

SECT. XV.

Company Creditors how to be ranked on the Estates of Individual Partners.

No. 41. 1741. *February 26.* A. *against B.*

THE creditor of a Company ought to sue the Company in the first place as his proper debtor.

Fol. Dic. v. 4. p. 292. Kilkerran.

* * This case is No. 8. p.14560.

No. 42.
Manner of
ranking.

1776. *July 4.* DUNLOP and Others *against SPIERS* and Others.

JAMES DUNLOP, a partner of Carlyle and Company, being indebted in a large sum to that company, both he and the company became bankrupt. The trustees for the partnership claimed upon Dunlop's estate for the debt due by him to the Company; and the same persons, as trustees for the creditors of the partnership, made a separate claim upon his estate for the whole amount of the debts due by the company, upon the ground of his being liable *in solidum* for the company's debts, admitting, however, that they could not upon both of these claims draw more than full payment of the last. The trustees for Dunlop's private creditors objected to this double claim, and particularly maintained, that his private estate could not be claimed upon for more than the balance of the partnership debts after exhausting the company's estate. The Lords found, That the claimants, as trustees for the partnership of Carlyle and Company, were entitled to be ranked on the estate of Dunlop for the amount of the debt due by him to the said company; and that, after computing the dividend arising from the said debt, and the dividend already paid from the company's effects, in extinction of the debts due by the company to their creditors, along with the other funds arising from the estate of the company remaining in the hands of the claimants, and yet undivided, the said claimants, as trustees for the creditors of the company, were entitled to be again ranked on the estate of Dunlop for the balance which would then be remaining due to the said creditors; the trustees on Dunlop's private estate being entitled to an assignation from the company-creditors, so far as they should draw upon the second ranking, for the purpose of operating a relief to the estate of Dunlop from the other partners of Carlyle and Company, in so far as the said creditors

should thereby draw from the effects of Dunlop more than his proportional share as an individual of the company. Affirmed in the House of Lords. See APPENDIX. No. 42.

Fol. Dic. v. 4. p. 292.

* * A similar judgment was given in the case Chalmers, Leslie, and Seton, *contra* Creditors of Gorge Chalmers, December, 1787. See APPENDIX.

1796. May 19.

CHARLES CAMPBELL, Trustee for the Creditors of Thomas Houston, and Others, *against* FRANCIS BLAIKIE, Trustee for the Creditors of Ramsay, Smith, Graham, and Company, both as a Company and as Individuals.

FRANCIS BLAIKIE, trustee on the sequestrated estate of Ramsay, Smith, Graham, and Company, and likewise on the private estates of the partners, proposed to rank the Company creditors exclusively on the funds of the Company; and these being insufficient for their payment, to rank them afterwards, *pari passu* with private creditors, on the private estates of the partners.

To this Charles Campbell, trustee on the sequestrated estate of Thomas Houston, a private creditor of one of the partners, and some other creditors of the same description,

Objected: As the creditors of a Company are preferred on the funds of the Company, it is fair that the private creditors of the partners should have a similar preference on their private estates. The former trust to the funds of the Company for their payment, while the latter, in general, give credit to an individual partner on the faith of his private fortune, without placing any reliance on his copartnery concerns, which may be altogether unknown to them. Accordingly, the preference contended for is established in England, where general questions of this nature have been longer an object of attention than in this country; Green's Spirit of the Bankrupt Laws, p. 154.; Cook's System of Bankrupt Laws, p. 163.

Answered: The creditors of a Company are preferred on its funds, because the stock of the Company is, in law, held to belong not to the partners, but to the Company, considered as an *universitas*, against which the partners, and consequently their private creditors in their right, have a *jus crediti* only for the residue after payment of the debts of the Company; L. 27. D. Pro socio; Ersk. B. 3. Tit. 3. § 24. But, on the other hand, the partners are liable *singuli in solidum* for the debts of the Company, which are therefore, in reality, the private debts of each partner, and, as such, must rank on his private estate. Such, accordingly, has been the uniform practice and understanding in this country; 4th July, 1776, Dunlop against Spiers, No. 42. p. 14610. affirmed on appeal; and a contrary

No. 43.

The creditors of an insolvent Company are entitled to rank on the private estates of the partners *pari passu* with their private creditors.