

low, of necessary consequence, that no man can know whether he is contracting with a single person or with a company. This will be the case when a merchant in this country deals with a person in London, but much more so when he deals with persons beyond sea : he cannot know whether the company subsists or is dissolved by the death of any of its number.

PRESIDENT. Goods commissioned on the 26th March were certainly a burden on the company ; but I think that the goods commissioned on the 22d May, when Cheap's death was not known, must also be a burden of the company.

AUCHINLECK. Ayton was not in knowledge of the company being dissolved when he executed the commission of the 26th March.

KAIMES. Ayton was not bound to believe a newspaper : his information ought to have come from the surviving partner. Suppose the intelligence of Cheap's death had proved false, could he have justified himself for not sending the goods, because he had seen Cheap's death in a newspaper ?

JUSTICE-CLERK. Ayton was not bound to believe a newspaper, suppose he had seen it, as the partner did not inform him of Cheap's death. The commission of the 21st May came to hand in course. It was certainly accepted ; for, if the goods had not been sold to the company, they might have been sold to some one else.

On the 2d March 1769, "the Lords found the company liable for both parcels of goods." And, on the 11th March, "adhered ;" altering Lord Pitfour's interlocutor as to the second parcel.

Act. R. M'Queen. Alt. D. Rae.

Diss. as to the second parcel, Affleck, Elliock.

Non liquet, Pitfour, Kaimes.

[Reversed on appeal.]

1769. June 14. MAGISTRATES and TOWN COUNCIL of CULROSS *against* The TRUSTEES of CHARLES COCHRAN.

PROPERTY.

Property in Wreck and Ware.

[*Fac. Coll. IV. p. 180. Dict. 12,810.*]

GARDENSTON. The right of the town of Culross is a grant from the crown, confirmed and explained by possession. The subject of the grant is bounded by the sea. If this does not comprehend the shore, there is a valuable property still in the hands of the crown, which is supposed to be in the subjects having estates on the coast ; I mean the whole seaware all over Scotland. On the other side, the grant is of a later date, and there has been no possession.

MONBODDO. Here is a competition betwixt a general grant to the town of

Culross, and a special grant to Lord Kincardine. A grant of the sea-shore will convey wreck and ware. By the Roman law the shore was *res nullius*; but this is not modern law. We follow the constitution of the Emperor Frederic I. The only difficulty is from the prior grant. If Lord Kincardine had been in possession, and the town not, I would have preferred him: but the grant to the town may comprehend what is within the sea-mark, and the town has been in possession.

PITFOUR. The town of Culross needs no prescription: its right is preferable, and carries the sea-ware. As to the question of nuisance, that depends upon the distance.

JUSTICE-CLERK. The use of the sea-ware, by burning kelp, is new. What is a trifling addition to the revenue may do great damage to the inhabitants. I doubt whether the right and possession will authorise an inverting of the mode of possession. The house of Culross is within the royalty, and so the proprietor may here argue for his own behoof as an inhabitant.

On the 14th June 1769, "The Lords decerned and declared, with exception as to the shore opposite to Pretty Common and St Mungo."

Act. G. Haldane. Alt. J. Boswel. Reporter, Justice-Clerk.

[N.B. As there was no proof of the nuisance, the question concerning it was not understood to be before the Court.

1769. June 15. JAMES SCRIMGEOUR *against* MESSRS ALEXANDER and SONS.

(*Faculty Collection, IV. 172; Dictionary, 3955.*)

EXERCITOR.—AFFREIGHTMENT.

Powers of a Ship-Master.

GARDENSTON. This is a mercantile case, and I would wish light from merchants of eminence unconnected with either party. The owners of the ship undertake a voyage, under an option between one port and another. The option was made, and the ship sailed without objection as to the late day; so that is out of the question. The purpose of the voyage was afterwards disappointed, without any blame on either party. In such an emergency, the discretionary powers devolve on the master, and his act binds the owners. It was judicious in him to make the new contract: in it he was assisted by the assurances of Mr John Alexander: events and accidents he could not foresee. The ship was first distressed by bad weather, and afterwards detained, in consequence of popular commotions in Carolina. Neither party is answerable for this, according to any liberal ideas of merchant law.

KAIMES. If the ship had been unexpectedly detained at the original place of