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THE

PRECIPITATION and FALL

OF

Meſſ. DOUGLAS, HERON, and COMPANY,
Late Bankers in Air,

WITH

The Cauſes of their DISTRESS and RUIN,

INVESTIGATED and CONSIDERED,

By a COMMITTEE of INQUIRY,
appointed by the PROPRIETORS.

EDINBURGH:

Printed in the year 1778.

PREFACE.

THE following Report, which contains the Hiſtory of a ſhort-lived and moſt unfortunate Company, is the reſult of an inveſtigation authoriſed and recommended by a general meeting of the Partners held at Edinburgh, in July 1776. It was, in the month of Auguſt 1777, lodged at Edinburgh with the Company's Manager; and, in compliance with the injunctions of the general meeting, copies of it were immediately tranſmitted by him to Air and Dumfries, for the peruſal and inſpection of the Partners in theſe diſtricts.

The buſineſs of this inveſtigation was at firſt entered upon by the gentlemen named as a committee of inquiry with chearfulneſs and alacrity; and was propoſed to be divided among them into different parts or branches, and carried on in that manner till it ſhould be completed: But, unacquainted with the nature of the management, and ignorant of the infinite variety of tranſactions which had taken place, they ſoon found, that they had to wander through an indigeſted chaos of looſe and unconnected materials, without any guide to conduct their ſteps, or a ſingle light to direct their inquiries. The ſeeming impracticability, therefore, of accompliſhing

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what they had undertaken at the requeſt of their fellow-partners, and the foreſight of a moſt laborious examination, affrightened ſome, and deterred others, from purſuing the inquiry. They perſevered, however, for ſome time, with unwearied attention, in ſo far as their private affairs would permit: But although, as they advanced in the inveſtigation, many important facts began to diſcover themſelves; yet they ſtill deſpaired of being able to perform any uſeful ſervice by ſuch a divided and occaſional attention to the buſineſs as had hitherto been beſtowed upon it.

In this ſituation, one of their number undertook to ſelect the *materials*, as well as to prepare the *form*, of ſuch a report as the caſe might ſeem to require, after a more full and deliberate inveſtigation. It was afterwards delivered to the Company, ſuch as it is now, after ſome corrections and amendments, delivered in a more public manner to the Partners at large: and the defects of it therefore are his; the other Members of the Committee having only ſeen, examined, and compared the evidence upon which it is founded; and which it is neceſſary ſhould be attentively peruſed by every perſon deſirous of forming his own judgement upon the ſubject.

Having, with all the caution, accuracy, and attention in their power, completed the inveſtigation of their various

various materials, they found themſelves at laſt ſurrounded with a conſtellation of important facts, which had gradually diſcloſed themſelves, and ſeemed to throw much light upon the dark, myſterious, and complicated affairs of the Company; and which not only unfolded to them the nature of the management, and the cauſes of the Company's diſtreſs and ruin; but ſeemed to afford ample ſubject of complaint againſt many individuals, as well as ſolid grounds of legal redreſs. They were concerned to find, that their duty compelled them to complain of the conduct of many whoſe characters and ſituations intitled them to reſpect, ſome whoſe conduct in many inſtances appeared to be altogether unjuſtifiable, others who, although miſled by improper and dangerous advice, they may have been guilty of no intentional wrong, had yet fallen into ſuch unhappy circumſtances, as, in ſpite of the innocence of their intentions, ſeemed to point them out as reſponſible to their fellow-partners, and liable in claims of reſtitution and damages. The ſituation was painful; but the conduct to be obſerved was too obvious to admit of heſitation. The inveſtigation of truth was the object in view: and as, in ſearch of it, they never wiſhed, ſought for, or made uſe of improper, equivocal, or inſufficient evidence; ſo, on the other hand, they have neither ſoftened any material fact which they thought the evidence before them warranted, nor ſuppreſſed a concluſion which their underſtandings approved. None will rejoice more than

themſelves, if theſe gentlemen can leſſen the blame which, upon their repreſentation, they may appear to merit; or if they ſhall be able to vindicate their conduct in the courſe of any future judicial diſcuſſion which may take place: but, acquainted with ſubſtantial and authentic facts, and ignorant of any apology ſufficient to avoid their force, they could not betray the truſt repoſed in them; and although the ſtake of patrimonial intereſt may make ſome gentlemen their enemies, they have, to their own conviction, endeavoured, by a candid inquiry, to deſerve even their eſteem.

As the Report abounded with facts of ſuch a deep and important nature to many individuals, ſupported by evidence which was in every particular pointed out and referred to, and followed with concluſions which ſeemed in many inſtances to intereſt both character and fortune, it was the wiſh and the deſire of thoſe who were concerned in the compilation, that an immediate and ſerious attention ſhould be paid to the ſubject, by thoſe who might think themſelves intereſted: but, inſtead of applying themſelves to the diſcharge of this important duty, they ſeemed for ſome time to treat the matter with a degree of inattention which approached to contempt; and four or five months were allowed to elapſe in ſupine ignorance or unpardonable ſilence.

The ſubject fell to be taken under the conſideration of the Proprietors at a general meeting held in January

1778, when the truth of the facts contained in the Report ought either to have been acknowledged, or a candid and regular offer of juſtification made to the meeting: But, inſtead of this, an attempt was made to ſtir up unreaſonable prejudice and clamour againſt the compilers of the Report, as if they had exhibited to the world a falſe and calumnious production, full of error, and tending to inflame, not to inform, the minds of the Partners. In defence againſt ſo illiberal an attack, an opportunity was taken of giving a public defiance to thoſe offended parties, as to the truth of the facts contained in the Report; and the conſideration of it was poſtponed till the next general meeting, which was to be held in June enſuing, in hopes that, betwixt and that period, they would endeavour to detect the errors of the Report, and to vindicate themſelves from the various charges which ſeemed to be pointed againſt them.

The general meeting, however, in June, arrived, without any appearance of a defence, or even explanation, upon their part. An anſwer had indeed been prepared, in name of Charles Ferguſſon and Company, and Fordyce, Grant, and Company, in juſtification of one particular tranſaction complained of in the Report, viz. the tranſaction of compoſition with theſe houſes. But this anſwer does not differ from the Report in point of fact. It is a mere legal defence of that tranſ-

action, as effectually binding the Company; and was much more fit to be ſubmitted to the nice diſcuſſion of a court of law, than to the juſtifiable feelings of a number of injured men, ſtripped as they have been, by that very tranſaction, of a great part of their fortunes; embarked as they are in many other calamities; and intitled as they muſt be to ſeek relief where-ever it is to be found.

Although no other anſwer had been made to the Report, yet the indulgence of the general meeting in June 1778, again poſtponed the conſideration of it, upon the earneſt requeſt of ſome of the parties intereſted, and after a ſolemn promiſe that a ſatisfactory anſwer would be given to it between and the firſt of November.

The only anſwer which has appeared is in the form of a letter, addreſſed to the Proprietors, upon the ſubject of the Report, drawn up by two of the gentlemen who had always been in the direction of the Company's affairs at the Edinburgh branch. It is confined to the tranſactions of this branch, and does not differ materially from the Report in point of fact. Explanations indeed are there given of ſome important facts charged againſt the Managers; and it would be unjuſt, in the higheſt degree, to attempt to deprive them of the benefit of any ſuch defence, which it muſt be conſidered

ed as their undoubted right to urge, in vindication of their conduct, where-ever or in whatever form the queſtions reſpecting the matter of this Report may be canvaſſed. How far ſuch explanations may operate in a competent court, either in exculpation, or in alleviation of that blame, which eſtabliſhed facts, when ſtripped of diſguiſe, ſeem naturally to ſubject them to, it belongs not either to the accuſers or the accuſed to ſay. It is wrong in any caſe, but more particularly in a caſe of ſuch importance and delicacy as the preſent, to attempt publicly to anticipate the judgement of courts of law; and the authors of the Report are perſuaded, they have diſcharged their duty, when they have reported authentic facts, and ſuggeſted ſuch concluſions as ſeemed naturally to ariſe; concluſions which they have offered, and which they wiſh may be treated, merely as the opinions of men, but without which the bare narrative of facts would have been aukward, perplexing, and uninſtructive.

The general meeting of the Company held in November 1778, having at laſt taken under their conſideration the Report of their Committee of Inquiry, after it had been upwards of twelve months expoſed to the peruſal and inveſtigation of all concerned, it was very generally, though not univerſally, approved of by the meeting, who were likewiſe pleaſed to return their thanks to the members of that Committee; and beſides other

resolutions then adopted, in the view of bringing the various and important matters contained in the Report under future judicial discussion, it was ordered by the meeting, That the Report, together with any Answers thereto, should be printed, and distributed, for the general information of the Partners. In consequence of which appointment, it is now, in this public manner, submitted to their perusal, after having, in consequence of a careful revisal, suffered some small corrections and amendments.

Particular care has been taken to point out, as distinctly as possible, the evidence referred to throughout the Report; and it has also been judged proper, for the sake of truth, and for the satisfaction of all concerned, to print, in an Appendix, such parts of the evidence referred to as seemed most material, and might be desiderated by those who were desirous to exercise their own judgement upon the subject.

The Answers made to the Report are likewise printed along with it; and as, in some instances, the authors appeared to have mis-stated facts, and misunderstood conclusions, we have endeavoured to correct these errors, in notes occasionally subjoined.

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At a General Meeting of Proprietors, held, at Edinburgh, 23d November 1778,

On a motion,

ORDERED, That the Report of the Committee of Inquiry, and any Anſwers that are or may be given in thereto, ſhall be printed and diſtributed for the information of the Partners, at the ſight of the Committee of Inquiry, and of thoſe who have or ſhall give in Anſwers betwixt and the 20th December next.

REPORT

OF

The Committee of Inquiry

Appointed by a General Meeting of the Partners of *Meſſ. Douglas, Heron, and Company, late Bankers in Air*, held, at Edinburgh, upon the 10th day of July 1776, for making an inveſtigation into the management of the affairs of the Company.

INTRODUCTION.

THE affairs of this Banking Company having fallen ſo faſt to ruin, and the loſs ariſing from the tranſactions of a very ſhort period having accumulated to ſo great a height, it has not only become a ſubject of ſpeculation, but a matter of very deep concern to all the Partners of this unfortunate Company, and particularly, to that large body of them who are merely Partners, and were never engaged in the management, to inquire into the cauſes which have produced ſo violent and ſo rapid a fall.

That a Company eſtabliſhed on ſo ſolid a bottom, poſſeſſed of a ſubſcribed capital of upwards of L. 160,000, the greateſt part of which had been called for, and embarking in a buſineſs which, when conducted with any tolerable degree of prudence, cannot, from its nature, be attended with great riſk, ſhould, by the tranſactions of a very few years, have incurred ſo enormous a loſs, as not only to exhauſt the whole of ſo large a capital, but to require the additional aid of a very great ſum, the amount yet unknown, is an inſtance which, it was hardly to be imagined, could have ſprung from the enterpriſe of ſo narrow a country, and of which, perhaps, there are few examples in any country.

In this ſituation it was natural for many of the unfortunate Partners, who were altogether ignorant of the tranſactions of their Managers, to imagine that they had been injured; and in ſearching for the cauſes of ſuch rapid deſtruction, they were apt to derive them from the errors and miſconduct of thoſe who had been all along intruſted with the management of the Company's affairs.

Whether ſuch errors, and ſuch miſconduct, were ſufficient to afford to the injured Partners ſolid grounds of redreſs againſt individuals, or to juſtify their endeavours to procure it, it was altogether impoſſible to ſay, without an accurate inveſtigation into the nature and detail of the management; but it was a moſt juſtifiable and natural deſire which aroſe among the Partners, to obtain ſome ſatisfaction with reſpect to the tranſactions of the Company, the conduct of their managers, and the real ſources from which their calamities were to be derived, ſo as full juſtice might be done both to the reputations and fortunes of all concerned.

In this view the Proprietors, at their laſt general meeting, in July 1776, were pleaſed to appoint a committee of their number to make the wiſhed-for inveſtigation, and to report the ſame to the Company.

The

The Committee have accordingly applied themſelves, with much pains and attention, to the buſineſs recommended to them by the Partners: They have gone through and examined the proceedings of the Managers, and the numerous tranſactions which have taken place at the principal office at Air, and the two branches of Edinburgh and Dumfries, from the firſt inſtitution of the Company down to their diſſolution; and from this great variety of materials they have endeavoured to inveſtigate the cauſes, both immediate and more remote, which have occaſioned the heavy loſſes ſo ſuddenly brought upon the Company, and to digeſt their obſervations into the form of the preſent Report.

As we conſidered, that the object in view was not to amuſe with fruitleſs obſervations, but to endeavour to be of ſome real ſervice to the unfortunate partners of this Company who imagined themſelves injured, by pointing out where redreſs might be competent, we thought it altogether unneceſſary, to employ our time and attention in tracing the hiſtory of every tranſaction which may have taken place. It would have been idle and impracticable to do ſo; and we have therefore endeavoured to confine ourſelves to *leading* tranſactions, and to objects of ſuch importance as may ſeem to merit and demand the attention of the Partners.

We thought it likewiſe inconſiſtent with our duty to collect in this Report, as articles of charge againſt the Managers of the Company, every trifling act of impropriety, or imprudent and unſucceſsful management, which may and muſt have occurred in the courſe of conducting a buſineſs of ſo various and intricate a nature, and where the plea of inexperience, or error in judgement, might ſo juſtly be urged in vindication of an erroneous conduct. It would have been unjuſt and unreaſonable to decide in that manner upon the conduct of our Managers; and we have therefore endeavoured to diſtinguiſh between *imprudent* acts of miſmanagement, and ſuch

culpable

culpable acts as we apprehend may be made the foundation of a legal claim of redreſs or indemnification.

We hope we have throughout this Inquiry acted with candour and impartiality, and in ſuch a manner as neither to conceal any part of the neceſſary truth, nor to give reaſonable cauſe of offence: and as the report of facts, without referring to the evidence of them, might juſtly be deemed improper in a caſe of *this nature*, we have been attentive to point out, as we go along, the evidence by which we have been enabled to diſcover and judge of every fact contained in this report.

PLAN

PLAN OF THE REPORT.

THE ſubject of this Report falls to be divided into ſeveral branches.

1. IN the *firſt* place, it is neceſſary for the purpoſe of this Report, to be made acquainted with, and to keep in view, the laws, articles, and conditions, of the copartnery, upon the faith of which the Partners of this Company became bound to each other, and by which the conduct of the Directors, and other officers of the Company, ought to have been governed in the courſe of their tranſactions.

2. IN the *ſecond* place, we ſhall make ſome obſervations upon the general nature of the management of the affairs of this Company.

3. IN the *third* place, we ſhall take notice of, and endeavour to collect, the particular acts of *culpable* miſmanagement authoriſed by the Directors and officers of the Company in the different branches of the buſineſs, from the commencement in November 1769, down to our ſtop in June 1772, when the affairs of the Company were brought to the fatal criſis which rendered them irretrievable, and put an end to their operations as a ſubſiſting banking company.

4. IN the *fourth* place, we ſhall enquire into the actual loſs or damage which has enſued to the Company from thoſe culpable acts of miſmanagement previous to June 1772.

5. In the *fifth* place, we ſhall inquire into the nature and effect of the proceedings of our managers in London after our ſtop in June 1772, reſpecting the ſale of annuities, and at the ſame time ſuggeſt the manner in which we apprehend the loſs thence ariſing ought to be apportioned among the Partners.

6. In the *ſixth* place, admitting that the ſale of annuities was a juſtifiable meaſure, we ſhall take notice of what we apprehend was *culpable* in the conduct of that meaſure.

7. In the *ſeventh* place, we ſhall take notice of the *culpable* acts of miſmanagement authoriſed by the Directors in Scotland, poſterior to our ſtop in June 1772.

BRANCH I.

Articles and Conditions of the Copartnery.

Articles and conditions of the Copartnery, as fixed by

UNDER this branch there will fall to be conſidered, *firſt*, The original contract of copartnery; *ſecond*, The by-laws eſtabliſhed in terms of the contract, for regulating the conduct of Directors and Caſhiers; and, *third*, The ſubſequent alterations made upon either of theſe, or additional regulations eſtabliſhed by the Proprietors, or by the Directors, at their reſpective general meetings.

Contract of Copartnery. Appendix, N° 1.

original contract.

THE contract recites, That it is entered into, in conſideration of *mutual truſt and confidence*, for the purpoſe of carrying on the buſineſs of *banking*, for twenty-one years from 6th November 1769. The parties bind themſelves mutually to promote and advance the *true intereſt and advantage* of the Company to the utmoſt of their power, and to contribute the ſeveral ſums therein mentioned towards

wards raiſing a capital of L. 150,000, to be afterwards augmented if found neceſſary; and for the better regulating and conducting the buſineſs, and preventing diſputes, they ſubject themſelves, *their ſhares and intereſt in the ſtock* of the ſaid copartnery, to certain articles, conditions, and obligations, whereof the following will be attended to.

1. By the firſt article, the ſum of L. 500 is declared to be a ſhare, and no Partner is to hold more than four ſhares, or leſs than one.

2. By the ſecond article, each Partner is taken bound to pay his ſubſcription at ſuch times, and in ſuch proportions, as ſhall be appointed by general meetings, and that within thirty days, *with one fifth part more in name of penalty in caſe of failure*, and the legal intereſt till payment.

3. By the fourth article, it is declared, That it ſhall not be allowable for the *Company*, or the *Directors* thereof for the time being, *upon any ground or pretence whatever*, directly or indirectly, to uſe, exerciſe, or follow *any other* commerce, traffic, or buſineſs, with the joint *ſtock* of this Company, or any part of it, except towards the undertaking of *Banking* intended by this Copartnery, as above mentioned.

4. By the fifth article, it is provided, That the profits ariſing from the ſaid joint ſtock and copartnery, are to be divided among the Partners, in proportion to their ſhares of ſtock; and that *the loſſes ariſing from the ſaid Copartnery-buſineſs*, if any are, ſhall be ſuſtained by the ſaid Partners according to their ſaid ſhares of ſtock.

5. By the ſixth and ſeventh articles, it is provided, That the Company's principal office ſhould be at Air, till removed by a general meeting, and that branches ſhould be eſtabliſhed at Edinburgh and Dumfries.

6. By

6. By the eighth article it is provided, That there ſhall be annually choſen nine directors to officiate at Air, *five whereof to be a quorum*; and nine directors to officiate at Edinburgh, *five whereof to be a quorum;* and nine directors to officiate at Dumfries, *five whereof to be a quorum;* all which directors, when occaſionally preſent at any of the offices to which they do not properly belong, ſhall be *intitled* to vote and act *together with* the directors properly belonging to that office.

7. By the ſame article it is declared, That the buſineſs of the Directors ſhall be, to ſuperintend and direct the Caſhiers and other officers of the Company, to diſcount bills, allow caſh-accounts, &c.; and, in general, to conduct the buſineſs of the Company in the moſt expedient and beneficial manner: and that their actings ſhall be binding upon all the partners, to the extent of their reſpective ſhares, *unleſs thoſe are altered or varied by a general meeting*.

8. By the ninth article it is provided, That the Caſhiers and Tellers to be appointed at each office ſhall, *at their admiſſion*, find ſufficient caution for the due, honeſt, and faithful execution of their office, and for the full damages to be incurred by their non-performance; as alſo to pay up what arrears ſhall be found owing to the Company, as the ſame ſhall be certified by the Accountant.

