decision given very lately in the question between Annan and Colquhoun and Mrs. Scot, relative to a share held by James Scot in the Leith Ropery Company.

No. 21.

The suspender at no time ever acted openly as a partner; and it is believed, that it was only known by a few that he had any interest or concern in the company. But the contract of copartnership was, no doubt, available to subject him to all the debts of the company, even although his concern was unknown to the creditors with whom the company contracted; and if a latent contract, remaining in the partners' own hands, published in no record, nor in any other form, was sufficient to subject the suspender to the whole debts of the company, while he remained a partner, his renunciation, accepted of by the company, and entered in the books of the company, and to which every person had as much access as to the contract, must, upon the most established principles of the law of Scotland, be available to relieve the suspender of all debts that were contracted by the company subsequent to his ceasing to be a partner. *Lastly*, There was not the least occasion for altering the firm. The firm which was assumed at the beginning, and was all along continued to be used, was most properly applicable to the two acting partners, and to none else.

The Court adhered to the Lord Ordinary's interlocutor, " suspending the letters *simpliciter*."

Act. *Maclaurin*. Alt. *Macqueen*. Clerk, *Ross*.

Fol. Dic. v. 4. *p.* 286. *Fac. Coll. No.* 140. *p.* 367.

1776. *February* 15.

BLAIR of Dunskey *against* DOUGLAS, HERON, and COMPANY.

No. 22.

ONE of the articles in the contract of copartnership of Douglas, Heron, and Co. was, " That, in the event of the death or insolvency of any partner, his heirs or creditors should be obliged to receive his share in the stock and profits, as it should stand at the last preceding settlement of the company's affairs, with interest thereon till payment." And another article provides, " That the company's books shall be brought to a balance once every year." Blair of Dunskey, one of the partners, having died, in October, 1772, his executor brought action for payment of his two shares of the stock, and profits due on it, as at the last preceding settlement, viz. November, 1771; by which means the executor hoped to avoid the loss from the supervening bankruptcy of the company, which happened soon after Mr. Blair's death. Urged in defence, 1*mo*, The first article above mentioned imports only a stipulation in favour of the company: It obliged the executors and creditors of a deceased partner to *receive*, but did not oblige the company itself to *pay*, according to the last balance. 2*do*, Supposing a mutual obligation, it could be made effectual only out of the stock and profits of the company, not out of the private estates of the partners; and the stock and profits were annihilated. In June, 1772, before the death of Mr. Blair, the company, as the last resource of their expiring

No. 22.

credit, had raised a large sum by annuities; and the company was then considered as on its death-bed. Answered, on the first head, That as, in the event of the company having gained profits posterior to the settlement in November, 1771, Mr. Blair's executors would have had no right to any share of such profits; so, on the other hand, the company having incurred loss since that period, they cannot suffer from such loss. Answered, on the second head, That though the company's credit was for a short time suspended, they were not bankrupt till August, 1773; they were bound by their articles of copartnership till that period; these articles fix the interest of the deceased partner in the company's stock and profits as it stood in November, 1771; and at that time there was sufficient stock and profit to divide. The Lords, on a hearing in presence, found, That as it is asserted by the defenders, and not denied by the pursuers, that betwixt the balancing of the company's books in November, 1771, and Mr. Blair's death, the said company became totally insolvent, therefore the defenders are not accountable to the pursuer for the value of the deceased partner's share, as at the balancing of their books in November, 1771. See APPENDIX.

Fol. Dic. v. 4. p. 290.

*** This judgment was affirmed, on appeal to the House of Lords, April 30, 1777.

SECT. VII.

Effect of the Insolvency of a Partner.

1749. *July* 12.
PATERSON and COCHRAN his Creditor-arrester, *against* GRANT and KEITH.

No. 23.
Insolvency of a partner does not exclude him from a proportion of the profits.

WHERE a sale is made to a bankrupt, who fraudulently induced the seller to sell, the seller prevailing to be free of the bargain, the obligation on the buyer becomes also extinct. But where partners buy, though one of them happens to be at the time insolvent, they cannot get free of the bargain; and the property being vested in the whole partners, the insolvent partner cannot be deprived of his share of the profits; and all that the other partners can do, is to apply to the Judge Ordinary, in respect of their partner's bankruptcy or insolvency, to have his share exposed to sale.

And, accordingly, the Lords varied the interlocutor of an Ordinary, who had " Found it relevant to assoilzie Grant and Keith, partners with Paterson, in a pur-