

Messrs. DOUGLASS, HERON & Co.	<i>Appellants;</i>	1774.
The Honourable JOHN GRANT, Esq., one of the Barons of the Court of Exchequer in Scotland, - - -	} <i>Respondent.</i>	<hr/> DOUGLAS, &c. v. GRANT.

House of Lords, 1st June 1774.

GUARANTEE—RECAL—DELIVERY.—A guarantee for a certain party, a partner in a firm, held not to operate as a guarantee for this firm; and though the guarantee was handed over by the obligant, to be sent to the parties requiring it; held, that the bankruptcy of the party, for whose benefit it was granted, before reaching their hands, entitled the obligant to recal his guarantee.

The appellants carried on business as bankers in Ayr, Edinburgh, and Dumfries; Alexander Ferguson of Craigdarrock, a director of the said company, had been sent to London, to manage the affairs of the company there, in the springs of 1771 and 1772.

On the first occasion, he had been introduced to Mr. Fordyce, of a firm which carried on business as merchants and dealers in bills of exchange, under the title of Fordyce, Grant, and Company, in London, and Fordyce, Malcolm, and Company, in Edinburgh, both of which houses were one concern.—Fordyce, at that time, contemplated retiring from his concern, and was anxious, sometime before doing so, to establish his other partner, and brother-in-law, Andrew Grant, in good credit, before he separated, so that he might be able to carry on the concern. With that view, he consulted Mr. Ferguson as to the mode in which this could be best effected, whereupon the latter not only recommended the establishing of credits in favour of Andrew Grant, but assisted in obtaining them, by introducing Mr. Fordyce to two several banking houses in London, where credits were procured for Andrew Grant, guaranteed in part by John Fordyce, and in part by the respondent, who was a brother of Andrew Grant. But the separation not having taking place, nothing followed upon these.

In March 1772, Alexander Ferguson was again sent to London by the appellants' firm, to establish accounts for them there, with different houses.—On this occasion several interviews took place between him and Andrew Grant, still with the view of establishing his credit after the dissolution, by the retiring of Fordyce, which was to take place in June or July following. The result was, that out of friendship to

1774. Andrew Grant, Mr. Ferguson agreed to employ him as one
 of the appellants' correspondents in London. Whereupon
 DOUGLAS, &c. Andrew Grant wrote, "What I understand to be the terms
 v. GRANT. "agreed on between us for Messrs. Douglas, Heron, and
 April 20, 1772. "Company, commencing an account with *my* house in Lon-
 "don, which please confirm in reply to this:—1st, That
 "Messrs. Douglas, Heron, and Company, shall have liberty
 "to draw upon *my* house in London, for what sums and at
 "what dates they think proper, or order them to pay away
 "money to any other correspondents. 2dly, That for all
 "bills drawn at or under the rate of ten days, Messrs.
 "Douglas, Heron, and Company shall, by the same post, re-
 "mit bills on their bankers, or other bills on bankers in
 "London, sufficient for the payment of these bills. 3dly,
 "That for all bills drawn above the rate of ten days, they
 "shall remit bills on bankers as above, to be in the hands
 "of the house in London, at least ten days before their bills
 "became due. 4thly, That they shall give no order to pay
 "away any money sooner than five days after the house in
 "London shall receive the order; and the same post that
 "brings such order, shall bring remittances, in bankers bills,
 "for the same. 5thly, Douglas, Heron, and Company, shall
 "constantly keep in the hands of *my* house £6000 sterling,
 "which on no consideration shall ever be reduced, and for
 "which they are to be allowed no interest, in consideration
 "of which no commission was to be charged."—The answer
 April 20, 1772. to this letter from Mr. Ferguson simply stated:—"I am
 "clearly of opinion, the terms you propose to conduct the
 "above account for Douglas, Heron, and Company, are very
 "reasonable, and agree to the same on their parts, which I
 "have no doubt will meet with their approbation. And I
 "am, &c.

On submitting this agreement to the directors, on his re-
 turn to Edinburgh, they, at their meeting, held on 7th May,
 approved of the agreement, but as a heavy deposit of £6000
 was to lie in the hands of Mr. Grant, the company insisted
 on a guarantee. Accordingly, on the same day, Mr. Alex-
 ander Ferguson wrote the following letter to Mr. Andrew
 Grant: "As we are acting for a number of other people, and,
 "consequently, must be more scrupulous in our transactions
 "than if they were on our own account, we hope you will not
 "look upon it in the least disrespectful to your house, that
 "we request of you, at your conveniency, to transmit us a
 "letter of guarantee from one or two of your friends, for

“ your transactions with Douglas, Heron, and Company,” 1774.
&c.

In compliance with this request, the respondent, a brother of Mr. Andrew Grant, became guarantee for his brother, in the following letter:—“ As I learn from my brother, that he has entered into an agreement with Douglas, Heron, and Company, by which £6000 of their money is to lie in his hand, I hereby become security for him to these gentlemen for this sum, and oblige myself that he shall repay it to them, according to the terms of his agreement.”

