

No. 24.

any fitted account made by the rest of the copartners ; but the pursuer ought to count with them *de novo, quia in societate potior est conditio prohibentis*. It was replied, That, by the contract of society, they were all bound to assist at the making of accounts, and they being required, ought not (after the fitting of the accounts with the whole rest of the copartners) force the pursuer to make a new account, now after so many years, and when many instructions might be out of the way. The Lords, having considered the contract of copartnership, as likewise that it was the defenders' own fault that they were not present at the fitting of accounts, did find, That Sir William was not liable to make a new account ; and only ordained them to exhibit the account made, to see if they had any just reason to quarrel any of the articles thereof ; otherwise, that they should immediately grant discharge, upon payment of their proportions.

Gosford MS. No. 824. p. 519.

1725. February 2.

ALEXANDER LOGIE, Land-waiter in Aberdeen, *against* WILLIAM GORDON, Collector, and other Officers of the Customs there.

No. 25.

Found, that the majority have power to dissolve a society.

THE officers of the customs at the port of Aberdeen entered into a contract, touching the communication of seizures made by any one of them to the whole ; in which, amongst other things, it was provided, " That the society should continue, so long as they or any of them continued in office at that port ; that is to say, upon the death or removal of any one or more of them, the concert was not to break up, but stand good amongst the rest, for their full respective shares of the profits, and proportion of the loss or charges : But the successor or successors of such as should drop were not to be admitted thereinto, without the express consent of the majority remaining in office.

After the society had continued for some time, the defenders, who were a majority, resiled, and made due and lawful intimation of their renouncing and departing therefrom. Upon which Mr. Logie insisted in an action, for obliging them to observe the contract, and remain in society, upon the following ground : That a contract of society entered into for life, or any shorter, though indefinite time, could not be revoked or departed from at the pleasure of parties, if the contrary was expressly covenanted ; and, in the present case, it was agreed, that they should remain in society as long as any of them continued in office at that port ; so that, though a majority should have been removed, yet the society was to subsist amongst the rest : And the only power granted to the majority, in relation to the fundamental constitution, was as to the admission of successors to such as should drop ; and therefore it could not be further extended, because *casus omissus, pro consulto omissio habendus*.

It was answered : That though, by the contract, the society was constituted for so long a time as the *socii* should remain in their office at that port, yet, since there

was no express obligation on them that they should not renounce, the common and known rules of society must take place, which favour natural liberty, *et nemo invitatus tenetur manere in societate*; and as the majority had a power to continue the society, or rather constitute a new one, they certainly could act in matters consequential and agreeable to the nature of societies; namely, to terminate the same at their pleasure.

No. 25.

The Lords found, That the major part of the *socii* might dissolve the society, and that the same did become void after the date of the intimation of the dissolution thereof, in respect there was no obligation in the contract to continue in the society, and not to renounce the same.

Act. *Alex. Garden.* Alt. *Will. Grant.* Reporter, *Lord Milton.* Justice Clerk.
Edgar, p. 161.

1771. November 15.

LUDOVICK GRANT, Trustee for Fairholm's Creditors, *against* GEORGE CHALMERS, Merchant in Edinburgh.

No. 26.

THOMAS FAIRHOLM, senior, and Adam his nephew, carried on trade under the firm of *Thomas and Adam Fairholms*; which concern expired in the year 1751.

Powers of management vested in the acting and surviving partner of a company.

In the year 1754, Adam and Thomas Fairholms carried on trade in company with Robert Malcolm, under the firm of *Fairholms and Malcolm*.

This company being dissolved in 1760, the brothers carried on trade under the firm of *Adam and Thomas Fairholms*. Thomas was entrusted with uplifting the debts due to Fairholms and Malcolm; and did so for several years.

Adam and Thomas Fairholms having, in the year 1764, become bankrupt, they executed a disposition of all their estate to Ludovick Grant, and others, in trust, for behoof of their creditors.

George Chalmers was debtor to Fairholm and Malcolm, the second company, in upwards of £.700 by a promissory note; and in 1770 Thomas Fairholm, under the firm of Fairholms and Malcolm, granted an assignation to this debt in favour of Ludovick Grant, as trustee for Fairholm's creditors.

Grant having brought an action against Chalmers, the defence upon the merits was a plea of compensation on account of certain claims he had against the first company of Thomas and Adam Fairholms, but *in limine* he objected to the pursuer's title, and stated, That as the promissory notes had been granted to the company of Fairholms and Malcolm, it was not in the power of Thomas Fairholm, one only of the partners, to convey, after the dissolution of the company, the debts due to the company for the payment of the debts of another company; more especially as Thomas Fairholm was bankrupt when he granted the assignation.

The question having been reported to the Court,
The pursuer pleaded: