

No. 14.  
freighted her  
on a dan-  
gerous voy-  
age without  
the consent  
of the other  
partner, and  
ship being  
lost, he was  
not found lia-  
ble to his  
partner in her  
value.

he had freighted the bark to Zetland five or six years ago with the Laird of Bawhillie, and in-put therein a sufficient skipper; but that the bark had never been heard of since, and that Bawhillie who was therein, was holden and reputed perished, and his son entered heir to him. It was replied, That both parties being partners in the bark, it was an unwarrantable deed for Abernethy, without consent of his party, to in-put a skipper; for, if the partner had been advised with, he might have refused, either upon the account of the danger of the voyage, or insufficiency of the skipper.

The Lords found Abernethy's defence relevant, and that albeit he could not unwarrantably freight the ship without consent, yet being done, it could not import the making up of the bark, which had perished by accident, seeing it was offered to be proven the skipper was sufficient, and had gone greater voyages.

*Fol. Dic. v. 2. p. 376. Stair, v. 2. p. 218.*

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1697. December 30. THOMAS LOGY *against* ADOLPHUS DURHAM.

No. 15.  
A company  
found liable  
for goods  
bought by a  
partner, al-  
though the  
seller did not  
know of the  
copartner-  
ship, and the  
other partner  
had settled  
with the pur-  
chaser for  
them.

I reported Thomas Logy, merchant in Edinburgh, against Adolphus Durham, clerk to the custom-house at Leith. Thomas sold James Moncrieff five hogsheads of wine. Moncrieff being now broke, Logy pursues Adolphus, as he who was in society and copartnery with James *quoad* these wines, and offers to prove it by his own account-books; which being inspected, it appeared that James and Adolphus were in a copartnery at the time of buying of these wines, and these very individual hogsheads were brought into the society and divided betwixt them, and that they are posted down as bought from Thomas Logy *nominatim*; but Adolphus does not state himself debtor therein to Logy, but to James Moncrieff; and what he was debtor in to James Moncrieff, in another part of the book, is balanced as cleared and paid off. From this abstract of the accounts, Logy argued, You knew the wines to be mine; you share them, and bring them as a part of the subject of your joint trade; you was *in mala fide* to pay Moncrieff till he had shewed you my discharge, exonerating the society of this debt; and you should have retained for my payment. Answered, 1<sup>st</sup>, Adolphus Durham had no negotiation with you: These wines were sold by you to James Moncrieff, whose faith only you followed, not so much as knowing we were in a copartnery, and whatever is done *extra fines societatis* does not bind the *socii*. The Lords argued, If Thomas had bought from James Moncrieff any goods that were *in communione*, an action would then have arisen to Adolphus for the price, albeit the other only made the bargain; *ergo, a pari*, Thomas must have access against him; and therefore found his account-book proved they were in a copartnery *quoad* these wines, and made them both liable. But Adolphus contending the debt was prescribed, being in 1683, and so not being insisted in within three years, the prescription of merchant-accounts within that time run against it; answered, The prescription is sufficiently interrupted by your own

book, where these wines are posted as mine; and though it prove not *pro scribe*, yet it is good enough against him. Replied, If you make use of my book, you must take it complexly, and not divide it; for by it the wines are only to James Moncrieff's account, and I only constitute myself debtor to him for the same, and your name is only inserted *designative* to distinguish them from other wines. The Lords found the account-book did not prove them to be yet resting owing, but that Logy must prove it *aliunde, scripto vel juramento* of Durham. The third point was, if he could be convened *in solidum*, or only *pro rata* with James Moncrieff, deducting his share. The Lords found him liable *in solidum ex natura societatis*.

*Fol. Dic. v. 2. p. 376. Fountainhall, v. 1. p. 806.*

No. 15.

1728. November.

LUMSDEN. against GORDON.

THE point in debate was, Whether one in a society submitting to arbiters for himself and Company their joint affairs, can bind thereby the Company? It was objected, That indeed one partner can bind the whole with relation to every deed of ordinary administration; that is, such deeds which tend directly to the advancement of their joint concerns, and without which their business cannot be expedited; but a submission is no such deed, for that lies entirely out of the common course of their trade? and therefore a power of submitting for the society, is never understood to be communicated to the partners, since matters may be happily carried on without the supposition of any such power. The Lords found the submission of one partner does not bind the Company. See APPENDIX.

*Fol. Dic. v. 2. p. 376.*

No. 16.

1747. June 12.

JOHN KER against JOHN BRYSON.

JOHN BRYSON, and Robert Bousie, merchants in Edinburgh, made up between them a cargo to be exported on their joint account, by furnishing each their share of the goods, and by purchasing an additional quantity from Robert Ker, merchant in Paisley, on their conjunct bill, 1st April, 1728, for £.36 Sterling, payable six months after date. Afterwards they made up another cargo, by Bryson's furnishing his share as before, and Bousie's taking from Ker to the value of £.95, 28th September, 1728, for which he imagining both were to be bound, and not being undeceived by Bousie, drew upon them both, which Bryson refused to accept.

Bryson and Bousie, 2d October, 1728, wrote to Ker, excusing the not punctual payment of the first bill, and added two postscripts by Bousie, in these words:—  
“ Sir, I have accepted the bill myself, because Mr. Bryson purchased as much value from one of his own acquaintance, and this is to keep clear accounts betwixt

No. 17.

Two merchants purchased goods, for which they granted a joint bill, and exported them. Intending afterwards to export another joint cargo, this they severally purchased. One of them