9. By the tenth article it is provided, That a general meeting of the whole Partners ſhall be held twice in the year, viz. on the firſt Monday of the months of May and November, to lay down rules, and give directions as to the Company's buſineſs: That their proceedings ſhall be regularly kept in the ſederunt-book, to be ſigned by the Preſes of each meeting; and that the Directors ſhall be bound by every general rule preſcribed by a general meeting; and that abſent Partners may act at ſuch general meetings by proxy, in the choice of Directors, and certain other queſtions.

10. By

10. By the twelfth article it is provided, That the whole of the Company's tranſactions ſhall be fully and fairly entered and kept in regular and diſtinct books, to be brought to a juſt and true balance once every year; and atteſted and ſigned as ſuch, by the Directors, Caſhiers, and Accountants, of every year, ſo as to be ready for the inſpection of the ſubſequent general meeting in May.

11. By the thirteenth article it is declared, That all *promiſſory notes, bonds, bills, contracts, and other writings*, relating to the ſaid joint buſineſs, ſhall be taken and given under the firm of DOUGLAS, HERON, AND COMPANY, BANKERS IN AIR: *That the Caſhier and Accountant at the principal office, ſubſcribing on powers from the Company*, to be given and entered in their ſederunt-book, ſhall effectually bind the whole Company; and that the Caſhiers and Accountants of the ſeveral branches, ſhall alſo have power to bind the Company in *all writings* neceſſary for the buſineſs of each branch reſpectively.

12. By the fourteenth article it is provided, That the Company may be diſſolved by the proprietors of two thirds of the ſtock, at the end of the firſt ſeven or fourteen years, but at no other period; *provided always*, That if it ſhall appear from the yearly balance, that *fifty per cent.* of the capital is loſt, or if, *at any time*, it can be ſhown from the Company's books, that a *loſs* has been incurred *to that extent*, it ſhall be in the power of *any one Partner*, at the next, or any other ſubſequent general meeting, to *inſiſt for* an immediate diſſolution of the Company; and ſuch meeting ſhall be *obliged* to diſſolve the Company accordingly.

13. By the fifteenth article it is provided, That *in any of theſe events*, or at the expiry of the term of twenty-one years, the general meeting ſhall be *obliged* to appoint proper perſons to levy the debts due to the Company, and to turn their eſtate and debts into caſh, and apply the neat proceeds thereof; firſt, to extinc-

tion of the debts due by the Company; next, towards reimburſing the partners of their advance; and the reſidue ſhall be divided among the partners, according to their reſpective ſhares of ſtock. *And in caſe any of the debts* and effects belonging to the Company ſhall happen to be outſtanding at the expiration of twelve months from the diſſolution of the Company, then, and in that caſe, *the ſaid outſtanding debts* and effects ſhall be divided into lots, and a value fixed thereon by a general meeting of the partners, with this reſtriction, That none of theſe lots ſhall exceed, in original value, the ſum of five hundred pounds; and *which debts* and effects, divided as aforeſaid, ſhall be ſold, by public roup, at Edinburgh, intimation being always made thereof in the Edinburgh news-papers thirty days preceding the ſale.

14. By the ſixteenth article it is declared, That no ſale, or transfer of ſhares, ſhall take place, until regularly laid before a general meeting, and approved of by two thirds of thoſe preſent; and the ſeller ſhall, in that caſe, be relieved by the Company of all debts, deeds, and contractions, poſterior to the ſale *.

15. By the nineteenth article it is declared, That general meetings ſhall have power, from time to time, not only to ſettle their plan of management, but alſo to alter any of the foregoing regulations, *excepting thoſe hereafter declared to be unalterable*; and to make ſuch further rules, regulations, and by-laws, as ſhall be found neceſſary; *all which rules, or by-laws*, being duly recorded in their ſederunt-books, ſhall be equally binding, *as if the ſame had been inſerted in the contract*, until the ſame are altered, varied, or repealed, by a ſubſequent general meeting, or others adopted in their place; *declaring always*, That the *firſt*, *fourth*, *twelfth*, *fourteenth*, and *fifteenth* articles, are expreſsly agreed upon to be fundamental and *immutable* articles of the copartnery, and *unalterable* by the *whole*,

* This article is afterwards varied, § 31. of this branch.

or

or by any of the partners; and that no general meeting whatever ſhall have power to compel any partner to pay or contribute any more to the Company-ſtock than the preciſe ſum ſubſcribed for.

16. By the twenty-firſt article, the partners become bound to each other for the performance of their reſpective parts of the premiſſes, with the *good faith* neceſſary to ſo public an undertaking; and that under the *penalty* of a *fifth part* of each ſhare of the capital ſtock, to be paid by the party failing, to the Company's Caſhier, for behoof of the Company.

By-laws for the conduct of Directors and Caſhiers. App. N° 2.

By-laws.

THESE by-laws were, in terms of the nineteenth article of the contract *, adopted and approved of by the firſt general meeting of the Company in November 1769 †. They were, therefore, in terms of that nineteenth article, *equally binding, as if they had been inſerted in the contract*; and the following will therefore be attended to.

For Directors. App. N° 2. (*b*).

For Directors.

17. By-law 1.—The Directors are to meet once a-week, when the operations of the former week ſhall be laid before them by the acting Director, and examined.

18. By-law 2.—The weekly meetings to diſcount good bills of no longer dates than three months; to purchaſe good bills on London; and to give and withdraw Caſh-accounts, under theſe limitations: That no Caſh-account ſhall be ſmaller than L. 200, *or exceed*

* § 15. of this branch.

† *Vide* Appendix, N° 2. (*a*).

ceed L. 1000, except in *particular caſes*, where the honour and intereſt of the Company may require to give larger credits; the propriety of which muſt be determined *by the Directors of all the offices*; and in caſe any one Director ſhall object to the giving or withdrawing Caſh-accounts, his objection ſhall be marked in the ſederunt-book of the Directors, and brought under review of next general meeting.

19. By-law 3.—Each Director ſhall have charge of the buſineſs in his turn, week about.

20. By-law 5.—The buſineſs of the acting Director is, to inſpect the conduct of the ſervants; to give out the neceſſary caſh, notes, &c.; to deliver to the Caſhier the neceſſary checks for drawing bills on London, and on the different branches, and to ſign theſe bills; to regulate the quantity of money the Teller ſhall keep in his hands; to inſpect the Caſhiers and Tellers balances, and examine the vouchers; and to count over the money in their hands *at leaſt once a-week.*

21. By-law 7.—At Edinburgh there are to be two days of diſcounting bills, one of them the day of the weekly meeting, the other any day moſt convenient, when the *acting Director*, with the aſſiſtance of *other two Directors*, to determine what bills ſhall or ſhall not be diſcounted, with liberty to any of the other Directors to attend and vote. *Bills on London to be purchaſed in ſame manner.* And in caſe any one Director ſhall object to the diſcounting or purchaſing any bill, the matter ſhall lie over till next day for a fuller meeting of Directors. The purchaſing bills of exchange, to be part of the *daily buſineſs* of the *acting Director* and *his aſſiſtants.*

22. By-law 8.—A *Minute-book* for diſcount and purchaſing bills of exchange, to be kept, and every bill ordered to be bought or diſcounted, *to be entered therein*, and *the entries* of the day to be *ſigned*

ed by the Director or Preſes; and as all the Directors have charge of the buſineſs in their turn, the *two next* in order to the acting Director to attend for *purchaſing* and *diſcounting* bills, or procure others to attend for them.

23. By-law 10.—The Directors ſhall every week correſpond with one another, and forward to each other a ſtate of their affairs.

For Caſhiers. App. N° 2. (*c*).

24. By-law 8.—That the Caſhier ſhall act as Secretary at the meeting of Directors, keep their ſederunt-book, *and enter* in the minute-book for purchaſing bills of exchange, and for diſcounting inland bills, *all bills they ſhall order to be bought or diſcounted*; and ſhall cauſe the meeting, or the preſes, *ſign ſuch order*; and that he ſhall cauſe regularly proteſt ſuch bills as are not duly paid. For Caſhiers.

25. By-law 15.—The Caſhiers ſhall fill up and ſign all the bills upon London, and on the different branches; which ſhall be marked by the Teller's initials on his receiving the money, after having been firſt ſigned by one of the Directors.

26. By-law 17.—The Caſhier ſhall not engage in any trade or buſineſs which may interfere with the duty and attendance due to the Company.

27. By-law 18.—The Caſhier ſhall on no account apply any of the Company's money to any other purpoſe than the Company's buſineſs.

Alterations or additional Regulations eſtabliſhed by the Proprietors or by the Directors at their reſpective general meetings. Appendix, N° 3.

By the Proprietors.

Alterations or additional Regulations by the Proprietors.

By the tenth and nineteenth articles of the contract*, ſuch general meetings had power either to alter former regulations, or to make new ones; and various regulations were accordingly eſtabliſhed at different times: and of theſe the following will be attended to.

28. The general meeting held at Air 6th and 7th November 1769, declared, That the Caſhiers, and other officers of the Company, ſhould *on no account* be allowed to be bail or ſurety for any perſon in caſh-accounts, or any other tranſaction with the Company; and that this ſhould be ſtrictly obſerved. App. N° 3. (*a*).

29. The ſame meeting declared, That there ſhould not be above one member of any trading ſociety or company whatever in the direction of this Company, at any of the offices, at one and the ſame time, whatever be the number of ſuch members in one company or ſociety. App. N° 3. (*b*).

30. The general meeting held at Air 7th of May 1770, declared, That the bail for the Caſhiers of the Company ſhould not be unlimited, but ſhould only extend to the ſum of L. 15,000 for each Caſhier. App. N° 3. (*c*).

31. The general meeting held at Edinburgh 5th and 6th November 1770, agreed, That the ſixteenth article of the contract † ſhould be varied, and that it ſhould be left to the *whole Directors*, when any

* § 9. and § 15. of this branch.

† § 14. of this branch.

any Proprietor means to ſell out either one or more ſhares, either to admit of a transfer to the perſon to whom he propoſes to ſell, or otherwiſe *to purchaſe his ſhare for behoof of the Company*, and to pay him therefor his proportion of the ſtock and profits, according as the ſame ſhall ſtand at the laſt or preceding ſettlement of the Company's affairs, with intereſt at 4 *per cent.*; *and that all ſuch transferences ſhall be regularly entered, and reported to the immediate ſubſequent general meeting*. App. N° 3. (*d*).

32. The ſame meeeing agreed, That the ſeventeenth article of the contract ſhould alſo be varied, and that the *whole Directors* ſhould be impowered either to admit as a Partner the Repreſentative of a deceaſing Partner, or the Aſſignee of the creditors of an inſolvent one, or elſe to pay to ſuch Repreſentative or Aſſignee the value of the ſhare as aſcertained at laſt balance. App. N° 3. (*e*).

33. The general meeting held at Dumfries 6th of May 1771, agreed, That the Directors ſhould have power to treat with any banking companies in Scotland who might incline to join the Company, and to aſſume the whole, or ſuch of them as they ſhall ſee cauſe, upon ſuch terms as may be beneficial to the Company, ſo ſoon as any of them ſhall make offers for that purpoſe, or agree to propoſals made them. App. N° 3. (*f*).

34. The general meeting held at Air the 4th, 5th, and 6th of November 1771, agreed, That as it was of importance to the Company, that the Proprietors ſhould have confidence in the conduct of their Directors, *and as it was impoſſible* that a full inveſtigation could be made of the Company's affairs in any general meeting of the Copartners, therefore an *extraordinary* Committee of nine Proprietors ſhould be annually choſen, veſting them with power to meet and act with the ordinary Directors *at all their ſtated or extraordinary general meetings*, to review all their proceedings, and to offer obſervations thereon. App. N° 3. (*g*).

35. The

35. The ſame general meeting agreed to approve of the tranſactions lately entered into with the old Air and Dumfries banking companies. App. N° 3. (*h*).

36. The ſame general meeting reſolved, That the reſolution of the general meeting 7th of November 1769, prohibiting more than one member of any trading company from being in the direction at any of the offices at one and the ſame time, be varied; and that, in place thereof, it be eſtabliſhed, *That in caſe* two or more partners of the ſame company ſhall be in the direction at the ſame time, *none of them ſhall be preſent at the diſcounting of any bills, or any other money-tranſaction relative to that company.* App. N° 3. (*i*).

SUCH are the chief articles and conditions of this Copartnery, to which the whole Copartners were ſubjected, and by which, *in particular*, the conduct of the Directors and officers of the Company ought to have been governed throughout their tranſactions. We have only mentioned ſuch as we conſider to be neceſſary for the purpoſe of the preſent Report: but as ſeveral other regulations for managing and controlling the buſineſs were from time to time eſtabliſhed by general conſent of the three Boards of Directors; and as theſe regulations ought likewiſe to have governed their conduct at each of the offices, it therefore becomes proper, before proceeding to the ſecond branch of the Report, to mention the following regulations eſtabliſhed by general conſent of the whole Directors.

By the Directors.

By the Directors.

37. A general meeting of Directors, held at Air 8th November 1769, reſolved, *That in every obligation for a caſh account or credit, from L. 1000 downwards, there be two cautioners or bailſmen at leaſt.* App. N° 3. (*k*).

38. A

38. A general meeting of Directors, held at Edinburgh 6th November 1770, ordered, That it ſhould be obſerved as a general rule at each office, That all who are concerned in any copartnery-trade, ſhall lodge a liſt of the whole names and firms of ſuch company, at the office where they have occaſion to deal in diſcounts, or other money-tranſactions; and that copies of ſuch liſts ſhall be tranſmitted to the other offices. App. N° 3. (*l*).

N. B. This order renewed and ſtrictly enjoined at a general meeting of Directors held at Dumfries 4th May 1771. App. N° 3. (*l*).

39. A general meeting of Directors, held at Dumfries 4th May 1771, reſolved, That as the number and extent of caſh-accounts given at the office and branches, were already become *burdenſome*, and likely to be *unprofitable*, many of them being uſed more *as loans* than in the proper operations of buſineſs; therefore *no caſh-accounts ſhould for the future be given at the office, or any of the branches, without previouſly correſponding with and obtaining the conſent of the three Boards of Directors, or the majority of them, when convened as a Board.* App. N° 3. (*m*).

N. B. This reſolution is confirmed at a general meeting of Directors 5th November 1771, which appoints, That no caſh accounts or credits ſhould for the future be granted, except twice in the year, *at general meetings of Directors.* App. N° 3. (*m*).

HAVING thus recapitulated the principal articles, laws, and regulations, of this Copartnery, to which all the Partners were ſubject, and by which the Directors and officers of the Company were bound to their conſtituents to regulate their conduct in all their tranſactions; we ſhall now proceed to the Second Branch of this Report; the object of which is, to conſider and explain the general nature of the management of the affairs of this Company.

BRANCH II.

General Nature of the Management.

General nature of the management.

BEFORE proceeding to ſtate the particular acts of miſmanagement which are the proper object of the third branch of this Report, it will be neceſſary to make ſome obſervations upon the general nature of the management of the affairs of this Company, and the cauſes which contributed to their rapid deſtruction.

The general error in the conduct of the affairs of this Banking Company, ſeems to have been that of over-trading, and endeavouring to force a circulation of the Company's paper beyond the natural limits, which muſt ever regulate and confine operations of that kind: and it was unfortunate for this Company, that its original conſtitution, by eſtabliſhing three diſtinct branches, independent of each other, tended much to render the error of too profuſe a circulation extremely dangerous. The extent of the circulation of any country muſt ever be regulated by the extent of its trade and induſtry. It can only employ, in circulation, a certain quantity, either of money, or of paper uſed as its repreſentative. But this poſition, however obvious, was not attended to by the Managers of this Company. In conſequence of credits given out in various forms, too profuſely, and too rapidly, a much greater quantity of the Company's paper was at all times thrown into the circle than could be employed in it; and hence it is plain, that the *exceſs* would perpetually return upon the Company, to be exchanged for other value; and that the Company would of courſe be perpetually contracting debt *ſomewhere* for anſwering the demands upon them. The Company's ſtock, though very conſiderable, was yet altogether inſufficient for this purpoſe; and it was the more ſo, becauſe the

the calls upon the partners were by no means punctually paid in. It was therefore neceſſary immediately to reſort to credit-eſtabliſhments in London; and the Company's debt there gradually accumulated, according as the credits in Scotland were extended. Theſe credits too were placed ſo injudiciouſly, that they became in fact permanent loans of money; and the ſtream which by this means once iſſued from the Company, being in reality never repleniſhed, the Company loſt the command of their funds, and the debt in London very ſoon became formidable and enormous. Hence may be derived the ſource of our calamities.

This debt being contracted by draughts upon correſponding houſes in London, it became neceſſary to provide, from time to time, for payment of thoſe draughts, and to ſupport our credit there, by continually purchaſing and remitting vaſt ſupplies of bills of exchange; whereof by far the greateſt part was of the fictitious kind, ſo prevalent in this country at that period.

The fatal conſequences which enſued in the year 1772 from ſuch improper and extravagant management, and from ſuch a dangerous traffick in fictitious circulation-bills, were the natural reſult which was foreſeen by many, and might have been apprehended by all who were verſant in matters of that ſort.

But it would be unreaſonable and unjuſt to lay to the charge of our Managers errors of this general and ſpeculative nature. It is by no means our intention to do ſo. On the contrary, however ſevere the conſequences have been, the plea of ignorance, and error in judgement, ought to have its full weight; and provided the Managers of this Company have, in their profuſe adminiſtration, acted *legally*, and agreeably to the rules preſcribed for their conduct, the unfortunate Partners of this Company have only to regret the misfortune of their having come together, and muſt abandon the

proſpect

proſpect of obtaining that redreſs and indemnification to which they might otherwiſe imagine themſelves intitled.

We are ſorry, however, that, upon examining, in the moſt candid and impartial manner, the nature and circumſtances of that profuſe management which occaſioned the ruin of the Company's affairs, we cannot, with juſtice, or propriety, confine the charge againſt the Managers of the Company to mere imprudence, ignorance, or ſpeculative errors. The regulations by which they were bound to conduct themſelves have been before recapitulated. Whether theſe were altogether adequate to the purpoſes of the Copartnery, or ſufficient to enſure ſucceſs, we have no occaſion to inquire. We are, however, fully ſatisfied, that if thoſe eſtabliſhed rules of conduct had been obſerved, even with a moderate degree of fidelity, the Company's affairs could not have been plunged into ſuch diſtreſs and ruin. But, violated and evaded as they were, in a thouſand inſtances, the conſequences were not more fatal than they were infallible. Imprudent, or erroneous management alone, could not have produced ſuch deſtruction; and though abundance of this every where appears in the proceedings, yet we are ſorry to ſay, that our misfortunes have in a great degree been occaſioned, not by mere error and imprudence, but by an open diſregard, not only of the principles of the Copartnery, but of the expreſs and poſitive rules and regulations laid down for the conduct of the Managers; and we do therefore apprehend, that, in ſo far as this charge can be eſtabliſhed by legal evidence, and the damage thence ariſing properly qualified, the Managers of the Company ought to be liable in redreſs to their injured Fellow-partners.

In order the better to enable the Partners of this Company to judge of the culpable acts of management which are the proper object of the third branch of this Report, it will be a neceſſary preliminary, to review the general nature and ſtyle of the management at the reſpective offices of Air, Edinburgh, and Dumfries; ſuch as it

it appears to us upon an attentive peruſal of the proceedings and tranſactions at each of theſe offices.

