

APPENDIX

PART I.

HERITABLE AND MOVEABLE

1797. December 20. DAVIDSON against KYDE.

No. 1.

THIS case, which is No. 142. p. 5597. *vide* HERITABLE AND MOVEABLE, was appealed. The House of Lords, May 16, 1798, ORDERED and ADJUDGED, that the appeal be dismissed, and that the interlocutors therein complained of be affirmed.

1802. December 16. CORSE and Another, Petitioners.

No. 2.

JOHN BLACK and Company, callico printers at Bonhill, sold their printing-field utensils, materials, and goods on hand, to the Bonhill Printfield Company, at the price of £50,000, who finding themselves unable to pay this sum, were willing to reconvey the whole property to them in security, holding themselves still liable to make up the full price. This was accepted. The moveable property was again put into the possession of Black and Company; and a bond containing a clause of sale, if this should be found necessary, was granted to them by the Bonhill Company for £13,700, the price at which the field was estimated. When sold, it was purchased for £5000 by James Kibble, one of the partners of the Bonhill Company. The share of the deficiency thus ascertained, which corresponded to the interest of the other partners, was paid up; but Kibble's share remained secured as a burden upon the field, along with the £5000. for which he purchased it.

An individual partner's share in an heritable bond taken to a Company, after the Company is dissolved, is held to be moveable in a question of succession, even after all the debts due by the Company are discharged.

Robert Corse was a partner of Black and Company, and consequently a part of this debt, heritably secured, belonged to him. Kibble paid up a part of it to discharge the last remaining debt of Black and Company, some time

No. 2. previous to Corse's death ; and when this took place, his share of it, amounting to £1500, was claimed as heritable property by Janet and Helen Corse as his heirs-portioners ; while his executor competed with them, on the plea of this being a company fund ; the share in which belonging to each partner, being only a claim against the company, is of course a moveable right, which must be taken up by the executor.

The Lord Ordinary (15th November 1800) found, that the succession to the balance of the sums due on the bond to John Black and Company, must be held to be part of the stock in trade of the said Company, and therefore moveable in respect of succession.

The pursuers reclaimed, and

Pleaded : The bond, though for behoof of the partners of John Black and Company, was in reality not granted till after the contract of that Company had expired ; and even though the copartnery should be held still to subsist until the discharge of the debts, yet the balance on this bond remained after extinction of all their engagements. For where the contract of copartnery has expired, and the society is no longer held together by debts or obligations undischarged, or transactions unfinished, the free funds which remain, partake of the common attributes of a joint property ; and a question of succession will be regulated by the nature of the property itself. The bond in question can be looked upon in no other light than as money lent out on heritable security ; besides, interest had actually been drawn upon it. Suppose, that after every debt of the Company had been paid, the different partners had continued for several years to draw the interest, being willing that the principal should remain in the debtor's hands, being satisfied with the security over the printfield ; when one of the partners dies, the succession to his share would just be regulated like the succession to a common heritable bond. The connection as *socii*, in such a case, would not be more effectually dissolved than it is here. It does not seem necessary to wait till the fund is actually divided, to give to each of the partners a certain share in the Company fund, instead of each having only a claim upon the common property for a certain share of the proceeds when converted into cash ; for whenever this share is ascertained, by the whole debts of the Company being extinguished, and the Company formally at an end in virtue of its contract, and now by the discharge of its engagements to the world, the division is presumed then to take place : the property comes to be *in bonis* of the partner ; and if the subject be heritable, it is taken up by the heir, and not by his executor ; Young against Campbell, 27th January 1790, No. 62. p. 5495.

The Court refused the petition without answers, considering the point as being fixed, that a company is held in law to subsist till the final settlement of all its concerns, whether in engagements to the world, or in transactions between the partners themselves relative to the division of the profit or loss.

Lord Ordinary, *Craig*. For Petitioner, *Semple*. Agent, *Geo. Fordyce*. Clerk, *Pringle*.
F. *Fac. Coll. No. 71. p. 162.*