in question is held in trust for a society of persons who contributed their money for purchasing the ground, and building, repairing, and upholding, the house or houses thereon, under the name of the Associate Congregation of Perth; and so far repel the defences against the declarator, at the instance of Matthew Davidson and others; and find, That the management must be in the majority, in point of interest, of the persons above described; and, before further answer in the cause, remit to the Lord Ordinary to ascertain what persons are entitled to be upon the list of contributors aforesaid, and whether the majority aforesaid stands upon the one side or the other; and thereafter to do as to his Lordship shall seem just." No. 29.

A reclaiming petition against this interlocutor was presented by the defenders; upon advising which, with answers, the Court (1st November, 1804) altered their interlocutor, and found, "That the property of the subjects in question is held in trust for a society of persons who contributed their money, either by specific subscriptions, or by contributions at the church-door, for purchasing the ground, and building, repairing, and upholding, the house or houses thereon, or for paying off the debt contracted for these purposes; such persons always, by themselves, or along with others joining with them, forming a congregation of Christians, continuing in communion with, and subject to, the ecclesiastical discipline of a body of dissenting Protestants, calling themselves the Associate Presbytery and Synod of Burgher Seceders; and remit to the Lord Ordinary to proceed accordingly."

Against this interlocutor, a reclaiming petition was presented by the pursuers, which was followed with answers.

Counsel were heard in presence.

The Court, by the narrowest possible majority, adhered to their last interlocutor.

Lord Ordinary, *Armadale*. For the Pursuers, *Solicitor-General Blair, W. Erskine, Thomson*. Agent, *R. Sym, W. S.* For the Defenders, *Erskine, Robertson, Hamilton, Bruce, Maconochie, Jardine*. Agent, *M. Linning, W. S.* Clerk *Ferrier*.

J. *Fac. Coll. No.* 216. *p.* 481.

1799. *June* 25.

JAMES BUCHANAN *against* MICHAEL MUIRHEAD and Others.

No. 30.
A clause in the contract of a mercantile company constituted for twenty-one years, by which all disputes which should arise among the

ROBERT CORSE, Michael Muirhead, and others, entered into a contract of copartnership for foreign trade and insurance, for twenty-one years, from May, 1795.

By a clause in the contract, it was agreed, that all disputes relating to the affairs of the company, which should arise among the partners or their representatives, ("unless submitted to other arbiters named by the parties,") shall be and are "hereby referred to the final determination of the chairman, deputy-chairman, and secretary, for the time being, of the Chamber of Commerce and Manufactures of the City of Glasgow, or any two of them."

No. 30. partners, or their representatives, relating to the affairs of the company, were submitted to the final determination of the chairman, deputy-chairman, and secretary of the Chamber of Commerce of Glasgow, or any two of them, for the time being, unless special arbiters should be agreed on, found not to be obligatory.

On the death of Robert Corse, a dispute, with regard to his share of the stock, arose between James Buchanan, his executor, and the surviving partners of the company; on account of which he brought an action against them before the Court of Session.

As a preliminary defence, they

Pleaded: The present action is precluded by the clause in the contract, which creates not merely an obligation to enter into a submission, but an actual reference to persons who, from their situations, must be the best judges of the questions likely to occur among the partners. Courts of justice frequently find it necessary to remit such questions to merchants; and while clauses like the present are highly expedient in themselves, there seems no principle for refusing effect to them more than to any other in the contract of copartnership.

Answered: Although, *ex figura verborum*, the contract contains an actual reference, it in reality resolves into a resolution or promise to enter into one. For a dispute cannot be referred till it occur. The reference in the contract was to take place only in case other arbiters were not named by the parties; and the officers of the Chamber of Commerce could not decide any existing dispute without a special submission. Such promises *de futuro* are often intered into without consideration, and are not sustained by the Court; 5th June, 1790, Gordon and Davidson against Keith, (not reported.) See APPENDIX.

As the office-bearers of the Chamber of Commerce are chosen annually, there could be no *dilectus personæ* in their appointment as arbiters. They may often be particularly connected with one of the parties. And as they may decline, it should likewise be optional to all concerned to pass from the reference when a particular dispute occurs.

It is even *contra bonos mores* for parties to tie themselves up from having recourse to the established courts of justice, which indeed, if such clauses are supported, might be in a great measure superseded by the Chamber of Commerce, and a new jurisdiction created, which would be neither constitutional nor expedient.

It was farther mentioned, as a specialty, that the secretary to the Chamber of Commerce, for the time, was trustee on a bankrupt estate, where a question similar to the present, on the merits, was in dependence.

The Lord Ordinary reported the cause on informations.

Observed on the Bench: The case does not hinge upon the supposed difference between an obligation to enter into submission and an actual reference. The difficulty in supporting the plea of the defender arises from the reference being not to an individual, but to a description of persons who, as well as the point to be decided, must necessarily have been indefinite at the date of the contract. The reference might as well have been to the whole Chamber of Commerce. Supporting such clauses would virtually create a new court. The specialty in the present case, which, or the like, must frequently occur, confirms the general objection;

see case of Miln against Magistrates of Edinburgh, determined in the House of Lords, 15th February, 1770, (not reported.) See APPENDIX. No. 30.

The Lords unanimously repelled the defence.

Lord Ordinary, *Stonefield.* Act. *Davidson.* Alt. *Ar. Campbell.* Clerk, *Sinclair.*

D. D. *Fac. Coll. No.* 134. *p.* 305.

SECT. IX.

Dissolution of a Society must be notified.

1791. *May* 24. DALGLEISH and FLEMING *against* SORLEY. No. 31.

SORLEY and Whyte, by mutual missives, in December, 1788, entered into a copartnership for carrying on a button manufactory, under the firm of Whyte and Company, of which Whyte was to be the sole manager and hirer of the workmen. It was stipulated, that the copartnership should last till the 1st January, 1790, and that Whyte should accept no bills under the company's firm without the express consent of Sorley. Whyte continued to carry on the business, in Edinburgh, as usual, after the 1st of January, though Sorley, who lived at Glasgow, alleged it was without his knowledge; and, on the 6th of March, the latter caused notification to be given, in the Edinburgh newspapers, that the company was dissolved; but, on the 9th January, Whyte had drawn bills, under the company's firm, on Dalgleish and Fleming, which they had accepted, and had given them a letter, obliging the company to relieve them of these acceptances. The acceptors having paid the bills, brought action on this obligation against Sorley, as a partner of Whyte and Company. Urged in defence, That the company was dissolved on the 1st of January. The Lords were of opinion, that a company cannot be dissolved by private stipulation of the partners, without a public notification; and, until that is made, an acting partner has a power to bind the company, notwithstanding any private and latent agreement to the contrary; and they therefore found Sorley liable. See APPENDIX.

Fol. Dic. v. 4. *p.* 286.