

No. 7. Miln and Bonhard; and found, that Bailie Marjoribanks was only liable for a sixth part of the loss of the whole subject of the tack.

Act. Ch. Areskine, H. Dalrymple, & W. Grant.
Reporter, Lord Newhall.

Alt. Graham, sen. & Dun. Forbes.
Clerk, Hall.

Fol. Dic. v. 4. p. 284. Edgar, p. 155.

1741. February 26.

A. against B.

No. 8.

THE creditor of a company cannot pursue one of the partners for a company-debt: His action lies only against the company.

Fol. Dic. v. 4. p. 283. Kilkerran, (SOCIETY) No. 3. p. 518.

1757. November 14.

JOHN STEVENSON and Co. against ROBERT MACNAIR, and two other PARTNERS of the ARRAN FISHING COMPANY.

No. 9.

In a process against a company, either the whole company or the directors must be called.

By the contract of copartnership constituting the Arran Fishing Company, a share in the copartnership was declared to be £50, and the capital stock to be £2000; and that no partner should have more than four shares.

It was further agreed, That the trade should be carried on by certain directors therein named; and by one clause the directors are "empowered to give such orders and directions concerning the stock, and management of the whole of the company's affairs, as to them shall seem meet, which shall be binding on all the partners to the extent of their respective subscriptions, until the same (viz. orders and directions) shall be altered by a general meeting;" which was confirmed by another clause, in these words: "Provided, nevertheless, that nothing herein contained shall be understood to import a power to the directors, or any general meeting, to compel any partner or subscriber to pay or contribute any more money to the stock than the sum by him subscribed." And by two other clauses it was stipulated, "That none of the company's stock should be liable to be affected with the private debts of any of the parties, or to diligence at the instance of any of their creditors, so as to give the creditors using such diligence any other right to the subject than the price at which his debtor's share shall be sold for at public roup: That in the event of any partner's share being affected by legal diligence, and in the event of the death of any partner, and more persons claiming right to his share than one, or the right of that one affected by diligence, it shall be in the power of the directors, or general meeting, to sell the share so affected by diligence, or that shall be claimed by more persons than one, by public roup;

and the company to be only accountable to those having right to such a sum as the share shall be sold for at the roup."

Stevenson and Company, of the rope-work of Port Glasgow, having furnished ropes to the extent of £.72, to the company, pursued Macnair, and two other partners of the company, for payment.

Objected for the defenders, *1mo*, All parties having interest are not called: Either the whole partners, or at least the directors, as representing the whole partners, ought to have been made defenders; *2do*, The defenders could not be liable in their private fortunes. From the contract, it appears, that the present was not an ordinary society, but was an agreement of a number of gentlemen to carry on a new branch of trade, by a certain limited capital, composed of distinct and equal shares; that to keep these shares always separate, they were withdrawn from the common rules of succession and attachment; that the shares were to be under the direction of certain persons, separate from the other funds of the subscribers; and in such a manner, that nothing affecting them should affect their other funds.—Such societies are well known in trading nations, and in them it was never dreamed, that the private funds of the partners could be attached for the debts of the company. The French are best acquainted with it, and have derived the greatest advantages from partnerships of this kind, of any nation in Europe. Savary, in his *Parfait Negociant, second partie, L. 1. C. 1.* in giving an account of them, called by him *Societez en commandites*, says, p. 24. "Les marchands, et autres personnes qui feront des societez en commandites, doivent bien prendre garde de mettre tousjours cette clause dans l'acte, Qu'ils ne seront tenus à aucune dette de la societé; et qu'en cas de perte, ils ne pourront perdre que jusques à la concurrence des sommes qu'ils y auront mises." And, in giving the form of such a contract of copartnery, p. 52. the 23d article of the contract is expressed in these words: "Toutes les dettes faites et créés, tant par la maison de Paris, que celle de Lyon, seront aux risques, perils, et fortunes, de la dite societé, et seront supportées suivant les parts et portions que chacun de nous aura en icelle; suivant qu'il sera dit ci-après. Neanmoins, ne sera tenu à aucune perte que jusques à la concurrence des profits."

The Lords waved giving judgment on this last defence; but

"Assoilzied the defenders, in respect all parties having interest were not called into the field."

Act. Lockhart.

Alt. J. Dalrymple.

Fol. Dic. v. 4. p. 283. Fac. Coll. No. 54. p. 87.