therefore, was null *ab initio;* in strict law, it was ineffectual; and though perhaps the pursuers might have had some claim in equity, had they fulfilled it *bona fide*, in belief that the society still subsisted, there can be no room for any plea of that sort here. Aiton and Company knew the state of the case; and yet they proceeded to execute the commission.

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This argument is the stronger, that the invoice of the goods, as well as a letter sent along with them, was addressed, not to Adair and Cheap, but to Adair singly. Hence, it is apparent, *quo animo* the goods were sent to London; the pursuers were sensible that Adair, not the company, was liable for them.

" The Lords found, That the company was bound by both commissions."

Act. *M'Queen.* Alt. *Lockhart, Rae.*

G. F. *Fol. Dic. v.* 4. *p.* 291. *Fac. Coll. No.* 92. *p.* 170.

*** This case having been appealed, the judgment of the Court of Session was reversed.

1774. *November* 29. ROBERT ARMOUR *against* DOCTOR JOHN GIBSON.

No. 21.
Whether a partner in a private company, who has renounced his share from the expiration of a term fixed by the contract, when any of the partners had an option so to do, can be subjected for debts contracted under the firm assumed at their commencement, after he had ceased to be a partner?

ARMOUR, a merchant in Glasgow, being creditor to the company of Bell and Gibson, merchants in Glasgow, in two bills, dated in 1772, for goods furnished to that company, he raised horning on these bills, and charged Dr. Gibson, as a partner of the said company, for payment; who thereupon obtained a suspension.

The Doctor set forth, That a young man, named Thomas Bell, and John Gibson, the Doctor's son, having been both bred up in the merchant business, in the town of Glasgow, a scheme was projected, in the year 1766, for their carrying on, in company, the business of a cloth-shop in that city; that the Doctor, being then a physician residing in Glasgow, and his son being under age, proposed to take a small share in the concern, in order that he might have it in his power to examine into their books, and controul their management, when amiss. Accordingly, in June, 1766, a contract was entered into, with the advice and consent of both their fathers, by which Thomas Bell was to have three sixths, John Gibson junior two sixths, and Dr. Gibson one sixth, in the concern. The stock of the company was to be £400, and the copartnership was to subsist for seven years, from 26th May, 1766; " but, if any of the partners thinks proper, he shall be at liberty to withdraw from the concern at the end of the first three years allenarly; he always giving notice of his intention so to do, to the other parties, six months before his withdrawing, by a notary and witnesses." That, in consequence of this contract, the trade was carried on under the firm of " Bell and Gibson," without the addition of " Company," or appearance of any other person being concerned, the two young men themselves managing the whole business; which having proved successful, and the Doctor having attained his end, in bringing it to a proper

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bearing, and thinking that the two young men themselves might be trusted, without having any check upon them, so he wanted to withdraw, at least at the expiration of three years, when any of the partners had it in his power so to do.

Accordingly, that this was intimated to the company, to which they agreed; and, on 27th July, 1768, a minute was entered in the company-books, which proceeds upon the recital of that intimation having been made, and allows the Doctor to make over his share in the concern to John Gibson, junior; and, on the 11th May, 1769, the Doctor renounced his interest in the company; and the transaction was closed by another minute entered in the company's books, of that date, from which period the Doctor had no farther concern in it. In June, 1771, he left Glasgow, and soon thereafter went and resided in London. The trade was carried on for above four years after the Doctor's leaving the company, by the remaining two partners; but, at last, their affairs having gone into disorder, they were obliged to stop.

The reason of suspension, therefore, insisted on by the Doctor was, that he had renounced his interest in the company in May, 1769; that, from that time, he had ceased to be a partner; and that, therefore, he could not be made liable for the debts charged for, which were contracted more than three years after he had no concern with the company.

Pleaded for the charger: It is admitted by Dr. Gibson, that he was a partner of this company, which used the firm of "Bell and Gibson," at its commencement in 1766. That he was so, was well known all over the town of Glasgow; and his concern induced people to trust the company, which otherwise they would not have done. If the Doctor did withdraw in 1769, no notification was made, in any shape, of his having done so, either by circular letters, or by advertising in the newspapers; and the same firm was used, after his alleged withdrawing, as before; so that the public had the same reason for trusting this company as formerly. So standing the case, the Doctor ought to be subjected in payment of the bills in question, though posterior in date to his withdrawing.

The charger does not mean to allege any fraud against Dr. Gibson, or his partners. He puts his cause upon this general principal, that a person who has been once a partner must continue bound to those who contracted with the company, even after he has renounced and withdrawn, in consequence of a private agreement between the parties, unless his renunciation or withdrawing had been notified. It is evident, that though there has been no fraud in this case, yet, if judgment goes for the Doctor, it will make way for numberless frauds.

Answered: Personal creditors have in reality no other security to rely upon than the good faith and credit of the person with whom they do contract; and the rule in law, in such cases, must apply, that *unusquisque debet scire conditionem ejus cum quo contrahit.*

It is an established principle in the law of Scotland, that personal rights are affected by every personal deed, however latent; and, agreeably thereto, was the

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decision given very lately in the question between Annan and Colquhoun and Mrs. Scot, relative to a share held by James Scot in the Leith Ropery Company.

The suspender at no time ever acted openly as a partner; and it is believed, that it was only known by a few that he had any interest or concern in the company. But the contract of copartnership was, no doubt, available to subject him to all the debts of the company, even although his concern was unknown to the creditors with whom the company contracted; and if a latent contract, remaining in the partners' own hands, published in no record, nor in any other form, was sufficient to subject the suspender to the whole debts of the company, while he remained a partner, his renunciation, accepted of by the company, and entered in the books of the company, and to which every person had as much access as to the contract, must, upon the most established principles of the law of Scotland, be available to relieve the suspender of all debts that were contracted by the company subsequent to his ceasing to be a partner. *Lastly*, There was not the least occasion for altering the firm. The firm which was assumed at the beginning, and was all along continued to be used, was most properly applicable to the two acting partners, and to none else.

The Court adhered to the Lord Ordinary's interlocutor, "suspending the letters *simpliciter*."

Act. *Maclaurin*. Alt. *Macqueen*. Clerk, *Ross*.

Fol. Dic. v. 4. *p.* 286. *Fac. Coll. No.* 140. *p.* 367.

1776. *February* 15.
BLAIR of Dunskey *against* DOUGLAS, HERON, and COMPANY.

No. 22.

ONE of the articles in the contract of copartnership of Douglas, Heron, and Co. was, "That, in the event of the death or insolvency of any partner, his heirs or creditors should be obliged to receive his share in the stock and profits, as it should stand at the last preceding settlement of the company's affairs, with interest thereon till payment." And another article provides, "That the company's books shall be brought to a balance once every year." Blair of Dunskey, one of the partners, having died, in October, 1772, his executor brought action for payment of his two shares of the stock, and profits due on it, as at the last preceding settlement, viz. November, 1771; by which means the executor hoped to avoid the loss from the supervening bankruptcy of the company, which happened soon after Mr. Blair's death. Urged in defence, 1*mo*, The first article above mentioned imports only a stipulation in favour of the company: It obliged the executors and creditors of a deceased partner to *receive*, but did not oblige the company itself to *pay*, according to the last balance. 2*do*, Supposing a mutual obligation, it could be made effectual only out of the stock and profits of the company, not out of the private estates of the partners; and the stock and profits were annihilated. In June, 1772, before the death of Mr. Blair, the company, as the last resource of their expiring