

DAVID CARNEGY, Esq. Appellant.—*Wetherell—Wilson.*

No. 49.

MISS MARGARET SCOTT, Respondent.—*T. H. Miller
—Robertson.*

Bona Fides.—Landlord and Tenant.—Held (affirming the judgment of the Court of Session) that an heir who continued in possession of a farm after the death of the tenant, on a supposed right vested in the heir by the terms of the lease, was not liable in violent profits prior to the judgment of the House of Lords, (reversing that of the Court of Session,) finding that the heir had no right.

THE late Thomas Carnegy of Craigo, the father of the appel- Dec. 9, 1830.
lant, offered, in October 1769, to let by public roup the separate ^{2^D DIVISION.}
farms of Upper and Nether Dysart, stipulating that the highest Lord Pitmilly.
offerers 'shall be obliged, within the space of three months after
' the roup, to enter into and subscribe formal tacks, written
' upon stamped paper, whereby the said Thomas Carnegy, on
' the one part, shall set, and in tack and assedation let, to the
' highest offerers respectively, and their heirs, the foresaid farms
' purchased by them at the said roup, for the space of two nine-
' teen or thirty-eight years and crops; and after the expiration
' of the said two nineteen years, for all the years and crops of
' the lifetime of the person having right to the principal tack,
' either as heir or as assignee appointed within the space after
' expressed, at the expiry of the said two nineteen years from
' and after their entry to the said lands, which is hereby declared
' to be and begin to the houses, yards, and grass, at the term of
' Whitsunday 1770, and to the arable land at the separation of
' the crop 1770 from the ground; by which tack the said Tho-
' mas Carnegy shall give power to the tacksmen, or their heirs
' respectively, of assigning their said respective principal tacks
' at any time before the expiration of the first twenty-nine years
' of the said tacks; but if such assignations are not made, and
' the assignations duly intimated to the said Thomas Carnegy,
' his heirs and successors, before that time, then the said tacks
' are to fall to the heirs of the person having right to the said
' principal tacks, at the end of the said twenty-nine years, and
' all assignations made of the said tacks after the lapse of the
' said twenty-nine years, and although thus made, if they are
' not duly intimated to the said Thomas Carnegy or his fore-
' saids, before the end of the said twenty-nine years, are hereby,
' and shall, by the said tacks, be declared to be void and null.'

The late Patrick Scott, father of the respondent, was the high-

Dec. 9, 1830. est offerer for the farm of Nether Dysart, and a lease of that farm was accordingly granted on the 27th of October, in terms of the articles of roup, to him, 'his heirs and assignees, (such assignees ' being always made in manner and within the space after ' expressed,)' 'and that for the space of two nineteen or thirty- ' eight years and crops, and after the expiration of the said two ' nineteen years, for all the years and crops of the lifetime of ' the person having right to this present tack, at the expiry of ' the said two nineteen years, either as heir or as assignee, ' appointed within the space after expressed.' The deed then contained the following clause:—'And further, the said Tho- ' mas Carnegy hereby gives and grants full power to the said ' Patrick Scott and his foresaid to assign this present tack, at ' any time before the expiration of the first twenty-nine years ' thereof; but if such assignees are not made, and the assigna- ' tion duly intimated to the said Thomas Carnegy, or his heirs ' and successors, before that time, then this tack is to fall to the ' heirs of the person having right to the same at the end of the ' said twenty-nine years; and all assignations made of this ' present tack after the lapse of the said twenty-nine years, and ' although then made, if they are not duly intimated to the said ' Thomas Carnegy or his foresaids before that period, are here- ' by declared to be void and null.'

In virtue of this lease Mr Scott entered into possession, and resided upon the lands with his family. It was stated on the part of the respondent, that when the time arrived for determining whether he should grant an assignation, so as to put the alternative liferent upon the life of an assignee, he was seventy years of age, and consulted counsel, as to whether, under the terms of the lease, the liferent would devolve upon his heir, and that being advised that it would, he did not execute any assignation in favour of the respondent, who (she alleged) was his heir, which otherwise he would have done.

