SECT. XII.

Partner, whether liable to the Company in a Contribution beyond his Stock?

1778. *July* 24.

DOUGLAS, HERON, and COMPANY, *against* ALEXANDER HAIR.

No. 37.
Found liable when necessary.

AT a general meeting of the partners of Douglas, Heron, and Company, in August 1773, it was resolved, "That, from and after that date, the Company shall give over the business of banking in all its branches; and a committee was appointed for winding up their affairs, with ample powers.

At subsequent general meetings in July and August, 1776, it appearing that the Company had then incurred a loss of £.70,000 certain, over and above their subscribed capital, it was resolved that every partner should be immediately required to pay up his whole capital, and to advance a further sum of £.200 upon each share of £.500. Those who did not comply to be prosecuted.

Actions were accordingly brought in the name of the Company against many different partners, who did not object to the paying up of the capital, but refused the call for the £.200; among others, against Alexander Hair and his trustees, in whom his estate was then vested.

Pleaded in defence: 1*mo*, That the meeting had no right to compel a contribution of this kind.

By the 19th article of the copartnership, it is declared, "That nothing herein contained shall be understood to import a power in any general meeting whatever to compel any partner to pay or contribute any thing more to the company-stock than the precise sum by him originally subscribed for." The majority of a meeting, therefore, could not have assumed this power, even when the Company subsisted.—But, though it had been competent then, it is not so now. The resolution of the general meeting, August 1773, is to be considered as a dissolution of the Company; for the Company was insolvent, and the whole business of it is thereby put an end to. That the debts of it are not paid, is no reason for considering it as undissolved. That might have been the case after the time of its endurance by the contract was expired. The dissolution of the Company is nevertheless complete, and the articles of their agreement, which vested powers in the majority of their meetings over individuals, are at end. The partners remain liable for the debt; but no number of them can oblige any other partner to enter into joint measures for payment of the debts, still less can they levy money from him for that purpose.

No. 37. When such powers are meant to be vested after a Company have given up business, an express stipulation to that purpose is necessary in the copartnership agreement. The winding up of the Company's affairs upon its dissolution, is the object of the 15th article. A method is therein laid down for levying the debts due to the Company, and turning their effects into cash, to be employed in the extinction of their debts. The pursuers did not follow out the directions of this article. The powers they now assume are authorised by no part of the original contract, nor of the minute dissolving the Company.

2do, Although the majority of the partners had power to make a call of this kind, when a pressing necessity required their taking such a measure, that is not the case at present; for the proper funds of the Company are more than sufficient to answer all demands now made by their creditors.

Answered for the Company: *1mo*, The present case does not fall under the 19th article of the copartnership. The pursuers here are not calling for an addition to the Company's stock, which is at an end, but for money to answer pressing debts over and above every thing the stock can pay.

They have powers to call for such aid from the partners. The Company was not dissolved by the resolution which extended only to the giving up their banking business, on account of their insolvency as a Company; but in every other respect they continued connected by their contract of copartnership as before. They appointed a committee, with the powers of a general meeting, to wind up their affairs, and all their powers as a Company remain with them in every stage of that business.

It would have been highly detrimental and ruinous to the interest of the Company to have followed out the plan of article 15th in the present emergency. The contract specifies the cases in which that method is to be pursued. But the situation in which the Company now is, falls under none of these cases, and could not enter into the minds of the partners at the time. Their conduct must be regulated by their circumstances.

2do, The measure taken is indispensably necessary to extricate the Company from its difficulties.—A general state of their funds and debts was exhibited, to show that there was no fund immediately tangible sufficient to answer the great demands that were running against the Company.

The Court were of opinion, That the Company was not dissolved by the resolution August 1773, and that the propriety and necessity of the measure were sufficiently ascertained by the situation of their affairs. "The Court repelled the defences, and decerned for what remained unpaid of the capital, and £.200 as the defender's proportion of his share of what is now requisite towards defraying and making good the losses of the Company."

For Pursuers, *Wight, Ilay Campbell, Advocate.* Alt. *Rae, Rolland.*

Fol. Dic. v. 4. p. 291. Fac. Coll. No. 34. p. 57.