AT Air, which was the principal office, and where the buſineſs commenced the 6th of November 1769, it was unfortunate, that a variety of enterpriſing companies, engaged in different kinds of foreign and domeſtic trade, had, about this time, been eſtabliſhed in that place, under different firms indeed, but all of them cloſely connected and linked together; and that the members which compoſed theſe ſeveral trading companies became all of them Partners of *Douglas, Heron, and Company*. It was ſtill more unfortunate, that the Caſhier, and moſt of the Directors, choſen for the management of the Air office, were deeply connected with, and concerned in, one or more of theſe trading companies; and thus the wiſe and ſalutary regulation of the general meeting November 1769 *, prohibiting above one member of any trading company from being in the direction at any of the offices at one and the ſame time, was diſappointed and eluded in the very firſt proceeding. Air.

Such were the companies under the firms of *Oliphant and Company*, —*Whiteſide and Company*,—*Maclure and Maccree*,—*Campbell and Company*,—*Montgomery and Company*,—*Campbell, Crawford, and Company*, —and ſome others. The ſame connections, and, in general, the ſame individuals, compoſed thoſe trading ſocieties. They were a ſet of the partners of Douglas, Heron, and Company, aſſociated together; and four or five of the chief acting Directors of this office, were deeply engaged in thoſe commercial ſchemes. The common deſire and neceſſity of promoting mutual credit, could not fail to unite this confederacy in the cloſeſt manner; and the acceſs to credit being rendered eaſy, the conſequences were ſuch as might have

* Branch 1. § 29.

been expected.——Moſt exorbitant and profuſe credits were immediately given out, in various forms, to the individual members of thoſe trading companies, and to the companies themſelves, under their reſpective firms.—The ſame ſet of people became ſecurities for each other; and, in the granting of caſh-accounts in particular, this abuſe immediately became ſo great with reſpect to the *Board of Directors*, and was ſo evidently inconſiſtent with the proper rules of management, that, ſo early as the 20th November 1769 *, a regulation was made, " That none of the Directors who had already " been bound, ſhould afterwards be received as ſecurities in any " caſh-account:" and thereafter, on the 8th of January 1770 †, the abuſe having been complained of by the other offices, it was further reſolved, " That no perſon whatever ſhould be received as cau- " tioner in more than three caſh-accounts."

Theſe regulations, however, were not regarded; and the abuſe of credit, in favour of thoſe trading companies, and the members of them, by the method of *diſcount* of bills, was ſtill more flagrant and inexcuſable. It may with juſtice be ſaid, that almoſt the whole extenſive operations of this office were confined within this narrow circle.——And hence two dangerous conſequences neceſſarily followed: The operations themſelves, though they had been more generally diffuſed, were by far too extenſive, and far beyond what the real trade and induſtry of the country required: And, ſecondly, The circumſtance of their being confined within ſo narrow a circle, threw ſuch large ſums into the hands of a *few* individuals, that the Company-funds became altogether inacceſſible to a very great amount, and were entirely withdrawn from the command of the Company; whereas, had the credits, in conformity to our *ſocial motto*, been more impartially and more generally diffuſed, *pro bono publico*, the conſequences

* *Vide* Air ſederunts of that date.

† *Vide* Air ſederunts of that date.

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of an exceſſive credit could not have been ſo calamitous; the reſources would have been more numerous; and our funds more at command.

The conſequences of this wild, partial, and profuſe management at Air, were very ſoon felt, particularly at the Edinburgh branch, where the Company's notes were poured in from all quarters in great quantities, to be exchanged for other value. It appears from the ſederunts and correſpondence of the Directors there and at Dumfries, that the improper conduct of the Directors at Air, had very early been the ſubject of obſervation and complaint at both the other offices; and particularly, in the beginning of January 1770, a very ſevere and judicious letter of remonſtrance, approved of by both the branches *, was ſent from Edinburgh to the Air Directors; which having had little effect upon their conduct, and the diſtreſs of the Edinburgh branch having increaſed, ſeveral other uſeful letters of remonſtrance † afterwards paſſed upon the ſubject, in which the critical ſituation of the Company's affairs, even at this early period, in conſequence of the raſh proceedings at Air, is abundantly diſplayed.

Theſe early remonſtrances, which ſprung from ſevere experience, and which ſuggeſted the proper principles for conducting the Company's affairs, ſeem in a great meaſure to remove the general plea of ignorance, or error in judgement, which might naturally be urged in behalf of our Managers, and ought certainly to have put thoſe at Air upon their guard. It does not, however, appear that theſe warnings had any proper effect. The ſame plan of wild and profuſe management was ever after eagerly purſued by the Directors of this office down to the fatal period of June 1772, although the Company's affairs had before then, in conſequence of ſuch an extra-

* *Vide* Appendix, N° 4. letter 11th January 1770, and Dumfries ſederunt of 16th January 1770.

† *Vide* Appendix, N° 4. letters 13th and 17th April 1770.

vagant

vagant carreer, again and again approached to an alarming criſis. Indeed, it appears ſufficiently plain from the proceedings of this office, that the credits given out within the *firſt few months*, and thrown into the narrow circle already mentioned, were the ſubject of the chief future operations at that office, and the cauſe of our ultimate, as well as of our firſt diſtreſs. Such large ſums were thereby thrown into the hands of a few individuals, that they could not afterwards be commanded; and, notwithſtanding the *appearance* of conſtant, new, and ſucceſſive operations, the debts firſt contracted in *reality* continued the ſame. They indeed appeared from time to time in different *ſhapes*; but they were in fact permanent loans, only continually accumulating; and the Debtors in the beginning were the Debtors in the end, as well as at every period of the Company's affairs.

The great and cumberſome Debtors of the Company at this office, were the Directors themſelves, and a few more of the Partners, aſſociated and interwoven together in the ſeveral trading ſocieties already mentioned. This, we are ſorry to ſay, we find, upon the moſt accurate inquiry, to be the caſe at this office at every period of the Company's affairs. The debts contracted by thoſe companies, and the individual members of them, by means of caſh-accounts, and diſcount of bills, will be found to bear a vaſt and ſhameful proportion to the ſum-total of the debts due to the Company at this office, at every period of their affairs; and, when compared with the credits given to other individuals, all proportion ſeems loſt.

Such was the general nature of the management at Air.

Edinburgh. ALTHOUGH it does not appear, that the Directors of the Edinburgh branch were ſo much connected together in trading companies as at Air, and though at firſt they ſeem to have acted with greater

greater caution, yet we are ſorry to obſerve, that they appear very ſoon to have abandoned that proper ſtyle of conduct.

The great increaſing London debt, which chiefly fell under the management of this branch, had very early induced the Managers to form connections with circulation-houſes, who dealt in fictitious bills of exchange, and from whom great ſupplies of ſuch remittances were from time to time procured. Thoſe dangerous connections, however, though at firſt formed by the *neceſſity* of our affairs, were afterwards cultivated with too little diſcretion, and appear to us, from numberleſs proofs and inſtances, to have been made ſubſervient, not to the accommodation of the Company alone, but likewiſe to the private accommodation of individuals, and of the circulation-houſes themſelves. Theſe houſes were certainly not intitled to that extraordinary degree of truſt and credit which the Directors at this branch thought proper at all times to give them, not only by purchaſing from them ſuch vaſt ſupplies of bills of exchange, for which a ſort of neceſſity might perhaps be pleaded, but alſo by a variety of other modes of credit equally dangerous and unconſtitutional, and for which there ſeems to have been no neceſſity whatever.

Such was the practice which took place in ſome inſtances, of opening accounts-current with thoſe houſes, under the pretence of 4 *per cent.* accounts, and allowing them to overdraw thoſe accounts, and to become the debtors inſtead of the creditors. Such likewiſe was the practice of giving large accommodations to thoſe needy houſes under the form of diſcount: no advantage could poſſibly be derived to the Company from ſuch diſcount; and immediate inconvenience and diſtreſs was the obvious and neceſſary conſequence. The Company's paper iſſued upon the diſcount, would immediately be returned upon them for caſh, or bills on London; perhaps by thoſe very circulators, who would, in their turn, ſtand in need of ſuch ſupplies for ſupporting their own London credit. Such likewiſe was the ſtill more dangerous and inexcuſable practice of ex-

changing bills on London with thoſe houſes.: No apology whatever occurs to us in excuſe for this practice: The Company, by ſuch a traffic, neceſſarily and directly increaſed their debt in London, by the amount of the draughts they gave, while they run the riſk of the bills received in exchange, not being in the end effectual to diminiſh an equivalent ſum of the London debt.

Speculative notions reſpecting the bill-trade, and the ſuppoſed utility of the Company's connections with theſe circulators, may then have been, and perhaps may ſtill be, entertained by ſome, in defence of theſe and ſimilar practices. But they were dangerous and unconſtitutional devices; and it was proper here to take notice of them, becauſe very great loſſes have thence ultimately enſued to the Company.

The Directors at this office did not at firſt launch out into ſo profuſe a credit in the other branches of management as the office at Air had done. They were *then* more cautious in that reſpect, and frequently remonſtrated, during the firſt few months, againſt the proceedings of the Air Directors. It appears, however, that they afterwards fell into the ſame dangerous abuſe of credit, which they had formerly complained of in others, and the conſequences of which they had already ſufficiently experienced; and gave out, with much indiſcretion, exorbitant and *partial* credits in various forms. The diſtreſs ariſing from a profuſe and intemperate extenſion of credit, was always more ſeverely felt at this than at any of the other offices; and it might therefore have been expected, that ſuch experience would have had a ſalutary effect on our Managers there, in reſtraining their conduct; but we are ſorry to ſay, that it does not appear to have had any ſuch good effect; and at no period of our affairs does the management at this office appear more looſe, profuſe, and irregular, than during the times of the greateſt diſtreſs, and moſt imminent danger, to which the Company was frequently reduced.

Upon

Upon inquiry, too, we find, that here, as at the Air office, by far too great a proportion of thoſe credits was, at every period, confined within the narrow circle of a few individuals, in whoſe hands the debts once contracted remained ever after fixed, and perpetually accumulating; ſo that a large proportion of the Company's funds, which, had they been more generally diſtributed, might have afforded relief to the Company in their exigencies, was, by this partial management, placed beyond their reach. The great and cumberſome debtors of the Company, were the managers themſelves, and a few more individuals; and the debts due by them, at every period of the Company's affairs, will be found to bear a *vaſt* proportion to the ſum-total of the debts due to the Company. In reality it appears, that it was not ſo much the exceſſive credit iſſued, as the narrow and partial circle within which it was confined, that occaſioned the Company's perpetual diſtreſs, and final ruin.

Such was the general nature of the management at Edinburgh.

Dumfries.

THE affairs of the Company appear to have been for a conſiderable time conducted in a prudent and cautious manner, by the Directors of the Dumfries branch. They did not launch out into that ſhamefully profuſe credit which the other offices did. They appear to have been ſenſible of the impropriety and danger of doing ſo, and to have been for ſome time ſincere in watching over the conduct and management of the other offices, and cenſuring ſuch abuſes as they obſerved.

The chief error of their management ſeems to have been that of endeavouring, from miſtaken notions of the buſineſs, to *force* a circulation of the Company's paper, beyond its natural limits, and to ſupplant the circulation of other banking companies: A ſcheme which, though in the end it proved idle and unprofitable, ſeems to have been a favourite topic at all the offices, but to have been early carried

carried to a much greater extent here, than at Air, or Edinburgh. This error, however, as well as the other errors which occur in the proceedings of this branch, do not, for a conſiderable time, ſeem imputable to wrong motives.

But though the erroneous conduct of the Directors of this branch may, during a conſiderable period of the Company's affairs, be excuſeable; yet, in the later period of their tranſactions and operations, we can by no means view their conduct in that favourable light; particularly after November 1771. From this period they appear to have gone to the higheſt pitch of abuſe and irregularity, in giving out profuſe and partial credits; which being confined within a very narrow circle, as at the other offices, the bad conſequences were the ſame. The greateſt part of the credit iſſued, is found placed in the hands of a few individuals, altogether beyond the reach of the Company.

Thoſe proceedings of the Dumfries Managers, after the above period, were the more unjuſtifiable; becauſe it was then ſufficiently obvious, and ſevere experience had taught all our Managers, that the only chance of retrieving our affairs, was by an immediate and ſteady retrenchment.

Such was the general nature of the management at Dumfries.

Conduct of Directors in general meetings.

WHILE, in conſequence of the wild, profuſe, and partial management at the different offices, the general nature whereof has been inquired into, the affairs of the Company were advancing faſt to ruin, the conduct of our Managers, towards the Proprietors, when aſſembled together in their own general meetings, or in the general meetings of the Company, was by no means ſuch, as, after the moſt candid and impartial examination, we can with any degree of juſtice or propriety approve of.

The

The diſtreſs occaſioned by the growing London debt * was very ſoon ſo ſeverely felt, and the ſituation of the Company's affairs already appeared ſo alarming, that, previous to the general meeting of the Company in May 1770, as appears from the private correſpondence of the Directors †, it was thought neceſſary, "that the matter ſhould be *fairly ſtated* to the Proprietors at their general meeting, and further aid required." —— It appears, however, from the proceedings at this general meeting, that, in the Report from the Directors to the Proprietors ‡, which was the only channel of information they had as to their affairs, no mention is made, nor account given, of the *real* ſituation of the Company. A ſtate of the credits then lately eſtabliſhed in London is indeed reported to the Proprietors, in compliance with the injunction of the general meeting in November 1769, which had remitted that important buſineſs to their Directors ‖; But no mention is made of the paſt diſtreſs, or of the danger and amount of the London debt; And a further call of 20 *per cent.* being ſuggeſted, without aſſigning any reaſon for that aid, the Company, in full reliance upon the opinion of their Managers, agreed to the propoſal **. May 1770.

The Company's affairs ſeem to have gone on ſmoothly enough for ſome time after this; the London debt, however, gradually accumulating, as the credits in Scotland were extended: and as the Proprietors, at their meeting in November 1770, knew nothing of the real ſtate of their affairs, nor learned any thing material upon Nov. 1770.

* N. B. The London debt already amounted to above L. 85,000.

† *Vide* Appendix, No 4. letter 17th April 1770.

‡ *Vide* Appendix, No 5. (*a*)

‖ *Vide* Sederunt of the general meeting, 6th November 1769, art. 5.

** *Vide* Appendix, No 5. (*b*). There were preſent at this meeting, perſonally 60, and by proxy 110. — Abſent 41.

that ſubject from the report of their Managers *, and were moſt of them abſent, or repreſented only by proxies, ſolicited by and given to a few of the former Managers †, the choice of Directors for the ſecond year fell, with a few exceptions, upon the ſame ſet of people who had formerly officiated, and who, unfortunately for the Company, were now bound and aſſociated together, by the extent of their debts to the Company, and the neceſſity of mutual ſupport.

It appears, however, that about February or March 1771, the London debt had increaſed to ſuch a height, as nearly threatened the ruin of the Company; and as no relief could be expected from the Company's proper funds, which had been ſo injudiciouſly and improperly placed, the only reſource left was, to procure larger and more convenient credit-eſtabliſhments in London. It was accordingly agreed among the managers of the three offices, that this expedient ſhould be attempted ‡. In the mean time, however, one of the houſes of correſpondence ‖ having refuſed to come under further acceptance for the Company, the diſtreſs became exceſſive; and a deputation of Directors from the Edinburgh branch was diſpatched to London, in order to ſettle a new correſpondence **; but before this was got done, the ſituation and diſtreſs became ſo great, that the Company was on the very brink of ruin and bankruptcy, as abundantly appears from the ſederunts of the Directors at Edinburgh about that period, and from private letters of correſpondence which then paſt upon the ſubject ††.

* *Vide* Appendix, N° 5. (*c*).

† There were preſent at this meeting, perſonally 67, and by proxy 117. — Abſent 37.

‡ *Vide* Appendix, N° 5. (*d*).

‖ Dimſdale, Archer, and Byde.

** *Vide* Appendix, N° 5. (*e*).

†† *Vide* ſundry letters, Appendix, N° 5. (*f*).

The

The danger, however, was for this time eſcaped, by means of the very extenſive credit-eſtabliſhments then obtained in London; but we cannot help thinking, that ſuch an alarming criſis ought to have awakened our Managers from their golden dreams, and ought to have made prudence and caution a *poſitive* duty with them in all their ſubſequent proceedings; although, we are ſorry to ſay, that at no period of our affairs does profuſe and irregular management appear more prevalent than during the time of all this diſtreſs. In particular, at Edinburgh, the whole board during that period, generally conſiſted of only *three* Directors. The practice, therefore, of acting without a quorum, became quite common; and the iſſuings appear to have been moſt unneceſſarily profuſe *.

After ſo much danger eſcaped, and ſuch deep and important tranſactions lately concluded at London, without the knowledge or authority of the Proprietors, it might have been expected, that, at the enſuing general meeting of the Company in May 1771, the Directors would have laid a fair and candid ſtate of their affairs before their conſtituents, in order that proper means of relief might be deviſed, or conſidered of. Some reſpect was certainly due to the Proprietors, whoſe fortunes and credit were at ſtake; and though we may be perſuaded, that the Directors, at leaſt many of them, were flattered and deluded by ſpeculative notions, with reſpect to the future proſperity of the Company, yet it was not juſt, that becauſe the Directors were deluded, the Proprietors ſhould be deceived as to the real ſtate of their affairs. May 1771.

We are ſorry, however, to find, that altho' the whole of the Company's buſineſs, important and intereſting as it was at that period, is fully canvaſſed among the Directors themſelves, at their meetings immediately previous and ſubſequent to this general meeting of the Company †; yet in the Report laid before the Proprietors, when

* *Vide* Edinburgh ſederunts between March and May 1771.

† *Vide* ſederunts of Directors, 4th and 7th May 1771.

aſſembled

aſſembled together *, no mention whatever is made of any one particular which could in any ſhape tend to ſhow the *real* ſtate of the Company's affairs †. The important matters which had lately occurred, are not touched upon in the moſt diſtant manner, but kept out of view. The Proprietors are amuſed in their conſtitutional general meeting with a few idle, inſignificant, common-place topics; and ſtrangers as they were to the real ſtate of their affairs, an additional call of ſtock is ſuggeſted, and viſionary ſchemes propoſed to them of purchaſing up other banking companies.

We cannot juſtify or excuſe the conduct of our Managers upon this occaſion. They knew the critical ſituation from which the Company had juſt emerged, as well as the cauſes of it; and they likewiſe knew, that thoſe cauſes ſtill remained. They ought, therefore, to have candidly informed the Proprietors, more eſpecially as they were ſoliciting farther aid; and had they done ſo, it will hardly admit of a doubt, that the Proprietors would not only have diſapproved of any additional call, or ſchemes of purchaſing up banking companies, but would have immediately adopted proper meaſures for ſaving their affairs from ruin, by retrenching their buſineſs, calling in their debts, and laying reſtraints upon their managers.

The Proprietors, however ‡, who had no opportunity of being informed about their affairs, from any other quarter than the report of their Directors, and who could not poſſibly make any uſeful in-

* *Vide* Appendix, N° 5. (*g*).

