was no express obligation on them that they should not renounce, the common and known rules of society must take place, which favour natural liberty, *et nemo invitus tenetur manere in societate;* and as the majority had a power to continue the society, or rather constitute a new one, they certainly could act in matters consequential and agreeable to the nature of societies; namely, to terminate the same at their pleasure. No. 25.

The Lords found, That the major part of the *socii* might dissolve the society, and that the same did become void after the date of the intimation of the dissolution thereof, in respect there was no obligation in the contract to continue in the society, and not to renounce the same.

Act. *Alex. Garden.* Alt. *Will. Grant.* Reporter, *Lord Milton.* *Justice* Clerk.

Edgar, p. 161.

1771. *November* 15.

LUDOVICK GRANT, Trustee for Fairholm's Creditors, *against* GEORGE CHALMERS, Merchant in Edinburgh.

No. 26.
Powers of management vested in the acting and surviving partner of a company.

THOMAS FAIRHOLM, senior, and Adam his nephew, carried on trade under the firm of *Thomas and Adam Fairholms;* which concern expired in the year 1751.

In the year 1754, Adam and Thomas Fairholms carried on trade in company with Robert Malcolm, under the firm of *Fairholms and Malcolm.*

This company being dissolved in 1760, the brothers carried on trade under the firm of *Adam and Thomas Fairholms.* Thomas was entrusted with uplifting the debts due to Fairholms and Malcolm; and did so for several years.

Adam and Thomas Fairholms having, in the year 1764, become bankrupt, they executed a disposition of all their estate to Ludovick Grant, and others, in trust, for behoof of their creditors.

George Chalmers was debtor to Fairholm and Malcolm, the second company, in upwards of £.700 by a promissory note; and in 1770 Thomas Fairholm, under the firm of Fairholms and Malcolm, granted an assignation to this debt in favour of Ludovick Grant, as trustee for Fairholm's creditors.

Grant having brought an action against Chalmers, the defence upon the merits was a plea of compensation on account of certain claims he had against the first company of Thomas and Adam Fairholms, but *in limine* he objected to the pursuer's title, and stated, That as the promissory notes had been granted to the company of Fairholms and Malcolm, it was not in the power of Thomas Fairholm, one only of the partners, to convey, after the dissolution of the company, the debts due to the company for the payment of the debts of another company; more especially as Thomas Fairholm was bankrupt when he granted the assignation.

The question having been reported to the Court,

The pursuer pleaded:

No. 26.

1*mo*, Thomas Fairholm, the assigner of the debt, had, ever since the dissolution of the concern of Fairholms and Malcolm, been the sole acting partner in every thing relative to the settlement of that Company's affairs. The books and vouchers had been left with him for that purpose; and he had acted accordingly, without any objection being made to his title.

2*do*, Thomas Fairholm was the only surviving partner of the Company of Fairholms and Malcolm, both Malcolm and Fairholm being dead. When a company accordingly was dissolved either by death or otherwise, the funds did not *ipso jure* divide among the different partners or their representatives. Till the affairs were finally settled, they were still considered as a company—they fell to sue or be sued in that character—the surviving partner *sustinet personam* of the company for that purpose: and hence all his acts of administration and management were authorised and binding.

The objection reared, upon Thomas Fairholm's being bankrupt when the assignation was granted, could have no weight. The representatives of Malcolm, the other partner, who alone had any interest, had been called into the field; and as they made no objection to the transaction, it was evidently *jus tertii* to the pursuer; who being, at all events, a debtor to the company, could never, upon this pretence, withhold payment of what was avowedly due.

The defender answered:

1*mo*, When a copartnery was dissolved, and all or several of the partners were alive, no one partner could of himself uplift and discharge the company's debts. They must either all concur in every act, or give a power to one to act for them. Though Thomas Fairholm, therefore, had been the sole acting partner in settling the company's affairs, it was not alleged he had any authority to act in that manner.

2*do*, At the date of the assignation, Thomas Fairholm was not the sole surviving partner, Malcolm being alive. But although he had, it did not follow that the assignation would have been authorised. There was a manifest distinction between ordinary and proper acts of administration; such as uplifting the company's debts and effects, and granting an assignation of them; it being a general rule, that no one acting in the affairs of another could convey the property of his constituent, without a special power for that purpose.

3*tio*, Though Thomas Fairholm had been entitled to the management of the company's affairs, either as surviving partner, or as authorised by a mandate express or implied, his bankruptcy, which had occurred prior to the assignment, must have had the effect to annul his powers, either by operating a revocation of the mandate, or by the consequent disqualification it created as to an interference in the affairs of others.

The interlocutor of the Court was as follows: "In respect that no objection was offered by the heirs of Robert Malcolm, who are now made parties to the said process, nor by any others, to the assignation granted by Thomas Fairholm

to the pursuer; repel the objection made to the pursuer's title, and remit to the Lord Ordinary to proceed accordingly." No. 26.

Lord Ordinary, *Monboddo.* For Grant, *Macqueen.* For Chalmers, *Rolland.* Clerk, *Pringle.*

R. H. *Fac. Coll. No.* 105. *p.* 318.

1791. *May* 25. DAVID ALLAN and Others, *against* JAMES MACRAE.

No. 27.
A number of people having formed themselves into a society for religious purposes, built a meeting-house by voluntary contributions of the members. A schism having happened in the congregation, the majority of the contributors were found entitled to the property of the subject.

A NUMBER of people in the parish of Fettercairn, in Kincardineshire, who formed themselves into a religious society, under the denomination of Bereans, and chose Mr. Macrae for their pastor, purchased a piece of ground, on which they erected a place of worship, the whole expense being defrayed by the voluntary contributions of the members. The property having been acquired in the name of a committee of their number, as trustees for the congregation, the feudal right was vested in these trustees by infeftment.

Afterwards, however, a schism happened in this congregation, a part of them adhering to Mr. Macrae, and another part renouncing all connection with him; in consequence of which, the question came to be agitated in a process of declarator, at whose disposal the property of the society should be.

The Lord Ordinary reported the cause; when

The Court, contrary to the decision in the case of Gibb's meeting-house in 1752, and agreeably to those of Jobson in 1771, No. 5. p. 14555. which related to a seceding meeting-house at Dundee, and of Smith in 1779, respecting a meeting-house at Falkirk,

"Found, That the feu-right obtained by David Allan and others, as managers for building a meeting-house for divine-worship, was a trust in their persons, for behoof of the contributors for purchasing the area, and building the meeting-house in question; and that the said trustees are bound to denude themselves of said trust, in favour of the said contributors, or the majority of them, or managers named by the majority."

Reporter, *Lord Dreghorn.* Act. *Solicitor General Stewart.* Alt. *Dean of Faculty Gillies.* Clerk, *Sinclair.*

S. *Fol. Dic. v.* 4. *p.* 287. *Fac. Coll. No.* 181. *p.* 367.

1791. *June* 17. MONTGOMERY *against* FORRESTERS and COMPANY.

No. 28.

FORRESTERS and Company fitted out a ship for the Greenland whale-fishery, and advertised a division of the property in her into thirty-two shares, of £.150 each; and it was stipulated that the majority of the adventurers should direct the employ and disposal of the ship, and that the contract should subsist for three years. Forresters and Company subscribed themselves for ten shares, Montgomery