

No. 2.

It is no where laid down, that a firm is one of the essentials of a contract. It is a modern invention, and mentioned as such by the writers on the law. Neither can it be maintained, that a written contract is essential to a copartnery; *vide* Erskine, B. 3. T. 3. § 20, 26. And this was very fully under the consideration of Court, in the question between Cuninghame and the Creditors of Ancrum.

In the present case, third parties have no access to know, nor business to inquire, whether Gutzmer and Somerville had a written contract or not; what were the terms of their agreement; or, whether they had first entered into one contract, and afterwards cancelled it, and went on without a contract. All these matters were only between themselves. Neither the original contract, nor the discharge of it, were on record; and, when this discharge is looked into, it is plain, that the sole intention of it was to liberate Mr. Selby, and only to dissolve the contract so far as regarded him; and, accordingly, the other two went on as partners, trading under the denomination of a Company, and were treated as such by the creditors who are now claiming upon the Company's subjects.

The Lords "preferred the Company-creditors."

Act. Hay Campbell.

Alt. D. of Faculty.

Clerk, Campbell.

Fol. Dic. v. 4. p. 285. Fac. Coll: No. 147. p. 1.

SECT. II.

Whether a Society can sue without being incorporated?

1730. June 11.

MASONS of the LODGE of LANARK *against* HAMILTON, &c.

No. 3.

By an act of the Mason Lodge of Lanark, "all members are discharged to receive, or be witness to the receiving or passing any mason within 10 miles of the burgh of Lanark, except the benefit come to the Lodge, under the penalty of ten pounds." Upon this act, process was brought against some of the members, to account for the sums they had received by apprentices and otherways, the benefit of which ought to have accrued to the lodge, and concluding for £10 Scots of penalty for the contravention of the said act, *toties quoties*. The defence was, that this is an unlawful society, and therefore cannot have the protection of the law; that the design of the society is evidently to enhance the business of the country, by restraining any person to pass mason, unless he pay such sums to the lodge as

the society thought fit to exact; which is contrary to the policy of the nation, disallowing of all societies, unless by particular grants or seals of cause. To this purpose, was cited act *anno 6to*, Geo. Reg. entitled, "An act for securing better powers and privileges, &c." which statutes, "That the acting, or presuming to act as a body corporate, without legal authority, shall be deemed a public nuisance, and be illegal and void."

"It was found that the masons had not *personam standi*, and could not sue."

Fol. Dic. v. 2. p. 375. Rem. Dec. v. 2. No. 2. p. 4.

No. 3.

1761. June 13.

CRAWFORD *against* MITCHELL.

THE tradesmen of Saltcoats, a burgh of barony, incorporated themselves, by an agreement, which was approved of by the superior of the town, binding themselves by certain regulations, and enacting, That every tradesmen coming to the town, should be obliged to subscribe the agreement. A shoemaker having subscribed it, afterwards infringed some of the rules, upon which the society pursued him before the Baron-Bailie for fines and arrears of contribution. He brought a suspension, pleading, That they were no legal corporation, and had no title to pursue. The Lords suspended the letters.

Fol. Dic. v. 4. p. 283. Fac. Coll.

No. 4.

* * This case is No. 77. p. 1958. *voce* BURGH ROYAL.

1771. December 13.

ADAM WILSON, Merchant in Dundee, and others, *against* DAVID JOBSON,
Writer in Dundee.

THE pursuers, for themselves, and as commissioners appointed by the Associate Congregation of Dundee, brought an action against the defender, subsuming, that, in the years 1763 or 1764, the said Associate Congregation, then called Antiburghers, had authorised Jobson, then one of their members, to purchase ground for building a house for public worship for the said Congregation, and to enter into contracts for building the same, &c. That considerable sums had been contributed and impressed into his hands for these purposes: That, in place of taking the rights in his own name as trustee, or in the name of the managers for the use of the congregation, he had taken them to himself absolutely, his heirs and assignees; and it was therefore concluded, that he, Jobson, should grant to the pursuers, for themselves, and in name of the other members of the Congregation, a valid disposition of the subjects, together with the other writs, and should deliver up the keys of the said house of worship.

No. 5.

An action sustained at the instance of a majority of private individuals, who had united themselves for religious purposes into a society called the Antiburgher Associate Congregation of Dundee.