† N. B. In the late *letter to the Proprietors upon the ſubject of the Report of Inquiry*, p. 8. it is ſaid, That the ſtate of the credits eſtabliſhed in London at this time, was particularly mentioned in the Report from the Directors to this general meeting. But this is a miſtake in point of fact. The Report itſelf is appealed to, App. N° 5. (*g*).

‡ N. B. There were preſent at this meeting, perſonally 70, and by proxy 59,—abſent 96.

veſtigation

veſtigation at a general meeting, moſt unfortunately ſeconded the ideas of their managers, and adopted their Report *; but the height of abſurdity and folly into which the Proprietors at this meeting were betrayed ſtill remained. They *unanimouſly* ordered *a dividend of profits* †, and thus were made to amuſe themſelves with fancied wealth, at a period when it was ſo well known among the Directors, that the Company had lately been on the brink of ruin; and that although the general balance, made up as on the 5th of November 1770, and laid before this meeting, in terms of the 12th article of the contract ‡, might hold out a profit as ariſing from the tranſactions of the former year, this was yet in reality a *deception*, and a falſe view of things, ſince the Company's affairs were certainly at that time in no ſituation to admit of a dividend of profits.

In ſhort, upon a review of circumſtances, we cannot help cenſuring, in the ſtrongeſt manner, the conduct of the Directors of the Company towards the Proprietors upon this occaſion; and we only ſpeak what we feel, and what we imagine every unbiaſſed Proprietor muſt feel, upon a review of theſe proceedings, and of the *then* ſtate of the Company, when we ſay, that the Proprietors were *ſported* with at this general meeting.——We do not ſay, that our managers were bound, or that their duty required of them to diſcloſe to the Proprietors, the *arcana* of their banking policy: it might no doubt have been improper to do ſo: but there were *arcana* which, after the ſeveral alarming trials already experienced, the Partners were intitled to know, and which the managers were called upon in the ſtrongeſt manner to diſcover. They ought to have informed their conſtituents, that they had launched out too far in

* *Vide* Appendix, N° 5. (*b*).

† *Vide* Appendix, N° 5. (*i*).

‡ § 10. of branch 1.

the way of credit. They ought to have told them where, and in what manner this credit had been diſtributed: That it was placed ſo injudiciouſly as to be altogether inacceſſible to the Company; and that this ſituation of affairs had occaſioned much diſtreſs, and been the cauſe of their late extenſive operations in the way of enlarging their credit-eſtabliſhments in London.

It appears from the ſederunts of the meetings of the Directors, upon this occaſion, that they were by this time ſufficiently ſenſible of the dangerous nature of their paſt management, and accordingly laid down ſome regulations for reſtraining the powers of the Directors of the ſeveral offices. But thoſe ſchemes of retrenchment were not purſued with any degree of ſteadineſs or attention; and although for ſome time after this period the affairs of the Company moved on more ſmoothly than before, owing chiefly to the extenſive credit-eſtabliſhments in London; yet it was only a deceitful calm. Our debt there was ſtill accumulating; and the wound, which was already given, was continually inflamed by a perſeverance in the ſame ruinous plans of management. The raſh tranſaction, too, concluded about this time with the old Air Banking Company, and the ſtill more *diſmal* tranſaction with the Dumfries Banking Company*, though both unfortunately

* *Nota.* Beſides other peculiar diſadvantages attending it, it will be obſerved, that by the tranſaction with the Air Company, Douglas, Heron, and Company, were to enter to the buſineſs as on the 1ſt January *preceding* the date of the bargain. But by the tranſaction with the Dumfries Company, they were to enter, as on 29th October, near three months *after* the date of the bargain; and they were to be anſwerable for all the Dumfries notes in the circle *on that day*.—This interval, between the date of the bargain and the date of the entry, might be very induſtriouſly employed by the managers of Johnſton, Lawſon, and Company, in creating a great *oſtenſible* circulation, and putting the greateſt poſſible quantity of notes in *truſty* hands, ſo as to make them *appear* to be in the circle on 29th October. Accordingly no leſs than L. 80,000 appear to be *then* in the circle, conform to the ſtate made up. Whether the circulation of that Company was always as great, or only *happened* to be *uncommonly* great that day, we have no acceſs to know; but it is plain, that the three months interval afforded a fine field for *manœuvres* of various kinds.

fortunately authoriſed by the laſt, and approved of by the ſubſequent general meeting of the Company *, muſt yet be added to the catalogue of our diſaſters; and the extravagant proceedings in conſequence of theſe tranſactions, rendered our affairs ſtill more irretrievable, and were peculiarly improper and deſtructive, at a period when an immediate and ſteady retrenchment of buſineſs ſeemed to be the only remedy left.

The Proprietors, who at their general meeting in November 1771 could learn nothing but from the report of their Directors, ſeem to have been ſtill amuſed, and kept in the dark with reſpect to the *real ſtate* of the Company's affairs †, though it was fully canvaſſed among the Directors themſelves ‡. Two thirds of the Proprietors were indeed abſent from the meeting, but by far the greateſt part of theſe was repreſented by the Managers themſelves, in virtue of proxies ‖; and as they no doubt judged it expedient for them that the management ſhould be continued in nearly the ſame hands as formerly; ſo it moſt unfortunately happened, that the choice of Directors at this meeting fell again, with a few exceptions, upon the ſame ſet of people who had all along been in the management, and who were now ſo deeply involved; only that a conſiderable alteration to the worſe took place for the Dumfries office, in conſequence of the late tranſaction with the Dumfries bank. Nov. 1771.

After this period the London debt daily accumulated, and before the general meeting in May 1772 had become enormous.——

* § 33. and 35. of branch 1.

† *Vide* Appendix, N°. 5. (*k*)

‡ *Vide* ſederunts of Directors, 5th and 6th November 1771.

‖ N. B. There were preſent at this meeting perſonally 81, and by proxy 126,— abſent 30.

The

May 1772. The fate of the Company was now at hand; but even then we are ſorry to find, that the Proprietors ſtill remain in total ignorance of their *real* ſituation, and are amuſed, as they had formerly been, with deluſive accounts of the ſtate of the Company's affairs, which, in the Report from the Directors to that meeting, are repreſented as being *in a flouriſhing ſtate* *. It was not ſo when this matter was canvaſſed among the Directors themſelves in their private meetings at this time. The real ſtate of the Company, and their imminent diſtreſs and danger, as well as the cauſes of it, are there fully treated of, and the neceſſary ſchemes of retrenchment formed †. It may be aſked, why was this important information with-held from the Proprietors? Why were thoſe, whoſe fortunes and credit were ſo deeply at ſtake, denied the privilege of deliberation upon ſuch important and intereſting ſubjects? We are ſorry to ſay, it appears to us, from the moſt ſatisfying evidence, that the managers were now afraid to draw aſide the veil, and to lay open to the Proprietors a fair ſtate of their affairs, leſt the paſt management had been cenſured with too much ſeverity, and meaſures too ſteady and vigorous purſued for the Company's relief.

The plans of immediate retrenchment, formed among the Directors upon this occaſion, were perhaps prudent and judicious enough; but it was now too late: the bubble of circulation was ready to burſt, and the Company was about to be left without reſource.

The failures in London, in June 1772, having occaſioned a ſudden and general ſtagnation of credit, and put a ſtop in a great meaſure to the circulation of bills of exchange, the criſis of the Company's affairs was arrived. The bills of the Company were circulating

* *Vide* Appendix, N° 5. (*l*). There were preſent at this meeting perſonally 49, and by proxy 92; abſent 100.

† *Vide* Sederunts of Directors, 5th and 6th May 1771.

lating in London to a vaſt amount. An immediate proviſion for their payment became neceſſary. The common method which had hitherto been practiſed, of ſupplying our correſpondents by remittances, could no longer be reſorted to. Bills of exchange were not to be had; at leaſt to a very trifling amount, compared with the Company's demands; and a great proportion of the bills, which had formerly been purchaſed, and remitted, and were now circulating in London, being diſhonoured, fell to be taken up, and paid for a ſecond time by the Company. The return of the bills muſt immediately have produced a legal bankruptcy of the Company; and the managers were therefore reduced to the neceſſity, either of allowing this to happen, or of ſupporting the credit of the Company, and providing for payment of their engagements, by raiſing money in London upon a ſale of annuities.

The nature and effect of the proceedings in that deep and important tranſaction, will be afterwards conſidered under a ſeparate branch of this report. It is only now mentioned, becauſe the neceſſity of reſorting to it aroſe from the improper and ruinous management which has been reviewed; and becauſe it may juſtly be conſidered to be the *period* of our tranſactions as a Banking Company, the ſubſequent management being entirely directed towards the liquidation of our affairs, as the only object now remaining.

WE have now reviewed and conſidered the general nature of the management of the affairs of this Company, and have endeavoured, with as much accuracy as we could, and from the beſt evidence to which we had acceſs, to give the Partners ſuch a view of it as may enable them to judge more juſtly of the ſequel of this Report. But what we have hitherto obſerved with reſpect to the impropriety of the conduct of our Managers, is perhaps of too general and indefinite a nature to be the foundation of any claim of redreſs, without being more particularly qualified.

We ſhall, therefore, now proceed to the third branch of this Report, and bring under view of the Partners the *particular* acts of *culpable* miſmanagement which we think are chargeable againſt our Managers, previous to the above period of our affairs, and may perhaps be made the foundation of ſuch a claim of redreſs or indemnification.

BRANCH III.

Particular acts of culpable miſmanagement previous to our ſtop in June 1772.

Particular acts of miſmanagement

THE chief original modes of credit, as authoriſed by the Copartnery, were thoſe of caſh accounts or credits, and diſcount of bills. A great conſequential one, which immediately ſprung from our profuſion in the former, was that of the purchaſe of bills of exchange: and as all our diſtreſs and ruin may, as already mentioned, be juſtly aſcribed to a raſh and intemperate profuſion of credit; ſo the particular abuſes prior to June 1772, committed by our Managers, againſt the rules and regulations of the Company, which ought to have governed their conduct, are to be chiefly looked for in the exerciſe of the above three modes of credit, the granting of caſh-accounts, diſcounting of bills, and purchaſing of bills of exchange.

In the conſtitutional modes of credit by

Upon the moſt accurate and candid examination of the proceedings of our Directors, and of the detail of their management, we find, that great and numerous abuſes, in many particulars, but chiefly in the exerciſe of the above three modes of credit, were committed and authoriſed by our Managers at all the offices, in open violation of the eſtabliſhed rules preſcribed for their conduct; and we ſhall, therefore, endeavour, as diſtinctly as poſſible, to bring under

under view thoſe particular acts of miſmanagement which we apprehend were culpable acts, and chargeable againſt our Managers, at Air, Edinburgh, and Dumfries.

The eſtabliſhed rules and regulations by which the conduct of the Managers of this Company ought to have been governed in all their tranſactions, are compriſed under the *firſt* branch of this Report; and in granting of caſh-accounts, diſcounting bills, and exerciſing every other mode of credit, the minutes and federunts of the Directors at each office, ought, agreeably to the rules of the copartnery, to bear the evidence of the particular tranſaction, or the particular credit given out. It is, therefore, from this evidence alone that we can derive any information, or can be enabled to judge of the legality of the proceedings and tranſactions; and to this evidence we muſt appeal, in ſupport of the facts contained in this branch of the Report *.

AIR.

1. *Caſh-Accounts.*

IN the granting of caſh-accounts, it was particularly dangerous to 1. Caſh-accounts.

* *Nota.* The ſeveral ſtates referred to in this branch of the Report, contain the *particulars* of irregular caſh-accounts, diſcounted bills, and bills of exchange, viz. the dates of granting or iſſuing the irregular credit, conform to the federunt-book of Directors, and the other books, at each office; the perſons to whom ſuch credit was granted; the *oſtenſible* amount thereof; and the ſums *actually* due thereupon to the Company 22d June 1772. It was propoſed to have printed theſe ſtates in the Appendix; but upon mature reflection it occurred, that it was quite unneceſſary to do ſo; 1*ſt*, becauſe, as theſe ſtates conſiſt merely of dates, names, and ſums, little or no uſeful information could be thence procured; 2*dly*, Becauſe the amount of the irregular credit, as contained in each of theſe ſtates reſpectively, is condeſcended upon in the Report; 3*dly*, Becauſe theſe ſtates are not themſelves evidence, but are only collected from evidence; and, *laſtly*, Becauſe the truth or juſtice of thoſe ſtates can only be diſcovered, by comparing them with the evidence from which they are taken, viz. the federunts of Directors, and the books of the three offices; and it was impoſſible to print that evidence in an Appendix.

tranſgreſs

tranſgreſs the eſtabliſhed rules of the Company, for two reaſons: 1*ſt*, Becauſe that mode of credit was of a more permanent nature, being a *ſtanding* credit to the ſtipulated amount; and, 2*dly*, Becauſe, after a credit of that ſort was once unwarrantably granted, and the bond lodged in the office, it would naturally be preſumed, that it had been properly authoriſed; no further inquiry would be made into the matter; the operations would immediately commence, and the memory of any objection to it would ſoon be loſt amidſt the variety of future tranſactions.

It appears, however, that in the article of caſh-accounts granted at the Air office, the following particular abuſes were committed, and authoriſed by the Managers.

In the *firſt* place, By the eighth article of the contract of copartnery, it is expreſsly declared, "That at each office, *five* of the nine "Directors ſhould be a quorum *." And in judging of what a *quorum* was, it is proper to obſerve, that although the Directors of each office had a *privilege* to attend and vote in the meetings of the other offices, when occaſionally preſent; yet this privilege could never ſuperſede the neceſſity of a legal *quorum* of the Directors of *each* office, in managing the *proper* buſineſs of that office, by ſuppoſing, that the Directors of another office, occaſionally preſent, could conſtitute a part of ſuch *quorum*. The greateſt confuſion and abſurdity would follow, in a variety of inſtances, if a different interpretation of a *quorum* was to be adopted. —— Indeed, if the *foreign* Directors were underſtood to conſtitute part of the *quorum*, it muſt follow, that four ſuch *foreign* Directors, and one *proper* Director, would make a *legal* meeting at any office. Nay, further, the Directors of *one* office might, by this conſtruction, conduct the buſineſs of all the three offices, without the concurrence of any other Directors, provided *five* of them could contrive to aſſemble together at the ſeveral offices.

* § 6. of Branch 1.

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We muſt therefore hold it as a clear propoſition, That in order to conſtitute a legal meeting at any one office, five of the *proper* Directors of that office muſt be preſent, however many *foreign* Directors may be preſent in conſequence of their privilege.

It ſeems quite unneceſſary to ſay any thing with reſpect to the propriety of the regulation of a *quorum*, and the neceſſity there was for its being adhered to, ſo as to render the proceedings legal; but we nevertheleſs obſerve, that the practice of acting without a *quorum*, in very important tranſactions, was frequent at all the offices; and that at the Air office, in particular, caſh-accounts appear to have been granted or allowed, *without a quorum*, to a very conſiderable amount. The particulars are contained in a ſtate marked N° 1. here referred to; and the amount of the irregular credit ſo granted, appears to be L. 17,600 *.

In the *ſecond* place, By the ſecond by-law for the conduct of Directors †, a proper and ſalutary reſtraint was laid upon the granting of caſh-accounts; whereby "no credit *exceeding One thouſand* "*pounds* could be granted, without the conſent of *all the offices*."

This regulation would have proved a very uſeful and ſalutary one, had it been obſerved with fidelity; but we find, that it was very ſoon evaded, by a practice which prevailed, of granting to the ſame perſons, under various pretexts, different caſh-accounts, exceeding *in all* the limited amount of L. 1000, though none of them *ſeparately* exceeding that amount. In this *indirect* manner, as well as more *directly*, the above ſalutary regulation was tranſgreſſed in a great many inſtances, as collected in a ſtate marked N° 2. here referred to; from which the amount of irregular credit ſo iſſued ap-

* *Vide* MS. State, N° 1. with its relative ſederunts.

† § 18. of Branch 1.

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pears to be L. 16,300; whereof L. 1500 is contained in ſtate, N° 1 *. as liable to the former objection.

In the *third* place, By a *ſtanding* rule of a general meeting of Directors, 8th November 1769, it is provided, "That in *every* obli- "gation for a caſh account *or credit*, from One thouſand pounds "downwards, there ſhould be *two cautioners or bailſmen at leaſt* †." The importance of this regulation is abundantly obvious. To a banking company it was of eſſential conſequence; becauſe it tended both to provide a proper *ſecurity* for the debt to be contracted, and to inſure to the Company that neceſſary and full *command* of their funds which every banking company ought to poſſeſs.

This ſalutary rule was, however, ſoon evaded at this office, by a practice of receiving the ſame ſecurity in a variety of different caſh-accounts. The confederacy of different trading companies before mentioned, immediately introduced this dangerous and unconſtitutional practice; and a very complete ſpecimen is given of it in the proceedings of the very firſt meeting at this office ‡. The charge againſt the managers of this office throughout their tranſactions, is not ſo much that of an exceſſive or profuſe credit, as the partial, injudicious, and unwarrantable diſtribution of it *within ſo narrow a circle* as altogether deprived the Company of the command of their funds. And the abuſe above mentioned, in particular, was ſo evidently an evaſion of the above *ſtanding* rule of the Company, reſpecting the ſecurity required in all caſh-accounts, and became immediately ſo flagrant with reſpect to the *Board of Directors*, that at the very ſecond meeting a reſolution is made, and inſerted in the

* *Vide* MS. State, N° 2. with its relative ſederunts. N. B. In this ſtate, the *exceſs only* of credit, after deducing the limited amount of L. 1000, is charged as irregular.

† § 37. of Branch 1.

‡ *Vide* Air ſederunts, 13th November 1769.

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ſederunts, "That none of the Directors who had already been ſe- "curities in caſh-accounts ſhould be admitted thereafter *."

The abuſe became at laſt ſo great, as to be a ſubject of obſervation and complaint at the other offices, and particularly at the Dumfries branch; where a general rule was early propoſed to the other offices, That no one perſon ſhould be received as ſurety in any future caſh-accounts, beyond a certain extent, *without the concurrence of the other offices* †.

In conſequence of this, a regulation was made at the Air office, "That no perſon, even of the moſt undoubted credit, ſhould be "received as ſurety in more than *three* caſh-accounts, without the "approbation of the Directors at the three offices ‡."

After theſe regulations, we apprehend the Directors at this office could not of themſelves legally admit, as cautioners in caſh-accounts, perſons who, from the number of their former engagements, are thereby *prohibited* to be received. Theſe regulations very wiſely provided a check to the dangerous practice before mentioned, which tended to throw ſo much of the Company's funds into ſo narrow a circle; the bad conſequences of which had already been felt, and are before ſufficiently explained; and therefore we imagine, that the afterwards receiving in caſh-accounts ſuch *prohibited* ſecurity, was an act of *culpable* miſmanagement; and, in particular, where-ever, in any caſh account or credit, there is not, *independent of ſuch prohibited ſecurity*, the requiſite number of *three obligants*, as required by the above ſtanding regulation 8th Novem-

* *Vide* Air ſederunts, 20th November 1769.

† *Vide* Dumfries ſederunts, 26th December 1769.

‡ *Vide* Air ſederunts, 8th January 1770.

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ber 1769, this ſalutary regulation muſt, we apprehend, in every ſuch inſtance, be underſtood to be broke through, as much as if it had been *directly* broke through by receiving only one or two obligants.

