

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

proof of it. But there was *here* private malice only, and no purpose of promoting the public good. The defender declines giving any account of his reasons for bringing so severe a charge. He does not even say that he ever heard from any one person that letters had been at any time opened at the post-house.

PITFOUR. There was more of private resentment than public spirit in this information. I would not discourage information in a discreet way. I will consider the *act*, not the *intention*. The interlocutor does no more than require a condescence. If he can condescend on nothing, he is without excuse.

GARDENSTON. The case of *James* is not in point: *There* it appears that the commissioners of the revenue had already judged upon the information, and this Court would do nothing which seemed to tend to a review of their judgment.

JUSTICE-CLERK. It is impossible that a charge of this nature could be kept secret. It must have been published by the postmaster-general, else to what purpose was it brought?

MONBODDO. This was not a *libellus famosus*, but an accusation to be supported some way or other. If the defender will do nothing to support it, we must hold it to be calumnious.

On the 19th November 1771, "the Lords found the action competent, and ordains the defender to say whether he means to support his accusation, and by what evidence;" adhering to Lord Ellick's interlocutor.

*Act.* H. Dundas. *Alt.* A. Elphinstone.

1771. November 19. MAGISTRATES OF DUMBARTON *against* MAGISTRATES OF GLASGOW.

#### STATUTE.

Interpretation of, and the effect given to a Public Statute.

[*Faculty Collection*, V. 234; *Dictionary*, 14,769.]

GARDENSTON. This exemption is a private right, established by private contract and long possession. It is not agreeable to the principles of justice and the practice of Parliament, to abolish private rights without an equivalent. We are not to put a construction upon an Act of Parliament which is unjust, when we can put a just one. I do not think that the Act means any injustice: it mentions the new duty in place of the old anchorage, *i. e.* the anchorage as formerly levied, with an exception as to Dumbarton.

HAILES. I would make a distinction. If the whole duty may be levied by