

SECT. IV.

Acquisitions made by a Partner relating to the Society.—Contribution of Pains instead of Stock.—Nature of the Stock of a Company.

1624. *March 26.* INGLIS *against* AUSTINE and Others.

No. 10.

Acquisitions made by a partner relating to the society must be communicated.

IN an action of double poinding, at the instance of the tenants of Easter Gellie, for the mails and duties of these lands, which were claimed by James Inglis, and Alexander Douglas his assignee, and by Gilbert Austine, and some partners, to whom the said lands were sold by contract, no sasine following thereupon, by Roger Duncanson, heritor of the said lands, for relief of a certain debt proportionally undertaken by the said partners, for the said Roger on the one part; likeas on the other part, the same farms were claimed by Sir Alexander Napier, as donatar to the escheat and liferent of the said Roger; and having obtained a general declarator, and intended a special declarator of the same, in respect whereof, he claimed the only right to pertain to him, of the farms of the said lands, during the said Roger's lifetime; and which gift was purchased by him since the said contract made with the partners, in the which contract the said Sir Alexander was also a partner, and contracter with the rest;—the Lords found the partners, and Sir Alexander as a partner, should be answered of the duties of the land, and that every one of them should have their own part thereof, according to the proportion of their debt, by them undergone by the said contract, and that Sir Alexander Napier, as donatar, could not claim the whole, by virtue of the said life-rent gift and declarator; for albeit any other donatar would have been preferred to the said partners, seeing the said Roger, the rebel, was not lawfully denuded by the contract, but that he standing infeft, and they never seised, his rebellion made his liferent of the lands to appertain to the donatar; yet the Lords found Sir Alexander Napier could not have preference, which another donatar would have had, seeing he was a contracter with them, and partner by the foresaid contract, which was *contractus bonæ fidei*, and wherein they were all bound to others, faithfully to assist others, conform to their security made by the said contract; in respect of that clause, none of them could do any deed, which might derogate from the effect of that contract, and prejudice any of them of the benefit thereof.

Act. *Mowat & Russel.*

Alt. *Nicolson, junior.*

Clerk, *Gibson.*

Fol. Dic. v. 2. p. 376. Durie, p. 124.

* * Haddington reports this case :

No. 10.

Sir Alexander Napier, James Inglis, James Leslie, and George Austine, being contractors with Roger Duncanson for security, to have been made to them by Duncanson, for sounes auchtand to them by infestments of wadset lands, and the said partners being bound lovingly, faithfully, and friendly, ilk ane to assist others for obtaining their securities, Napier obtained the gift of Duncanson's life-rent, seeking declarator. The parties excepted upon the contract and bond of mutual assistance. Napier replied, That he was not thereby excluded from the liberty to take the life-rent, vacant in his Majesty's hands, which was free to every subject. The partners granted that he might, but not with such freedom to use it to their prejudice as a stranger might have done, *ob contractum bonæ fidei inter eos initum*, and the clause of friendly concurrence; so as he who was bound to concur to procure them surety from others, could not impugn their right by any title procured to himself. The Lords, having respect to the clause of their mutual and friendly contract, found the exception relevant, the partners paying to the pursuer all expenses disbursed by him in purchasing the gift, declarator, and other charges.

Haddington MS. No. 3101.

1696. December 9.

BROCK against BROWN.

HALCRAIG reported Robert Brock, Goldsmith in Glasgow, against George Brown, Flesher there, who had entered into a co-partnery of buying Highland cows, and selling them by retail, in Glasgow market, wherein Bailie Brock contributed £.100 Sterling, for buying the stock, and the other furnished no money, but only his pains in going to the Highlands and buying them, and in killing and selling them; and being pursued for the product before the Commissary of Glasgow, and being twice examined, and decerned for the balance; and having suspended, the Lords found his second oath the rule; and where one gives in *pecunia* to a Society, and the other his *opera* and personal labour only, they thought he could claim nothing on the account of his pains, seeing that was all he conferred to the society in place of money, and therefore expunged the article of £.200 Scots, he craved *eo nomine*.

Fol. Dic. v. 2. p. 376. Fountainhall, v. 1. p. 741.

1707. March 18.

ALEXANDER ALISON, Writer to the Signet, against The DIRECTORS of the AFRICAN COMPANY.

ALEXANDER ALISON having, as creditor to Henry Crawford, merchant in Dundee, one of the joint adventurers in the African Company, arrested in the

No. 11.
No charge can be made for trouble, where no stock is contributed.

No. 12.
Share of the capital stock of a company,