

of the effects, provided they do not ultimately receive more than the Company owes; 26th July, 1776, Creditors of Carlisle *contra* Creditors of Dunlop, (not reported, see APPENDIX), 23d George III. C. 18.

The claimants here do not stand on a different footing. Their character of partners cannot take away the *jus crediti*, which payments, so far exceeding their share of the loss, have established in their favour. Nor is it possible to distinguish their situation from that of the creditors, who received the monies contributed, and from whom, if it were necessary, they can still require a formal assignment of all their rights.

Answered for Mr. Macghie's other creditors: The persons who advanced such large sums to save from immediate legal execution their own estates, as well as those of the other partners, are to be considered as trustees for the whole. In claiming retribution, more cannot be demanded by them from the bankrupt partners than from those who continue solvent.

The contrary method of proceeding would be attended with the most fatal consequences. For as each of the bankrupt partners could, in his turn, demand from every one of the *socii* the same sums for which his own estate has been attached, the whole members of the Company might, in this manner, be involved in one common ruin.

The Lords unanimously found, "That John Tait, trustee for the Duke of Queensberry and others, was only entitled to be ranked on the estate in question, for a proportion of the sums claimed by him, corresponding to the share of stock held by Mr. Macghie, the common debtor."

Lord Reporter, *Justice-Clerk*: Act. *Abercromby*. Alt. *A. Fergusson*. Clerk, *Orme*.

Fol. Dic. v. 4. p. 295. Fac. Coll. No. 234. p. 362.

SECT. X.

Have SOCII action IN SOLIDUM?

1672. January 9. MONTEITH *against* ANDERSON.

GEORGE MONTEITH, for himself, and as tutor to the children of his brother John Monteith, pursues Robert Anderson, factor in Camphier, for certain merchant goods sent over by them to be sold; and, for instructing thereof, produces

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sums advanced, corresponding to their respective shares.

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Two persons consigned goods to a factor. They

No. 46.
had right to
pursue for de-
livery there-
of; and the
defence for
the factor,
that the
goods be-
longed to
more persons
than the pur-
suers, was re-
pelled, unless
he would in-
struct that
there were
more part-
ners, and that
he had deli-
vered them
their shares.

an account under his hand; who alleged, That he could not be decerned for the whole goods, because, by the count produced, founded upon, there is nothing to instruct that the account was made by George and John Monteiths, or that they were creditors therein, but the inscription of the account, bearing "Account of goods belonging to George and John Monteiths, and Company;" so that it is clear the goods have belonged to partners, or to a society in company; and therefore the pursuer must condescend upon them, and can ask no more than his own and his brother's share; especially seeing the society is dissolved by the death of John his brother, and so the defender will be liable to every man for his share. It was answered, That the defender did once exhibit the accounts subscribed before this inscription, and though he has now adjected to the inscription the words, "and Company," that cannot burden the pursuer to condescend upon the company, who denies any society; unless the defender instruct otherwise that there was a society; for this adjection is like a quality adjected to an oath, seeing the defender's delivery of the account to the pursuer infers *presumptivé* that it was for his goods. *2do*, Though a society were proved, yet the pursuer and his brother having delivered the goods to the factor, they have good right to take them up again; neither can the factor, upon pretence of the interest of other partners, detain the goods; otherwise all commerce between partners and factors would be marred; but the partners who deliver are obliged to their partners, and the factor is secured. It was replied, That seeing the pursuer makes use of the account and inscription, without which he cannot prove his libel, he cannot divide the same, but must either allow it all, or reject it all. *2do*, The defender alleged, that a third party was partner, from whom he had a general discharge, which would liberate him as to his third part.

The Lords found, That the pursuer and his brother having delivered the goods to the factor, he ought, and might safely re-deliver them to him, albeit there were other partners; and would not suffer him to retain their shares, unless he instructed that they were partners, and that he had paid to them their share, and obtained from them such a discharge as would liberate both the pursuer and defender at their hands.

Fol. Dic. v. 2. p. 380. Stair, v. 2. p. 39.