

against Macrae, 8th March 1793; and 26th May 1797, Smith against Kyd. These cases have been omitted in the Faculty Reports, but in both of them the property was found to be in the contributors, and the right of management in a majority. In like manner, here, the only point for discussion is, in whom the property is vested; and it is admitted that the majority of the congregation is in favour of the pursuers.

The Court can enter into no investigation as to the religious grounds of the schism here, and, if they did, they must presume the majority in the right.

The bill of advocacy was refused. (See No. 27. p. 14588.)

Lord Ordinary, *Bannatyne*. Act. Solicitor-General Blair, *Ar. Campbell*.  
Alt. *H. Erskine, Wm. Robertson, J. G. Bell, Maconochie*.

D. D.

Fac. Coll. No. 14. p. 29.

1808. July 5.

JAMES and DAVID PATERSON, against DAVID CALDER and his CURATOR  
*ad litem.*

In the year 1801, a bond was granted to Carrick and Company, bankers in Glasgow, by Archibald Paterson, Archibald Calder, and John Aitchison, who formed a Company, under the firm of Archibald Paterson and Company, and by James Paterson and David Paterson, who were not copartners of that Company, "For £400 Sterling, or such sum or sums as I the said Archibald Paterson shall draw out by drafts or orders on, or receipts to, the cashier of the said Banking Company; (signed) *Archibald Paterson and Company*." The two latter obligants of course were only cautioners, though nothing was said on that subject in the bond. In January 1802, Archibald Calder died, No notice of his death was given to Carrick and Company, though it was said to have been notified in the newspapers.

At the time of Archibald Calder's death, the debt to Carrick and Company, on the cash-credit, amounted to £390; but it was said, that the remaining partners paid up the whole of this sum upon the 25th June 1803. Notwithstanding all this, Archibald Paterson continued to draw money from Carrick and Company by drafts or receipts in the name of *Archibald Paterson and Company* down to the 5th November 1803.

At that period, the balance due to Carrick and Company, amounted to £432, 9s. 7d. Of this sum, Carrick and Company demanded payment from James and David Paterson, cautioners in the bond of cash-credit, Archibald Paterson being then unable to pay it. James and David Paterson paid it on

No. 4.

The heir of *A.* a partner of a Company, and an obligee in a bond of cash-credit for sums to be drawn by *B.* another partner of that Company, in name of the Company, is bound for sums drawn by *B.* in that name, after the Company has been dissolved by the death of *A.* no notice of that event having been given to the bank granting the credit.

No. 4. receiving an assignation for their relief against the principal debtors. On this assignation they brought an action for total relief against David Calder, the son and heir of Archibald Calder, to whom Ninian Hill was appointed curator *ad litem*.

The Lord Ordinary's interlocutor was, " Finds that the cash account, for the balance of which the present action is brought against the defenders, was granted by Carrick, Brown, and Company, to and for behoof of the copartnership of Archibald Paterson and Company of Glasgow: Finds that the said copartnership of Archibald Paterson and Company was dissolved by the death of Archibald Calder, one of the partners thereof, in the month of January 1802: Finds that the heirs of the said Archibald Calder cannot be liable for any contractions or debts incurred by the remaining partners of the said Company after the period of its dissolution, which, *quoad* any mercantile house in Glasgow, needed no formal or public intimation, being an event sufficiently notorious; therefore, and in respect the debt pursued for appears to have been entirely contracted after the said dissolution, assoilzies the defenders from the present action."

A petition was presented against this interlocutor to the Court; on advising which, the Court, of this date, (10th December 1805,) remitted " to the Lord Ordinary to hear parties further, and to do therein as he shall see cause."

The case was accordingly stated to the Lord Ordinary in a representation; when the Lord Ordinary reported it on informations.

On advising these, the Court found, " In terms of the judgment formerly pronounced by the Lord Ordinary, that the heirs of Archibald Calder are not liable in relief to the pursuers for any debt contracted in consequence of the operations upon the cash account granted by Carrick, Brown, and Company, subsequent to the death of the said William," (should be Archibald) " Calder; and remit to the Lord Ordinary to hear parties procurators on the remaining points of the cause."

On petition against this interlocutor and answers (June 10th, 1808,) the Court altered it; and " Decerned against the defender in terms of the conclusions of the libel."

A petition against this interlocutor was refused without answers, (5th July 1808.)

The opinion of the Court was, that the bank had a clear claim against the pursuers as co-obligants in the bond for all sums that were drawn out by *Archibald Paterson in name of Archibald Paterson and Company*: That it was sufficient for the bank that the sums were drawn by him in that name: They were not bound to inquire in what state this Company was, or to look at all beyond Archibald Paterson: That if he signed in the manner agreed on, that authorised the bank to advance money on the cash credit, and bound all the

obligants in the bond to repay it to the bank. But that though the pursuers were bound as co-obligants to the bank, yet in reality they were only cautioners for the other obligants, the partners of *Archibald Paterson and Company*, for whose behoof the cash credit to Archibald Paterson was granted.—The pursuers must, therefore, have a right of relief against these principal obligants, and equally against their heirs: That even if the other partners could, in relation to the bank, be viewed in the light of cautioners for Archibald Paterson, in whose favour the cash credit was directly granted, yet as it was granted for their own behoof, they were principals in relation to the pursuer. But in either capacity their heirs were equally liable. As principals it could not be disputed, and as cautioners they were liable by the decision in the case of the College of Glasgow, 18th November 1790, No. 32. p. 2104.

No. 4.

Lord Ordinary, *Woodhouselee*.Act. *M'Conochie*.Alt. *H. Cockburn*.*John Moubray*, W. S. and *N. Hill*, W. S. Agents.

S. Clerk.

*Fac. Coll. No. 64. p. 235.*