

ing them to be conjunctly bound, implied the contrary, as Bryson refused to accept, for keeping clear accounts betwixt themselves, which his refusing to adhibit his name could not have effected, if notwithstanding he was bound: And whereas stress was laid upon the returns being applied for payment of his debts; that he was entitled to half the outward cargo, and also half the returns; and, if more than his property had been applied to his use, he behoved to be accountable for it.

Answered: That the two partners had taken up the former parcel of goods on their joint credit, and had continued to trade in the same way that the second parcel was contracted for by Bousie, for his own and partner's account, before payment of the first, and so furnished by Ker; and Bryson, if he did not intend to continue the same method of dealing, was *in mala fide* not to have intimated so much; that their letter did not deny their being jointly bound, but, supposing it, made an apology for not accepting; so that Ker had still reason to rely on them both; that it was not the case of two persons contributing their share of goods; but the furnishing and receiving by Bousie was *societatis intuitu*; and, according to the second rule laid down by the petitioner, the deed of one behoved to bind both the partners, being in a matter relative to the society; that there was no need of the bills being drawn as upon a Company, when the whole Company were therein named.

The Lords sustained the defence against payment of the bill libelled on.

Act. *W. Grant.*

Alt. *Brown.*

Forbes, Clerk.

Fol. Dic. v. 4. p. 285. D. Falconer, v. 1. No. 184. p. 247.

1766. June 14.

ROBERT DEWAR *against* PATRICK MILLER and Messrs. GIBSON and BALFOUR,
Merchants in Edinburgh.

JOHN WEIR, Patrick Miller, and Messrs. Gibson and Balfour, entered into a copartnery, principally for carrying on the linen trade, by the firm of John Weir and Company.

This branch of business was carried on under the management of Weir, who, as manager, was to have a certain allowance exclusive of all charges. The capital stock of the Company was to extend to £.2400 Sterling, one half to be advanced by Weir, a fourth by Miller, and the other fourth by Gibson and Balfour.

In December 1764, Robert Dewar, glazier in Edinburgh, gave John Weir £.160 Sterling, for which he received a bill, payable six months after date, accepted by Weir under the Company's firm.

In May, 1765, before this bill was payable, Weir stopped payments; and Dewar being about to charge the other partners for payment of his bill, was stopped by a suspension presented in their name, which was remitted to Lord Kames to discuss the reasons on the bill; and his Lordship, on the 22d January, 1766, " Having

Vol. XXXIII.

79 M

No. 17.

No. 18.

The acting partner of a company, by a bill, under the firm of the company, for money borrowed, binds the company.

No. 18. considered the contract of copartnery, by which no power was given to Weir, the managing partner, to borrow money, but only to buy and sell; and, having also considered the condescence of the bills accepted by Weir, under the firm of the Company, which bills appear all to be for goods purchased by Weir for the Company; finds that the defenders are not liable for payment of the bill in question."

Dewar reclaimed to the Court, and pleaded, That, where stocks are small, and business complicated, Companies were necessary, and such is the case in Scotland: That, in practice, money borrowed by one of the partners, and he giving a bill, under the firm of the Company for the same, such bill passes by indorsation in the same manner, as the bill of any known and reputable merchant, the person into whose hands such bill comes, trusting, not to the credit of the accepting partner, but of the whole Company.

That, be the purpose of the copartnery what it will, this is the manner universally practised in borrowing money by companies upon bill: In the linen trade large sums of money were required; and Weir, as the acting partner, was the proper person for borrowing the money necessary for the Company's behoof, under the firm of the Company: That, in the event of the bankruptcy of an acting partner, to throw the loss upon those who contracted with the Company, by means of such partner, would at once put an end to all credit in Scotland; as, empowering such partner to act in name, and under the firm of a Company, implies a power in that partner of binding the Company; and it was the business of the other partners to satisfy themselves of the knowledge and integrity of their acting partner, before they trusted him with their firm; and, if they had not done so, they must suffer by the consequences.

That, in lending his money to Weir on a bill, under the firm of the Company, Dewar did not trust to Weir's credit, but to that of the Company; and, accordingly, took his security under the firm of the Company, of which Weir, as the acting partner, was possessed.

The contract of copartnery was not registered; Dewar neither could nor did know any of the particulars contained in it; and, although he had known the particular tenor of this contract of copartnery, yet all the partners would be liable to him in payment of the bill accepted by John Weir and Company, as it was an express article in the copartnery contract, "That the said trade and business shall be carried on and managed by the said John Weir, in the name and by the firm of John Weir and Company;" and in fact, it appeared that Weir was in the constant use of accepting bills for the Company's behoof, under the firm of the Company; and that these bills, passed from hand to hand by indorsations, were retired by the Company, and considered by every body in the same manner as the bills of any other Company or merchant in good credit.

