

law of Scotland; and we are told, that it is the opinion of great names, that under that judgment no title can be made to a purchaser. I shall very much lament to find that the Court of Session cannot carry it into effect. But we must not have private opinions set up in opposition to that judgment.

1797.

YORK BUILDINGS CO.  
v.  
BREMNER, &c.

“ Upon these considerations, I shall move that the interlocutor in this case be affirmed, with £100 costs.”

It was accordingly

Ordered and adjudged that the interlocutors complained of be affirmed, with £100 costs.

For Appellant, *Sir John Scott, R. Dundas, J. Mansfield,*  
*John Clerk.*

For Respondents, *J. Anstruther, Mat. Ross, D. Monypenny.*

The GOVERNOR AND COMPANY OF UNDERTAKERS for raising the Thames Water in York Buildings, . . . . . } *Appellants;*

JAMES BREMNER, Writer in Edinburgh, *Respondent.*

House of Lords, 19th June 1797.

EXPENSES—RANKING AND SALE—The common agent having applied to the Court for a warrant for £1000 out of the York Buildings Co.’s funds, to defray the expenses incurred, and to be incurred, in the preceding causes, pending the appeal of the judgments therein, the Court granted warrant accordingly, and, on appeal, this order of the Court was affirmed.

In the course of the proceedings which issued in the two preceding appeals, it has been seen that Mr. Bremner, the respondent, was appointed common agent in the ranking and sale, in room of Mr. Scott, who resigned.

The respondent, as common agent, gave in a petition, praying the Court to issue an order, to pay out of the funds of the estate the sum of £1000. on account of costs incurred in the Court of Session, and to be incurred in discussing the preceding appeal.

The answer made by the appellants was, That they had appealed against the interlocutors of the Court in these

1797. . proceedings; and that every question was now before your  
 ——— Lordships, and, among the rest, the question, Whether Mr.  
 YORK BUILD- Bremner should be entitled to draw out of their funds any  
 INGS CO. part of the expense he had incurred, or should incur in the  
 v. business?  
 BREMNER, &c.

Mar. 11, 1797. The Court pronounced this interlocutor:—“The Lords  
 “recall the warrant formerly granted upon the treasurer of  
 “the Bank of Scotland, and grant warrant to and authorize  
 “and ordain Mr. Archibald Swinton, factor upon the seques-  
 “trated estate of Seton, out of the rents of said estate in  
 “his hands, to make payment to the petitioner, Mr. Brem-  
 “ner, of the sum of one thousand pounds, sterling, a pro-  
 “per receipt being granted for the same, and decern.”

Against this interlocutor the present appeal was brought to the House of Lords.

*Pleaded for the Appellants.*—When an appeal to your Lordships against a judgment of the Court of Session is served upon the party, it has the effect to stay execution of the sentence till the appeal be either discussed or withdrawn. The reason being, that nothing ought to be done prejudicial to the question before your Lordships, or which may have the effect to deprive the appellant of the full redress which he seeks by appeal. And it is even held, that by appealing, the whole cause is brought before your Lordships, and removed entirely from the jurisdiction of the Court of Session. And the only exception to this rule was introduced by the late Scots Bankrupt Act, 33 Geo. III., c. 74, § 55, in regard to ranking and sales, which exception has reference to the competency of the Court, notwithstanding appeal, to make such orders as may be necessary to prevent the funds “from being embezzled, secreted, “damaged, or dilapidated, while the appeal is pendent,” which is just what the appellants have contended for, and contend for in the present appeal.

*Pleaded for the Respondent.*—The respondent is an officer of Court, acting under its authority and appointment, for carrying into execution an act of Parliament, passed for the express purpose of “expediting the sale of “the estate of the York Buildings Co. for relief of their “creditors,” which enacts and declares, “That the expense “thereof, and of carrying the same into execution for be- “hoof of the creditors, shall be defrayed from the proceeds “of the said estates, in the same way and manner as the

“ expense of process of ranking and sale of bankrupt estates  
 “ before the Court of Session is usually defrayed; and the  
 “ judges of the said Court of Session are hereby directed  
 “ and empowered, to issue their warrants for payment of  
 “ such expense to the person or persons who shall advance  
 “ the same.” In this state of the law, there is not the  
 slightest ground for the present appeal.

1797.  
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 MONCRIEFF,  
 &c.  
 v.  
 DUNLOP, &c.

The Lord Chancellor, when delivering judgment in the preceding appeal, at same time moved simply, that the present appeal be dismissed, and the interlocutors complained of be affirmed.

It was ordered and adjudged, that the interlocutor be affirmed.

For Appellants, *R. Dundas*.

For Respondent, *G. Ferguson*.

MESSRS. ROBERT SCOTT MONCRIEFF, and  
 DAVID DALE, Cashiers of the Royal Bank  
 of Scotland, and Wm. SIMPSON, Cashier  
 at the said Bank, Edinburgh, } *Appellants;*

JAS. DUNLOP, Merchant in Glasgow, AN-  
 DREW HOUSTON of Jordanhill, JAS. GAM-  
 MELL, Merchant in Greenock, and JAS.  
 MACDOWALL, Merchant in Glasgow,  
 Bankers in Greenock, trading under the  
 Firm of DUNLOP, HOUSTON, GAMMELL and  
 Company, . . . . . } *Respondents.*

House of Lords, 17th July 1797.

**BANKING Co.—AGENT—PARTNER—POWERS TO BIND COMPANY.—**

The Greenock Banking Company had an agent in Glasgow, Mr. Dunlop. It being necessary to enter into arrangements with the several banks to receive their notes, this was done through means of their agent. Afterwards Mr. Dunlop entered into a new transaction by which this object was to be carried on more to the satisfaction of both parties. Held, on the failure of Dunlop, that, from the terms of the transaction gone into, the bank was not sufficiently bound by the acts of their agent and partner.

The respondents having opened a bank in Greenock, the Company affairs were managed by Mr. Gammell in Greenock, and by Mr. Dunlop in Glasgow.

Desirous to establish their credit, they entered into the usual