Mr Scott survived the fixed period of thirty-eight years, and did not die till 1814, being about six years after the expiration of that period, and leaving two daughters. The appellant, (who had succeeded to his father,) presented on the 14th of April of that year a petition to the Sheriff of Forfarshire against the respondent and her sister, and also against sub-tenants, praying 'to find that the foresaid tack or lease terminated and ' expired at the death of the said Patrick Scott, and therefore ' to decern and ordain the said several persons immediately to ' remove from the lauds of Dysart, and whole pertinents ' thereof, to the effect the petitioner, as having right in manner

‘foresaid, or others in his name, may enter thereto; and, if Dec. 9, 1830.
 ‘necessary, to grant precepts of ejection; and in case the re-
 ‘spondent shall object to remove, and thereby occasion ex-
 ‘penses, to find her liable in damages, and in the expenses of
 ‘this application, and procedure to follow hereon.’ The respon-
 ‘dent opposed this petition, on the ground that she was entitled
 to the enjoyment of the possession during her lifetime; but the
 Sheriff-Depute, on the 21st of June, pronounced this interlo-
 ‘cutor:—‘In respect the late Patrick Scott did not assign the
 ‘lease of the farm in question in terms of the tack, finds that
 ‘the right of the said Patrick Scott to continue tenant after the
 ‘first twenty-nine years of the lease, is not to be held forfeited
 ‘or taken away by inference from ambiguous clauses in the
 ‘lease, without an express declaration to that effect; finds that
 ‘Patrick Scott remained tenant after the first twenty-nine years
 ‘of the lease, and was, at the expiry of the second nineteen years
 ‘specified in the lease, the only person having right to the tack;
 ‘finds, therefore, that the tack terminated at his death; finds
 ‘that the defender (respondent) will be entitled to reap the
 ‘crop of any fields that were sown at the time of Mr Scott’s
 ‘death, on paying a proportion of the whole rents effeiring
 ‘thereto; finds that the pursuer must pay a bona fide price
 ‘for the labouring or sowing of any ground which has been
 ‘laboured or sown since Mr Scott’s death; and, with these
 ‘explanations, decerns in the removing, and ordains all the
 ‘defenders to remove within twelve days from this date; but
 ‘finds no expenses due.’ He also issued the subjoined note of
 his opinion.* The respondent then presented a bill of advoca-
 tion, but it was refused by Lord Glenlee. Against this judg-
 ment she reclaimed to the Second Division, who altered, and
 remitted with instructions to pass the bill. On this occasion
 the question of right was fully discussed, and the late Lord
 Meadowbank, who was in favour of the respondent, delivered
 the subjoined opinion.†

* ‘I am decidedly of opinion, that if, at the expiry of the first twenty-nine years
 ‘of the lease, any competition had occurred between the late Mr Scott and the
 ‘defenders, Mr Scott would have been found the only person having right to the
 ‘tack. The lease was granted to him, and his right is not to be taken away by
 ‘any inference from doubtful clauses framed on the supposition that Mr Scott was
 ‘likely to die before the expiry of the first twenty-nine years of the lease; and
 ‘which clauses were therefore worded so as (in case of any assignation being granted
 ‘by Mr Scott, or of his death) to secure the right of the heir or assignee.’

† ‘I am not entitled to conjecture a construction, when I have words that carry
 ‘a clear grammatical construction and a logical one. Now, what is this case?’

