ROBERT DAVIDSON, Appellant.—*Abercromby.* No. 45.

GEORGE LOCKWOOD and Company, Respondents.—*Jeffrey*—*Buchanan.*

Appeal—Jurisdiction—Repetition of Expenses.—The Court of Session having suspended a charge on a bill against an indorser, and found the charger liable in expenses, which he was compelled to pay; and the charger having appealed against the interlocutor; and a decree of reduction of the bill, pending the appeal, having been obtained by the drawer; and the House of Lords having reversed the interlocutor, and remitted to the Court of Session to make certain investigations; and the Court of Session having, in respect of the decree of reduction, refused to order the expenses to be repaid to the charger, and found it unnecessary to proceed with the remit;—Held, (reversing the judgment of the Court of Session), 1. That the Court was bound to have carried the remit into execution; and, 2. That the charger was entitled to repetition of the expenses.

June 15. 1824.

1ST DIVISION. Lords Reston and Cringletie.

GEORGE LOCKWOOD and Company, manufacturers at Huddersfield in Yorkshire, were in the custom of consigning goods for sale to their agents, Mason, Baird and Company, of Aberdeen; and that latter Company, in the month of April 1809, acting on behalf of Lockwood and Company, sold woollen goods of the value of L.1492. 14s. 9d. to a Company carrying on business at Aberdeen with Quebec, under the firm of John Robertson and Company. This Company consisted of Patrick Baird, (who was also a partner of Mason, Baird and Company), of John Robertson, and also (as was alleged) of William Carlier, in Aberdeen. On the 22d of January 1810, Mason, Baird and Company, drew a bill for the above sum upon Robertson and Company, payable three months after date, bearing to be for value in cloth to Quebec, and which was accepted by John Robertson, under the firm of John Robertson and Company. Mason, Baird and Company then indorsed the bill to Lockwood and Company, and immediately, and as per procuration of them, they indorsed it to Andrew Davidson, who again indorsed it to his brother, the appellant, Robert Davidson. By him it was indorsed to another party, and after passing through several other hands, it was ultimately returned upon him, and the subsequent indorsations scored.

It appeared that, on the 12th of February 1810, Mason, Baird and Company drew another bill on John Robertson and Company, for precisely the same sum, and in the same terms, with the exception that it was payable sixty-five days after date, which, having been accepted (as was alleged) by Robertson and Company, was transmitted to Lockwood and Company. During the currency of these bills, and in the month of March, the

June 15. 1824.

estates of Mason, Baird and Company were sequestrated; and when the bills fell due, the appellant raised diligence on his bill against Robertson and Carlier, as partners of John Robertson and Company, and Lockwood and Company as indorsers. At the same time, Lockwood and Company charged Robertson and Carlier on the bill which they had acquired. Bills of suspension were then presented by Robertson and Carlier, and Lockwood and Company, which having been passed, a process of multiplepoinding was raised in name of the partners of Robertson and Company, stating that they could only be liable in once and single payment of the L. 1492. 4s. 8d. contained in the two bills, and that one of them must have been granted fraudulently, or was fictitious. After a great deal of procedure, the Court found that Carlier was not bound as a partner of Robertson and Company; that Mason, Baird and Company had no authority to indorse as per procuration of Lockwood and Company; that that Company were alone entitled to recover payment; and therefore suspended the charges at the instance of Davidson, found the letters orderly proceeded at the instance of Lockwood and Company against Robertson and Company, and preferred them in the multiplepoinding to the fund in medio, and also found Davidson liable in expenses to all the parties.

An appeal was then entered by Davidson, who was compelled under an order for interim execution to pay the expenses. Thereafter, and during the dependence of the appeal, the trustee on the sequestrated estate of Mason, Baird and Company, brought an action of reduction against Davidson of the bill and indorsations, on the ground that they had been made within sixty days of their bankruptcy; and after some litigation, he obtained decree on the 29th of January 1813, in terms of the libel. This decree was extracted, and it was admitted by the respondents that it had been duly certified and transmitted to London with the view of being founded upon in the House of Lords; but they stated, that they had been advised that, as it had not been in existence prior to the judgments appealed against, they were not entitled to produce it. On hearing the appeal, the House of Lords, on the 4th of July 1815, pronounced this judgment:—'It appearing to the Lords that the appellant 'has not appealed from or reclaimed against the interlocutor 'of the Lord Ordinary of the 29th of November 1810, in the 'process of multiplepoinding, finding the pursuers liable only in 'once and single payment, or from the interlocutor of the Lord 'Ordinary of the 28th of February 1811, conjoining the processes

