

[5th August 1834.]

The Reverend JAMES CRAIG, Appellant.

No. 25.

ALEXANDER Duke of HAMILTON, Respondent.

Reparation—Relief—Personal Obligation.—A minister who was wrongously interdicted by the heritors from selling trees off his glebe, and who had been subjected in damages and expenses to the buyer,—Held (affirming the judgment of the Court of Session) barred by a transaction from claiming relief against the heritors.

IN the year 1814 the appellant, the Rev. Mr. Craig, who was then minister of the parish of Dalserf, sold to William Hamilton, some ornamental trees upon the glebe lands surrounding his manse, some of which were cut down immediately thereafter. The respondent, the Duke of Hamilton, and other heritors of the parish, applied to the sheriff of Lanarkshire for an interdict, which was granted in the first instance, but ultimately recalled, and the respondent and the other heritors who made the application were found liable in expenses, in which judgment they acquiesced, and the expenses were paid.

1ST DIVISION.
Ld. Corehouse.

Hamilton, the purchaser of the wood, had in the meantime transferred his bargain to James Stark, who in consequence of the interdict abandoned it, and raised an action of damages before the sheriff of Lanarkshire in September 1816 against the appellant. Pending this process the appellant made a claim against the respon-

No. 25. dent, which he transmitted to Mr. Robert Brown, the
 5th August respondent's factor, at Hamilton, in these terms:—
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	£	s.	d.	£	s.	d.
Mr. Stark's purchase of wood, end of May 1814,						
ready money - - - - -				60	0	0
Two and a half years interest, at 60s. per annum	7	10	0			
Paid by the first sale, Martinmas 1816 - - -				23	16	0
				<u>36</u>	<u>4</u>	<u>0</u>
Half year upon the balance, at 36s. 2d. per annum	0	18	1			
Paid by the second sale, June 1817 - - -				15	0	0
				<u>£8</u>	<u>8</u>	<u>1</u>
					8	8
					<u>12</u>	<u>1</u>
Remainder due Mr. Craig of principal and interest - - -				29	12	1
Had to pay to the other purchaser, of damages, and to prevent his bringing an action at law - - - - -				5	0	0
				<u>£34</u>	<u>12</u>	<u>1</u>

Hamilton Palace, 22d July 1817.—I hereby authorize Mr. Brown to receive and discharge the above balance of 34*l.* 12*s.* 1*d.*, from the different heritors of Dalsersf, concerned in opposing my sale of timber to Stark, against whom I have no further claim on that account.

(Signed) JAMES CRAIG.

The appellant afterwards moved, in the action at Stark's instance, that the respondent should be called as a party, for his interest. The respondent accordingly appeared, and the appellant raised a supplementary action of relief against him before the sheriff, in which he set forth,—“ That a proof and other proceedings have
 “ recently taken place, with a view to ascertain the
 “ amount of the said damages, and the same are now
 “ about to be awarded in the said action: That this
 “ award will necessarily be pronounced against the
 “ complainer Mr. Craig, along with the said Duke of
 “ Hamilton as an interdicting heritor; but the com-
 “ plainer is entitled to be completely relieved of the
 “ whole damages, expenses, and other consequents arising

“ from the said interdict; and as he may not be able
 “ competently to obtain such relief in an action which
 “ contains no regular conclusion against the said inter-
 “ dicting heritors, and to which they have only been
 “ incidentally called for their interest, it becomes neces-
 “ sary to institute the present supplementary summons,
 “ to be conjoined if necessary with the foresaid action :”
 He therefore, concluded that the respondent, as the
 leading heritor, by whose interdict the breach of bargain
 was occasioned, should be decerned to make payment
 “ of the sum of 200*l.* sterling, or such other sum, less
 “ or more, as may be found to be the amount of the
 “ damages sustained or to be sustained through the
 “ foresaid action at the instance of the said James Stark,
 “ or otherwise arising from the said interdict, deducting
 “ always the sum of 34*l.* 12*s.* 1*d.* sterling, being the
 “ difference between the price of the said timber when
 “ first sold and the price actually obtained for it after
 “ the interdict was removed, and which sum is agreed
 “ to be paid to the complainer by the said Duke of
 “ Hamilton; at least he should be decerned to free
 “ and relieve the complainer of the whole damages
 “ and expenses claimed against him by the said James
 “ Stark, as also to pay to the complainer the whole
 “ expenses and other loss incurred by him in defending
 “ the said action, or in any other manner of way in con-
 “ sequence of the foresaid interdict.”