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This letter of guarantee was sent by Andrew Grant to his partner in Edinburgh, John Fordyce, with this letter: “ Enclosed is the Baron’s letter of guarantee, to D. H. & Co. I send it to you for your approbation; you can, if you approve, make K—g deliver it.”

The appellants alleged, that they and their partner, who negotiated the transaction, all along understood that this was a transaction concluded with Messrs. Fordyce, Grant, and Company, and accordingly, by letter of this date, addressed to “ Messrs. Fordyce, Grant and Company,” they state,—“ Gentlemen, in consequence of our Mr. Alexander Ferguson’s letter to your Mr. Andrew Grant, by last night’s post, I have this day drawn on you for account of Messrs. Douglas, Heron, and Company, viz. £700 and £800 to David Thomson, at seventy days date,—£900 and £600 to James Mayleston, seventy-five ditto,—£1000 ditto, eighty ditto,—£4000 to your credit, I am, &c.” They also stated, that this was also the understanding of Mr. Andrew Grant himself, because, when they wrote, sending the other £2000 to Fordyce, Grant, and Company, of this date, in which the appellants state, “ this completes the £6000 deposit,”—this letter was regularly answered by a letter written by Mr. Andrew Grant, and signed with the firm of Fordyce, Grant, and Company, in which there is the expression, “ this completes the amount of deposit, in terms of our agreement.”

May 8, 1772.

May 30, 1772.

June 4, 1772.

It was on this very date that the above letter of guarantee was signed by the respondents, and transmitted to Mr. Fordyce, Mr. Andrew Grant’s partner in Edinburgh. On its arrival, Mr. Fordyce was in the country, and the letter did not reach him until the 22d June. In the meantime, Alexander Fordyce, banker in London, stopped payment and absconded; and Fordyce, Grant, and Company being deeply

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1774. connected with him, were obliged to stop payment the next day.

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The accounts of these failures reached Edinburgh before the above letter of guarantee reached Fordyce's hands.—The letter, when it did reach him, in order not to prejudice the rights of parties, in the then posture of affairs, was placed by him in the hands of a neutral friend. Action was then raised by Douglas, Heron, and Company, against the respondent and Fordyce, Grant, and Company, for payment of the £6000 so deposited; and also another action was raised by the respondent, against this neutral party, for delivery over to him of the letter of guarantee. These actions being conjoined, the Lord Ordinary ordered the declarations of Alexander Ferguson, John Fordyce, and others, to be taken in regard to the whole transaction, from which it appeared, that the facts above set forth were confirmed. The Lord Ordinary thereupon made avizandum to the Court, with the mutual memorials ordered by him. The defences stated by the respondent were, 1st, That his letter of guarantee had no relation to any transaction with Fordyce, Grant, and Company, or to any sum of money deposited with that house; but to a transaction with Mr. Andrew Grant alone, who was to carry on business by himself, upon the dissolution of the copartnership of Fordyce, Grant, and Company. And, 2d, That the letter was never delivered to Douglas, Heron, and Company, and no action could arise upon it; because he never came under any previous obligation to grant it, he could not be compelled to grant the same. And if he could not be compelled to grant the same, he might, on the same principle, refuse to deliver it while so undelivered. This the more especially in a voluntary and gratuitous act, undertaken for another, which was revokable in its nature, at any time by him; and which, if ever delivered into the hands of Douglas, Heron, and Company, he might have cancelled or demanded it up from them at any time.

Feb. 24, 1774. The Court, of this date, pronounced this interlocutor, “sustain the defences for Baron Grant; assoilzie him from the action at the instance of Douglas, Heron, and Company, and decern.”

Against this interlocutor the present appeal was brought.

Pleaded for the Appellants.—1st, That the respondent's letter of guarantee applied, in the most direct manner, to the transaction that really took place. That it was written the very day on which Mr. Andrew Grant, under the firm

of Fordyce, Grant, and Company, acknowledged the deposit of £6000 to be complete. It even refers to this sum, as a sum agreed on, to lie in his brother's hands, and states, that he has been informed, that such sum has been deposited, so that in no rational view can he maintain, that this deposit in his brother's hands, was otherwise than as active manager of the firm of Fordyce, Grant, and Company. It was quite immaterial to this question, that at the time the transaction was gone into, a dissolution of the firm of Fordyce, Grant, and Company, was in contemplation; because, while that final step was not taken, any arrangement with Grant, in the proper course of his own business, of which he was a partner in Fordyce, Grant, and Company, must be presumed to have been a company transaction. And the letter written, acknowledging receipt of the £6000, written by Andrew Grant, was signed by Fordyce, Grant, and Company, while all the letters sending the remittances of this sum, were addressed to that firm. As, therefore, the agreement has not been proved to be one entered into by Mr. Andrew Grant, for, and on behalf of himself only, but, on the contrary, for, and on behalf of the firm of Fordyce, Grant, and Company, the appellants are entitled to action on the respondent's guarantee, for the recovery of the amount. The letter of agreement, signed by Andrew Grant, of 20th April 1772, was subject to approval of Mr. Alexander Ferguson's constituents, the other directors of Douglas, Heron, and Company. It was laid before the first meeting for their approval, and approved of, on condition of finding a guarantee, and Mr. Grant having agreed to this, the agreement became a part of, and incorporated with, the above letter. And the remittances sent in terms thereof, to Messrs. Fordyce, Grant, and Company, and Mr. Grant's acknowledging the same, not in his own name, but in the name of his firm, Fordyce, Grant, and Company, were proofs of the transaction being with the latter, and not with Mr. Andrew Grant as an individual, such as places the matter beyond all manner of doubt. *2d*, In regard to the delivery of the letter—a letter of guarantee so signed, and put into the hands of Andrew Grant for transmission, ought to be held in law as delivered the moment it has passed out of the hands of the obligant, into those who are to reap its benefit, more especially, as it was actually sent by Andrew Grant to his partner John Fordyce, for the purpose of delivery, and, on the faith of this being delivered, the appellants had remitted to Fordyce, Grant,

