

do at all times, and still more after the decision affirming his interlocutor, Dec. 9, 1830. yet he afterwards, as a Scotch lawyer, when he came to reconsider the question of violent profits, and discussed the question with his brothers, gave it in favour of the lessee. I therefore cannot, on these grounds, recommend to your Lordships to do that, which would be, for the first time, introducing into the law of Scotland a principle not only never before acknowledged in that system of jurisprudence, but which is negatived by repeated decisions—between the principles of which decisions and the present I can discover no distinction. In this case your Lordships would certainly not be disposed to give any costs.

The House of Lords accordingly ordered and adjudged that the interlocutors complained of be affirmed.

Appellant's Authorities.—2 Stair, 1. 23. 2 Ersk. 1. 25.

Respondent's Authorities.—1 Stair, 7. 12. 1 Bankton, 8. 18. 4 Ersk. 2. 25. 2 Stair, 9. 44, 45. 2 Bank. 9. 75. 2 Ersk. 6. 54. Pitmeddin, July 7, 1627, (306.) Macbraire, 20th February, 1666, (13,861.) Hamilton, 10th February, 1715, (13,803.) Hamilton, 16th February, 1669, (13,827.) Roxburgh, 17th February, 1815, (See 2 Shaw, App. Ca. 18.) Queensberry Cases, 10th March, 1824, (2 Shaw, App. Ca. 43.) Agnew, 22 July, 1828, (ante, III. 286.) Leslie, 13th Feb. 1745, (1723.) Haldane, Dec. 11, 1804, (No. 3. App. B. and M. Fides.) Bowman, 11th June, 1805, (No. 4. Ib.) Elliot, 22d May, 1822, (1 Shaw, App. Ca. 16.) Grant, 9th Feb. 1765, (1760.) Laurie, 21st June, 1769, (1764.) Turner, 3d March, 1820, (F. C.) Moir, 16th June, 1826, (4 S. and D. 725.) Gordon v. Innes, 19th June, 1828, (6 S. and D. 996, affirmed 10th Nov. 1830, (ante, 305.) Bonny, 13th July, 1760, (1728.) Brisbane's Trustees, 26th Nov. 1828, (7 S. and D. 65.)

SPOTTISWOODE and ROBERTSON—RICHARDSON and CONNELL
—Solicitors.

ARCHIBALD SCOT, Appellant.—*Wilson.*

No. 50.

KER and JOHNSTONE (for LEITH BANK,) Respondents.—
John Miller.

Bankrupt.—Circumstances in which (affirming the judgment of the Court of Session) objections stated to a petition for sequestration under the bankrupt statute were repelled.

THE Leith Banking Company are an unincorporated com- Dec. 9, 1830
pany, consisting of more than six partners. Of these partners, ^{1ST DIVISION.} Archibald Scot, writer in Langholm, was one. He was also the bank's agent in that town; and likewise superintended a branch of their business established by them, but without

Dec. 9, 1830. license, at Carlisle. The Bank, being dissatisfied with his conduct, displaced him, and incarcerated him for payment of a bill for L.1500. He was also due to them, among other sums, two bills for L.500 each. Of charges on these he presented, but unsuccessfully, bills of suspension and liberation. Having paid, under protest, the L.1500 bill, and obtained his liberation, he, during the temporary subsistence of a sist on one of the L.500 bills, repaired to the sanctuary.

Thereupon a petition for the sequestration of the estates and effects of Scot was presented in the names of 'James Ker and Henry Johnstone, managers to, and for behoof of, the Leith Banking Company.'

Scot objected, that the Company were unincorporated, and had not complied with the statutory observances requisite to give them a title to sue; but the Court repelled the objection. Then, on the merits, Scot maintained that the debt of L.1500, on which he had been incarcerated, had been paid; that the diligence on which the incarceration had followed was inept; and that there was no legal caption in existence against him when he repaired to the sanctuary, as no caption could have passed on the bill under sist for L.500; consequently, he had never been rendered bankrupt. The Court ordered a minute, stating the grounds on which Scot was a bankrupt when the petition for sequestration was presented. The Bank stated, that Scot had been incarcerated in virtue of letters of horning and caption on the L.1500 bill; and that, although the principal of the debt was paid, the interest remained due; that the caption on the L.500 bill was a valid and legal diligence; that these bills had no connexion with the Carlisle agency; that Scot was under legal diligence at the instance of other individuals; that he was insolvent, and had fled to the sanctuary to avoid his creditors. Scot answered—That he had challenged the L.1500 bill and diligence; that the caption on the L.500 bill was inept, and incurably so; and that it had not been obtained when he went to the sanctuary; that he had not been made bankrupt; that he was not insolvent; that he did not come under the class of persons who are liable to sequestration; and he maintained that all the transactions which had given rise to these questions were tainted by the illegality of the Bank's establishment in Carlisle,—that agency being in direct contravention of the monopoly of the Bank of England, secured by statute; and, consequently, the Leith Bank being versantes in illicito, could not claim the aid or redress of a court of law, as to matters arising out of their illegal acts.

The Court repelled the objections, sustained the title of the Dec. 9, 1830. petitioners, and sequestrated the estate and effects of Scot.*

Scot appealed.

Appellant.—Besides repeating the statement relied on in the Court below, Scot maintained that being a partner of the Leith Banking Company, his estates could not be sequestrated at the instance of that Company, or any person representing it. A company is made up of its partners, and to allow it to apply for sequestration of one of its members, is, in fact, tantamount to sequestrating itself. No doubt, this plea in law was not raised in the Court below; but that is no objection,—at least to a remit, to have the point discussed.

Respondents.—This is an objection to the title; but objections to the title were repelled; and that interlocutor has not been appealed against.

Appellant.—The objection repelled was the objection to the title of the Bank to sue in the names of Ker and Johnstone. The objection now raised could not have been repelled, for it was not made in the Court below. The omission to appeal against the interlocutor was merely accidental; and, at any rate, the other interlocutor sustaining the title is appealed from; and thus the appellant is quite in form.

LORD CHANCELLOR.—My Lords, as I entertain no doubt whatever in this case, when I look at the facts and the law, and particularly the Act of Parliament, I shall only state, in moving your Lordships to give affirmance to the judgment of the Court below, that this disposes of no question of law not raised in the case. For instance, whether or not one partner may make another a bankrupt, is not to be taken as decided by the present affirmance. We see a certain objection taken to the title to pursue, and we see an interlocutor unappealed from repelling that objection. There has been no valid objection taken upon either record, by the pleadings or the appeal; therefore, this is to be taken to be a judgment simply affirmed in the circumstances of the case. The omission of appealing from that interlocutor is a remarkable peculiarity. How I might have been disposed to advise your Lordships had other circumstances existed, and had the interlocutor been appealed from, and had other questions been raised which are not in the pleadings before us, it is unnecessary now to consider.

The House of Lords accordingly ordered and adjudged that the interlocutors complained of be affirmed.

ALEX. GORDON—MONCREIFF, WEBSTER, and THOMSON—
Solicitors.