

1771. November 15. LUDOVIC GRANT *against* GEORGE CHALMERS.

SOCIETY.

Powers of Management vested in the Acting and Surviving Partner of a Company.

(*Fac. Coll. V. 318 ; Dictionary, 14,581.*)

COALSTON. A copartnery is a corporation, and subsists as long as any member of it is alive ; and the surviving partner may uplift and assign. If he is a bankrupt, the heirs of the deceased partner may interpose and object : *here* the heirs are called, and do not object : It is *jus tertii* for the debtor to object.

PITFOUR. There is no doubt but that the surviving partner may act and even assign ; but, here, the case may be varied by his becoming bankrupt. This objection, however, is taken away by the representatives of Malcolm being made parties to the cause.

PRESIDENT. Malcolm was alive at the time of Thomas Fairholm's granting the assignation. It was therefore improper ; but Malcolm might have ratified it, and his representatives do the same thing by not objecting. It is now good.

On the 15th November 1771, " In respect that no objection is moved by the representatives of Malcolm, or by any person having interest, the Lords repelled the defence."

*Act. R. M'Queen. Alt. A. Rolland. Rep. Monboddo.*

1771. November 19. ROBERT WARRAND *against* HUGH FALCONER.

REPARATION.

Where one wrote a private letter, accusing an inferior postmaster, to his superior, of malversation in office, the same held to be an injurious libel, and actionable,—the accuser having declined to make good his charge.

[*Faculty Collection, V. 323 ; Dictionary, 13,933.*]

COALSTON. I cannot justify the conduct of Falconer, but I doubt as to the ground of action. In order to constitute a *libellus famosus*, there must be *animus injuriandi* and a publication. Supposing there was *here* an *animus injuriandi*, there is no publication, only a private information.

PRESIDENT. I do not blame an information, nor do I require a full legal