

ture of his right, as well as that of those who, after his death, claim an interest in his effects, must be regulated by the nature of the agreement out of which it arises.

No 62.

There are few mercantile companies, the stock of which does not in part consist of landed property; and in many of them, it is almost entirely composed of money lent out on interest, or secured on land, as was the case of the public banks in Scotland, before the business of negotiating bills of exchange was brought to its present height. It is, however, a settled point, that the shares in these companies, though incorporated by statute, and having a perpetual succession, descend to executors, as indeed was very solemnly determined, 1st July 1735, Sir John Dalrymple *contra* The Representatives of Dame Jean Halket, No 48. p. 5478.

In the case of a bond subscribed by many co-obligants, and containing an obligation to pay interest, or accompanied with heritable security, it arises from the nature of the transaction that the representatives of each *correus* should be obliged to make payment, in the same manner as if every one of them had in a separate writing come under the same engagement. And in the case of landed property, or even bonds bearing interest, acquired by the members of a company which is finally dissolved, the succession of *quondam* partners would doubtless be regulated in the same way as if no copartnership had ever existed. But in the present instance the company, though it has given up trade, must still subsist for the purpose of paying its debts. And as the profit arising from the adventure would have been considered to be of a moveable nature, so as to enlarge the widow's share, justice requires, that a proportion of the loss, if there is any, should also fall on her.

THE LORDS found, That the claim arising against the deceased as a member of the partnership of Douglas, Heron, and Company, was of the nature of a moveable debt, affecting the goods in communion between husband and wife; and decerned. See No 29. p. 400.

Reporter, Lord Dregborn.
Clerk, Sinclair.

For the Widow, Blair.

For Charles Campbell, Wight.

G.

Fol. Dic. v. 3. p. 267. Fac. Col. No 105. p. 196.

1794. December 5. WATSON against M'DONNELL.

No 63.

A PERSONAL debt, in security of which the debtor had assigned a lease of an heritable subject, in consequence of which the creditor had entered into possession, was found a real right, and incapable of attachment by arrestment.

Fol. Dic. v. 3. p. 267. Fac. Coll.

* * See this case, No 60. p. 731.