

[15th August 1834.]*

No. 34. The Reverend JOHN MARTIN and others, Appellants.

CHARLES HUNTER and others, Trustees of ANDREW THOMSON, Respondents.

Partnership—Process.—Circumstances in which it was held (affirming the judgment of the Court of Session) that the pursuers of an action of relief inter socios of debts, for which a separate action had been brought against the company, were not entitled to insist in the action of relief to a greater extent than the conclusions in the principal action.

1ST DIVISION.
Ld. Corehouse.

ON the action noticed in the preceding report being instituted, the appellants, who were called as defenders in it, and who stated that they had either paid or were willing to pay their shares of the debt sued for, raised an action against those of the partners who refused to do so, reciting the terms of the summons, and concluding against the respondents, and each of the other parties, to relieve the appellants of such part of the debt of 143,000*l.* as corresponded to their respective shares.

The Lord Ordinary assoilzied the respondents “from “ the conclusions of the action in hoc statu, and de-

* The correct date is 31st August 1835.

“ cerned, reserving to the pursuers their claim of
 “ relief, in the event of the second Fife Banking Com-
 “ pany being able to establish a debt against the pur-
 “ suers and defenders for the sums applied by the
 “ second Banking Company in extinction of debts
 “ contracted by the first Fife Banking Company pre-
 “ vious to the late Andrew Thomson’s retirement from
 “ the first company, and to the defenders their defences
 “ against that claim as accords.”

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The appellant reclaimed to the Inner House; but their Lordships, on the 22d of May 1834, adhered.

Martin and others appealed, and maintained that although the conclusions in the original action were confined to a period posterior to the 2d of August 1823, yet, as the object of their action was to get relief proportionally from the respondents of the debts due by the first company, and there was no such limitation in their conclusions, they were entitled to be heard as to the liability of the respondents for the debts prior to the date of the alleged transfer, even if it should be found that such a transfer had been duly executed.

The respondents answered, that the action of the appellants was founded entirely on, and had for its object to obtain relief from the other action, and that accordingly their conclusions were for payment of a share of the debt of 143,000*l.*, being the debt which was said to be exhibited by the account current, commencing in August 1823 and ending in August 1831, founded on in the original action.

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The House of Lords ordered and adjudged, That the said petition and appeal be and is hereby dismissed this House, and that the interlocutor, so far as therein complained of, be and the same is hereby affirmed.

ANDREW M'CRAE—RICHARDSON and CONNELL,
Solicitors.