Dec. 9, 1830. The case having then come before Lord Pitmilley in the Outer House, he pronounced, on the 11th July 1815, this interlocutor:—‘The Lord Ordinary having heard parties’ procurators, and thereafter considered the process, finds that the clause in the lease, on which the advocator’s (respondent’s) claim is founded, is not applicable to the case which happened, of the original tenant not having assigned the lease within the stipulated term of twenty-nine years from its commencement; but having survived the period of thirty-eight years from the date of the lease, and having himself remained in possession of the farm during his lifetime, finds that the clause of the lease referred to by the advocator provides for the continuance of the lease, after the fixed period of thirty-eight years, during the lifetime either of an assignee who might have acquired right to the lease before the expiration of the first twenty-nine years, and, in virtue of his assignation, might have been in possession at the end of the thirty-eight years, or during the lifetime of the person who may have been the heir of the tenant at the end of the twenty-nine years, and afterwards might have succeeded to the lease, and been himself in possession at the expiration of the thirty-eight years; finds that the right of liferent adjected to the fixed period of thirty-eight years, was intended to be given to the person in possession when the liferent was to commence, and was accordingly, in one of the cases mentioned in the tack, conferred on an assignee to the lease; and finds that there is no room for holding, either that the heir of the original tenant could dispossess the tenant in possession, or that the duration of the right of the tenant in possession, after the fixed period, was to depend on the length of the life of the person who may have been presumptively his heir at the end of twenty-nine years from the commencement of the lease; repels the reasons of advocacy, and remits the cause simpliciter to the Sheriff.’ To this judgment, on considering two representations with answers, he adhered on the 16th January and 23d

‘The tack is to P. Scott, his heirs and assignees. These are the grantees—the period of endurance is a different matter—it might refer to any man, or to the king. I say, there is here a nominee of the liferent—it is either the assignee duly constituted, or the heir who becomes indefeasible. Look at the words: for the space of two nineteen years, and for all years and crops of the lifetime either of heir or assignee; that is, a nominee of the liferent. If Mr Scott had survived the heir, the liferent of the nominee would be gone, and he must have removed at the end of the thirty-eight years. Are we to take a probable, but conjectural meaning, against a meaning not so probable, but which is strictly deducible from the words employed, and capable, in all respects, of being logically applied, to regulate the rights of parties in the circumstances of the transaction?’

May, 1816. The respondent then presented a petition to the Dec. 9, 1830.
 Inner House; and, on advising it, their Lordships were at first
 equally divided in opinion, but thereafter altered the interlocu-
 tor, advocated the cause, assoilzied the respondent, and found
 her entitled to expenses. Against this judgment the appellant
 reclaimed; but on advising his petition with answers, the Court,
 on the 26th of May 1818, adhered.* The appellant then car-
 ried the case to the House of Lords, and on the 6th of March,
 1822, their Lordships ordered and adjudged that the ‘interlo-
 cutors complained of in the said appeal be, and the same are
 hereby reversed: and it is farther ordered and adjudged that
 the interlocutors of the Lord Ordinary of the 11th of July,
 1815, and the 16th of January and 23d of May, 1816, be, and
 the same are, hereby affirmed.’†

In the meanwhile, the respondent continued in possession,
 subset the greater part of the lands in 1818 at a large surplus
 rent, and built a mansion-house.

The case having returned to the Court of Session, their lord-
 ships ‘adhered to the interlocutors of the Lord Ordinary men-
 tioned in said judgment,’ and remitted to his Lordship to
 proceed farther in the cause. The appellant having claimed
 violent profits from the date of the commencement of the action
 in the Sheriff Court, Lord Pitmilley found him entitled to them,
 and ordained him to give in a condescendence of the amount;
 but on a representation by the respondent, his Lordship recalled
 this interlocutor, ordered a condescendence by the appellant of
 the facts on which he rested his demand, and afterwards re-
 ported the question on informations to the Court. On advising
 them, their Lordships, on the 4th of December 1827, found,
 ‘that the pursuer (appellant) is not entitled to violent profits
 from any earlier date than the 6th of March, 1822, when the
 judgment of the House of Lords was pronounced, but found
 no expenses due.’‡

Mr Carnegy appealed.

Appellant.—1. The ground on which the plea of bona fides
 by the respondent rests, is excluded by the special terms of the
 judgment of this House. By that judgment, the interlocutors

* It was stated by the respondents that Lord Robertson, who had formerly given
 an opinion adverse to the judgment, now concurred in it.

† See 1 Shaw's App. Ca. p. 114.

‡ See 6 Shaw and Dunlop, 206.

Dec. 9, 1830. of the Lord Ordinary are affirmed; and to these interlocutors the Court, in compliance with that judgment, adhered, so that the case must now be judged of as if the interlocutors of the Inner House had never been pronounced. But as the plea of the respondent is founded on the existence of these interlocutors, and as they must be considered as expunged from the record, the very basis of her plea is removed.

