

1778. *July 24.*DOUGLAS HERON and COMPANY, *against* HAIR.

No. 44.

AT a meeting of the partners of Douglas Heron and Company, in August, 1773, it was resolved to give over the business of banking from that date, and a committee was appointed with ample powers for winding up their affairs. At a meeting of this committee, in August, 1776, it was shown that the Company's losses amounted to £.70,000 beyond their subscribed capital; and it was then resolved, that every partner should be required to pay up his whole capital, and to advance a further sum of £.200 on each share of £.500; those who did not comply to be prosecuted. Action being brought against a partner for this effect, it was urged, that the meeting had no power to compel a contribution of this kind; that the Company was at an end, by the resolution of August, 1773; that even supposing it still existing, it is declared by a special clause in their contract, "That nothing therein contained shall import a power in any general meeting to compel any partner to pay any thing more to the Company stock than the precise sum by him subscribed." Answered, The Company was not dissolved by the resolution 1773, which extended only to their giving up their banking business on account of their insolvency; they appointed a committee, with the powers of a general meeting, to take all expedient measures for winding up the Company's affairs, and the powers of the Company remain still with this committee; that the present case does not fall under the above-recited clause of their contract; for there is no call made for an addition to the Company's stock, which is at an end, but for money to answer debts beyond what the stock can pay. The Court repelled the defences, and decerned for what remained unpaid of the capital, together with the additional sum required of £.200 towards payment of the Company's debts.

*Fol. Dic. v. 4. p. 295.** * * This case is No. 37. p. 14605. *voc* SOCIETY.1785. *November 18.*The CREDITORS of JOHN MACGHIE *against* JOHN TAIT.

No. 45.

A partner of a Company having paid the debts, can only be ranked on the estates of the other partners for a proportion of the

WHEN Douglas Heron and Company stopped payment, the solvent partners contributed £.286,000 to satisfy the most pressing creditors.

Afterwards, the estate of John Macghie, a member of this Company, having been sold judicially, Mr. Tait, as trustee for these contributing partners, claimed to be ranked on that estate for the whole sums advanced; and

Pleaded: The creditors of a Company are entitled to be ranked on the estate of every partner for the whole sums due to them, and to draw a rateable proportion

of the effects, provided they do not ultimately receive more than the Company owes; 26th July, 1776, Creditors of Carlisle *contra* Creditors of Dunlop, (not reported, see APPENDIX), 23d George III. C. 18.

The claimants here do not stand on a different footing. Their character of partners cannot take away the *jus crediti*, which payments, so far exceeding their share of the loss, have established in their favour. Nor is it possible to distinguish their situation from that of the creditors, who received the monies contributed, and from whom, if it were necessary, they can still require a formal assignment of all their rights.

Answered for Mr. Macghie's other creditors: The persons who advanced such large sums to save from immediate legal execution their own estates, as well as those of the other partners, are to be considered as trustees for the whole. In claiming retribution, more cannot be demanded by them from the bankrupt partners than from those who continue solvent.

The contrary method of proceeding would be attended with the most fatal consequences. For as each of the bankrupt partners could, in his turn, demand from every one of the *socii* the same sums for which his own estate has been attached, the whole members of the Company might, in this manner, be involved in one common ruin.

The Lords unanimously found, "That John Tait, trustee for the Duke of Queensberry and others, was only entitled to be ranked on the estate in question, for a proportion of the sums claimed by him, corresponding to the share of stock held by Mr. Macghie, the common debtor."

Lord Reporter, *Justice-Clerk*: Act. *Abercromby*. Alt. *A. Fergusson*. Clerk, *Orme*.

Fol. Dic. v. 4. p. 295. Fac. Coll. No. 234. p. 362.

SECT. X.

Have SOCII action IN SOLIDUM?

1672. January 9. MONTEITH *against* ANDERSON.

GEORGE MONTEITH, for himself, and as tutor to the children of his brother John Monteith, pursues Robert Anderson, factor in Camphier, for certain merchant goods sent over by them to be sold; and, for instructing thereof, produces

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sums advanced, corresponding to their respective shares.

No. 46.

Two persons consigned goods to a factor. They