

No. 18. pended, and not upon any of the other partners, to whom he does not allege he ever mentioned this matter.

That, in this country, tradesmen and manufacturers have but small stocks; and are, therefore, unable to carry on the different branches of their business, without the assistance of partners. These partners are often merchants, and people of credit engaged in other branches of business; so that, from the nature of the thing, it must be the inferior people who are the acting partners in such Companies; and, consequently, of necessity, they must be trusted with the firm of the Company; but it cannot from thence, with any justice, be argued, that the whole substance of such merchants, or others, as assist manufacturers in that way, is at the mercy of the tradesmen with whom they are engaged; such a doctrine would be ruinous and destructive to the trade and credit of the country.

The Lords altered the Lord Ordinary's interlocutor, "Repelled the reasons of suspension, found the letters orderly proceeded;" and decerned.

A reclaiming petition was presented, upon advising of which, with answers, memorials were ordered; and, upon the cause being again advised, the Lords adhered to their former interlocutor.

For Dewar, Lockhart. For Miller, &c. H. Dundas, and Alex. Wight. Clerk.

A. E.

Fol. Dic. v. 4. p. 285. Fac. Coll. No. 38. p. 63.

1791. June 13.

BORROWSTOUNNESS CANAL COMPANY *against* MACALPINE, FLEMING, and Company.

No. 19.

FLEMING, Brown, Macalpine, and others, formed in 1774 a copartnery for a manufacture of printed linens on Leven side, under the firm of Macalpine, Fleming, and Company, of which Macalpine was the book-keeper and acting partner, residing at the place of the manufacture, while the rest lived elsewhere, and had other occupations. In 1783, Addison, correspondent of the Company at Borrowstounness, subscribed in their name for two shares, of £.50 each, in the Borrowstounness canal navigation; and, in the act of Parliament soon after obtained for increasing the capital of that society, the names of Macalpine, Fleming, and Company, were inserted among the proprietors. Addison likewise attended as their proxy the several meetings of the proprietors, and two calls of ten *per cent.* of their subscribed stock were paid in to the Borrowstounness Canal Company, and receipts taken in the name of Macalpine, Fleming, and Company, in whose books these payments were entered by Macalpine. The partners of the Company of Macalpine, Fleming, and Company, came to a resolution to dissolve the copartnery, which was accordingly done on the 24th November, 1784; but no intimation thereof was given to the Canal Company, who soon after pursued the Company, as if still existing, for the remainder of their subscribed stock. The individual partners urged in defence, That they never had empowered Macalpine to sub-

scribe to the canal navigation, and that they knew nothing of the matter; that he had taken this liberty at his own hand, and was alone responsible. The Lords were of opinion, That an acting partner had power to bind the society in all matters of ordinary administration; and although this adventure might be considered as not strictly falling under that description, yet, in the circumstances of the case, the consent of the partners was to be presumed; and therefore found that the whole were bound. See APPENDIX.

No. 19.

Fol. Dic. v. 4. p. 286.

SECT. V.

Interest of a deceased Partner in the Stock in a Company.—Partner resigning his Interest, whether still liable to Company Creditors?

1769. *March 2.*

MESSRS. AITON AND COMPANY, Merchants in Glasgow, *against* HARRY CHEAP of Rossie, and Others, Executors of the deceased THOMAS CHEAP, late Merchant in London.

THOMAS CHEAP had entered into a copartnership with Charles Adair, merchant in London. Having been employed by the government as one of the commissaries in the expedition against Belleisle, he died in that island, about the beginning of May, 1761; and his death was published in the London newspapers, of the 23d of that month.

Cheap and Adair were wont to correspond with Messrs. Aiton and Company, merchants in Glasgow. From them, upon the 26th of March and 21st of May, 1761, Mr. Adair, the acting partner, ordered a quantity of lawns for the use of the Company. Both commissions were duly answered; one parcel of the goods being sent upon the 10th of June, the other upon the 22d of July following.

Adair stopped payment in May, 1762. The representatives of Cheap refused to hold those commissions as a copartnership-concern, or to pay any part of the price of the goods; and an action was brought against them by Adair and Company.

Pleaded for the defenders: Society is extinguished by the death of one, even of many partners; insomuch that, by the civil law, “Nemo potest societatem hæredi suo sic parere, ut ipse hæres socius sit;” L. 35. D. Pro socio; and, “Adeo morte socii solvitur societas, ut nec ab initio pasisci possimus ut hæres etiam succedat societati;” L. 59. Eod. Mandate likewise is extinguished by the death of the mandant; L. 15. C. Mandati.

No. 20.

A commission executed after dissolution of a copartnership by the death of one of the partners, or given by one partner while ignorant of the death of the other, not binding on the representatives of the deceased.