

No. 22. credit, had raised a large sum by annuities ; and the company was then considered as on its death-bed. Answered, on the first head, That as, in the event of the company having gained profits posterior to the settlement in November, 1771, Mr. Blair's executors would have had no right to any share of such profits ; so, on the other hand, the company having incurred loss since that period, they cannot suffer from such loss. Answered, on the second head, That though the company's credit was for a short time suspended, they were not bankrupt till August, 1773 ; they were bound by their articles of copartnership till that period ; these articles fix the interest of the deceased partner in the company's stock and profits as it stood in November, 1771 ; and at that time there was sufficient stock and profit to divide. The Lords, on a hearing in presence, found, That as it is asserted by the defenders, and not denied by the pursuers, that betwixt the balancing of the company's books in November, 1771, and Mr. Blair's death, the said company became totally insolvent, therefore the defenders are not accountable to the pursuer for the value of the deceased partner's share, as at the balancing of their books in November, 1771. See APPENDIX.

*Fol. Dic. v. 4. p. 290.*

\* \* This judgment was affirmed, on appeal to the House of Lords, April 30, 1777.

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## SECT. VII.

### Effect of the Insolvency of a Partner.

1749. July 12.

PATERSON and COCHRAN his Creditor-arrester, *against* GRANT and KEITH.

No. 23.  
Insolvency of  
a partner does  
not exclude  
him from a  
proportion of  
the profits.

WHERE a sale is made to a bankrupt, who fraudulently induced the seller to sell, the seller prevailing to be free of the bargain, the obligation on the buyer becomes also extinct. But where partners buy, though one of them happens to be at the time insolvent, they cannot get free of the bargain ; and the property being vested in the whole partners, the insolvent partner cannot be deprived of his share of the profits ; and all that the other partners can do, is to apply to the Judge Ordinary, in respect of their partner's bankruptcy or insolvency, to have his share exposed to sale.

And, accordingly, the Lords varied the interlocutor of an Ordinary, who had  
“ Found it relevant to assoilzie Grant and Keith, partners with Paterson, in a pur-

chase of goods, to them delivered, from accounting to Paterson for any part of the profits, that Paterson was insolvent at the date of the bargain;" and found Paterson and his creditor-arrester entitled to a third share of the free profits.

No. 23.

*Fal. Dic. v. 4. p. 286. Kilkerran, (BANKRUPT), No. 11. p. 56.*

## SECT. VIII.

Powers of a Majority of a Society ;—of a Surviving Partner.

1675. December 17. MILLS against BRUCE.

SIR WILLIAM BRUCE being tacksman of the customs, Robert and Alexander Mills, and several others, were sharers. He gave them a back-bond, obliging himself to count to the partners, or such of them as, upon advertisement, should convene; and accordingly did make count, which is extant, subscribed by the most part of the partners; but Robert and Alexander Mills were not present at the close of the account, and did not subscribe. They now pursue Sir William Bruce to count with them; who alleged, absolutor, because he had counted already, conform to his back-bond. The pursuers having been advertised to be present at the account, it was answered, That the remanent partners could not prejudge these pursuers.

The Lords found, That Sir William Bruce ought to make patent his account with the partners, with the instructions to the pursuers, and that they might object against any particular article thereof, whereby they might be prejudged.

*Stair, v. 2. p. 386.*

No. 24.

Partners having subscribed accounts of their common interest, their subscription was found not to exclude others of the partners to object to the accounts, although a meeting had been called, for the purpose of settling, and the majority had subscribed.

\* \* Gosford reports this case :

SIR WILLIAM BRUCE being tacksman of the excise, anno 1671, and having, by contract of copartnership, admitted Provost Mill, and many others, to the management thereof, extending to the number of twelve persons, with a provision, that they should be equally and proportionally gainers with himself of the whole benefit, after outrunning of the tack; he having warned the defenders and all the rest to meet, and fit his accounts, which they all did, except the two defenders; and upon the payment of their just proportions, did grant a discharge to the said Sir William, which the said Mills did refuse; whereupon he did pursue them for granting him a discharge upon the payment of their proportion of the benefit. It was alleged, That the defenders, being *in societate*, were not obliged to stand to