

1632. February 14. LAIRD LAMINGTON *against* GEORGE FOULIS.

IN a contract of partnery and society betwixt George Foulis, umquhile Mr Robert Foulis, and John Muir of Anniston, being all engaged in great sums for umquhile Thomas Foulis, and for all their reliefs having aequired from the said Thomas the right of the lead mines ay and while they were paid by the said contract ; the said three partners appoints John Muir to oversee the lead-mines and works thereof, and to attend the same, that the advantage thereof might go in common to them all for their relief ; thereafter by another contract, intended and drawn up in form, betwixt Lamington on the one part, wherein these are made contractors on the other part, as a party, the said George Foulis, the said John Muir, and the bairns of the said umquhile Mr Robert Foulis, himself being dead, which contract is only subscribed by Lamington, and the said George Foulis, and the bairns of the said umquhile Mr Robert, and not by Muir of Anniston, who is the third conjunct contractor, on the other side ; by which contract Lamington obliges him to relieve the said three contractors of all the debts foresaid, wherein they were engaged, and whereof they were not relieved by the profits of the mines, the count of which debts and relief and intromission was in that contract committed by the parties to certain friends chosen by them, and who were appointed to hear the counts of the parties, and to end the same betwixt and the day set down in the contract, and the intromission by the contract was ordained to be tried by Anniston's own oath, who had not subscribed the contract, nor would stand thereto ; and Lamington having charged George Foulis upon the contract, and George having intended reduction thereof, because it was a contract intended to be done by him and his other two partners, all making up but one party contractor on the other side, and Anniston, the third partner and *socius*, and who was the only person that could perfect the contract, and had most interest therein, seeing he was sole intromitter, and that the contract bore, the intromission to be tried by his oath, had not subscribed but disassented, it could not be obligatory against him who had subscribed, seeing without Anniston it could not take effect, and in a society all must dissolve, else the society remains, neither can one of the partners obtrude another upon the rest ; attour, that the friends nominated to try and end the counts betwixt and the time prescribed, had not done the same, which made the contract become void ; the LORDS found none of these reasons relevant, but assolizied simply therefrom, and found that the contract ought to have effect against George Foulis for his part, albeit the other partner should never subscribe, seeing the partnery might divide, the said George being always first relieved by Lamington ; and albeit the friends nominated had not ended the counts, they found that the contract was not thereby dissolved.

Act. *Nicolson et Mowat.*

Alt. *Advocatus et Cunningham.*

Clerk, *Gibson.*

*Fol. Dic. v. 1. p. 561. Durie, p. 620.*

45 X 2

No 17.

A contract was subscribed by the party on one side, and by two of three partners on the other. Found to subsist as to the two, the copartnership being divisible.