2. Independent of this, the judgment of the Court of Session is erroneous, and was pronounced in consequence of not advert- ing to a material distinction between this case and the others which have been decided in regard to bona fides. In the former cases, (such as those relative to the Queensberry leases and the sales of the Sheuchan estate,) the parties had titles which, ex facie, were unexceptionable, and were set aside only in respect of extrinsic objections. These rights formed, therefore, good titles of possession, till a judgment of a court of law was pronounced, finding them bad. But, in the present case, the respondent had no title at all. She no doubt contrived, by force of ingenuity, to rear up a construction which induced a majority of the Court to pronounce a judgment in her favour. But both the Sheriff Depute, the Lord Ordinary, the minority of the Court, and this House, were clearly of opinion that the respondent had no title at all. If the appellant had challenged it on the ground of defect of power in his father, or on some similar extrinsic objection, the authorities relied on might have applied. But his plea was, that she had no title, and that plea was sustained by this House. Neither can the judgment complained of be reconciled with the principle on which the plea of bona fides rests. That principle is not merely that the party has consumed fruits which he bona fide believed to belong to himself, but that the true proprietor has culpably neglected to vindicate his right, and so put the party on his guard. Now the appellant does not claim the rents earlier than the date of his petition to the Sheriff, which was an intimation to the respondent sufficient to certify her that the appellant meant to enforce his claim. Nor does he claim more than the actual surplus rents drawn by the respondent during her illegal possession. Besides, she was not the true heir. If she had any title at all, it was only as heir portioner; and as the other heir portioner did not oppose decree of removing, the respondent is not entitled to plead bona fide possession as heir, nor to withhold payment of the full rents drawn by her.

LORD CHANCELLOR. (To the appellant's counsel.) On one point you need not give yourself any trouble. By making the word heir a word of

purchase, for that was really what was done here, an entire vested right was given to this lady, whereas, after all, she was only one of the coparceners. She did not answer that description; but even if she had, there was so plain an absurdity in the case, that this House, in reversing, set up the Lord Ordinary's judgment in a very peculiar way—very fit matter for your argument; but this is a question of violent profits. Upon that subject, the law of Scotland totally differs from the law of England, where a person has been in bona fide perception of the profits;—in respect of the expenditure of money, and so on. The law of Scotland, in conformity with the civil law, under some modifications, and in conformity with the law in the greatest part of Europe, holds, that the bona fide perception and consumption of the fruits which are supposed to be consumed, follows the rule of bona fide possession—'bona fide possessor facit fructus perceptos et consumptos suos,'—that is, we know, a rule contrary to the English law. They also hold the giving relief to the extent of a portion, if not the whole, as far as it can be reasonably estimated, of that which he has bona fide expended for the improvement of the property. Now, that being the law, and the question being bona fides or not, it becomes a question of fact, how far this is bona fides entitling the party. What shall be considered the first ceasing of the bona fides, and where begins the mala fides, so as to render him responsible for the violent profits? Can you show me an instance where, there having been a possession during the subsisting judgment, which judgment was afterwards reversed on the clearest reasons of law in this House, the reversal of that judgment has been held to go by relation back during the period of possession of perception and consumption of profits; or where the party has been deprived of the benefit of his improvements, so as to impute mala fides to the possession while that judgment stood? You will argue the case exactly as you see fit; but, in the course of your argument, I wish you would apply yourself to that point. It will be very convenient with reference to the judgment I may feel it my duty to propose.

Before you close your argument, can you show me any instance of a decided case, where it was held to be a mala fide possession after the reversal of the judgment?

Wilson, for Appellant.—No, my Lord, I cannot.

