

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."

No. 39.

*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.