

“ The PRESIDENT—That in all societies, there is no bringing partners into Court, without calling either the managers or the whole partners. *2dly*, M’Nair had sold out before the action was brought. *3dly*, The pursuers own they had three shares themselves; must they not at least discount their own shares? *4thly*, Suppose the company insolvent, how can any subscriber be liable but for his subscription? *unusquisque debet scire conditionem ejus cum quo contrahit.*”

*N.B.* There is a material discrepancy between Lord Kames’ report of this case, and that given in the *Fac. Col.* The latter represents the judgment as having proceeded solely on the ground “that all parties having interest were not called into the field;” while the former represents it to have proceeded on the opinion of the Court, that the several partners were not liable beyond the amount of their subscriptions. Lord Kilkerran’s notes confirm this last account.

1757. *December 20.* ELIZABETH BRODIE and OTHERS *against* ARCHIBALD STEWART.

THIS case is reported in *Fac. Col.* (*Mor.* 3912.) Lord KILKERRAN has the following note of the opinions of the Judges:—

“ *Colston* said, that a decree dative vests the right before confirmation. The person decerned has right to intromit, and from that time he was accountable to his brothers and sisters, and upon that he put his opinion. *Kames et alii* put it upon the obligation.”

“ *December 20, 1757.*—The Lords found the pursuer entitled to her share of the debts as well as of the moveables.”

1758. *January 13.* M’KAY of Bighouse *against* GILBERT BARCLAY, Merchant in Cromarty, and WILLIAM FORSYTH, Merchant there.

MR. MACKAY raised an action against the above defenders, setting forth that the said Gilbert Barclay, by his missive letter, addressed to the pursuer, dated the 17th August, 1752, proposed to buy from the pursuer a certain quantity of salmon, at the same price, and upon the same condition as he, Barclay, had bought a quantity of salmon from the Earl of Sutherland’s commissioners; that the pursuer, by his letter, dated the 19th of the said month, addressed to Barclay, agreed to sell his salmon upon the same terms that the Earl of Sutherland’s commissioners had sold theirs, as to the price and security, without mentioning further particulars, or fixing any term of payment; and that Barclay, by his agreement with the Earl of Sutherland’s commissioners, was to pay for his Lordship’s salmon, at the rate of 50 shillings per barrel, deliverable at Cromarty on the risk and expense of the sellers; and that by a bill on Messrs. Coutts and Company, merchants in Edinburgh, and not upon James Stewart, merchant there, upon whom Barclay, contrary to pac-