

No. 25. 1752, Jan. 16. DUNLOP *against* CRUICKSHANK, &c.

WILLIAM FORBES, merchant in Aberdeen, and William Cruickshank, in Company, commissioned Dunlop at Rotterdam to send them some lawns; and the letters on the subject were sometimes signed by both, sometimes only by Forbes, and in a post or two after their last letter Forbes wrote him, referring to it and commissioning a parcel of spirits, rum, geneva, and brandy, and gave him great reason to believe it was for Cruickshank and him in Company, expressing himself in several parts in the plural number, "We," and acquainting him that he was next day to set out for Holland, and directed him by what ship he should send the spirits, with the mark to be put upon them, which was the two initial letters of the names F. C. Forbes went to Holland, and Cruickshank shipped the spirits and sent the invoice to Cruickshank in name of himself and Forbes in Company, and wrote to him in the same terms. But Forbes wrote to Jopp to take care of and receive the spirits because he could not be home so soon. Both letters came to Aberdeen by the same post, and that very night Cruickshank wrote to Dunlop that he was in a mistake, for that he Cruickshank had no concern in the commission, and was in no copartnery with Forbes, except for the lawns, and the same night gave the invoice to Jopp, and next day both of them set out to the place where they expected the ship, and she soon appeared. Cruickshank had on board a larger quantity of spirits belonging to himself, and by the way bought from Jopp about L.70 worth of Dunlop's spirits deliverable at the mast, which with his own he sold to sundries, and Jopp sold the remainder of Dunlop's spirits to sundries, except a small quantity that he said was left to Forbes. Creditors had begun to use diligence against him before he went to Holland. Soon after the above transaction he came home, and after a very short stay went to the West Indies. After he was gone Forbes's creditors arrested in the hands of both Jopp and Cruickshank, and among the rest so did Dunlop, after discovering how he had been tricked, and pursued both in a forthcoming, but concluded also against Cruickshank as a partner. The case came before me in the Outer-House, and I allowed a proof before answer, and in the forthcoming the defenders to depone. At advising the Lords thought, some of them, that there was sufficient evidence that Cruickshank was partner in the commission, but though there seemed great cause to suspect it, I thought the evidence not sufficient, and it carried that there was not. The other point insisted on was to reduce the sale because of Forbes's fraud, and though I would have had no difficulty had the goods been extant, yet as they were disposed of I should have had the same difficulty as I had in the case of Christie against Anderson's Creditors, 1st and 17th December 1748, (No. 20. *supra*,) but here I thought there never was a sale perfected, for Dunlop never consented to sell to Forbes, but to Cruickshank and Forbes in Company, and Cruickshank having refused to receive them, or to be concerned, there was no sale, and the property was not transferred, and therefore both Cruickshank and Dunlop were liable for such parts of Dunlop's spirits as they intromitted with, and so we accordingly found. Cruickshank produced a receipt and discharge by Jopp of the price of the spirits he bought, dated two or three days after the arrestment, and Jopp was creditor to Forbes in sums sufficient to exhaust the price of the whole, but we had no regard to either. (See the next case.)