

dent submits, that he has not exceeded the proper bounds of chastisement conceded to all schoolmasters; and therefore his appointment, being in its nature one for life, he cannot be removed at the pleasure of the magistrates, without some more justifiable cause than has yet been established,

1772.

CHEAP, &c.
v.
AITON, &c.

After hearing counsel, it was

Ordered and adjudged, that the interlocutors complained of be reversed.

For Appellants, *Ja. Montgomery, Henry Dundas, John Dalrymple.*

For Respondent, *Andrew Crosbie, James Boswell.*

JAMES CHEAP of Leith, and Others, Executors of THOMAS CHEAP, late Merchant in Lon- don, deceased, - - - - -	} <i>Appellants ;</i>
ANDREW AITON and Company, Merchants, Glasgow, - - - - -	
	} <i>Respondents.</i>

House of Lords, 11th December 1772.

DISSOLUTION OF COPARTNERY—LIABILITY OF REPRESENTATIVES OF A DECEASED PARTNER, FOR GOODS ORDERED IN COMPANY'S NAME BY ONE OF THE PARTNERS, IN ALLEGED IGNORANCE OF HIS DEATH.
—Circumstances where representatives of a deceased partner not held liable for goods so ordered, and furnished after the death was known to the sellers. Reversing the judgment of the Court of Session.

The company of Messrs. Adair and Cheap, merchants in London, was dissolved by Thomas Cheap's death, who was killed in the expedition to Bellisle, in April 1761, and the account of his death published in the London newspapers of 23d May 1761.

His partner Adair had, on the 26th March previously, ordered by letter, signed in the social name of "Adair and Cheap," a considerable quantity of lawns and other goods, from the respondents, to which they answered on the 1st April; "The clear lawns you order, shall be sent as soon as we have them from the bleaching," and addressed their letter to Messrs. Adair and Cheap.

On the 21st May, Mr. Adair gave a second order, in the name of "Adair and Cheap," he then being ignorant of the death of his partner.

1761.

1772. On the 10th June 1761, after the death of Thomas Cheap
 was published, a considerable part of the goods were sent,
 which were ordered by the letters both of 26th March and
 21st May 1761, amounting to £250. 13s. In the invoice
 sent along with these, they appeared invoiced to Charles
 Adair alone, and not to "Adair and Cheap," as follows:
 "Mr. Charles Adair, bought of Aiton, Blackburn, and Col-
 vill;" and on the margin, where the direction marks are put,
 "C. Adair, London, pd. to N^c." And on the 22d July 1761
 the remainder were sent in the same manner, amounting in
 value to £41. 9s. 10 $\frac{1}{4}$ d.

Sometime thereafter Charles Adair became bankrupt, and
 the respondents ranked on his estate for their whole debt,
 including both goods previously sent, as well as the goods
 sent by the orders of 26th March and 21st May 1761.

They afterwards raised the present action for the balance
 (£389. 7s. 4d.) against the representatives of Thomas Cheap,
 the appellants. In defence, it was stated, that they were
 not liable for the goods ordered by Charles Adair of 26th
 March and 21st May 1761, and furnished on 10th June and
 22d July thereafter, when by that time the respondents
 were acquainted with the death of Thomas Cheap, because
 the partnership was then known by them to be dissolved;
 and they, in evidence of this, had invoiced these goods,
not to the firm of "Adair and Cheap;" but to Charles Adair
 alone. The question thus came to be, Whether the appel-
 lants, as representatives of Thomas Cheap, were liable for
 the value of the goods ordered on 26th March and 21st
 May?

July 5, 1768. The Lord Ordinary pronounced this interlocutor: Find
 "the defenders (appellants) liable to pay the pursuers the
 "price of the goods commissioned on the 26th March 1761,
 "and sent by them on the 10th June thereafter; but found
 "that they are not liable for the price of the goods commis-
 "sioned on the 21st May, and sent by the pursuers on the
 "22d July said year."

Both parties represented against this interlocutor. And,
 in the meantime, the appellants having admitted that a cer-
 tain balance was due, the respondents insisted on an interim
 decree for that admitted sum, which was obtained of this
 Aug. 4, — date. Against this a representation was also lodged.

Nov. 26, — Thereafter the Lord Ordinary pronounced this interlo-
 cutor, finding "The defenders liable to pay to the pursuers
 "the price of the goods commissioned on 26th March 1761,

“ whether sent in June or July thereafter, but found them
 “ liable in no part of the goods commissioned on 21st May
 “ 1761, and refused the desire of the defenders’ representa-
 “ tion, reclaiming against the said interlocutor of 4th August
 “ 1768, and adhered thereto.”

1772.

CHEAP, &c.
 v.
 AITON, &c.

Reclaiming petitions being lodged by both parties, the
 whole Lords “ adhered to the Lord Ordinary’s interlo-
 “ cutor reclaimed against, so far as they find the defenders
 “ liable to pay the pursuers (respondents) the price of the
 “ goods commissioned on 26th March 1761, with interest
 “ from and after year and day after the date of the furnish-
 “ ing thereof, till payment; and further find the defenders
 “ (appellants) liable also to pay to the pursuers (respondents)
 “ the price of the goods commissioned on the 21st of May
 “ 1761, with interest from and after year and day after the
 “ date of the furnishing thereof, till the payment, and de-
 “ cerned.” Against this interlocutor three reclaiming peti-
 tions were presented and refused.

Mar. 2, 1769.

Mar. 11, 1769.

Feb. 1, 1770.

Feb. 21, —

Against these interlocutors the present appeal was brought.*

It was

Ordered and adjudged that the aforesaid interlocutor of
 the 4th August 1768, and so much of the subsequent
 interlocutors as adhere to the same, be, and the same
 are hereby affirmed; and that the whole other inter-
 locutors, as well of the Lord Ordinary as of the whole
 Lords of Session, in so far as respects the other points
 in the cause, be, and the same are hereby reversed.
 Reserving to the respondents, the said Aiton and Com-
 pany, their relief, and all claims and demands competent
 to them, from or out of the estate of Charles Adair,
 in the said petition of appeal mentioned.

For Appellants, *Al. Wedderburn, R. Perryn.*

For Respondents, *E. Thurlow, Thos. Lockhart.*

* The argument is well reported in Morison 14,573.