Having theſe obſervations in view, we find, that, in a great variety of inſtances, *prohibited ſecurity* was received; and that caſh-accounts were therefore granted, to a very conſiderable amount, in defraud and violation of the above important ſtanding regulation of the Company. The particulars of all theſe irregular caſh-accounts are contained in a ſtate, N° 3. here referred to; and the amount of them appears to be L. 22,200, (whereof L. 10,500 is contained in States N° 1. & 2. as liable to former objections) *; and we believe, that, upon a ſtricter examination, ſtill more might be found in the ſame predicament.

In the *fourth* place, it was reſolved upon at a general meeting of Directors, 4th May 1771, when an immediate retrenchment of buſineſs was judged neceſſary, "That for the future, no caſh-accounts ſhould be given at the office or branches, without previouſly correſponding with, and obtaining the conſent of, the three Boards of Directors, or a majority of them, when convened as a Board †."

After this regulation, it was altogether unwarrantable, in any *one* of the offices, to grant any caſh-accounts of themſelves, as they might *formerly* have done; and had the rule been adhered to, it would have been a very ſalutary reſtraint, and of great conſequence to the Company in their *then* ſituation.

* *Vide* MS. State, N° 3. with its relative ſederunts.

† Branch I. § 39.

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In a great number of inſtances, however, we find the Directors of this office tranſgreſſing this ſalutary rule, and diſregarding the reſtraint put upon them. The pretext chiefly made uſe of for this deviation from their duty, was the tranſaction with the old Air Bank, which was concluded about the middle of June 1771, and by which the whole debts due to Macadam and Company were aſſigned to Douglas, Heron, and Company. It was pretended, that it was neceſſary to accommodate the debtors of that former company with caſh-accounts, ſo as to enable them to pay up their debts; and thus the moſt eſſential intereſt of our own company, which then was a ſteady retrenchment of buſineſs and credit, was to be ſacrificed to the private accommodation of a numerous ſet of people, totally unconnected with us.

Had it been ſtipulated in the agreement with Macadam and Company, that ſuch accommodation was to be given, the ſtipulation, however adverſe to our intereſt, muſt, no doubt, have been binding, as part of a tranſaction authoriſed by the Company. But, exceptionable as that tranſaction was, it was yet not loaded with ſo unreaſonable a condition; nor is there a veſtige of any ſuch obligation upon the Company, in the articles of agreement *.

The Directors, however, at this office, although, in granting caſh-accounts to *other* perſons, they pretended to adhere to the late ſtanding regulation, did, nevertheleſs, take upon them, immediately after this tranſaction with Macadam and Company was concluded, and without obtaining or requiring the concurrence of the other offices, to iſſue caſh-accounts, to a very great amount, to the debtors of Macadam and Company. They indeed applied to the other offices, in the beginning of July, for their approbation of ſuch accounts as they had already granted unwarrantably, and for their authority to grant caſh-accounts *in future* to the debtors of Maca-

* *Vide* Appendix, N° 6. (*a*).

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dam and Company, without conſulting the other offices *: and though no *direct* powers, diſpenſing with the ſtanding regulation, were given them †; yet for ſome time the other offices were ſo indulgent as to acquieſce in their proceedings, though not without frequent complaints.

The abuſe, however, very ſoon grew ſo great and flagrant, that, in the beginning of Auguſt, the two offices, at Edinburgh and Dumfries, concurred in laying an expreſs prohibition upon the granting any farther caſh-accounts ‡. But, notwithſtanding this prohibition, they ſtill perſiſted in granting ſuch credits without the concurrence of the other offices. And, upon the whole, it appears, that, at a period when a firm and ſteady retrenchment of our buſineſs was the only remedy left, and had been accordingly deliberately agreed upon by the whole body of Managers, the Directors at this office, notwithſtanding the reſtraints they were under, took upon them to iſſue credits, in the courſe of a few weeks, to whole tribes of people, to the extent of upwards of L. 60,000.

Such ſtrange proceedings ſeem not to admit of any ſufficient apology. We are, however, unwilling to lay to the charge of the Directors at this office a greater ſhare of blame than fully belongs to them; and we ſhall therefore conſider their conduct at this period as excuſeable, ſo far as the other offices appear to have approved of, or acquieſced in, their iſſuing the credits above mentioned; and ſhall only ſtate, as a proper ground of charge againſt them under this head, the iſſuing of caſh-accounts unwarrantably, after the ſtanding regulation in May 1771, to perſons who were *not* debtors of Macadam and Company, and the iſſuing of them to ſuch

* *Vide* Letter of 1ſt July 1771, from Air to Edinburgh and Dumfries.

† *Vide* Letters of 5th and 10th July 1771, from Edinburgh and Dumfries to Air.

‡ *Vide* Appendix, N° 6. (*b*).

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as were, *after* the beginning of Auguſt, when an expreſs prohibition againſt the further granting of caſh-accounts was laid upon them by the other offices.

The particulars of all ſuch irregular caſh-accounts are contained in the State marked N° 4. here referred to; and the amount thereof appears to be L. 22,010; whereof L. 6600 is contained in States N° 1. 2. & 3. as liable to former objections *.

Such are the particular acts of miſmanagement which appear to have been committed at this office, in the article of *Caſh-accounts*; and which, we apprehend, may be made the foundation of a legal claim againſt the Managers; the full amount of the irregular credit granted being L. 59,510, conform to the ſtates before referred to. In many inſtances, which it is unneceſſary to mention particularly, they appear to have *evaded* the regulations preſcribed for their conduct. But in the inſtances before collected, we apprehend they poſitively *tranſgreſſed* their duty. It has already been mentioned, that in the granting of caſh-accounts, it was particularly dangerous to depart from eſtabliſhed rules; and the actual damage which has enſued, or may ultimately enſue, to the Company, from the abuſes committed in that article of management, will fall to be conſidered under a ſeparate branch of this Report.

2. *Diſcount of Bills.*

2. Diſcount of Bills.

It was in the management of this mode of credit, that, from the nature of it, the greateſt opportunity was given of committing abuſes without obſervation. It is therefore here that we may expect to find the greateſt degree of abuſe; and we muſt own, that, upon examining this branch of management, we cannot help conſider-

* *Vide* MS. State, N° 4. with its relative ſederunts.

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ing the practice of discount, as carried on at this office, to have been a much more dangerous and flagrant violation of the salutary rules of the Company before mentioned, restraining the credits to be given to individuals *, than that committed in the granting of cash-accounts. These regulations were intended to limit the *extent* of credit to be given to individuals, in the way of *cash-accounts*, which were considered as a more *permanent* sort of loan, as well as to guard against any deficiency in point of *security*. But it may be asked, To what purpose were these regulations introduced? or to what purpose should they be adhered to in granting *cash-accounts*, if by only varying the *name*, the Directors were to be at liberty to establish credits *equally permanent*, in the way of *discount*, without regard to these regulations?

We must, however, say, that this appears beyond the possibility of a doubt to have been plainly the case at this office; and upon examining the state of discounted bills *at different periods*, it will be found, that instead of an occasional *temporary* credit, a species of *standing* credit was thereby introduced, equally permanent as that of cash-accounts, and more dangerous and pernicious, because more latent, more partial, and more concealed from view. There is little or no variation in our debtors on bills, at *any* period of our affairs. That sort of debt is indeed still accumulating; but the debtors are still the *same*. The money once put in their hands never returned in any *proper* sense; and though we are amused with the *appearance* of a continual succession of operations in the way of discount, yet, *in fact*, the debt which was *first* contracted is only assuming different shapes and forms, and the advance into which the Company was at first thrown, is in reality never restored. Under tolerable management, this species of credit, however extensive, ought not, if *generally* and impartially distributed, to occasion any great or last-

* Branch I. § 18. & 37.

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ing distress to a banking company; since, if an excess should at any time be committed, the *natural* returns arising from so *temporary* a credit would soon reinstate the Company in the command of their funds. But the discount practised at this office was not made use of as a temporary loan, but as a permanent standing credit, similar to that of cash-accounts; and what was still worse, it was almost entirely thrown, with shameful partiality, into the hands of a few individuals. It is not the *extent* of our operations, so much as the *partiality* of them; not the *greatness* of the debt, so much as the *fewness* of the debtors, that we have reason to complain of. The credits given out to a *few* individuals ought to have commanded the security of *hundreds*; and if they had been more generally and impartially distributed, the Company might always, in their exigencies, have drawn a considerable degree of relief from their own funds.

Such being the case, we cannot help considering this *mock* practice of discount as a cover for enlarging the credits to individuals beyond the limits pointed out by the rules of the Company. It was in fact the *same* thing as if the enormous sums that appear at every period to be due by individuals upon discounted bills, had been due by them upon cash-accounts; and it was certainly absurd and unwarrantable, to pretend to adhere to the rules in granting a *cash-account* to an individual, and at the same time to throw into his hands, *in the form of discount*, large sums of money, truly intended as a *permanent* loan. It might, therefore, we apprehend, be justly considered, that the Directors at this office, by permitting and encouraging this unlimited practice of discount, which was carried on at this office to such a vast and shameful excess, did transgress the regulations before mentioned as essentially as they appear to have done in the article of cash-accounts.

But as it may perhaps be urged, that these regulations did not *directly* apply to the case of *discount*, or lay the managers of this

Company under reſtraints in that article, and that their conduct, therefore, in that particular, however imprudent, is yet not *ſtrictly* illegal; we ſhall therefore, with theſe general obſervations, paſs over the indirect abuſes before mentioned, and confine ourſelves, in this article of diſcount, to ſuch as we apprehend were clearly illegal and unwarrantable.

By the eighth article of the contract, already mentioned, it is declared, That at each office, *five of the nine Directors* ſhould be a quorum. By the firſt and ſecond by-laws, the meetings for diſcount, as well as every other buſineſs, are to be once a-week *. And it is further required, by the eighth by-law for the conduct of Directors, and the eighth by-law for the conduct of Caſhiers, "That a minute-book ſhall be kept for diſcount, and purchaſing bills of exchange; and that *every* bill ordered to be diſcounted or purchaſed, ſhall be *entered therein, and the entries ſigned by the Preſes* †." Theſe regulations were in every reſpect uſeful and neceſſary for the conduct of this branch of management. The regulation of a *quorum* without doubt applied to the diſcount of bills, as well as to every other buſineſs; and ſuch diſcount could only be granted at the *weekly* meetings. At Edinburgh, indeed, the acting Director of the week, with *other two* Directors, were impowered to diſcount bills upon one other day of the week. *But* at Air and Dumfries, the legal quorum of *five* was requiſite to authoriſe the diſcount of bills, and that at weekly meetings only.

Were we to interpret ſtrictly the import of this regulation of a *quorum*, we might require, in the diſcount of every bill, the preſence of *five* Directors, excluſive of thoſe who may themſelves be concerned in the tranſaction, and who ought not therefore, regularly,

* Branch 1. § 17. & 18.

† Branch 1. § 22. & 24.

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to make a part of the neceſſary *quornm*, as was indeed ſpecially provided by the reſolution of the general meeting of the Company in November 1771 *; and were we to go to work in this way, we might ſafely ſay, that very few of the vaſt amount of bills diſcounted at this office were legally authoriſed to be diſcounted: for as the operations in diſcount, though extremely profuſe, were yet almoſt entirely confined within the narrow circle already mentioned, in which moſt of the Directors were engaged; and as, excluſive of *ſuch* Directors, *few* meetings conſiſted of a *quorum*; ſo it would be found, upon a ſtrict inveſtigation, that very few bills were ever diſcounted at this office by proper authority.

But we ſhall not be ſo critically exact in this matter; and unfortunately we have no occaſion to be ſo; ſince too many inſtances occur, of moſt improper and exorbitant diſcounts authoriſed by meetings at which there was in no ſenſe a legal *quorum* preſent.

Confining ourſelves, therefore, to theſe inſtances, and to thoſe where *no authority at all* appears for the diſcount, we have collected the whole in a State marked N° 5. here referred to. And beſides a moſt irregular practice of iſſuing money upon bills *before* they were actually diſcounted, and getting ſuch diſcount afterwards approved of, it appears, from the above State, that the bills unwarrantably diſcounted, either without a *quorum*, or without any *viſible* authority at all, previous to our ſtop in June 1772, amount to the enormous ſum of L. 174,905 : 19 : 9 †.

* Branch 1. § 36.

† *Vide* MS. State, N° 5. with its relative books and federunts.

3. *Bills*

3. *Bills of Exchange.*

3. Purchaſe of bills of exchange.

With reſpect to the purchaſe of bills of exchange, it ought to have been regulated preciſely by the *ſame* rules which regulated the diſcount of inland bills; and although little was done at this office in the article of exchange, yet we find, that the regulations were diſregarded in the purchaſe of bills of exchange, as they had been in the diſcount of bills.

Thus we find, that the requiſite of a *quorum* was diſregarded in the purchaſe of bills of exchange, in almoſt as many inſtances, although not near to ſuch an amount, as in the article of diſcount; and that bills of exchange purchaſed in this irregular manner at Air, were *current* at the period of our ſtop in June 1772, to the amount of L. 4855, conform to a particular liſt, N° 6. here referred to *, and a great part of theſe was afterwards diſhonoured, and fell to be taken up by the Company; with reſpect to which it will be obſerved, that the Company being left to their recourſe upon the diſhonoured bills, theſe became in every reſpect proper debts due to the Company, as much as bills diſcounted were †.

Unconſtitutional modes of credit, by

Beſides the conſtitutional modes of credit already mentioned by means of caſh-accounts, diſcounted bills, and bills of exchange, ſeveral *unconſtitutional* modes were invented for giving out credits to individuals.

* *Vide* MS. State, N° 6. with its relative books and ſederunts.

† *Nota*, It will be obſerved, that in making up the ſtates of irregular credit by *bills diſcounted*, and irregular credit by *bills of exchange*, a diſtinction is made. In the *former* ſtate, the *whole* of the bills irregularly diſcounted, from the commencement down to June 1772, are brought under view; but in the *latter*, only ſuch part of the irregular bills of exchange as was *current in June* 1772. The reaſon of this diſtinction ariſes from the different *nature* of the two credits, and of the conſequences of abuſes committed in them.

duals. We muſt mention two of them, viz. circulation and accounts-current.

4. *Circulation-account.*

4. Circulation.

It ſeems to have been a favourite topic at all the offices, to endeavour not only to force a circulation of the Company's paper beyond the natural limits, which muſt always regulate and confine ſuch operations, but alſo to ſupplant the circulation of other banking companies. In this view it appears to have been a common practice, to give out to particular perſons, without receiving any proper ſecurity, large ſums in the Company's notes, to be circulated by them in different parts of the country, and the value to be returned, within a limited time, in bills of exchange, ſpecie, or the notes of other banking companies.

This dangerous and unconſtitutional practice was carried to great exceſs; and the conſequence of ſo idle an expedient was ſuch as might have been expected. The Company's paper forced into the circle in this manner, was immediately picked up by the agents of other banking companies, and generally came back upon the Company, to be exchanged for other value, long before the returns were made by the circulators; and by this means the Company, inſtead of reaping any advantage or relief from this ſort of traffic, was actually a real ſufferer by it, independent of the danger and riſk attending ſuch looſe dealings.

It was beneath the dignity, as well as adverſe to the intereſt of a banking company acting upon fair principles, to reſort to ſo mean an expedient: but we find, that it was likewiſe very ſoon ſhamefully abuſed, and converted into an additional mode of private accommodation. It was, however, a ſpecies of credit deſtitute of every requiſite neceſſary to render it legal or warrantable. For, firſt, except in a very few inſtances, it was iſſued without any *viſible* authority

at all, not to mention the authority of a legal quorum, ſo neceſſary to render any credit warrantable; 2*dly*, It exceeded in many inſtances the limited amount of L. 1000, beyond which no credit could be given without the conſent of all the offices; and, 3*dly*, It was directly in face of the ſtanding rule, which required in every credit the ſecurity of two cautioners at leaſt.

In ſhort, it was a moſt dangerous and unconſtitutional practice; the conſequences of which, we do apprehend, are chargeable againſt our managers; more eſpecially as they were themſelves very frequently the unprofitable and *culpable* circulators. It was carried to conſiderable exceſs at this office; and in ſo far as damage has thence enſued, or may enſue, the Company ought to have redreſs.

5. *Accounts-current.*

5. Accounts-current.

The proper nature of ſuch accounts, ſo far as warranted, was, that the Company was always to be the debtor, and to allow intereſt to the creditor at the rate of 4 *per cent.*; but, inſtead of this being the caſe, we obſerve, that theſe accounts were in ſome inſtances converted into an additional mode of credit or accommodation. The holder of the account was allowed to overdraw, and by this means the Company became the *creditor* inſtead of the debtor.

This ſpecies of credit, however, was quite irregular; and being deſtitute of every eſſential requiſite before mentioned, the managers who authoriſed it, ought to be anſwerable for the conſequences. Several accounts appear to be in that ſituation at this office, and the loſs which has thence enſued, or may enſue, falls to be afterwards inquired into.

EDIN-

EDINBURGH.

1. *Caſh-accounts.*

1. Caſh-accounts.

THE Managers at this office appear to have been rather more cautious in their conduct in granting caſh-accounts, and to have diſtributed that ſort of credit more generally, and with more impartiality, than the Managers at the Air office; but although they do not appear to have ſo often tranſgreſſed the eſtabliſhed rules, yet we find that they have tranſgreſſed them in the following particulars.

In the *firſt* place, the eſſential requiſite of a quorum appears to have been diſregarded in ſome inſtances, whereof the particulars are contained in a State, N° 7. here referred to, from which the amount of ſuch irregular credit appears to be L. 8650 *.

* *Vide* MS. State, N° 7. with its relative ſederunts.

Nota. In the late addreſs to the Proprietors upon the ſubject of this report, it is ſet forth, p. 9. & 10. That one of the accounts in the above ſtate, viz. that to Duncan Campbell, was beneficial to the Company; and that the other eight accounts were regularly granted by a *quorum* of five Directors. As to the firſt obſervation, we think it is a very inſufficient juſtification of a confeſſed irregularity, that no loſs has ariſen from it. Amidſt ſuch a vaſt multiplicity of irregular credits, there are no doubt many from which no damage has enſued. But is this a ſufficient apology? or is the ſecurity of a banking company, for the fidelity and good conduct of their managers, to depend upon the circumſtance of the reſult of their tranſactions being ſucceſsful or unſucceſsful, and not upon the eſtabliſhed rules of the Copartnery? As to the other eight accounts, the ground upon which they are juſtified is this, That, including *one* Director from Dumfries branch, occaſionally preſent, there was a legal *quorum* at granting theſe accounts. It has however, we apprehend, been clearly ſhown, p. 40. of Report, that the *occaſional* preſence of the Directors of one office could not ſupply the want of a *quorum* of the *proper* Directors of another office; ſo that we differ from the authors of the addreſs, not ſo much in fact, as in interpretation. It will be obſerved, that the circumſtance mentioned in the addreſs, of the concurrence of the *three* boards being neceſſary to the granting of caſh-accounts at the period when theſe were granted, is an additional proof of the abſurdity of ſuppoſing, that the Directors of one office can make up the *quorum* at another.

In

In the *ſecond* place, the ſtanding rule which limited the extent of credits to L. 1000, unleſs in caſes approved of by all the offices, appears to have been diſregarded in ſome inſtances; of which the particulars are contained in a ſtate marked N° 8. here referred to; from which it appears, that the amount of ſuch irregular credit is L. 20,000, whereof the ſum of L. 4000 is contained in the preceding ſtate, N° 7. as being likewiſe liable to the former objection *.