In defence, the respondent rested mainly on the dis-
 charge to be implied from the payment of the above
 sum, and the declaration at the end of the docu-
 ment. The sheriff substitute, on advising the process,
 and also that at the instance of Stark, pronounced
 a judgment in these terms:—“ In respect that the

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“ reverend pursuer has judicially admitted in his
 “ defence, No. 2. of that process, that he sold the
 “ timber in question to the other defender therein,
 “ William Hamilton, who again sold the same to the
 “ pursuer in that action, and that the reverend pursuer
 “ cannot retract the admission so made; and in respect
 “ that the contract for the sale of the timber was made
 “ between this pursuer and Hamilton, not between that
 “ pursuer and Stark, Hamilton only could claim
 “ damages against the said pursuer for any loss sus-
 “ tained in consequence of the non-fulfilment of the
 “ contract; and in respect that it appears from the
 “ letter No. 4. and receipt No. 12. of Stark’s process,
 “ and is indeed distinctly admitted in that process by
 “ the present pursuer, that Hamilton relinquished the
 “ bargain and all his claim against the said pursuer in
 “ consideration of 5*l.*, and that the noble defender paid
 “ the pursuer that sum, and also the sum of 29*l.* 12*s.* 1*d.*,
 “ being the difference between the original price of the
 “ timber, and interest thereon, and the sum for which
 “ it afterwards sold; and in respect that though it
 “ appears, from the foresaid letter, that the reverend
 “ pursuer undertook to relieve Hamilton from any
 “ claim on the part of Stark, yet, as that undertaking
 “ was a mere voluntary act of the pursuer, without any
 “ legal claim on the part of Stark against him, and that
 “ it has not even been alleged to have been entered
 “ into with the knowledge, consent, or approbation of
 “ the noble defender, that undertaking and the judicial
 “ admission also made by the pursuer in the process
 “ referred to, of his liability in damages to Stark,
 “ cannot operate to the prejudice of the noble defender :
 “ Finds that all claim which this pursuer had against

“ the said defender was fully and completely satisfied
 “ and extinguished by payment of the sums contained
 “ in the before-mentioned receipt, and that by virtue
 “ thereof the defender is legally discharged of such
 “ claim. Therefore dismisses the action; assoilzies the
 “ noble defender from the conclusions thereof; and
 “ finds him entitled to expenses.” Thereafter the
 appellant was assoilzied from Stark’s action, and the
 sheriff refused a petition in the case at his instance, “ for
 “ the reasons already assigned, and in respect that the
 “ action Stark v. Craig has been dismissed, and expenses
 “ therein found due, both to the pursuer and noble de-
 “ fender.” A reference was then made by Stark to the
 appellant’s oath, the result of which was that the sheriff
 decerned against the latter for 43*l.* of damages, and
 100*l.* of expenses. He advocated the action against the
 respondent to the Court of Session; but the Lord Ordi-
 nary in the first instance, and thereafter the Inner House
 (26th May 1831), repelled the reasons, and found ex-
 penses due.¹

An appeal was entered, in which the main point con-
 tended for by the appellant was that the payment of the
 34*l.*, and the relative document, could not be construed
 to import a discharge of the claim of relief from the
 damages and expenses awarded against him in the pro-
 cess at Stark’s instance.

LORD CHANCELLOR.—My Lords, this is a case in
 which I have not the slightest shadow of doubt upon the
 subject; and I move your Lordships to affirm this
 judgment, with full costs, to be taxed in the usual way.

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There must be an end to such appeals as these, otherwise the appellate jurisdiction of this House will be a curse instead of any thing else. There is nothing like a point of law here, and the expense of this appeal cannot be less than 100*l*.

Mr. Serjeant Spankie.—I am happy to say the party is very rich.

LORD CHANCELLOR—That is a good thing; it is only right your Lordships should make him pay; but the blame is not always imputable to the party himself, but the adviser; and I only wish your Lordships could get at him, and make him suffer.

The House of Lords ordered and adjudged, That the said petition and appeal be and is hereby dismissed this House, and that the interlocutors therein complained of be and the same are hereby affirmed: And it is further ordered, That the appellant do pay or cause to be paid to the said respondent the sum of one hundred and nineteen pounds ten shillings, for his costs in respect of the said appeal.

THOMAS DEANS — RICHARDSON and CONNELL,
 Solicitors.