'of suspension with the multiplepoinding; and that the appellant, 'on the contrary, in his reclaiming petition against the interlocu-'tor of the Lord Ordinary of the 13th of June 1811, submitted 'to the proceeding in the multiplepoinding; the Lords cannot 'proceed to determine whether the process of multiplepoinding 'was well raised or not: but on the bill of suspension for Wil-'liam Carlier it is ordered and adjudged, by the Lords spiritual 'and temporal in Parliament assembled, that the several inter-'locutors complained of in the said appeal, so far as they sus-'tain the said bill of suspension for William Carlier, be, and 'the same are hereby reversed; and with respect to the bills of 'suspension of the said John Robertson, and of George Lock-'wood and Company, as conjoined with the process of multiple-'poinding, it is farther ordered and adjudged, that the several 'interlocutors complained of in the said appeal be, and the 'same are hereby reversed. And it is ordered, that the cause 'be remitted to the Court of Session in Scotland, to review '(receive) such evidence as may be properly offered with respect 'to the two bills of exchange in question, and particularly to 'receive evidence upon the facts stated in the appellant's con-'descendence, and in the answers of the respondents George 'Lockwood and Company thereto, as to the nature of the deal-'ing of the respondents, George Lockwood and Company, with 'Mason, Baird and Company, and the authority which Mason, 'Baird and Company had to indorse the bill of exchange of the '22d of January 1810, as by procuration of the respondents, 'George Lockwood and Company, so as to make the respon-'dents liable to the payment as indorsers of the said bill, or in 'any manner to transfer such bill to Andrew Davidson, notwith-'standing the indorsement made by Mason, Baird and Company 'in favour of the respondents, George Lockwood and Company, 'either by striking out the said indorsement in favour of the 'respondents, George Lockwood and Company, or otherwise, 'without making the said respondents, George Lockwood and 'Company, liable as indorsers of the said bill.' When the case returned to the Court of Session in order to have this judgment carried into effect, the Court remitted it to Lord Reston, but refused to order repetition of the expenses which had been paid by Davidson. On coming before his Lordship, the respondents founded upon the decree of reduction as depriving Davidson of all right to go on with the litigation; and Davidson thereupon intimated his intention to raise an action of reduction reductive. Having, however, failed to do so, Lord Reston, in absence, pronounced judgment against him. He then represented, and the

June 15. 1824. case having come before Lord Cringletie in place of Lord Reston, his Lordship pronounced this interlocutor:—'In respect that 'the bill for L.1492, 14s. 9d. was made by Mason, Baird and 'Company as drawers thereof, and indorsers to the representer; 'and that their trustee, in their right, has set aside that bill by 'a regular decree of reduction thereof, obtained against the 'representer and all other parties interested in the same, declar-'ing it to be, and to have been, from its date, void and null; 'finds, that the respondents are entitled to found upon that 'decree, because, were they to pay the bill, they would have no 'relief against Mason, Baird and Company, the prior indorsers, 'nor from the acceptor, because their right of relief is also cut 'off against the drawers, to whom the bill was accepted without 'value, if the other bill for L.1492. 4s. 8d. be effectual. But 'as the said decree of reduction took away the title of the 'representer to insist in his appeal in the House of Lords, 'as it is now pleaded to do in this Court; as it is dated 'above two years prior to the discussion of the appeal, and has 'on it a certificate for the purpose of enabling the parties to 'found on it in that Right Honourable House, the Lord Ordi-'nary appoints parties to be ready to debate on the question, 'whether, as to the respondents, and the other parties in this 'cause, any plea arising on the said decree is not to be held 'either as proponed or repelled, or as competent and omitted.' Davidson represented against the findings in this judgment; and, on hearing parties on the whole cause, his Lordship order-ed memorials to the Court on these points:—1st, 'Whether the 'respondents are, or not, entitled to plead on the decree of reduc-'tion of the bill for L.1492. 14s. 9d. obtained by the trustee for 'Mason, Baird and Company, for their behoof? and, 2dly, 'Whether, by the judgment of the House of Lords, the res-'pondents are or are not precluded from setting up any plea on 'that decree, owing to its being properly to be considered a plea 'either competent or omitted in that Right Honourable House, 'or proponed and repelled by it?' On advising the case, their Lordships found, that 'as the bill is now reduced, it 'is unnecessary to proceed in the remit from the House of 'Lords;' and found the respondents entitled to expenses. Da-vidson then raised an action of reduction reductive of the de-cree; and having reclaimed, the Court superseded his petition till the issue of that reduction. Against this order the res-pondents presented a petition, and the Court thereupon recalled it, and adhered to their judgment, 'finding it unnecessary to 'proceed in the remit from the House of Lords in hoc statu,