With reſpect to two of the articles contained in this ſtate, viz. the two credits of L. 6000 each, which were granted to Charles Ferguſſon and Company, and Fordyce, Grant, and Company, in the way of *depoſit*, as authoriſed by the meeting of the Directors of this office 7th May 1772 †, and which we have there charged as a breach of the above eſtabliſhed regulation, it may perhaps be urged, That theſe credits were in a particular ſituation, and do not fall to be conſidered in that light; it being *one* of the conditions ſtipulated with theſe houſes, That, *in lieu* of commiſſion for their tranſactions in London on the Company's account, they were to have a *depoſit* of L. 6000 each put in their hands, to remain there free of intereſt ‡. But we muſt own, that we do not perceive any ſolid ground for differencing thoſe credits from any other. On the contrary, we think they were much more hazardous, and of worſe example, than the *ordinary* credits. The large ſums lodged in the hands of thoſe houſes were, in terms of the agreements with them, *always* to remain there free of intereſt. It was therefore, to all intents and purpoſes, a *credit* given them to that extent, as much as if it had been in the *form* of a *caſh-account*; and this could not be *legally* authoriſed by the Directors of *this* branch, but required the conſent of *all the three* offices; which was neither

* *Vide* MS. State N° 8. with its relative ſederunts.

† *Vide* Appendix, N° 6. (*c*)

‡ *Vide* Agreement with theſe houſes of 20th April 1772.

applied

applied for nor obtained. Beſides, it does not appear to have been at all a neceſſary or beneficial method of carrying on the operations of the Company in London, or of purchaſing the ſervice of theſe houſes. It ſeems rather to have been of the nature of a private accommodation to them; and it would certainly have been a much more *ſafe*, if not a more beneficial, method of conducting the Company's buſineſs, to have paid theſe houſes the uſual premium or commiſſion, according to the extent of their tranſactions, than to lodge in their hands, in the way of depoſit, or *ſtanding credit*, ſo large a ſum of money.

Theſe credits, therefore, or depoſits, being granted by the Directors of this office, without the conſent or approbation of the *other* offices, fall very properly, as we apprehend, to be conſidered as a violation of the eſtabliſhed rule, limiting the extent of credit to individuals to L. 1000, *unleſs* in caſes approved of by *all* the offices.

In the *third* place, the ſtanding rule which provides, That in *every* obligation for credit, from L. 1000 downward, there ſhould be *two cautioners at leaſt* *, was clearly violated by granting the two credits laſt mentioned, of L. 6000 each, to Charles Ferguſſon and Company, and Fordyce, Grant, and Company, without any perſon having been taken bound along with theſe houſes for the large depoſits lodged in their hands, amounting to no leſs than L. 12,000. But L. 10,000 of theſe depoſits is contained in State N° 8. as credits granted beyond the limited amount without the conſent of the other offices.

It ſeems to us to have been a ſtrange omiſſion in our Managers, and a flagrant breach of the eſtabliſhed regulation, which provides

* Branch 1. § 37.

for the *ſecurity* of the Company as to any credits to be iſſued by them, to neglect the eſſential requiſite of proper ſecurity in granting theſe depoſits. It accordingly appears, that the Directors themſelves, who authoriſed this tranſaction, were at the time in ſome degree ſenſible that it was improper to agree to it, without obtaining collateral ſecurity: For it was expreſsly recommended at the meeting, that theſe houſes ſhould be informed, *that it was expected ſome of their friends would give letters of guarantee for their tranſactions with the Company* *.

In the *fourth* place, the regulations May and November 1771, prohibiting any caſh-accounts from being afterwards granted without the conſent of all the offices, or at general meetings of Directors †, appear to have been broke through by the Directors at this office, not only in the inſtance above mentioned of the depoſits to Charles Ferguſſon and Company, and Fordyce, Grant, and Company, but alſo in a few other inſtances, whereof the particulars are contained in State N° 9. referred to; the amount of ſuch irregular credit being L. 1700; whereof L. 1000 is contained in the preceding State, N° 7. as being liable to that former objection ‡.

The total amount of the irregular credit granted at Edinburgh, in the way of *caſh-accounts*, conform to the preceding States, appears to be L. 27,350.

2. *Diſcount of Bills at Edinburgh.*

2. Diſcount of Bills.

Although the Directors at this office appear to have been ſome-

* *Vide* Edinburgh ſederunts, 7th May 1772. Appendix, N° 6. (*c*).

† Branch 1. § 39.

‡ *Vide* MS. State, N° 9. with its relative ſederunts.

what

what more cautious in granting caſh-accounts than their brethren at Air, and not to have tranſgreſſed the eſtabliſhed rules in ſo many inſtances; yet when we come to examine the article of *diſcount*, we cannot help obſerving, that at this office, as at Air, a much more dangerous violation of ſalutary rules was practiſed in *that way*. It has already been mentioned, that, under tolerable management, this mode of credit, however extenſive, ought not to be attended with any great or laſting diſtreſs; but in the way it was abuſed by the Managers of this Company, it became a *permanent* ſtanding credit in favour of a few individuals; and the ſums once iſſued became ſo many *loans* of money; which, though the bills upon which they were due were perpetually varying, did in no *proper* ſenſe ever return to the Company. It was therefore altogether a *mock* ſort of diſcount, and was in reality the *ſame* thing as if the large ſums which appear at every period to be due by individuals, in the *form* of diſcounted bills, had been due by them in the *form* of caſh-accounts. This *laſt* method, however, of accommodating thoſe individuals, would have been *directly* againſt the eſtabliſhed rules, and beyond the powers of Directors. And we muſt own, that, upon examining the circumſtances and true import of the diſcount every where practiſed by the Managers of this Company, we cannot perceive any ſolid ground for diſtinguiſhing the ſtanding credit given out, and continued to individuals, from firſt to laſt, *in that form*, from the credit eſtabliſhed in any other way.

It might therefore be juſtly conſidered, that ſuch extravagant and partial credit in favour of a few individuals, *in the way of diſcount*, ſo far *beyond* the limits pointed out by the rules of the Company, reſtraining the extent of credits to be iſſued, was as eſſential a violation of thoſe rules, as if they had been directly violated by granting *caſh-accounts* beyond the limited amount. Throughout our affairs we have had occaſion to obſerve, that it is not the *extent* of our operations, ſo much as the *partiality* of them; not the *greatneſs* of the debt,

debt, ſo much as the *fewneſs* of the debtors, that we have moſt reaſon to complain of; and that may be juſtly conſidered to have been moſt inſtrumental in producing the ruin of our affairs. It was this evil too which the above eſtabliſhed rules of the Company were calculated to prevent. The credits given out by our Managers to a *few* individuals ought to have commanded the ſecurity of *hundreds*; and had this been the caſe, the Company could always, in a great degree, have relieved themſelves by a command of their own funds.

But as this *indirect* violation of the eſtabliſhed rules by means of *diſcount*, may perhaps be thought inſufficient to found a proper charge againſt the Managers, no reſtraints being *directly* laid upon them as to the extent of their operations in that way, we muſt therefore take notice of the more direct and poſitive violations of the eſtabliſhed rules committed in this article of diſcount.

The legal *quorum* at this office for diſcount of bills was *three Directors*, in terms of the ſeventh by-law; by which likewiſe diſcount is *there* allowed twice a-week *; and the bills ordered to be diſcounted ought alſo to have been regularly minuted, as before mentioned †: and though we do not find, that the abuſe of acting without a *quorum* in this article was quite ſo frequent here as at Air, probably becauſe the requiſite *quorum* was leſs numerous; yet, if we were to examine the matter critically, and to exclude Directors from diſcounting bills in which they themſelves are concerned, a very large amount of bills would be found unwarrantably diſcounted at this office, no great degree of delicacy or diſcretion having been preſerved in this particular.

But, independent of this, we find, that the requiſite of a legal *quorum* was openly diſregarded, and that bills were diſcounted at

* Branch 1. § 21. † Branch 1. § 22. & 24.

this

this office, either without a *quorum*, or without any *viſible* authority at all, to the amount of L. 59,939, 10 s. conform to a particular liſt, marked N° 10. here referred to *.

3. *Bills of Exchange.*

3. Purchaſe of bills of exchange.

The greateſt abuſe committed at this office ſeems to have been in the article of bills of exchange; and as a very heavy loſs has thence ultimately ariſen, it ſeems to merit particular attention.

The demands upon the Company at Edinburgh, in conſequence of the profuſe plans of management already mentioned, having occaſioned a large London debt to be contracted, by draughts upon our correſponding houſes there, who had agreed, upon certain ſtipulated terms, to tranſact our buſineſs; it therefore became neceſſary to fulfil our agreements with theſe houſes, by a ſufficient ſupply of remittances; and this ſeems to have given riſe to our unhappy connections with the dealers in fictitious bills of circulation, from which ſo many diſaſters have ariſen.

* *Vide* MS. State, N° 10. with relative books and federunts.

Nota. In the addreſs to the Proprietors, p. 12. it is urged in vindication of irregular diſcount, That it was an eſtabliſhed rule, that if debtors in bills ſhould apply to have them rediſcounted, the acting Director ſhould have it in his power to do it. We aſk, Who made this rule? Where is the evidence that any ſuch rule was eſtabliſhed, even by the Directors of this office themſelves? And admitting that there was ſuch evidence, what right or authority had they to alter the eſtabliſhed rules preſcribed by the Company for their conduct? The Edinburgh office, at leaſt a meeting of *three* Directors, upon 18th October 1771, made the following order: "As there will not "be a *quorum* till after the general meeting, agreed to impower any one Director, or, "*in the abſence of all, the Caſhier*, to diſcount ſuch good bills as may be offered, for "the purpoſe of taking up bills paſt due." We beg leave to aſk, whether this was an eſtabliſhed rule, or what limits are to be fixed to deviations of this ſort?

The traffic carried on with theſe circulators, who unfortunately acquired a fatal aſcendency over our Managers, was equally hazardous and diſreputable: and though the neceſſity of our affairs may perhaps be pleaded in vindication of it; yet it does not occur, upon what ſolid principle our Managers ought either to have authoriſed unneceſſary draughts upon our correſpondents, or permitted the purchaſe of thoſe circulation-bills for the mere accommodation of others, which we are ſorry to obſerve was practiſed in a multitude of inſtances.

The regulations eſtabliſhed for the purchaſe of bills of exchange, have been already mentioned. They were the ſame as for the diſcount of bills. A quorum of *three* Directors was neceſſary at this office, to authoriſe it, in terms of the ſeventh by-law *; and tho' the purchaſe of bills of exchange was to proceed daily, yet the particulars of the bills purchaſed ought to have been *entered in the minute-book*, and the *entries ſigned*, as in the caſe of diſcount †. But we obſerve, that theſe regulations were, from firſt to laſt, altogether diſregarded at this office, in the purchaſe of bills of exchange, which appears to have been conducted in a manner ſo ſhamefully looſe and irregular, as gave ample opportunity for the greateſt and moſt enormous abuſes being committed in that important branch of management.

Thus we obſerve, that it was a common practice to deal deep with theſe circulation-houſes, in exchange of bills; that is, the Company's Caſhier gave bills upon our correſpondents in London, and received in return the draughts of theſe houſes upon their correſpondents. It would be endleſs to point out particular inſtances in which this practice occurs, as they abound in every part of this branch of management; and it will be obſerved, that the neceſſary conſequence

* Branch 1. § 21. † Branch 1. § 22. & 24.

of

of the practice was, *directly* to increaſe our debt in London, by the amount of the draughts given, without any tolerable certainty of the debt there being diminiſhed by the draughts we received. For if theſe draughts were diſhonoured, which in the end was the caſe to a very great amount, then the obvious effect of this traffic was an actual *unneceſſary* increaſe of our debt in London, to the amount of ſuch diſhonoured bills.

It ſeems plain to us, that this practice was a proſtitution of the Company's credit, and a mere accommodation to others, without the leaſt poſſible benefit to the Company. The pretence made uſe of in vindication of it, viz. that the bills received in exchange ſerved as a *cover* to remit to our correſpondents, ſeems altogether inſufficient, ſince the draughts upon our own correſpondents, given in exchange, would have anſwered much better for that purpoſe, and were attended with no riſk. For example, our draughts upon *one* correſpondent would have been a much better cover to remit to *another* correſpondent, than any circulation-bills whatever; and therefore, in all ſuch caſes, it was plainly more ſafe, and more beneficial, to remit our own draughts for the purpoſe of *cover*, than to purchaſe the bills of others, by giving our own draughts in exchange.

This accordingly appears to have been frequently done, both directly and indirectly; and whatever ſpeculative notions may have been entertained upon this ſubject, we do not ſee any ſolid ground upon which it can be maintained, that this ſafe method of accommodating ourſelves with *cover* ought not to have been always preferred, when the neceſſity of our affairs required it, to the dangerous and diſreputable practice of an exchange of bills, which, in the end, was followed with ſuch ruinous conſequences.

One flagrant inſtance of this practice we cannot omit mentioning, as a complete ſpecimen of the abſurdity as well as danger of it; and we are ſorry to obſerve, that this inſtance occurs at the very criſis

criſis of our affairs, in June 1772, after the accounts of the failures in London had reached Edinburgh. It appears, that, upon the 13th and 15th of June, an exchange of bills was made with David Campbell, one of our own Managers, to the extent of no leſs than L. 11,000 or L. 12,000. The Company's Caſhier gave bills to that amount upon our correſpondents, and received in return Mr Campbell's bills upon his correſpondents, to the ſame amount: And, upon tracing the conſequences of this tranſaction, it appears, that while we unneceſſarily increaſed our debt in London to the full amount of the L. 12,000, no leſs than L. 8000 of the bills received in exchange were diſhonoured, and fell to be taken up by the Company. By which means there was an actual *unneceſſary* increaſe of the Company's debt, to the amount of L. 8000, which, at that critical period, certainly fell to be provided for by taking up annuities, while the Company was left to take their recourſe againſt David Campbell upon his diſhonoured bills.

It ſeems impoſſible to give a more complete ſpecimen of the danger and abſurdity of the practice of an exchange of bills. But the regulations reſpecting the purchaſe of bills of exchange being quite neglected at this office, the evidence of this deep tranſaction does not in the ſmalleſt degree appear from any of the proceedings or ſederunts of the Directors, though theſe ought to contain the evidence of every tranſaction; and, but for the conſequences, it might have remained for ever unknown and unheard of, being only diſcoverable from an inveſtigation of the bill-tranſactions at that period *. Similar to this, many other inſtances might be given; but it ſeems unneceſſary, as the above ſufficiently points out the danger of the practice

* *Nota.* So far as we can diſcover, there is no veſtige of authority for this deep tranſaction, other than this, that, upon an examination of the bills drawn upon our correſpondents at the above period, thoſe given in exchange upon this occaſion, appear to be counterſigned, as uſual, by one of the Directors.

practice complained of, and of neglecting the eſtabliſhed regulations in the purchaſe of bills of exchange.

We cannot be perſuaded, that if theſe regulations had been obſerved with fidelity, ſuch abuſes would have been committed in this branch of management; or that a regular ſanction would have been given, and recorded from time to time at the meetings of Directors, authoriſing ſuch dangerous practices. But every reſtraint and regulation with reſpect to this article being diſregarded, the purchaſe of bills of exchange was conducted in the looſeſt and moſt diſorderly manner, in direct violation of the eſtabliſhed rules. Millions were purchaſed in this manner during the courſe of our tranſactions; and when the criſis of our affairs arrived, in June 1772, upwards of L. 360,000 of thoſe bills of exchange, before irregularly purchaſed, and remitted from this office, was circulating in London, conform to a liſt, N° 11. here referred to *; a great proportion whereof was afterwards diſhonoured, and fell to be taken up, and paid for by the Company a *ſecond* time, in London, the Company being left to their recourſe againſt the drawers and other obligants in the bills, which became in every reſpect debts due to the Company, as much as bills diſcounted were.

We therefore apprehend, that, in ſo far as damages ſhall appear to have ariſen to the Company from bills of exchange purchaſed in this irregular manner, the Company ought to be in ſome meaſure indemnified at the hands of their Managers. To what extent, it is not our buſineſs to inquire †.

4. *Cir-*

* *Vide* MS. State, N° 11. with relative books.

† *Nota.* In juſtification of the irregular purchaſe of bills of exchange, it is ſet forth by the authors of the addreſs, p. 13. That the Directors had full power, in virtue of the 8th article of the contract, to adopt a mode of their own for conducting this branch of management. The anſwer to this obſervation is obvious. The 8th article of the contract was properly and effectually qualified and limited by the rules and by-laws eſtabliſhed by the Company, for the expreſs purpoſe of regulating the con-

4. *Circulation-account.*

4. Circulation.

The nature of this dangerous and unconſtitutional practice has already been explained. It was in many inſtances evidently made uſe of at this office as an additional mode of credit and accommodation, which being quite unwarrantable, the Company ought certainly to be relieved at the hands of their Managers of the conſequences thereof, ſo far as damage ſhall appear to have thence enſued *.

duct of their Directors; which rules ſpecially defined the mode for purchaſe of bills of exchange. The Dumfries branch, upon 12th November 1771, openly, and without diſguiſe, annihilated at once the whole rules of the Company reſpecting the diſcount of bills, and purchaſe of bills of exchange, and adopted new rules of their own contrivance. *Vide* App. N° 6. *(k)*. This too, perhaps, was conſtitutional, and warranted by the implied ſovereign controul beſtowed upon Directors by the 8th article of the contract.

* *Nota.* In the addreſs to the Proprietors, p. 14. it is ſaid, That there is no inſtance *ſpecified* in the Report, where money was given on circulation-accounts. But if the authors of that addreſs will pleaſe to look into the general ſtate of irregular credit, App. N° 7. they will find ſuch circulation-accounts particularly enumerated, and that they amount to a conſiderable ſum. It is ſaid, that, upon a ſtrict inquiry, they find, that on ſome occaſions L. 100, or perhaps L. 200, was given to ſome individuals to diſperſe in the country, but that it was always upon undoubted ſecurity, and that the returns were *beneficial* to the Company. We are ſorry that theſe gentlemen ſeem to be ſo ignorant of the tranſactions of their own office. In vindication of ourſelves, we muſt put them in mind of one operation in that way, of a pretty deep nature. It appears from the Edinburgh ſederunts, 5th, 8th, and 15th October 1770, that, about a month before, David Campbell had prevailed on the Caſhier to give him, firſt L. 5000, and afterwards L. 3000, under pretence of circulating the Company's notes at a Falkirk market. The returns made by Mr Campbell likewiſe appear from thoſe ſederunts. The authors of the addreſs may ſatisfy themſelves, whether theſe returns were *beneficial* for the Company.

5. *Ac-*

5. *Accounts-current.*

5. Accounts-current.

Abuſes were frequently committed at this office, under the colour of ſuch accounts; and the Company, who ought always to have been the debtor, became in many inſtances the creditor, to conſiderable amounts.

Accounts of this ſort appear to have been held at this office, with William Fullerton of Roſemount, William Alexander and Sons, John Fordyce, and others *.

6. *Security from Officers and others neglected to be procured.*

6. Security neglected to be procured.

In this particular, the Directors at this office appear to have been very culpable; and we therefore apprehend they ought to relieve the Company of the damage thence ariſing.

