No. 43. rule would greatly weaken the credit of Companies, as it is upon the confidence in the responsibility of the partners, and not in the stock of the Company, that their credit is generally supported.

Upon advising memorials, the Lords, on the grounds stated for Blaikie, " found, That the creditors of Ramsay, Smith, Graham, and Company, are entitled to rank on the private estates of the individuals partners of said Company along with the private creditors of such partners;" but ordered a hearing in presence as " to what extent: Whether to the full amount of their original debts, or only for the balance due after deduction of what they drew from the Company estate?" (decided in the case which follows.)

For the objectors, *Tait.* Alt. *Cullen.* Clerk, *Colquhoun.*

Fol. Dic. v. 4. *p.* 293. *Fac. Coll. No.* 216. *p.* 509

1796. *November* 18.

CHARLES CAMPBELL, Trustee for the Creditors of Thomas Houston and Others, *against* FRANCIS BLAIKIE, Trustee for the Creditors of Ramsay, Smith, Graham, and Company, both as a Company and as individuals.

No. 44.
The creditors of a company are entitled to rank on the private estates of the partners, in competition with their creditors as individuals, only for the balance remaining due to them after exhausting the funds of the company; and, if the competition arise before the amount of the latter be ascertained, the company creditors are entitled to have dividends set apart for them, in the mean time, corresponding to the whole sums due to them.

THE estates of Ramsay, Smith, Graham, and Company, as a Company, and those of the individual partners, were sequestrated, on the 30th December, 1793.

In a competition which arose between the creditors of the company and those of the individuals, the Court (19th May, 1796, No. 43. *supra*) ordered a hearing on the general point, Whether company creditors are entitled to rank on the private estates of the partners to the full amount of their original debts, or only for the balance due after deduction of what they draw from the company estate?

The private creditors

Pleaded: At common law, no creditor can rank twice *in solidum* on the estate of the same debtor, whatever may be the number of his securities over it; 12th July, 1769, Creditors of Auchinbreck, No. 34. p. 14131. *voce* RIGHT IN SECURITY; 2d August, 1781, Douglas, Heron, and Company, against the Bank of England, No. 35. p. 14131. IBIDEM; 24th February, 1780, Tait and others against Sir James Cockburn, No. 21. p. 14110. IBIDEM. Now, the partners of a company are proprietors *pro indiviso* of its stock, in the same manner as they have a separate right of property in their separate fortunes; and the company creditors being preferable on its stock, they, like every other creditor having a preferable security, can only be entitled to rank on the property of their debtor for the balance remaining due to them after exhausting the subject on which they have a preferable claim; 4th July, 1776, Dunlop against Speirs, No. 42. p. 14610.; 1787, Chalmers, Leslie, and Seton, against the Creditors of Chalmers. See APPENDIX.

Nor is the question altered by the bankrupt statutes. The act 1772 made no provision on the subject; but, before the act 1783 was passed, the decisions of

Dunlop and Chalmers had fixed the rule, at common law, to be as already mentioned. It being, however, thought expedient, in order to support the credit of mercantile companies, that their creditors should be entitled to rank *in solidum*, both on the estates of the company, and those of the partners, the act 1783 contained a special clause to that purpose. This enactment was afterwards found to bear hard on the private creditors of the partners; and the act 1793, as framed at first, contained an express clause, declaring company-creditors entitled to rank on the private estates of the partners only for the balance remaining due to them after the funds of the company are exhausted; but, from the state of mercantile credit at that time, it was thought proper to omit this clause, and leave the question to be regulated by common law. No. 44.

Answered: Wherever there are *correi debendi*, the creditor is entitled to rank *in solidum* upon the estate of each. But a company is, in law, considered as an *universitas* or corporation, distinct from the partners who compose it; and it is upon this ground alone that the company-creditors are preferable on its funds. It is a mistake to suppose, that the partners have a right of property in the stock. They have merely a *jus crediti* against the company for their share of the residue after the copartnership debts are paid; and it is only from the implied obligation of the partners to guarantee its solvency that they are at all liable for its debts.

