

it was particularly questioned, whether it was a *corpus* subject to arrestment, or only a right or claim, which is neither the subject of detention nor custody, and consequently not affectable by that diligence.

This last, which was the argument urged against the arresters, was thus answered. A partner's stock is a proper *jus crediti*, which he purchases with his money that goes into the company's stock, similar to a bond of borrowed money purchased with a sum, the property of which is transferred to the debtor; differing only in the following particular, that, instead of a certain yearly profit, the profits are casual, depending on the success of the company-trade. That the company is the debtor; for a proper action lies against the company, at the instance of every partner, to make his stock effectual, whether by accounting for the profits, or by delivering to him a proportion of the company's stock. Were not the company debtor to each particular partner, no action could lie against the company *communi dividundo*; nor an action to account for profits, but only against the intrmitters with the company's stock and profits. Hence it was inferred, that a partner's stock, being properly a company-debt, is arrestable, and may be ordained to be detained by the company till called for in an action of forthcoming. The Lords, considering that a right of partnership after a partner's death may be confirmed, to the end of pursuing a division of the company's effects, were of opinion, That an arrestment, with a decree of forthcoming, will carry every subject which can be confirmed, and found accordingly. But here it was not understood, that an arrestment can carry a right of partnership to any other effect than to pursue a division. The court was not of opinion, that an arrester is entitled to be a partner in place of his debtor. Hence it may be inferred, that an arrestment of a partner's stock will not carry the benefit of any new adventure begun after the date of the arrestment.

Fol. Dic. v. 4. p. 285. C. Home. Rem. Dec. Kilkerran.

* * This case is No. 52. p. 716. *voce* ARRESTMENT.

SECT. V.

How far a Partner can bind the Society?

1673. July 22.

SWYNE against ABERNETHY

THERE being a bark belonging to John Swyne and William Abernethy, John pursues for the half of the value of the bark. It was alleged for Abernethy, that

No. 14.

A partner in a ship having

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.

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, 1st, 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