

1747. June 12.

ROBERT LANG *against* ROBERT MACAULAY.

THESE two persons, both merchants in Glasgow, were present at a roup of a quantity of condemned rum; where Macaulay having outbid Lang's offer, Lang said to him, 'Will you give me a part with you, or I'll bid upon you;' to which Macaulay answered, He should have a part with him. And nobody else offering, Macaulay was declared the purchaser.

In a short time, Lang, who had left the place, returned, and offered half of the money to Macaulay, and desired to be received as a joint purchaser for half of the bargain; and thereupon took a protest. To which Macaulay *answered*, That he was employed to purchase by nine other persons, with whom he was equally concerned; and therefore could only give a half of his own tenth. However, he afterwards persuaded the rest to take him in as an eleventh sharer.

Lang pursued Macaulay for the half of the bargain; that being to be understood by a part indefinitely, as he did not know of his concern with the other partners, and intended to have the half when he desisted from offering.

*Answered* by Macaulay, It was being too strict with him, considering the overly manner in which the bargain was made, he not meaning to give the half, as it was not in his power; that a part did not necessarily signify so much; and the pursuer might as easily have demanded the half as a part, if it had been his intention to have it.

"THE LORD ORDINARY found the defender's agreeing to give the pursuer a part with him, did subject the defender to give the pursuer one half of the defender's part of the spirits; but that the said agreeing could not subject the defender for the shares of the other nine partners with the defender." And, 26th February 1745, "found, That, especially in a bargain so transiently made, and when there was so little time to be particular, the defender was to be presumed to have intended no more than to assume the pursuer into a share of what he the defender had power to dispose of; but, in respect that the defender, after advising with his partners, did express his sense of the bargain to be, that the pursuer should be assumed as an eleventh partner, found the pursuer entitled to an eleventh part with the defender and other nine partners.

On bill and answers, the LORDS adhered.

Act. J. Graham.

Alt. Ferguson.

Clerk, Murray.

Fol. Dic. v. 4. p. 130. D. Falconer, v. 1. No 183. p. 246.

No 322.

Part of a bargain, wherein several persons were concerned, was presumed to signify half of the promiser's share, but on consent of all the partners, an equal share.