Answered for Miller, Gibson, and Balfour: That none of them were engaged in any general trade or copartnery with Weir; their connection with him was confined to the linen trade; they did not dispute but Weir was in the practice of accepting bills under the firm of Weir and Company, and that they were in the

practice of honouring these acceptances ; but such bills were all granted relative to the copartnery business, in managing of which, Weir, as acting partner, must necessarily grant acceptances for the value of goods bought for behoof of the Company ; but they contended, that Weir was not in use of borrowing money for the Company, or giving bills for the same ; nor did ever any of the partners honour any bills accepted by Weir for borrowed money, or upon any other account than for the price of goods bought for the Company's behoof : That Dewar did not allege he had ever dealt with the Company in the way of their copartnery business, or ever furnished them with a single article of goods ; and, as the bill in question was granted for money borrowed, and applied by Weir for his own private behoof, the Company could not be liable.

That every obligation or agreement entered into with Weir, in relation to purchases or sales of the commodities in which the Company dealt, will no doubt bind the Company ; but it will not from thence follow, that every deed of Weir's, under the firm of the Company, must rear up an obligation against them. If he had purchased an estate at an extravagant price, and granted bills to the seller for the price, under the firm of the Company, the Company would not have been subjected in payment of these bills, as that would have been giving Weir the power of subjecting the Company as cautioners to his own private transactions, a thing which he had neither title nor authority to do.

That the borrowing money is no act of ordinary administration in a Company, such as that now under consideration. It may be true, that bankers, or merchants, properly so called, are accustomed to take money upon bills ; but the present Company act in a very different capacity, and cannot be considered as bankers, or properly merchants, but rather as shop-keepers, or warehouse men, for buying and selling of goods ; and when the Company had occasion to borrow money, the whole partners signed the securities granted for such loans ; and, although Weir had full power to manage ordinary occurrences in the copartnery trade, he could not bind the partners in matters out of the way of their common business ; he could not dissolve the Company ; he could not submit the concerns of the Company ; he could not alter the nature of the trade ; neither could he borrow money, unless particularly authorised.

The circumstance of the contract of copartnery not being registered, cannot alter the argument one way or other. There is no particular register established in Scotland for copartnery contracts ; and registration only takes place on account of diligence or preservation.

It was further argued for the suspenders, That Dewar seems to have lent his money entirely upon the faith of Weir. He does not allege to have conversed with any of the other partners upon the subject, or so much as asked them, if they were engaged in a copartnery with Weir. He could not discover from the form of Weir's acceptance who were his copartners ; nor did he ever see the contract of copartnery ; so that he must have had his information as to all these particulars from Weir alone, upon whose word, faith, and veracity, he has solely de-

No. 18. pended, and not upon any of the other partners, to whom he does not allege he ever mentioned this matter.

That, in this country, tradesmen and manufacturers have but small stocks; and are, therefore, unable to carry on the different branches of their business, without the assistance of partners. These partners are often merchants, and people of credit engaged in other branches of business; so that, from the nature of the thing, it must be the inferior people who are the acting partners in such Companies; and, consequently, of necessity, they must be trusted with the firm of the Company; but it cannot from thence, with any justice, be argued, that the whole substance of such merchants, or others, as assist manufacturers in that way, is at the mercy of the tradesmen with whom they are engaged; such a doctrine would be ruinous and destructive to the trade and credit of the country.

The Lords altered the Lord Ordinary's interlocutor, "Repelled the reasons of suspension, found the letters orderly proceeded;" and decerned.

A reclaiming petition was presented, upon advising of which, with answers, memorials were ordered; and, upon the cause being again advised, the Lords adhered to their former interlocutor.

For Dewar, Lockhart. For Miller, &c. H. Dundas, and Alex. Wight. Clerk.

A. E.

Fol. Dic. v. 4. p. 285. Fac. Coll. No. 38. p. 63.

1791. June 13.

BORROWSTOUNNESS CANAL COMPANY *against* MACALPINE, FLEMING, and Company.

No. 19.

FLEMING, Brown, Macalpine, and others, formed in 1774 a copartnery for a manufacture of printed linens on Leven side, under the firm of Macalpine, Fleming, and Company, of which Macalpine was the book-keeper and acting partner, residing at the place of the manufacture, while the rest lived elsewhere, and had other occupations. In 1783, Addison, correspondent of the Company at Borrowstounness, subscribed in their name for two shares, of £.50 each, in the Borrowstounness canal navigation; and, in the act of Parliament soon after obtained for increasing the capital of that society, the names of Macalpine, Fleming, and Company, were inserted among the proprietors. Addison likewise attended as their proxy the several meetings of the proprietors, and two calls of ten *per cent.* of their subscribed stock were paid in to the Borrowstounness Canal Company, and receipts taken in the name of Macalpine, Fleming, and Company, in whose books these payments were entered by Macalpine. The partners of the Company of Macalpine, Fleming, and Company, came to a resolution to dissolve the copartnery, which was accordingly done on the 24th November, 1784; but no intimation thereof was given to the Canal Company, who soon after pursued the Company, as if still existing, for the remainder of their subscribed stock. The individual partners urged in defence, That they never had empowered Macalpine to sub-