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1774. and Company, the £6000 of deposit. No doubt this letter was not to be delivered, unless Mr. Fordyce *approved*, but this does not prejudice the appellants' right. On the contrary, it rather proves that the transaction was truly a transaction with Fordyce, Grant, and Company; or otherwise, why was Mr. John Fordyce's approval required, or necessary, except on the supposition that he was a partner in the transaction? The moment the letter of guarantee left the hands of the respondent, and was placed in the hands of Mr. Andrew Grant, it was a delivered document. It was placed there, just as an article would be with a carrier, for the special purpose of delivery to the person for whom it was intended, and to whom it was addressed; and the moment it was put into Grant's hands to be sent to the appellants, the document, in law, must be held as delivered, for, from that moment, he became liable upon it. It was constructive delivery, Mr. Andrew Grant being the mere trustee, custodian, or holder of the letter, for the benefit of the appellants. In the same manner, when it reached Mr. John Fordyce in Edinburgh, it was in his hands, for the special purpose of carriage and delivery to the appellants, and it was handed over by the latter to Mr. Dundas, the neutral party, subject to their demand and right for delivery.

Pleaded for the Respondent.—1st, The expression in the original letter of agreement, of "my house,"—the fact of Andrew Grant signing that letter alone, without any allusion whatever to any other firm or party, and, in particular, without any reference to the firm of Fordyce, Grant, and Company—coupled with the circumstance, that it was made with special reference to Grant's situation, after the dissolution of the partnership, of which he was a partner, were incontestable evidence that the transaction was one with Andrew Grant alone. The subsequent shape which the transaction assumed, after the letter of agreement of 20th April, did not, and could not alter the nature of that agreement. It only superadded the condition of guarantee, when it was submitted to the directors. This was agreed to by Mr. Andrew Grant. No doubt the appellants remitted the £6000 to Messrs. Fordyce, Grant, and Company; but this they were never required to do; and most assuredly, they never required Mr. Andrew Grant to obtain a guarantee for Fordyce, Grant, and Company, but only a guarantee for himself. This, accordingly, he agreed to do, and obtained and forwarded it to Edinburgh. But as that letter is not a guarantee for

Fordyce, Grant, and Company, but only for Andrew Grant, it cannot in law be extended to cover any transactions between the appellants and the firm of Fordyce, Grant, and Company. The £6000, therefore, having been remitted to, and deposited with this firm, no action lies upon the guarantee, because, in fact, no advance ever took place under it. In law, guarantees are strictly interpreted.—A letter of guarantee to an individual of a firm, will not be a guarantee to the firm. It is strictly applicable to the person, and to the particular transaction, and is never extended beyond either; but here the appellants wish to import a construction upon it, contrary to the express words of the letter, and contrary to every rule which has hitherto governed the construction of guarantees. 2*d*, In regard to the letter itself, it was never delivered to the appellants, either in fact, or in constrction of law. The respondent merely delivered it to his brother, until such time as the dissolution of the firm of Fordyce, Grant, and Company should take place. His brother, in this respect, became his agent or mandatory, and his transmitting this letter to Mr. Fordyce was, at most, but a delegation of that agency; but this power to deliver so imposed, he could recal at any time. He did recal it, by commissioning and sending another agent to demand the letter back from Mr. John Fordyce, when it arrived at Edinburgh; which was done prior to his recovering that letter, and which recal of power to deliver foreclosed him, when that letter arrived, from delivering it to the appellants. In point of fact, it was never so delivered to them. Nor is there evidence that this letter of guarantee was the one alluded to in Alexander Ferguson's letter of 7th May. He there demands a guarantee, but it seems rather to be a guarantee for the whole transaction, which, by the agreement, was to amount to £450,000 per annum, and not for the £6000 of deposit, so that, in every view of the case, the action under this guarantee against the respondent is untenable.

After hearing counsel, it was

Ordered and adjudged, that the interlocutor complained of be affirmed.

For Appellants, *E. Thurlow, Alex. Wight.*

For Respondents, *Ja. Montgomery, Al. Wedderburn.*

Not reported in Court of Session.

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