In the firſt place, by the ninth article of the contract †, it is provided, "That the Caſhiers and Tellers to be appointed at each office, ſhall, *at their admiſſion*, find ſufficient caution for the due, "honeſt, and faithful execution of their office, and for the full damages to be incurred by their non-performance; as alſo to pay "up what arrears ſhall be found owing to the Company, as the "ſame ſhall be certified by the accountants." And, by a ſubſequent

* *Nota.* The addreſs to the Proprietors ſays, That the Company has ſuffered no loſs from the tranſactions in the way of accounts-current. We do not underſtand the meaning of this obſervation, when it appears from the general ſtate of irregular credit, App. N° 7. that a large ſum was due the Company upon this ſcore, in June 1772; a great part of which is due at this day.

† Branch 1. § 8.

reſolution,

reſolution, at a General Meeting of the Company, 7th May 1770*, it is declared, That the bail for the Caſhiers ſhould not be unlimited, but ſhould only extend to the ſum of L. 15,000 for each Caſhier.

Notwithſtanding this eſſential regulation, we are not a little ſurpriſed to find, that although Mr Hogg was appointed by the Directors at this office to be their Caſhier, upon the 24th November 1769 †, he was, nevertheleſs, allowed to enter upon, and continue in, his office, without finding caution. And the matter appears to have been afterwards entirely forgot, till the beginning of January 1772 ‡; when, upon occaſion of a fraud committed by one of the Tellers, the neglect was diſcovered, and he was immediately ordered to find caution; which he accordingly did, in February that year ‖.

It likewiſe appears, that David Fleming was appointed Deputy-Teller upon the 4th March 1771, and ordered to find caution for L. 1500 **. But, in violation of this ſtrict injunction, he was, nevertheleſs, permitted to enter upon his office without finding caution; and it was afterwards forgot, till the beginning of January 1772, when he was diſmiſſed the office, after having become deficient in a conſiderable ſum ††.

‖ *Nota.* The addreſs to the Proprietors obſerves, p. 16. that as no loſs has enſued from the ſtrange neglect here cenſured, it is rather *ungenerous* to find fault with it. When the Managers are *juſt*, the Partners, we think, ought to be *generous*.

* Branch 1. § 30. † *Vide* Edinburgh ſederunts of that date.

‡ *Vide* Edinburgh ſederunts of 6th January 1772.

** *Vide* Appendix, N° 6. (*d*). †† *Vide* Appendix, N° 6. (*e*).

We

We alſo find, that George Moriſon was upon this occaſion appointed to act as Teller *; and, what ſeems very ſurpriſing after what had happened, he is received without finding caution. Similar conſequences enſued: ſome months afterwards, he was accuſed of fraudulent practices, and was diſmiſſed upon the 15th May 1772, after having become likewiſe deficient in a conſiderable ſum †.

We cannot help thinking, that the Directors at this office, by neglecting to procure the neceſſary caution in theſe inſtances, muſt be anſwerable for the conſequences; and that, from their omitting ſo eſſential a requiſite, it muſt be underſtood, and preſumed, that they became cautioners themſelves for theſe officers. This will likewiſe appear to be more juſt and reaſonable, when it is conſidered, that although the fifth by-law expreſsly required, that the Directors ſhould inſpect the Caſhiers and Tellers balances, and count over the money in their hands, at leaſt once a-week ‡; yet the Directors at this office appear to have generally neglected to comply with this regulation; for which trifling apologies are frequently inſerted in their minutes ‖.

In the *ſecond* place, We have already, under the article of Caſh-accounts, mentioned ſeveral objections that occur to the credits given Charles Ferguſſon and Company, and Fordyce, Grant, and Company, in the way of depoſit, in conſequence of the agreements with them, approved of at the meeting 7th May 1772. But another objection now ariſes to theſe credits under the preſent head. For when theſe agreements were approved of, it was underſtood

† *Vide* Appendix, N° 6. (*f*). *Nota.* It is mentioned in the addreſs, that this deficiency of Moriſon's aroſe from the office being broke open and robbed. It is wrong to miſrepreſent matters. The ſederunt of 2d May 1772, Appendix, N° 6. (*f*), diſcovers who it was that was ſuſpected of this robbery.

* *Vide* Edinburgh ſederunts, 1ſt January 1772. Appendix, N° 6. (*e*).

‡ Branch 1. § 20. ‖ *Vide* Edinburgh ſederunts, *paſſim*.

S and

and recommended by the meeting, " That theſe houſes ſhould procure from their friends letters of guarantee for their tranſactions with the Company." And it was accordingly intimated to them, that ſuch collateral ſecurity was required *. Indeed, with reſpect to one of them, a letter of guarantee to that extent was afterwards actually ſigned.

So ſtanding the caſe, the depoſits ought certainly not to have been lodged with theſe houſes till the expected ſecurity was obtained; and, at any rate, though it had been neceſſary that our operations with them ſhould immediately commence, yet it was the obvious duty of our Managers forthwith to inſiſt for the additional ſecurity.

It however appears, that the L. 6000 of depoſit was *immediately* put into the hands of Charles Ferguſſon and Company, without any collateral ſecurity being obtained; and that before any ſuch was inſiſted for, that company became inſolvent, in the beginning of June 1772.

In the ſame manner, the depoſit of L. 6000 was likewiſe *immediately* put into the hands of Fordyce, Grant, and Company, without any collateral ſecurity being obtained. For although it appears, that a letter of guarantee to that extent was actually ſigned in London by Baron Grant, the brother of one of the Partners, and ſent down to Mr Fordyce to be delivered to the Company; yet our Managers did not think proper to inquire after it, or to inſiſt for the delivery thereof, until after the failures happened; when Mr Fordyce refuſed to deliver it up. And the queſtion having been afterwards tried at law, it was ultimately found, That Baron Grant was not

* *Vide* Appendix, N° 6. (*g*).

liable

liable on his letter of guarantee, the ſame having never been delivered *.

DUMFRIES.

1. *Caſh-accounts.*

The Managers at this office appear to have been for a conſiderable time tolerably prudent and cautious in their proceedings, as has formerly been mentioned. We, however, find, that in the article of Caſh-accounts the eſtabliſhed rules of the Company were tranſgreſſed in the following reſpects. 1. Caſh-accounts.

In the *firſt* place, the requiſite of a *quorum* appears to have been diſregarded in ſeveral inſtances, and caſh-accounts to have been therefore unwarrantably granted; whereof the particulars are contained in a State marked N° 12. here referred to; from which it appears, that the amount of this irregular credit is L. 15,200;

* *Nota.* The addreſs to the Proprietors, as well as the ſeparate anſwer upon the part of Charles Ferguſſon and Company, and Fordyce, Grant, and Company, repreſent the agreements made with theſe houſes, ſo far as reſpected the depoſits put in their hands, as highly beneficial to the Company; and we have no occaſion to enter deeply into that inquiry, or to diſpute with theſe gentlemen the boaſted advantages of thoſe agreements. The complaint we have made is not ſo much againſt the nature and terms of the agreements with theſe houſes, as againſt the neglect of procuring collateral ſecurity from them, before communicating the benefit of the ſtipulated depoſits. Had ſuch ſecurity been procured, we ſhall admit, that the agreements might have been conſidered as beneficial; but while no ſuch collateral ſecurity was obtained, we beg leave to deny, that the agreements were, or could be conſidered as beneficial, in ſo high a degree as they were hazardous.

whereof

whereof the ſum of L. 6000 is contained in preceding States N° 1. 3. & 4. as liable to former objections *.

In the *ſecond* place, the ſtanding rule which limited the extent of credits to individuals to L. 1000, *unleſs* in caſes approved of by all the offices; the regulation May 1771, prohibiting the granting of *any* caſh-accounts in future, without conſent of the three offices; and the ſubſequent regulation November 1771, prohibiting the granting of any caſh-accounts, except twice in the year, at general meetings of Directors ‖, appear to have been all openly and directly violated, in a ſtrange and unaccountable manner, in one inſtance of conſiderable importance.

It appears from the ſederunts, that, upon the 3d December 1771, the Directors at this office took upon them, in violation of the above rules, to authoriſe a loan of no leſs than L. 10,000 to Mr Murray of Broughton, upon his bond, with cautioners, payable at Martinmas 1772 †.

The pretence made uſe of upon this occaſion for granting ſo large a loan was, that, by the preliminary articles of agreement with the Dumfries bank, the Company was bound to grant this loan, *in order to enable Mr Murray to diſcharge a debt to near that extent, due by him to that bank.* But upon looking into the articles of agreement, we find, that there is no ſuch obligation upon the Company ‡. It is indeed ſtipulated, that Mr Murray is to have a caſh-account of L. 2000; and there is a ſort of *general* obligation upon the Company to furniſh loans to the debtors of Dumfries bank, *for three months*, to the extent of their debts. But admitting that Mr Murray was debtor to that bank to the extent of the *whole* L. 10,000, of which fact there is no evidence, it ſeems plain, that he could not demand more, in the ſtricteſt ſenſe, than a loan of the money *for three months*; whereas it was given him upon his bond, payable at the diſtant period of Martinmas 1772.

* *Vide* MS. State, N° 12. with its relative ſederunts.

† *Vide* Appendix, N° 6. (*b*).

‖ Branch 1. § 18. & 39.

‡ *Vide* Appendix, N° 6. (*i*).

But, independent of this, the above general obligation was clearly ſuch as, when properly conſidered, could have no real operation againſt the Company, and fell to be received with reſtrictions ſuitable to our ſituation, and the future plans of management that might be adopted. Accordingly, at the general meeting of Directors in November 1771, a few weeks before this great loan was given, the nature and extent of the agreement with the Dumfries bank, *in that particular*, had been fully canvaſſed. It had been agreed upon, and minutely and accurately fixed, what additional caſh accounts or credits were to be given out in conſequence of the tranſaction lately entered into. And at the ſame time the regulation is made, prohibiting any caſh-accounts from being granted in future, except twice in the year.

It therefore appears to us to have been a moſt unwarrantable proceeding in the Directors of this office, and a moſt wanton deviation from their duty, to take upon them to authoriſe this loan; and it was the more unpardonable, conſidering the *then* ſituation of the Company's affairs, which required a conſtant and ſteady retrenchment.

The circumſtances, too, under which this great loan appears to have been granted, are extremely ſuſpicious. No mention whatever was made of it at the general meeting a few weeks before, although every additional credit which it was judged neceſſary and proper to grant in conſequence of the late tranſaction with the Dumfries bank, is there particularly fixed and aſcertained. No mention whatever is made of it at any of the preceding meetings of this branch;

but all at once, and without any previous intimation, the loan is ſuddenly propoſed at the meeting 3d December; and being as ſuddenly agreed to, without the leaſt deliberation or inquiry, the bond is produced cut and dry, ſigned by Mr Murray, and by two cautioners, who had never ſo much as been mentioned to the meeting; and authority is forthwith given to the Caſhier to pay the money; which was accordingly done.

In ſhort, we apprehend it is clear, that this loan was intended as a mere accommodation to Mr Murray; who, it will alſo be obſerved, was at that time one of our own Extraordinary Directors, lately choſen; and that it was authoriſed by the Directors of this office, in breach of their moſt obvious duty, and to the great prejudice of the Company whoſe affairs they were conducting. The conſequences, therefore, ought to be chargeable upon them *.

The total amount of the irregular credit, under this article of Caſh-accounts, appears to be L. 19,200.

2. *Diſ-*

* *Nota.* Since this Report was made to the Company, it has been repreſented to us, in vindication of the above loan to Mr Murray, that it was in fact one of the conditions of the bargain with Johnſon, Lawſon, and Company; and in evidence of this, a paper has been ſhown to us, ſigned, upon 29th October 1771, by the two Directors who had made the bargain near three months *before*, by regular agreement, ſigned 10th Auguſt 1771, as laid before the Company at the general meeting, Nov. 1771, and then approved of. This paper is ſaid to contain the *particulars* of the agreement made with Johnſon, Lawſon, and Company, ſuch as they were, to be communicated to the partners of that Company; and there appears in it the following clauſe, "That Douglas, Heron, and Company, are to receive from Alexander Johnſon, "Hugh Lawſon, and Company, Mr Murray of Broughton his bond, payable at Mar-"tinmas 1772, for what he owes Alexander Johnſton, Hugh Lawſon, and Company." In conſequence of this, it is ſaid, that Douglas, Heron, and Company, were *bound* to take a transfer of the propoſed ſecurity, in payment *pro tanto* of the great debt which Johnſton, Lawſon, and Company, contracted to Douglas, Heron, and Company, by the latter coming under obligation to pay all the notes of the former then in the circle; and that the tranſaction was accordingly finiſhed in that way. Upon

2. *Diſcount of Bills.*

2. Diſcount of Bills.

Although the Directors at this office appear for a conſiderable time to have been cautious, and attentive to the intereſt of the Company, in moſt of their management; and, particularly, to have acted in the article of diſcount with more moderation and impartiality than their brethren at Air or Edinburgh; yet we muſt obſerve, that in this article the eſtabliſhed regulations appear to have been likewiſe broke through in a great many inſtances.

It has already been mentioned, that at this and the Air office a *quorum* of five Directors was neceſſary to authoriſe the diſcount of

Upon mature deliberation, and after due inquiry into this matter, we are by no means ſatisfied with the repreſentation which has been given us; nor can we view it as any juſtification of the tranſaction: *Firſt*, Becauſe we do not conſider the above condition to have been in any ſhape binding upon Douglas, Heron, and Company: for it was neither any part of the bargain with Johnſton, Lawſon, and Company, as fixed by the regular agreement of 10th Auguſt 1771, laid before and approved of by the general meeting of the Company; nor was it in any manner made known to or ratified by this meeting. 2*dly*, Becauſe, though the condition had been binding upon Douglas, Heron, and Company, yet it was not to be fulfilled in the way of a *loan* to Mr Murray, but was to be a ſimple *transfer* of his ſecurity in payment *pro tanto* of the debt due by the Dumfries bank; whereas, upon examining our office-books, it appears to have been a proper *caſh*-tranſaction. It is true, that ſome payments were made about that time by Johnſton, Lawſon, and Company, to Douglas, Heron, and Company; but whether thoſe payments aroſe in any part from the loan of money to Mr Murray, it is impoſſible for us to ſay: nor is it material, as theſe appear to have been *proper* payments by them to account of their debt; and indeed their payments were not only then, but ever after, much too ſmall, and inconſiderable, compared with the immenſe load of debt which Douglas, Heron, and Company, came under upon their account, in conſequence of that ruinous tranſaction.

bills,

bills, which could only be granted at the weekly meetings; and that the bills ordered to be diſcounted ought to have been entered in a minute-book, and the entries ſigned by the Preſes.

Theſe regulations, however, appear to have been very ſoon evaded, by a practice early introduced, of the acting Director for the week diſcounting bills when he thought proper, and afterwards reporting the particulars to the weekly meeting for their approbation. Two inconveniencies aroſe from this bad practice; both of which the rules of the Company before mentioned were calculated to prevent. *Firſt*, A *ſingle* Director had it thereby in his power to diſcount ſuch bills as he thought fit, though a quorum of *five* was required for that purpoſe; and the ſubſequent report to the weekly meetings does not ſeem ſufficient to remove the objection: For it may well be ſuppoſed, that many bills diſcounted by the ſingle Director might not have been diſcounted by a regular *quorum*; but after the diſcount was once granted, and the money actually iſſued, it ſerved little purpoſe to diſapprove; and, except in a flagrant caſe, the matter would evidently not be attended to. 2*dly*, The practice of *daily* diſcount was thereby neceſſarily introduced; and it was the obvious and declared intendment of the eſtabliſhed rules, that this ſhould not be the caſe; the inconvenience of too frequent diſcount having been foreſeen, and wiſely provided againſt, by permitting it only at weekly meetings.

But though this practice was irregular and dangerous, and tho', in many inſtances, even the weekly meetings acted without a *quorum*; yet as we do imagine, that the diſcount at this office was, prior to November 1771, conducted with moderation, and may have been beneficial to the Company, we are therefore unwilling to charge the Directors of this office with any very culpable miſconduct in this particular till after the above period.

But

But in their ſubſequent operations in the way of diſcount, we can by no means overlook their proceedings; as we cannot help thinking them ſhamefully unwarrantable and partial, as well as highly injurious to the Company. In particular, the practice of acting *without a quorum* became quite common, and, inſtead of being checked, was connived at, and even met with encouragement.

It has formerly been ſhown, that at this period of our affairs, there appears to have been no remedy left, but a ſteady retrenchment of buſineſs; but, unfortunately, a change of Managers for this office, extremely unfavourable to any plan of retrenchment, had taken place at the late general meeting, in conſequence of the connections lately formed with the Partners of the old Dumfries banking company.

It appears, that among the firſt acts of their management, a reſolution was entered into, at a meeting of the Directors of this office, at which, too, it will be obſerved, there was not a *quorum* preſent, ſuperſeding altogether the eſtabliſhed regulations of the Company with reſpect to diſcount, and purchaſe of bills of exchange, and ſubſtituting, in their place, other rules of their own creation, which they found might anſwer their purpoſes better. It was agreed, that the regulations which required a *quorum* to authoriſe diſcount, which allowed diſcount at weekly meetings only, and which appointed the bills diſcounted to be entered in the minute-book, and the entries ſigned, ſhould be afterwards diſcontinued; and that, in place thereof, a ſingle Director might diſcount any bill not exceeding L. 50, and two Directors any bill not exceeding L. 100: That, beſides a general day of diſcounting, the Directors might diſcount, as they thought proper, every day; and that the bills diſcounted ſhould be entered in a book, together with the

initials of the Directors annexed to the bills diſcounted by them reſpectively *.

It ſeems almoſt unneceſſary to mention how entirely it was beyond the powers of this meeting, though a *quorum* had been preſent, or indeed of any meeting of Directors whatever, particular or general, to diſpenſe with the eſſential and eſtabliſhed rules of the Company, which nothing leſs than the authority of the Company itſelf could alter. This new practice of diſcount, however, immediately took place, appears to have been very well reliſhed, and was ever after made uſe of, till the bad conſequences of it had been ſufficiently experienced; and the conſtitutional mode of diſcount was reſtored 24th December 1772 †.

It is difficult to imagine any ſcheme better calculated for every degree of abuſe, than this looſe and diſorderly method of diſcount; and the conſequences of it were accordingly ſuch as might have been expected. Every reſtraint being removed, the credit afterwards given out in the way of diſcount at this office was enormouſly increaſed; and by this means, at a period when we had already gone too far, and when retrenchment was abſolutely neceſſary, our affairs were rendered ſtill more irretrievable.

We muſt therefore conſider the whole of the diſcounts at this office, after the introduction of the new method of diſcount, to have been quite irregular and unwarrantable; and that the Directors at this office are chargeable with the conſequences thereof, in ſo far as it ſhall appear, that damage has thence enſued to the Company.

In this view, we find, that the bills unwarrantably diſcounted at

* *Vide* Appendix, N°. 6. (*k*)

† *Vide* Dumfries ſederunts of that date.

this

this office, from November 1771 to our ſtop in June 1772, amount to the ſum of L. 110,180 : 4 : 4, conform to a particular liſt, marked N° 13. here referred to *.