Observed on the Bench: An heritable creditor, after exhausting the subject of his preference, can only rank for the balance on the other property of his debtor. The same principle must regulate the present case.

The partners of a company come under an implied obligation to the public, that the stock of the company shall be equal to their dealings, *socio nomine*, and their private estates are liable only for the deficiency. The cases of Dunlop and Chalmers are precisely in point, and founded in material justice and expediency.

The Court, almost unanimously, found, "That the creditors of Ramsay, Smith, Graham, and Company, can only be ranked on the private estates of the partners for the balance remaining due, after deducting what they shall have drawn, or may draw, from the estate of the Company."

Francis Blaikie then presented a petition, in which he stated, that the creditors of the Company had already received a dividend of 3s. a-pound; but that, from the Company having some foreign debts due to them, it might be a considerable time before the amount of their funds could be ascertained; and therefore, as the private funds of the partners were ready for immediate division, he proposed that the creditors of the Company should be considered as having a contingent claim for the balance due to them, and dividends be set apart accordingly, which might be afterwards reduced, according to the future dividends from the company-estate.

"The Lords (30th November, 1796,) having advised this petition, they find, That the petitioner falls to consider the claims of the creditors of Ramsay, Smith,

No. 44. Graham, and Company, as a company, on the estates of the individual partners, merely as contingent ones; and ordain him, agreeably to the 38th section of the bankrupt statute, passed in the 33d of his Majesty's reign, to deposit a sum equal to the interim dividends which he is about to pay from the private estates, corresponding to the balance of the company-debts, after deduction of 3s. *per* pound already paid; and afterwards to reduce the sum deposited from time to time, in proportion to the dividends to be made from the company-estate, until the whole be finished, so as thereby to ascertain the exact amount of the ultimate claim of the company-creditors on the individual estates."

Reporter, *Lord Probationer Cullen.* For the private Creditors, *Tait.*
Alt. *H. Erskine.* Clerk, *Colquhoun.*

D. D. *Fol. Dic. v. 4. p. 294. Fac. Coll. No. 2. p. 4.*

1804. *January* 24. MONACH'S CREDITORS *against* The TRUSTEE.

No. 45.
Furnishers of goods to an individual who carried on business in this country, apparently in his own name alone, but in connection with others, whom he called his partners, abroad, how entitled to claim, in the event of his bankruptcy?

ANDREW MONACH having carried on business, on his own account, as a merchant in Glasgow, for several years, sent out two of his clerks, George Scott and John Don, the one to New York, the other to Charleston, for the purpose of carrying on his business more extensively. While the concern in America was managed under the firms of George Scott and Co. and John Don and Co. the business of the first, in this country, was carried on in the name of Monach and Co. and of the other in Monach's name alone. By him all purchases were made, and goods sent out, without his taking any commission from the partners, who furnished no part of the common stock.

Having become embarrassed in his circumstances, Monach applied for, and obtained, a sequestration of his estate, which was (25th June, 1800) awarded against him individually and against Monach and Company.

The estate of Monach and Don was also sequestrated.

The trustees proceeded to rank the creditors according as they appeared to belong to the respective estates of Monach or of the copartnerships, as follows:

	FUNDS.	DEBTS DUE.
John Don and Company,	£. 2750 0 0	£. 1305 16 6
George Scott and Company,	12020 0 0	4632 13 4
Monach alone,	3617 7 3	11684 5 11
	£. 18387 7 3	£. 17622 15 9

On the other hand, Messrs. Henshaw, Barker, and Company, and other creditors, petitioned the Court, complaining of this mode of ranking, as they contended that the copartnerships were entirely fictitious, or rather unfair companies, and that the classing of the creditors was an arbitrary act of Monach, to give a preference to favourite creditors, who will draw the full amount of their