

1757. December 14.

STEVENSON and other Partners of the Rope-Work at Port-Glasgow, against
ROBERT M'NAIR and Others, Merchants in Glasgow.

IN order to advance the fishing trade at the mouth of the Clyde and through the Western Isles, certain persons, 40 in number, entered into a private society, known by the name of the Arran-fishing Company. It was agreed that each subscriber should pay £.50 Sterling, which made a capital stock of £.2,000; and directors and overseers were named for prosecuting the purposes of the contract.

The partners of the rope-work at Port-Glasgow, creditors to the Company in certain furnishings, brought a process for payment, not against the Company in general, but against two or three of the subscribers who were monied men; being advised that all and each of the partners were conjunctly and severally liable. The defence was, That the directors could not, by contracting debt, subject any of their partners beyond the sums severally subscribed by them; and that the defenders having paid into the Company the whole sums subscribed by them, they are no farther liable. The pursuers, furnishing to the Company, followed the faith of the Company, and must betake themselves to the Company's stock for their payment. The Lord Ordinary, having repelled the defence, and found the defenders liable, conjunctly and severally, the interlocutor was unanimously altered, and the defence sustained upon the following grounds: There is an obvious difference betwixt the present case, and a Company trading without relation to a stock. In the latter case, each partner must be liable *in solidum* to the Company's debts; for there is nothing here to limit the credit; and if a partner be liable at all, he must be liable *in solidum*. In the present case, the managers are liable for the debt they contract, and each partner is liable to make good his subscription. But upon what medium can he be made farther liable? Not upon the common law; for he neither contracted the debt himself, nor gave authority to contract beyond his stock. The very meaning of confining the trade to a joint stock, is, that each should be liable for what he subscribes, and no farther. This is the very reason why joint proprietors of ships are never subjected beyond the value of the ship. With respect to equity, Grotius justly observes, L. 2. Cap. 11. § 13. that it is not expedient to make partners farther liable, because it would deter every one from entering into a trading Company. To show the inexpediency, and even the absurdity of making each partner liable for the whole debts of a Company having a joint stock, consider only the Whale-fishing Company, composed of a vast number of partners for the subscription of £.35 each. According to the interlocutor pronounced by the Lord Ordinary, any one partner, loaded with the whole debts of the Company, might be crushed to atoms in a moment.

Sel. Dec. No. 135. p. 191.

* * * The report of this case, as in the Faculty Collection, is No. 9. p. 14560.

voce SOCIETY.

No. 43.

In a Company having a joint stock made up by the subscription of the partners, no partner is bound beyond his subscription.