'and finding Robert Davidson liable in expenses of process.' June 15. 1824.
To this judgment they adhered on the 11th of January 1820; and 'in respect the bill is now reduced and set aside, they find 'it unnecessary to proceed in the remit from the House of 'Lords.'*

Davidson then entered another appeal, and maintained,—

1. That it was the imperative duty of the Court of Session to have obeyed, and carried into execution, the order and remit of the House of Lords; and that they were not entitled to refuse giving effect to that order on the ground of proceedings having been adopted during the dependence of the appeal, and of the decree of reduction, which was just to maintain, that the judgment of the Inferior Court might defeat the orders of the Supreme Tribunal; and, therefore, that the Court of Session ought to be enjoined to carry the judgment of their Lordships into immediate execution.

2. That the Court of Session were not entitled to refuse to the appellant a warrant for repayment of the expenses which he had paid under the order for interim execution, seeing that the interlocutors finding him liable in expenses had been reversed.

3. That as the decree of reduction had been obtained by the trustee of Mason, Baird and Company, to the effect of setting aside the indorsation of that Company to Lockwood and Company, and of any obligation contracted by the former of these Companies, whereby any claim could be made on their estate, this could never have the effect of depriving the appellant of his right to proceed against any other prior indorser; and as Lockwood and Company stood in this situation, it was jus tertii to them to plead upon the decree of reduction. And,

4. That even supposing they had a title to found upon the decree, they ought to have done so when the case was pleaded in the House of Lords; and if they did not do so, they had no right to resort to it now, because it must be held as falling under the plea of competent and omitted; and if they did found upon it, then it was proponed and repelled.

To this it was answered,—

1. That as the decree of reduction was in general and unqualified terms, whereby the right of the appellant to the bill was completely extinguished, and his title to insist upon the bill as a document of debt completely set aside; and as it could not competently be brought under the consideration of the House of

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* Not reported.

June 15. 1824. Lords on occasion of the first appeal; and could only be founded upon when the case returned to the Court of Session; the respondents had a manifest interest in the decree, and the Court of Session were as much bound to give effect to it, as if an actual discharge had been produced under the hands of the appellant; and therefore that Court acted correctly in finding it unnecessary to proceed with the remit. And,

2. That if that decree had the effect to deprive the appellant ab initio of any right in the bill, then he could not competently demand the expenses of any part of the proceedings adopted by him in order to enforce that right.

The House of Lords found, 'That the Court of Session ought 'to have applied the judgment of this House in the terms there-'of; and as by that judgment the interlocutor of the 16th of 'January 1812 was, with other interlocutors, reversed, the ap-'pellant, upon the cause being remitted to the Court of Session 'according to the said judgment, was entitled to a repetition of 'the costs paid by him in pursuance of that interlocutor. It is 'therefore ordered and adjudged, that the interlocutors com-'plained of in the present appeal be reversed; and it is further 'ordered, that the cause be remitted back to the Court of Ses-'sion, to proceed therein according to the judgment of this House 'pronounced on the 4th of July 1815.'*

J. DUTHIE— FRASER,—Solicitors.

(Ap. Ca. No. 60.)

No. 46. ROBERT DAVIDSON, Appellant.—*Abercromby.*

GEORGE LOCKWOOD and Company, Respondents.—*Jeffrey—Buchanan.*

Bankrupt—Sequestration.—The trustee on a sequestrated estate having obtained a decree of reduction of a bill, on which a party claimed against the estate; and that party having brought a reduction reductive of the decree; and a majority of the creditors assembled at a meeting having resolved that this action should not be opposed, and that the decree should be allowed to be set aside; and the Court of Session having found that a majority had no power to do so;—Held, (reversing the judgment), That the majority had that power, and that their resolution was binding on the minority.

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* See Lord Gifford's Speech. p. 365.