 5. Shaw and Dunlop, No. 123. p. 204.

March 25. 1830. refused the reclaiming note, both on the merits and competency.*

On appeal, the discussion at the bar embraced the state of the accounting between the parties, and the import of the evidence afforded by the *res gestæ* of the case, the appellant strongly relying on the fact of the two promissory-notes in question having been found in his possession.

LORD CHANCELLOR.—The weight of evidence is against the appellant. I would therefore propose to your Lordships, that the interlocutors complained of be affirmed, with L.50 costs. A cause in this shape ought not to be brought to the bar of this House. It is like a *nisi prius* case.

The House of Lords therefore ordered and adjudged, that the interlocutors complained of be affirmed, with L.50 costs.

Appellant's Authorities.—3. Ersk. Inst. 4, 5.; Ferguson, Nov. 29. 1793, (1488.)

ALEXANDER DOBIE—Solicitor.

No. 12. Honourable WILLIAM MAULE, Appellant.—*Attorney-General—Murray—Brown.*

Major-General Honourable JAMES RAMSAY, Respondent.
Lushington—Spankie—A. McNeill.

Presumption.—Circumstances under which a gratuitous bond of annuity, granted by one brother to another, during the joint lives of the parties, found in the custody of a person who was the ordinary agent of the granter, and had also acted as agent for the grantee, was held (affirming the judgment of the Court of Session) to be a delivered deed.

March 25. 1830.

2D DIVISION.
Lord Cringletie.

THE trust-disponees of the late Alexander Duncan raised an action of multiplepinding, in which they narrated, that they had found among the papers which had been in his possession, in his professional character of writer to the signet, two bonds;—1st, A bond of annuity, bearing date the 19th February 1805, granted by Mr Maule of Panmure in favour of his brother-german, Major-General James Ramsay, whereby, for love and affection, and for certain other good causes and considerations, Mr
