

COMMERCIAL BANKING COMPANY OF SCOTLAND, and Others, No. 20.
Appellants.

POLLOCK'S TRUSTEES, &c. Respondents.

Title to Pursue—Process.—An appeal sustained in name of an unincorporated Commercial Banking Company, and several of the individual partners, against a judgment of the Court of Session, in a process in which they were defenders.

THIS was an appeal against several judgments of the Court of Session, in actions raised by the respondents, as trustees of the late John Pollock, against the Commercial Banking Company of Scotland, and several individual partners nominatim. The case came on to be heard on the 28th March 1825; but an objection being taken, on the ground that the Commercial Banking Company was not a corporate body, and yet had been sued by their firm, and not by the names of the individual partners, farther proceedings were adjourned. July 28. 1828.

2D DIVISION.

The case was afterwards taken up (16th May 1828), and argued on the want of parties.

LORD CHANCELLOR.—My Lords, There is a cause which was heard on a single point before your Lordships, in which the Commercial Banking Company of Scotland, and Archibald Campbell, and other partners of that Company, were appellants, and the trustee and executors of the deceased John Pollock, Esq. manager and permanent director of the Commercial Banking Company of Scotland, were respondents. This case was argued on the single point of the propriety, according to the law of Scotland, of the description of the parties, Whether persons who were united in a trading concern, and describe themselves, for instance, as the Commercial Banking Company of Scotland, can be sued by that title? My Lords, I think, according to the law of Scotland, and according to the practice which has prevailed in that country, the parties appellants are sufficiently described in this case;—it is not merely the Commercial Banking Company of Scotland, but it is the Commercial Banking Company of Scotland, and Archibald Campbell, Esq. and many other persons, by name, who are described as partners in that Bank; and I think where a commercial establishment of that kind exists, it is sufficient, for the purpose of carrying on a suit, to carry it on against the firm, adding to the firm the names of some of the partners in the establishment. This is a still stronger case, because the particular individuals named in this instrument are those individuals of whose conduct the pursuer thinks he has most reason to complain. It is unnecessary to pronounce any opinion in this case as to the result of this judgment. The case

July 28. 1828. must be heard on the other point. The case stood over for your Lordships to consider this point, Whether the cause should go on? If it turned out that the parties were not properly described as defendants, that would have put an end to the cause. If your Lordships concur in the opinion I have expressed, the cause will of course proceed.*

Ordered accordingly.

No. 21.

LEITCH and Others, Appellants.—*Adam—Stuart.*

LEITCH'S Trustees, Respondents.—*Sugden—John Campbell.*

Fee, Conditional or Absolute.—A party having, by his deed of settlement, conveyed his lands to trustees, to hold them in trust for his widow's liferent during her life and viduity; and, on her death or second marriage, for two substitutes successively, and their heirs and assignees in fee; whom failing, another substitute, but without calling his heirs or assigns; whom failing, other substitutes; and the two first substitutes having predeceased the widow, who never married a second time, and the third substitute having executed a general disposition, and also predeceased the widow;—Held, (affirming the judgment of the Court of Session),—1. That the fee had vested in the third substitute; and, 2. That the general disposition was effectual to evacuate the subsequent destinations.

Feb. 17. 1829.

2D DIVISION.
Lord Cringletie.

JOHN LEITCH, proprietor of Kilmardinny, was married to Elizabeth Ironside, but had no family. He had a brother George, two nephews, James Frisby Leitch, and Andrew Leitch (the son of George),—two sisters, Christian and Mary,—and two nieces, Agnes and Jean Trokes. In 1804 he executed a mortis causa trust-disposition of his estate in favour of trustees, declaring, 'that these presents are granted, and to be accepted by 'my said trustees, in trust, for the ends, uses, and purposes after 'specified; viz. that they may and shall hold the foresaid lands 'in trust for the behoof of the said Elizabeth Ironside, my wife, 'in case of her surviving me, in liferent, for her liferent alimentary use allenary, during the time of her life, and of her continuing my widow; and after her death, or in case of her entering into another marriage after my death, then for behoof of 'the said George Leitch, my brother, and his heirs and assignees 'whomsoever, in fee, in case he shall survive me, and shall be in 'life at the time of the death or second marriage of the said 'Elizabeth Ironside; and failing the said George Leitch by decease before me, or prior to the death or second marriage of 'the said Elizabeth Ironside, then I appoint the said trustees to 'hold the foresaid lands and others in trust for behoof of the

* See post, No. 29.