

chase of goods, to them delivered, from accounting to Paterson for any part of the profits, that Paterson was insolvent at the date of the bargain;" and found Paterson and his creditor-arrester entitled to a third share of the free profits.

No. 23.

Fal. Dic. v. 4. p. 286. Kilkerran, (BANKRUPT), No. 11. p. 56.

SECT. VIII.

Powers of a Majority of a Society ;—of a Surviving Partner.

1675. December 17. MILLS against BRUCE.

SIR WILLIAM BRUCE being tacksman of the customs, Robert and Alexander Mills, and several others, were sharers. He gave them a back-bond, obliging himself to count to the partners, or such of them as, upon advertisement, should convene; and accordingly did make count, which is extant, subscribed by the most part of the partners; but Robert and Alexander Mills were not present at the close of the account, and did not subscribe. They now pursue Sir William Bruce to count with them; who alleged, absolutor, because he had counted already, conform to his back-bond. The pursuers having been advertised to be present at the account, it was answered, That the remanent partners could not prejudge these pursuers.

The Lords found, That Sir William Bruce ought to make patent his account with the partners, with the instructions to the pursuers, and that they might object against any particular article thereof, whereby they might be prejudged.

Stair, v. 2. p. 386.

No. 24.

Partners having subscribed accounts of their common interest, their subscription was found not to exclude others of the partners to object to the accounts, although a meeting had been called, for the purpose of settling, and the majority had subscribed.

* * Gosford reports this case :

SIR WILLIAM BRUCE being tacksman of the excise, anno 1671, and having, by contract of copartnership, admitted Provost Mill, and many others, to the management thereof, extending to the number of twelve persons, with a provision, that they should be equally and proportionally gainers with himself of the whole benefit, after outrunning of the tack; he having warned the defenders and all the rest to meet, and fit his accounts, which they all did, except the two defenders; and upon the payment of their just proportions, did grant a discharge to the said Sir William, which the said Mills did refuse; whereupon he did pursue them for granting him a discharge upon the payment of their proportion of the benefit. It was alleged, That the defenders, being *in societate*, were not obliged to stand to

No. 24.

any fitted account made by the rest of the copartners ; but the pursuer ought to count with them *de novo, quia in societate potior est conditio prohibentis*. It was replied, That, by the contract of society, they were all bound to assist at the making of accounts, and they being required, ought not (after the fitting of the accounts with the whole rest of the copartners) force the pursuer to make a new account, now after so many years, and when many instructions might be out of the way. The Lords, having considered the contract of copartnership, as likewise that it was the defenders' own fault that they were not present at the fitting of accounts, did find, That Sir William was not liable to make a new account ; and only ordained them to exhibit the account made, to see if they had any just reason to quarrel any of the articles thereof ; otherwise, that they should immediately grant discharge, upon payment of their proportions.

Gosford MS. No. 824. p. 519.

1725. February 2.

ALEXANDER LOGIE, Land-waiter in Aberdeen, *against* WILLIAM GORDON, Collector, and other Officers of the Customs there.

No. 25.

Found, that the majority have power to dissolve a society.

THE officers of the customs at the port of Aberdeen entered into a contract, touching the communication of seizures made by any one of them to the whole ; in which, amongst other things, it was provided, " That the society should continue, so long as they or any of them continued in office at that port ; that is to say, upon the death or removal of any one or more of them, the concert was not to break up, but stand good amongst the rest, for their full respective shares of the profits, and proportion of the loss or charges : But the successor or successors of such as should drop were not to be admitted thereinto, without the express consent of the majority remaining in office.

After the society had continued for some time, the defenders, who were a majority, resiled, and made due and lawful intimation of their renouncing and departing therefrom. Upon which Mr. Logie insisted in an action, for obliging them to observe the contract, and remain in society, upon the following ground : That a contract of society entered into for life, or any shorter, though indefinite time, could not be revoked or departed from at the pleasure of parties, if the contrary was expressly covenanted ; and, in the present case, it was agreed, that they should remain in society as long as any of them continued in office at that port ; so that, though a majority should have been removed, yet the society was to subsist amongst the rest : And the only power granted to the majority, in relation to the fundamental constitution, was as to the admission of successors to such as should drop ; and therefore it could not be further extended, because *casus omissus, pro consulto omissio habendus*.

It was answered : That though, by the contract, the society was constituted for so long a time as the *socii* should remain in their office at that port, yet, since there