No. 34. It was observed by the Court, That, at the date of the assignation, the whole was a *non ens* both to as to debit and credit. There was no debt due by the cedent to the assignee at the time; and it was uncertain, whether, in the end, he would have any free stock or not; so that the question comes to this, Whether a man can create a latent hypothec upon effects not yet acquired, for security of debts not yet contracted?

The Court, by two consecutive judgments, "adhered to the Lord Ordinary's interlocutor, which preferred Galdie, the factor on Anderson's sequestrated effects, to the sum due by Brown, Carrick, and Company."

Act. *L. Advocate, Macqueen.* Alt. *Il. Campbell, Rolland.* Clerk, *Gibson.*

Fol. Dic. v. 4. *p.* 289. *Fac. Coll. No.* 112. *p.* 297.

SECT. XI.

The Rights and Obligations of Partners must be determined by the Custom of the Company.

1746 *June* 13.

MR. ROBERT FREEBAIRN *against* RICHARD WATKINS.

No. 35. Sharers in a patent for a monopoly were found not obliged to trade in Company, after they had traded separately for a long time, seeing that the copartnership had been in that respect departed from, and matters were not entire.

MR. ROBERT FREEBAIRN, in concert with James Watson and John Basket, obtained, *anno* 1711, to himself and his assignees, a gift of the office of King's printer, and assigned third shares thereof to his two partners, and articles of agreement were drawn up amongst them for the joint management of the trade. This project however never took effect, but the three partners traded separately, printing each for their own benefit such books as fell under the patent.

Mr. Freebairn brought a process against Richard Watkins, assignee to Watson and Basket, to have it declared, that he behoved to carry on the trade in company with him, and offered proposals for setting up a joint house.

Pleaded for Mr. Watkins, That as the original agreement was certainly departed from, and he at had at a great expense provided materials and set up a printing-house, he could not be obliged to enter of new into a society with Mr. Freebairn.

Pleaded for Mr. Freebairn, That the original patent to him and his assignees meant that they should together carry on the trade, else the intent was lost of confining the printing the books which fell under the patent to a privileged person or Company, since by assignations it could be divided into numberless shares, all the owners whereof might trade separately: That the assignations were to certain de-

termined proportions of the profits; and if the partners were not obliged to join, a ninety-ninth share was as good, and might draw as much profit as all the rest of the patent. No. 35.

To obviate the inconveniency of forcing a society, and at the same time to fix the interest of the parties proportionably to their interest in the patent, it was proposed by some of the Lords, that they might act separately, and account to one another for the profits.

The Lords, 26th June, 1745, found, that Mr. Freebairn the pursuer was not entitled to compel Mr. Watkins to enter into a joint trade of printing patentee books with him; that the said Richard Watkins, in consequence of his rights, might print separately all or any of the books enumerated in the patent, and that he was not obliged to communicate to the said Robert Freebairn any share of the profits arising therefrom; and, on a bill and answers, adhered.

Act. *A. Macdonall & Lockhart.* Alt. *W. Grant.* Reporter, *Dun.* Clerk, *Murray.*

Fol. Dic. v. 4. p. 289. *D. Falconer, No.* 112. *p.* 133.

1798. *January* 24.

PATRICK WARNER and his CURATORS, *against* ROBERT REID CUNNINGHAME.

No. 36.
A contract of copartnership, by which the partners granted to themselves, and their heirs, mutual leases of coal and salt-works on their respective estates, to be wrought for their joint behoof, found to be binding on their heirs, unless they could show good cause for dissolving it.

IN 1783, Patrick Warner and Robert Reid Cunninghame, two adjoining proprietors on the coast of Ayrshire, entered into a contract, by which Mr. Warner granted to himself and his partner, and their heirs, a lease of the whole coal upon his estate, for 124 years from 1770, since which time, in consequence of previous agreements, a connection had subsisted between them; and Mr. Cunninghame, on the other hand, granted a lease of part of the coal on his property, with the salt-pans on it, and right to a canal through it.

The coal and salt-works were to be wrought for the joint behoof of the Company during the contract, which was declared binding on the partners and their heirs for its whole period, unless the coal on Mr. Warner's property should be sooner exhausted.

Mr. Cunninghame was declared to be sole manager during his life, and, at his death, the manager was to be chosen by the parties, or, in case of their not agreeing in their choice, by the Sheriff-depute of the county.

Mr. Warner died in 1794, and in 1796, his son Patrick Warner, with consent of his curators, raised a reduction, in which he, *inter alia*,

Pleaded; The *dilectus personæ* and consent necessary for the constitution of a copartnership, are equally requisite for its subsistence. Hence, both by the Roman law, and our own, a private society, though formed for a fixed period, may be renounced at any time, the person renouncing being always liable in damages, if he do so, *dolosè* or *intempestivè*, *D. Pro socio, L.* 4. *L.* 14. *L.* 65. § 6. *Voet. h. t.* § 9.