LORD CHANCELLOR.—My Lords, I shall not require the learned counsel for the respondent to discharge their duty to their client, but I will shortly state to your Lordships the reasons for my judgment. Generally speaking, when I advise your Lordships to affirm a decision on appeal, I do not trouble your Lordships with the reasons which may be given; but there is a peculiarity in this case which leads me to state why I do not call on the learned counsel for the respondent to address your Lordships. It is not from mere deference to the authority of the Court below, though that is always entitled to the greatest respect; nor is it from any wish hastily to dispose of this matter, that I stop the counsel, and propose that you should decide the point at the present stage. But my reason is this,—we are here on a question of Scotch law, as to which

Dec. 9, 1830. there is nothing to assist us in our system of jurisprudence at all. Your Lordships are aware, that after a recovery in ejectment—it is not so in real actions—but after a recovery in ejectment, under the common law, there was an action given for recovering mesne profits, and that action was only limited, in the extent to which it went back, by the statute of limitations ; consequently, it is every day's practice by our law, that as soon as a person recovers the possession—that is to say, as soon as he showed that he, and not the person before in possession, was entitled to hold that property, he recovers all the rents and profits from the tenant, as far back as the statute of limitations allowed him to go in quest of his right. No question was ever allowed to be raised as to the footing on which that possession had been holden. No doubt was ever allowed to be expressed by the Court as to the clear right of the landlord who had been kept out of possession all the while, whether by the tenant holding over on a lease which was determined, or by a person holding over on a lease which was bad ; or by a person holding land to which he had no title, from being, in point of fact, not the real heir—whether the flaw in his title, and whereupon he had assumed to hold the land during these six years, had arisen from matter of fact, or from matter of law, it signifies not which—and whether or not he had been holding in circumstances which ought to have taught him to know he was not holding upon a right title ; or, whether or not he had been holding in circumstances which rendered it doubtful if he had a right title. Nay, if the decisions of all the Judges of all the Courts, and the opinions of all the conveyancers, and the opinions of all the text writers,—if all that weight of authority had been departed from, and the former cases overruled by an ultimate decision,—if that ultimate decision was such as to entitle the lessor of the plaintiff to recover, (and I cannot put a stronger case of a bona fide possession,) during all those six years the possessor would be held liable to pay back to the lessor of the plaintiff, who now had his writ of possession under his judgment in ejectment, all the mesne profits ; that is to say, the profits which he had been in the perception of during those six years. This is the law of England, and it is so far peculiar. The law of Scotland sanctions the doctrine, that the tenant, or the person in possession, who has held for a course of years, in circumstances which entitled him to say he had ground to suppose he was the rightful possessor, *facit fructus perceptos et consumptos suos* ; and they also give him compensation for monies he may have laid out in the bona fide improvement of the property, which is also contrary to our law. Now, my Lords, this being the case, we come to a question of purely Scotch law, upon which, in guiding your Lordships to a safe conclusion, you have no assistance whatever from the known principles and the undoubted decisions of your own Courts ; because they proceed not only upon a different, but upon a perfectly opposite principle. Now, when I find that there is in favour of the appellant's argument, no case whatever decided in the Scotch Courts—that there is not any obiter dictum of Judges where this might not have been the principal point in the case supporting the appeal, but that it rests entirely upon the reasoning and argument, (somewhat partaking of refinement,)

