scribe to the canal navigation, and that they knew nothing of the matter; that he had taken this liberty at his own hand, and was alone responsible. The Lords were of opinion, That an acting partner had power to bind the society in all matters of ordinary administration; and although this adventure might be considered as not strictly falling under that description, yet, in the circumstances of the case, the consent of the partners was to be presumed; and therefore found that the whole were bound. See APPENDIX. No. 19.

Fol. Dic. v. 4. p. 286.

SECT. V.

Interest of a deceased Partner in the Stock in a Company.—Partner resigning his Interest, whether still liable to Company Creditors?

1769. *March* 2.

MESSRS. AITON AND COMPANY, Merchants in Glasgow, *against* HARRY CHEAP of Rossie, and Others, Executors of the deceased THOMAS CHEAP, late Merchant in London.

No. 20.
A commission executed after dissolution of a copartnership by the death of one of the partners, or given by one partner while ignorant of the death of the other, not binding on the representatives of the deceast.

THOMAS CHEAP had entered into a copartnership with Charles Adair, merchant in London. Having been employed by the government as one of the commissaries in the expedition against Belleisle, he died in that island, about the beginning of May, 1761; and his death was published in the London newspapers, of the 23d of that month.

Cheap and Adair were wont to correspond with Messrs. Aiton and Company, merchants in Glasgow. From them, upon the 26th of March and 21st of May, 1761, Mr. Adair, the acting partner, ordered a quantity of lawns for the use of the Company. Both commissions were duly answered; one parcel of the goods being sent upon the 10th of June, the other upon the 22d of July following.

Adair stopped payment in May, 1762. The representatives of Cheap refused to hold those commissions as a copartnership-concern, or to pay any part of the price of the goods; and an action was brought against them by Adair and Company.

Pleaded for the defenders: Society is extinguished by the death of one, even of many partners; insomuch that, by the civil law, "Nemo potest societatem hæredi suo sic parere, ut ipse hæres socius sit;" L. 35. D. Pro socio; and, "Adeo morte socii solvitur societas, ut nec ab initio pasisci possimus ut hæres etiam succedat societati;" L. 59. Eod. Mandate likewise is extinguished by the death of the mandant; L. 15. C. Mandati.

No. 20. These rules of the civil law being received with us, are decisive of the question; for the goods commissioned, upon the 26th of March, during the subsistence of the copartnership, were not sent from Glasgow till the 10th of June, long after its dissolution.

Answered for the pursuers: The principle, that the contract of society, or of mandate, is dissolved by death, respects not the question at issue. In order to bind a company of merchants, there is no necessity that the commission be executed during the copartnership. As soon as the commission is given and accepted, an obligation arises, from which neither party can resile; and that obligation must receive additional strength, when the commission is not only given, but begun to be executed. From that period, *res non est integra;* law and equity concur in giving effect to the contract.

Pleaded for the pursuers: 2*do*, The Company is liable even for the goods commissioned upon the 21st of May, as being furnished in consequence of a letter under the firm of the Company, written by the one partner, before he had heard of the death of the other.

Even where the extinction of the society by death is expressly stipulated, a contract will be valid, though entered into after the death of one of the partners, if before it had come to the knowledge of the parties-contractors. The contrary doctrine would be ruinous to commerce. It happens every day, that men of fortune enter into copartnerships with men of little or no fortune, merely upon account of their skill in their profession. With these is entrusted the management of the company's business; and they are sent to settle, perhaps, in the most distant quarters of the globe, in order to conduct it to greater advantage. Merchants contract with persons of this kind entirely upon the credit of the company. But an end would be put to all such dealings, were it held to be lawful, that contracts of this nature cease to be obligatory upon the company, from the very moment of the death of one of the partners happening in a remote place, and necessarily unknown to the parties-contractors.

"Quod si, integris omnibus manentibus," says Paulus, L. 65. § 10. D. Pro socio, "alter decesserit, deinde tunc sequatur res de qua societatem coierunt, tunc eadem distinctione utemur qua in mandato: Ut si quidem ignota fuerit mors alterius, valeat societas; si nota, non valeat."

This distinction is founded in reason. The partner contracting cannot take advantage of the intermediate death of the other, and thereby appropriate to himself the whole profits of a lucrative bargain: He must be accountable to the representatives of his partner; and consequently they must be accountable to him, and to the persons with whom he contracted in the name of the company.

Answered for the defenders: This contract of copartnership contained no special clause. It must therefore be regulated by the common rules of law, and held to be dissolved by the death of one of the partners. The commission of the 21st of May was given after that dissolution; nay, it was executed after Cheap's death was known in Scotland, and in particular known to the pursuers. The bargain,

No. 20.

therefore, was null *ab initio;* in strict law, it was ineffectual; and though perhaps the pursuers might have had some claim in equity, had they fulfilled it *bonâ fide*, in belief that the society still subsisted, there can be no room for any plea of that sort here. Aiton and Company knew the state of the case; and yet they proceeded to execute the commission.

This argument is the stronger, that the invoice of the goods, as well as a letter sent along with them, was addressed, not to Adair and Cheap, but to Adair singly. Hence, it is apparent, *quo animo* the goods were sent to London; the pursuers were sensible that Adair, not the company, was liable for them.

"The Lords found, That the company was bound by both commissions."

Act. *M'Queen.* Alt. *Lockhart, Rae.*

G. F. *Fol. Dic. v.* 4. *p.* 291. *Fac. Coll. No.* 92. *p.* 170.

*** This case having been appealed, the judgment of the Court of Session was reversed.

1774. *November* 29. ROBERT ARMOUR *against* DOCTOR JOHN GIBSON.

No. 21.
Whether a partner in a private company, who has renounced his share from the expiration of a term fixed by the contract, when any of the partners had an option so to do, can be subjected for debts contracted under the firm assumed at their commencement, after he had ceased to be a partner?

ARMOUR, a merchant in Glasgow, being creditor to the company of Bell and Gibson, merchants in Glasgow, in two bills, dated in 1772, for goods furnished to that company, he raised horning on these bills, and charged Dr. Gibson, as a partner of the said company, for payment; who thereupon obtained a suspension.

The Doctor set forth, That a young man, named Thomas Bell, and John Gibson, the Doctor's son, having been both bred up in the merchant business, in the town of Glasgow, a scheme was projected, in the year 1766, for their carrying on, in company, the business of a cloth-shop in that city; that the Doctor, being then a physician residing in Glasgow, and his son being under age, proposed to take a small share in the concern, in order that he might have it in his power to examine into their books, and controul their management, when amiss. Accordingly, in June, 1766, a contract was entered into, with the advice and consent of both their fathers, by which Thomas Bell was to have three sixths, John Gibson junior two sixths, and Dr. Gibson one sixth, in the concern. The stock of the company was to be £400, and the copartnership was to subsist for seven years, from 26th May, 1766; "but, if any of the partners thinks proper, he shall be at liberty to withdraw from the concern at the end of the first three years allenarly; he always giving notice of his intention so to do, to the other parties, six months before his withdrawing, by a notary and witnesses." That, in consequence of this contract, the trade was carried on under the firm of "Bell and Gibson," without the addition of "Company," or appearance of any other person being concerned, the two young men themselves managing the whole business; which having proved successful, and the Doctor having attained his end, in bringing it to a proper