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HOTCHKIS, &c. v. DICKSON.

" measure highly proper, prudent, and expedient on the part " of the pursuers' constituent; 2d, That it is admitted by " the pursuers, that he voluntarily executed the said entail, " and had power to do so; and that there does not appear, " from the terms of the deed itself, or any other collateral " circumstances, any foundation for the allegation that the " pursuers' constituent was improperly or fraudulently induced " to execute such deed, and that the present proceedings " seem to arise rather from a change of mind on the part of " the pursuers, than the discovery of any facts attending the " execution of the entail 1809. Therefore, refuses the desire " of the representation, and adheres to the interlocutor re- " claimed against."

June 2 and 28, 1814. On reclaiming petition the Court adhered.

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

After hearing counsel.

It was ordered and adjudged that the interlocutors complained of be, and the same are hereby affirmed, with £100 costs.

For the Appellants, *John Clerk, Geo. Cranstoun.*

For the Respondent, *Alex. Maconochie, Sir Saml. Romilly. John A. Murray.*

NOTE.—In the House of Lords, the appellants pleaded much on the deed being void as vitiated *in substantialibus*. It bore to have been executed on the 24th of April 1809; but the word *fourth* was clearly written on an erazure, and, therefore, they contended that this objection was fatal to the validity of the deed, but this was disregarded.

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GRAHAM v. KEBLE, &c.

THOMAS GRAHAM, Esq. of Kinross, . . *Appellant;*

PAGE KEBLE, Esq., a Lunatic; ROBERT SAUNDERS, Esq., his Committee, under the appointment of the Lord Chancellor of England, and ROBERT RATTRAY, his Mandatory, ... *Respondents.*

House of Lords, 21st July 1820.

INTEREST—FOREIGN RATE—RES JUDICATA.—(1) Held, that in

making a claim against a solvent partner of a firm, who had at one time acted as agents in Calcutta for the party claiming, and had in that capacity uplifted Indian Bonds, he was entitled to charge 12 per cent., being the India rate of interest up to 13th November 1813, and to 5 per cent. thereafter. (2) That a former decree was not *res judicata* on the question.

This appeal arose out of a former appeal between the same parties, (*vide* Dow, vol. ii., p. 17) in which the interlocutors of the Court below were affirmed.

The action had been brought for payment of a large sum of East India Bonds, deposited in the hands of the Company of Graham, Crommeline and Moubray, Agents in Calcutta, by Mr Keble on the eve of leaving India. The partnership had changed subsequent to this deposit, first, by the retirement of Mr Crommeline in 1787, after which Graham and Moubray continued the firm, with the possession of these funds, and, second, the retirement of the appellant, Graham, in 1791, after which event, the firm of Graham, Moubray, and Company failed, with the proceeds of these India Bonds in their hands.

The former action and appeal was, as to Graham's liability to make good the amount of this India Stock. The Court of Session and the House of Lords held him liable.

On the case coming back from the House of Lords, a state was given in which the foreign or Indian rate of interest was charged at 12 per cent., from the different periods at which the bonds had been uplifted by them, calculated down to 12th November 1813, the said sum, inclusive of interest charged at the said foreign rate, amounting to £19,413, 16s. 2d. The respondents, besides claiming this foreign rate of interest up to 12th November 1813, claimed interest on that sum, at the rate of 5 per cent., until paid, and, in support of this claim, it was concluded that the matter was *res judicata* by the former appeal.

The Lord Ordinary and the Court allowed the foreign or Indian rate of interest, up to that date and interest on the accumulated sum at 5 per cent. thereafter. June 28, 1814. Dec. 2, 1814. Dec. 22, 1814. Nov. 15, 1815. Feb. 13, 1816.

Against these interlocutors the present appeal was brought to the House of Lords. Mar. 8, 1816.

After hearing counsel,

It was ordered and declared, that the appellant is to be charged with interest at the rates following, viz., with Journals of the House of Lords.

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interest at the rate of 12 per cent. upon the balance of any account which shall appear to have been stated and signed, and which is mentioned in the summons in this action: such interest to be calculated from the date of the account so stated and signed, to the 10th of November 1813, and with interest of the several bonds in the proceedings mentioned, at the rate per cent. which they respectively bore until the times when they were respectively paid and discharged or indorsed away, and value was given for the same, and with interest at the rate of £12 per cent. from and after such times respectively to the said 10th November 1813, when the former appeal was dismissed in this House; but that the appellant is to have proper and just allowances and deductions made in respect of partial payments, if any, which he can instruct to have been made, and in respect of interest thereof, and also a deduction of the charge of remittance to Great Britain, of the consolidated amount of the debt, which shall be constituted against him, up to the said 10th November 1813. And it is further declared, that the appellant is chargeable with interest at £5 per cent. upon such consolidated amount of debt, from the said 10th November 1813 until payment thereof, but with a due deduction of the property-tax upon the amount of the interest of such consolidated amount of of debt, so long, and at such rates as the same were chargeable upon the appellant's property in Great Britain; and it is ordered, that with these declarations the cause be remitted back to the Court of Session, to do therein as is just and consistent with these declarations.

For the Appellant, *James Wedderburn, Wm. Wingate.*

For the Respondents, *Sir Saml. Romilly, James Gordon.*

1820. JAMES CRAIGDALLIE and Others, . . *Appellants;*

CRAIGDALLIE, &C. *v.* AIKMAN, &C. The Rev. J. AIKMAN and Others, . . *Respondents.*

House of Lords, 21st July 1820.

PROPERTY OF CHURCH—SECEDING BODY.—A difference of opinion having occurred in the Associate Synod of Burgher Seceders, in reference to the principles of their Church in regard to the power