of the very learned person,* who took an opposite view to that of the Dec. 9, 1830. Judges in the Court below, I feel myself incapable of advising your Lordships to reverse the decision which has been pronounced. I have considered, however, the principles upon which this decision rests, and they are in conformity to the principles of all the formerly decided cases. The question is shortly this : A person received a lease for two 19 years, from Mr Carnegy, and the life of the heir or assignee of the lessee ; the question arose, whether, those two 19 years being expired, the tenant's daughter, who was not his heir, (for that was justly contended by Sir Charles Wetherell in his able argument,) but who was one of his coparceners, and therefore did not strictly answer that description, could hold over. Suppose she had been an only daughter, in which case she clearly would have been the heir, it is quite clear the tenant might have assigned the lease, and then, besides the two 19 years, she would have taken for her life. But there being no assignment in this case, the question is,—Whether the daughter can say, I am the heir—I have a right to come in as a purchaser—I am so designated and described, that I take nominatim, as it were, as a purchaser, and come in for my life ; not only had my father right to hold over, but I have, because I am his heir. In the Court below, the Sheriff, in the first place, decided against the tenant. The Lord Ordinary decided in favour of the Sheriff's interlocutor, and it was taken to the Court of Session ; and they decided against the Sheriff, reversing his interlocutor, and reversing the interlocutor of the Lord Ordinary. Now, this was in 1817, and there was an appeal by the losing party ; and the judgment appealed was reversed by your Lordships' House, in a very remarkable judgment, conceived in extraordinary terms, and with a brevity and a conciseness and peremptoriness, which, being unusual in that most learned person† who moved the judgment, certainly shows what his opinion was, and that he thought it was one of the most extraordinary cases that ever came before the Court. The lawyers so held—your Lordships so held—the Court of Session now will probably so hold, and in future cases regulate their decisions by so holding. But the question is, whether Miss Scott was bound to anticipate this, and to discover that the Court of Session was wrong, and that your Lordships would set them right ? Can I say that a five years' possession from 1817 to 1822, during all which time she was in possession of a judgment in her favour, showing not only that she was in bona fide, but that she was right in point of law, and entitled to go on, does not protect her ? Could I advise your Lordships that there was a call upon her, to say, ' they have decided in my favour, but I know they were wrong in their views of the Scotch law, and could not construe the instrument according to its principles, and therefore I will abandon the judgment in my favour, and pack up my goods and remove from the farm ?' They say she was in mala fide during all the time ; but they must be prepared to show that. But then (and that is the most judicious mode of putting the

* Lord Alloway.

† Lord Eldon. See 1 Shaw, Ap. Ca. 114.

Dec. 9, 1830. question for their purpose) it is argued by Sir Charles Wetherell, and Mr Wilson, that this is not the common case of a deed sought to be reduced—they say there is this distinction, that if there was an entail, and the question was, whether a lease was granted under fetters of entail, in contravention of those fetters, which was the case of Elliott and Pott; or if there was a lease sought to be reduced on the ground of force, or fraud, or concussion, so as to show that it ought not to stand, but ought to be set aside—in that case, they say, the question will arise of bona fide possession; and while they admit that they have no instance of a person being held accountable for violent profits, there standing a judgment in his favour, although afterwards reversed—though they admit there are no such instances, they put it to the other side, and say, ‘ Do
 ‘ you produce a case in all respects like the present, where the parties have
 ‘ been held to be in bona fide possession, with or without a judgment—
 ‘ where there is no reduction of any deed, but a case where the question
 ‘ arises on the construction (as I understand them) imposed upon the
 ‘ deed, and not the destruction of the deed by a reduction.’ My Lords, I cannot myself see that there is any solid ground for this distinction, because the title of the party is the lease. The lease may be bad on various grounds. It is bad, if it is granted in the non-execution of power. It is bad, if it is granted in contravention of the fetters of a good entail. It is bad, if it is granted by a person non habens potestatem to grant. It is bad, if it is extorted by force, or obtained through fraud; or if it is granted by a married woman, without the consent of her husband, or by an infant, without the consent of the guardian; in which case it is reducible, as against the infant. Now, my Lords, there are all these various heads of reduction. But there is also another head on which the lease is not valid to convey the interest sought to be established by it, and that is—that the construction of the lease itself, in point of law, does not give the right contended for to the lessee; but I do not see, upon principle, any distinction whatever between those various sources of invalidity in the title of the lessee. All that is different in this case is, the ground upon which the title shall be held invalid. The invalidity of the title of the lessee is the only question. He has no valid title, whether that flaw in his title arises from the entail being contravened, under which the lessor made the lease, or from force or fraud, impressed or imposed upon him when he granted the lease, or whether it is held from the words of the lease never having conveyed an estate to the lessee for years; in all those cases, the invalidity of the lease is the material point; and that being once established, the only question that remains is, whether he was in bona fide or mala fide during the period of the possession. Such being the grounds on which I have put this question, and having repeatedly asked for a case in which there has ever been a decision, or even an obiter dictum of the judges the other way, can I move your Lordships to shake the judgment complained of? Observe also, that Lord Pitmilly first of all pronounced an interlocutor as Lord Ordinary, by which he found violent profits due; yet with all that leaning in favour of the original decision in the former appeal, and holding it to be a clear case, as he had a right to

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