

S E C T. XIV.

Joint Adventure.

No. 39.

1740. *January 11.* CREDITORS of M'CAUL *against* RAMSAY and RITCHIE.

THREE Glasgow merchants having joined in an adventure for the purchase of tobacco from Virginia, and one of them, Henry M'Caul, having died bankrupt before the division of the cargo was completed; in a competition betwixt his proper creditors and the other two partners, who were considerably in advance upon account of the cargo, the Lords found the partners had right to retain the deceased M'Caul's proportion of the cargo of tobaccos, until they were relieved of all advancements and engagements on account of the said cargo. It was yielded by M'Caul's creditors, That in a proper copartnership, where there is a society and company under a known designation, no extraneous creditor of any partner can be allowed to draw out of the company more than the free stock belonging to his debtor; but it was contended to be otherwise in a transient joint adventure, in which, if one partner be in advance, he has no more than a simple personal action against the others. To which it was answered, That though in this case, the parties concerned were not properly *socii*, but only proprietors *pro indiviso*, yet, until the divisions be made, they are each in possession of the whole *pro indiviso*, and each is entitled to retain possession until he is relieved of the engagements undertaken on account of the cargo, and thereby is preferable to the diligence of extraneous creditors of the other parties concerned.

Fol. Dic. v. 2. p. 377.

* * Kilkerran reports this case :

IN a proper copartnery, no private creditor of any one of the partners can affect more than the free stock which remains to his debtor, after payment of his share of the company-debts.

And in the present case, which was that of the tobacco trade in Glasgow, where there is no proper copartnery, but only a property *pro indiviso* resulting from a particular adventure carried on by several merchants joining together, and contributing for the purchase of the outward cargo, and with the proceeds thereof purchasing the tobaccos by their factor or supercargo, which, upon the return of the cargo, they divide according to their several proportions, and are proprietors thereof *pro indiviso*, the Lords found, " That, till division, they are each in possession of the whole *pro indiviso*, and therefore each entitled to retain possession

until he is relieved of his engagements on account of the cargo, and is thereby, for his relief, preferable to the extraneous creditors of the other parties concerned."

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Kilkerran, No. 1. p. 517.

1766. December 29. DONALDSON *against* PAUL and Others.

JAMES PAUL, merchant, and John Buchanan and John Barclay, hatters in Glasgow, were concerned in two joint adventures to the West Indies, with John Macnair, weaver, under the firm of John Barclay and Company.

Each party was to furnish his proportion in goods, or money; and the profit or loss upon the whole was to be communicated.

An action was brought by Robert Donaldson for the price of goods sold to John Macnair, and entered in his books to John Macnair and Company, which goods, he alleged, had been sent to the West-Indies along with the other goods belonging to the defenders, who, being engaged in a copartnership or joint trade, must be bound by the deed of any one partner.

Answered: From the manner in which the goods were furnished by the different persons concerned, the defenders have no access to know, whether those put into the common stock by Macnair were bought from the pursuers or not: Nor is it material.

Persons united in a proper copartnership are liable *singuli in solidum*, and bound by the actings of the different partners. With respect to the trade in which they are engaged, they act as one person, subscribe by one name, and transact business in one house, from which, and other circumstances, the public are induced to deal with each partner on the credit of the whole. But, in a joint adventure, the union is less intimate; and as third parties cannot be induced to deal with one of the adventurers on the faith of a transient connection, which they can scarcely have access to know; so there is not the same reason to consider the bargains made by one of them as binding upon the rest.

Accordingly, this is understood to be law in all commercial countries, and the distinction is accurately laid down in a work called *Le Parfait Negotiant*, by Savary, Liv. I. ch. 1. It is mentioned by Erskine, III. 3. 10. though overlooked by the other writers upon the law of Scotland; and appears to have been adopted by the Court in the case of *Champion contra Falls and Murray*, in 1731. See APPENDIX.

"The Lords found, that it is not denied that the firm of the defender's company was John Barclay and Company, and the goods are stated in the pursuer's books to the debit of John Macnair and Company; and that, though it appears the goods were sent abroad with the company's goods, it is not proved that they commissioned them; and, therefore, assoilzied the defenders."

Act. Wright.

Alt. Maclaurin.

Fol. Dic. v. 4. p. 292. Fac. Coll. No. 51. p. 280.

No. 40.

The partners in a joint adventure do not bind each other by their transactions.