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.

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.

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. rule would greatly weaken the credit of Companies, as it is upon the confidence in the responsibility of the partners, and not in the stock of the Company, that their credit is generally supported.

Upon advising memorials, the Lords, on the grounds stated for Blaikie, " found, That the creditors of Ramsay, Smith, Graham, and Company, are entitled to rank on the private estates of the individuals partners of said Company along with the private creditors of such partners;" but ordered a hearing in presence as " to what extent: Whether to the full amount of their original debts, or only for the balance due after deduction of what they drew from the Company estate?" (decided in the case which follows.)

For the objectors, *Tait.* Alt. *Cullen.* Clerk, *Colquhoun.*

Fol. Dic. v. 4. *p.* 293. *Fac. Coll. No.* 216. *p.* 509

1796. *November* 18.

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.

No. 44.
The creditors of a company are entitled to rank on the private estates of the partners, in competition with their creditors as individuals, only for the balance remaining due to them after exhausting the funds of the company; and, if the competition arise before the amount of the latter be ascertained, the company creditors are entitled to have dividends set apart for them, in the mean time, corresponding to the whole sums due to them.

THE estates of Ramsay, Smith, Graham, and Company, as a Company, and those of the individual partners, were sequestrated, on the 30th December, 1793.

In a competition which arose between the creditors of the company and those of the individuals, the Court (19th May, 1796, No. 43. *supra*) ordered a hearing on the general point, Whether company creditors are entitled to rank on the private estates of the partners to the full amount of their original debts, or only for the balance due after deduction of what they draw from the company estate?

The private creditors

Pleaded: At common law, no creditor can rank twice *in solidum* on the estate of the same debtor, whatever may be the number of his securities over it; 12th July, 1769, Creditors of Auchinbreck, No. 34. p. 14131. *voce* RIGHT IN SECURITY; 2d August, 1781, Douglas, Heron, and Company, against the Bank of England, No. 35. p. 14131. IBIDEM; 24th February, 1780, Tait and others against Sir James Cockburn, No. 21. p. 14110. IBIDEM. Now, the partners of a company are proprietors *pro indiviso* of its stock, in the same manner as they have a separate right of property in their separate fortunes; and the company creditors being preferable on its stock, they, like every other creditor having a preferable security, can only be entitled to rank on the property of their debtor for the balance remaining due to them after exhausting the subject on which they have a preferable claim; 4th July, 1776, Dunlop against Speirs, No. 42. p. 14610.; 1787, Chalmers, Leslie, and Seton, against the Creditors of Chalmers. See APPENDIX.

Nor is the question altered by the bankrupt statutes. The act 1772 made no provision on the subject; but, before the act 1783 was passed, the decisions of