3. *Bills of Exchange.*

3. Purchaſe of bills of exchange.

Although little was done at this office in the way of exchange; yet we muſt obſerve, with reſpect to this article, that the eſtabliſhed regulations of the Company appear to have been altogether diſregarded from firſt to laſt in the purchaſe of bills of exchange; which ſeems to have been always carried on very looſely, and without any *viſible* authority whatever. And we find, that the ſum of L. 20,696 : 12 : 5 of ſuch irregular bills of exchange was current in June 1772, conform to liſt N° 14. referred to †.

4. *Circulation-accounts.*

4. Circulation.

This office appears at every period to have gone to great exceſs in the plan of circulation. It has already been ſhown, that no benefit could thence ariſe to the Company: and it appears, that it ſoon became an additional mode of credit; which being quite irregular and unwarrantable, the Directors were highly culpable in authoriſing it, and ought to be charged with the conſequences.

5. *Accounts-current.*

5. Accounts-current.

Abuſes were likewiſe committed at this office, under the colour

* *Vide* MS. State, N° 13. with relative books.

† *Vide* MS. State, N° 14. with relative books.

of

of accounts-current; and the Company, who ought always to have been the debtor, became, in many inſtances, the creditor, to conſiderable amounts; the particulars of which will be ſhown under a ſeparate branch.

We have now gone through the proceedings of the Directors of this Company, at their reſpective offices, prior to our ſtop in June 1772; and we have thence ſelected, as accurately and impartially as we could, the *particular* acts of culpable miſmanagement which we apprehend are chargeable againſt our Managers, and may be made the foundation of a claim of indemnification againſt them. But as ſuch claim would be idle and inadmiſſible, unleſs it can alſo be ſhown, that damage has thence actually enſued to the Company, we ſhall therefore now proceed to inquire into that matter.

BRANCH IV.

Damage ariſing from the culpable acts of miſmanagement prior to 22d June 1772.

It has already been frequently mentioned, that the original ſource of our misfortunes was, the profuſe and partial credit iſſued in Scotland; whereby the Company became *creditors* indeed to a very great amount; but neceſſarily became *debtors* elſewhere nearly to the ſame amount.

The

Conſequences of the irregular proceedings prior to June 1772.

The firſt obvious conſequence, therefore, of the irregular proceedings, which have been reviewed, was, That, in purſuance of the credits thereby unwarrantably given out, a very great debt was contracted *to* the Company, which otherwiſe would not; at leaſt it is to be preſumed, would not have been contracted; and of courſe that a ſum of debt correſponding to it fell neceſſarily to be contracted *by* the Company.

Amount of irregular debt.

The amount of the debt contracted to the Company in this irregular manner, and *actually due* by the ſeveral debtors, upon the 22d June 1772, is aſcertained by a ſtate thereof, here referred to; from which it appears, that there was then due to the Company, in conſequence of the unwarrantable proceedings at Air, Edinburgh, and Dumfries, already examined, to the amount of no leſs than L. 361,611: 17: 6 *: A ſum aſtoniſhingly large; and yet the whole of it is, in our apprehenſion, in the predicament of being irregularly and unwarrantably contracted. A conſiderable part indeed of this irregular debt, as contained in the above-mentioned ſtate, ariſes from the bills of exchange which were current in June 1772, and were afterwards diſhonoured; and we muſt own, that with reſpect to it, the neceſſity which our Edinburgh Managers were under, of obtaining ſuch vaſt ſupplies of remittances, may be pleaded as an alleviation of their miſconduct in that branch of management; and that it does not therefore fall to be conſidered as on the ſame level of blame with the other irregular debt. But at the ſame time we can ſee no apology for the accommodations given to other perſons under this branch of management, and for the proſtitution thereby made of the Company's credit, ſuch as occurs in the flagrant inſtance of David Campbell already mentioned †; and therefore, in ſo far as ſuch accommodations were given, we apprehend, that our Managers were fully as blameable as in any article whatever.

* *Vide* Appendix, N°7. † *Vide* p. 64.

Beſides this great amount of irregular debt, the other debts due to the Company were immenſe; and it is abundantly plain, that a debt correſponding to the above amount fell neceſſarily to be contracted by the Company *ſomewhere*; but as the chief ſource of the Company's credit was ſituated in London, where it fell to be ſucceſſively drained, and ſupplied by draughts and remittances, the conſequence was, that, to the amount of the irregular debt before mentioned, the Company would be *creditors* in Scotland, and *debtors* in London.

Two ſpecies of damage thence ariſing.

Having this in view, it will appear, that two diſtinct ſpecies of damage muſt have ariſen to the Company, from the irregular and unwarrantable proceedings which have been reviewed. *Firſt*, The *ordinary* damage ſo frequently ariſing from the loan of money, viz. the inſolvency of the debtors; and, *2dly*, The *extraordinary* damage, which in this caſe aroſe to the Company from the ſale of annuities taken up for the relief and ſupport of the Company after our ſtop in June 1772.

Inſolvency of debtors.

As to the *firſt*, we apprehend that the Managers of the Company ought either jointly and ſeverally, or according to their ſhare and concern in the irregular proceedings reſpectively, to be reſponſible for the ſolvency of the debtors in the above irregular debt contracted in conſequence of theſe proceedings. The *particulars* of all theſe debts; the irregular proceedings in conſequence of which they were contracted; the perſons concerned in and acceſſory to theſe proceedings; are all fixed and aſcertained by the ſeveral ſtates before referred to, and by their relative books and ſederunts. And if the *premiſſes* therefore which we have laid down are juſt; if the Managers of this Company were bound to their fellow-partners to diſcharge with fidelity the important truſt committed to them; and to govern themſelves in all their proceedings by the fixed and eſtabliſhed rules of the Company: in ſhort, if they were bound to do their duty, and if our folly in making choice of them as Directors, did

did not cancel every obligation, and render them unaccountable defaulters; then, we do humbly imagine, the *concluſion* muſt follow, That as they openly diſregarded the eſtabliſhed rules of conduct, and, in the various particulars ſtated in the former branch of this Report, tranſgreſſed their moſt obvious duty, they muſt be anſwerable for the conſequences of their culpable miſmanagement; and, in particular, that they muſt and ought to be reſponſible for the loſs ariſing from the inſolvency of thoſe debtors of the Company whoſe debts were contracted through their means, in an irregular and unwarrantable manner. To this extent the Company may properly be ſaid to have incurred damage through their culpable miſmanagement; and to this extent, therefore, they ought to be liable in an indemnification.

Extraordinary loſs by annuities.

As to the ſecond ſpecies of damage before mentioned, it is well known to what ſad reſources the Managers of this Company were reduced upon the general ſtagnation of credit in June 1772; and it is *now* perhaps better known than it was *then*, what were the errors in the previous management, and what the proper cauſes and ſources of our diſtreſs upon that occaſion.

Our debt in London, occaſioned by the profuſe and partial credit given out in Scotland, was then become ſo enormous, and required ſuch a large and immediate proviſion at that critical period, that, in default of every other reſource, the ſcheme of raiſing money by annuities, for the Company's ſupport and relief, was reſorted to. The nature and effect of the proceedings in that deep and important tranſaction will be conſidered under a ſeparate branch. At preſent it is ſufficient to ſay, That a very great additional and *extraordinary* loſs enſued from the annuity-meaſure, the whole of which now ſtands charged to the debit of the Company.

As the irregular debt, however, previouſly contracted to the Company, neceſſarily occaſioned a correſponding ſum of debt to be contracted

tracted in London, as has already been ſhown; and as this debt fell, along with the other London debt, to be provided for, and paid, by the expenſive mode of annuities; we apprehend it muſt follow, that the *extraordinary* loſs ariſing from the ſale of annuities, correſponding to the amount of the irregular debt under conſideration, falls to be charged as a conſequence of the irregular and unwarrantable proceedings already mentioned. To this extent the Company may likewiſe be properly ſaid to have thence incurred damage; and to this extent likewiſe the Managers ought to be liable in indemnification.

We have thus inquired into the actual damage which we apprehend may properly be ſaid to have ariſen to the Company, from the unwarrantable proceedings of our Managers previous to our ſtop in June 1772. To what extent, or in what proportions they ought to be liable to their fellow-partners in an indemnification, is a point which we cannot, and which it is no part of our buſineſs to inquire into. We have only, in purſuance of what we thought our duty, ſtated the particular acts by which we apprehend the Company was wronged, and the proper damage which appears to have thence ariſen to the Company. But the extent of the reparation to be obtained, is a matter which does not fall within the province of this Report*.

We now proceed to

* *Nota.* In the addreſs to the Proprietors, it is ſaid, That we have not pointed out any loſs ariſing to the Company from irregular loans. We are altogether at a loſs to underſtand the meaning of this obſervation. From the general ſtate of irregular debt, it appears, that there was due, 22d June 1772, at the Edinburgh office, upwards of L. 160,000 of debt in that predicament. We now inform the authors of the Addreſs, that, ſo far as we can diſcover, there is upwards of L. 90,000 of that debt ſtill due; whereof L. 60,000 or L. 70,000 appears to be already irrecoverably loſt by inſolvency of debtors; how much more of it may hereafter ſhare the ſame fate, it is impoſſible to ſay. Such being the caſe, theſe gentlemen will no longer have occaſion to doubt, that if the complaints themſelves are well founded, there will be a ſufficient qualification of *damage*, independent of the extraordinary loſs by annuities, neceſſarily occaſioned by ſuch an amount of irregular credits.

BRANCH

BRANCH V.

Nature and effect of the proceedings in the ſale of Annuities, and manner in which the loſs thence ariſing ſhould be apportioned among the Partners.

THE general ſtate and ſituation of the Company in June 1772, when the failures which brought on the criſis of their affairs happened, has already been occaſionally mentioned: but it will be neceſſary to be now ſomewhat more particular.

In this view a full ſtate is made up, and here referred to, of the whole debts then due to the Company; and from this it appears, that, independent of the effects which compoſed the *fixed* capital of the Company, ſuch as houſes, &c. the debts due at the three offices, excluſive of the different agencies, amounted, upon the 22d June 1772, to the ſum of L. 694,175, 19 s. *, whereof it will be obſerved no leſs than L. 361,611 : 17 : 6 was irregularly contracted, as mentioned under branch 4. †. Upon analiſing the above ſtate of debts, the proportion thereof belonging to the Partners themſelves, appears to be upwards of L. 400,000; and of this debt due by Partners, the proportion belonging to a very few individuals, moſt of whom had all along been intruſted with and engaged in the management of the Company's affairs, appears to be ſhamefully and incredibly great, as might indeed be expected from the profuſe, irregular, and partial management which has already been examined.

State of the Company's affairs, 22d June 1772.

Beſides this great debt due to the Company at the three offices, there was due at the different agencies eſtabliſhed at Glaſgow, In-

* *Vide* MS. State of debts at that period.

† *Vide* State, App. N° 7.

verary, Inverneſs, Kelſo, Montroſe, and Campbelltown, to the amount of L. 133,788 : 0 : 11, conform to particular ſtates; and of this too a very conſiderable proportion belonged to the Partners of the Company.

There were likewiſe circulating at this period in London, bills of exchange, which had been previouſly purchaſed and remitted from the ſeveral offices, to the amount of upwards of L. 400,000, the whole of which might properly be conſidered as part of the debt due to the Company, as much as any other, ſince theſe bills were purchaſed and remitted at the Company's riſk, and could not therefore be placed to their credit in London till paid. In fact, a great part of them, upwards of L. 180,000 was ultimately diſhonoured, whereof a large proportion likewiſe belonged to the Partners of the Company.

Such, therefore, may be conſidered to be the ſtate of the debts due to the Company at the above period, amounting in all as follows.

Debts at the three offices, -	L. 694,175	19	0
Debts at the ſeveral agencies, -	133,788	0	11
Bills of exchange, - -	409,079	7	2
	L. 1,237,043	7	1

On the other hand, the debt which was then due *by* the Company in various ſhapes, was fully equivalent to the debts due *to* them; and it appears, that beſides the capital ſtock belonging to the Partners *, the loans of money obtained from individuals †, and the Company's paper then in the circle, including the notes of the old Air and Dumfries Banks, for which we were liable ‡, there was then due

* N. B. The ſtock paid in or called for was about - -	L. 130,000
† N. B. The private loans were about - - -	300,000
‡ N. B. The notes in the circle were about - - -	220,000
	L. 650,000

in

in London to the amount of about L. 600,000 upon current bills drawn upon our correſpondents there at different times and dates.

Impoſſible to provide for the Company's engagements in the ordinary way of remittances.

Such was the ſtate of the Company's affairs in June 1772, when, owing to the many bankruptcies which then happened, and the general ſtagnation of credit which thence enſued, it became impoſſible to provide in the ordinary way of remittances, for payment of the vaſt ſum running upon our correſpondents, no part of which was due upon bills at a longer date than ſeventy days. Conſiderable proviſion had indeed been made for our current engagements by the remittances already mentioned; but even theſe could no longer be depended on. The diſhonour of them to a great amount, was to be looked for with certainty; and in fact no leſs than L. 180,000 of them was actually diſhonoured, and of courſe fell to be replaced by the Company, who were left to their recourſe againſt the drawers and indorſers of the diſhonoured bills.

It muſt likewiſe be obſerved, that beſides the *immediate* proviſion, which it became neceſſary to make for the bills already running upon our correſpondents, a proper proviſion fell likewiſe to be made for the bills which the Company might afterwards be under the neceſſity of drawing, in conſequence of the multiplicity of demands upon them, which in the *then* ſituation of affairs might naturally be expected from different quarters.

The debts due to the Company, the natural means of relief,

but inacceſſible.

The natural and proper funds for relief of the Company in this emergency, were the debts due to the Company; but it was well known, at leaſt to thoſe who knew any thing of the ſtate of the Company's affairs, that theſe funds were altogether inacceſſible and out of reach. This might perhaps be abundantly obvious, if the *extent only* of our operations is conſidered; but if the ſhameful *partiality* of them is likewiſe attended to, and the ſtate of the debts properly examined, it will appear, that it would have been altogether chimerical to look for relief to that quarter, from which it ought naturally

rally

rally to have come. Relief, however, muſt be procured ſomewhere; for if the bills circulating in London were allowed to return upon the Company, a legal bankruptcy, with all its diſmal and inextricable conſequences, muſt have infallibly enſued.

Committee of Directors repair to London, to raiſe money for the Company's relief;

In this ſituation, a committee of our Directors repaired to London, with inſtructions to raiſe money for the Company's relief, and furniſhed with all the powers for that purpoſe which Directors could give *; and after trying ſeveral fruitleſs expedients †, it was at laſt reſolved, in default of every other reſource, to adopt the meaſure of raiſing money upon a ſale of redeemable annuities, though upon moſt oppreſſive and diſadvantageous terms.

and raiſe large ſums upon a ſale of redeemable annuities;

In purſuance of this reſolution, very large ſums were accordingly raiſed from time to time in that way, as our demands and exigencies required ‡. And in this manner, and at this high expence, the Company was relieved from the burden of the London debt, and ſaved from the appearance of a legal bankruptcy.

which prevents a legal, but occaſions a voluntary bankruptcy.

It was, however, only a *legal* bankruptcy which was by this means avoided: A *voluntary* bankruptcy certainly enſued; the embarraſſment of our affairs being ſuch, and the burden of the annuities, together with the vaſt train of conſequential expences attending the tranſaction, being evidently ſo immenſe as at once to ſwallow up and annihilate the Company's capital, and to leave them nothing to do, but to attend to the liquidation of their affairs, and to extricate themſelves in the beſt and eaſieſt manner. Whether the conſequences of the legal bankruptcy might in the end have proved more or leſs fatal to the Company, and the unfortunate partners, than thoſe of the voluntary bankruptcy, which our Managers then

* *Vide* App. N° 8. (*a*)

† *Vide* London ſederunts in June 1772.

‡ N. B. The ſum-total raiſed upon annuities, as afterwards redeemed, was L. 457,570.

thought

thought it proper to embrace, it is unneceſſary for us to inquire. Our preſent purpoſe is, to ſuggeſt what we apprehend to have been the nature and effect of the annuity-meaſure, and in what manner the extraordinary loſs thence ariſing ought to be diſtributed, upon due conſideration of the ſtate of the Company's affairs at the time.

The meaſure not binding upon the Company, as under the contract;

It cannot admit of a doubt, that in an *ordinary* ſtate of the Company ſuch a ſcheme was equally adverſe to the principles of the Copartnery, the intereſt of the Partners, and the powers of the Managers; and it is impoſſible to ſay, that the Directors of this Company, acting *as ſuch*, under the authority of the contract of copartnery, could bind the Company by a tranſaction of that nature. It further appears to us, that even a general meeting of the Company itſelf could not have authoriſed it, to the effect of binding the Partners *at large*, it being altogether inconſiſtent with the *fourth* article of the contract *, which is expreſsly declared by the nineteenth article †, to be unalterable by any general meeting; and whatever individuals might have ſubjected themſelves to by their *own* act and deed, if preſent at ſuch a meeting, we cannot perceive upon what ground, even a general meeting of the Company, could have adopted or authoriſed the annuity-meaſure, ſo as to bind abſent or diſſenting Partners, or to affect the *ſtock* of the Company by any loſs *thence* ariſing ‡.

Beſides,

* Branch 1. § 3.

† Branch 1. § 15.

‡ *Nota.* It is obſerved, p. 19. of the addreſs to the Proprietors, that it is improper in a Committee of Inquiry to diſpute the power of a General Meeting to bind all its members. We are perſuaded, we know the extent of the powers of a General Meeting, ſo far as regulated by the contract of copartnery; and we do not conceive, that ſuch a meeting, which is the creature of that contract, can have any other powers than what are there beſtowed on it. We likewiſe know, that the powers of a General Meeting are great. We all of us feel at this day the fruits of a wanton and injudicious exerciſe of thoſe powers, in a variety of inſtances. But all this notwithſtanding, we beg leave poſitively to deny the *omnipotence* of a general meeting.

Beſides, it ſeems deciſive againſt the validity or effect of the annuity-tranſaction as againſt the *Company*, that none of the annuity-bonds were ſigned by the Company's Caſhier and Accountant, who alone could bind the Company, agreeably to the thirteenth article of the contract *; and indeed it is plain, that it was then conſidered and underſtood by all concerned, that the tranſaction could derive no obligatory force from the contract; becauſe, although it was every where known, and particularly among the money-lenders, that the annuity-managers were engaging in it for, and in name of, the Company; yet it was not the faith or credit of the Company which was followed upon this occaſion, but the faith and credit of individuals, and it was therefore deemed idle and immaterial to make uſe of the official ſubſcription of the Company's Caſhier and Accountant, in granting the annuity-bonds, which were accordingly all of them ſigned by individual Partners †; who, though Managers, could not with effect bind the Company in any ſuch obligation, unleſs ſpecial powers had been given them for that purpoſe by the Proprietors,

but binding on account of the neceſſity of their affairs,

The annuity-meaſure, therefore, being clearly beyond the powers of the Managers of this Company, *as ſuch*, we imagine, that the only ſolid ground upon which their proceedings in that tranſaction could be deemed effectual againſt us, was the critical and alarming ſituation of the Company, and the neceſſity of their affairs at that juncture, which prompted the Managers to have recourſe to that meaſure, in order to avert what they then imagined would have been a greater calamity.

Suppoſe the Managers of this Company had thought proper to purchaſe, with the Company-funds, a large Weſt-India eſtate, we aſk the authors of the Addreſs, Whether the approbation of a general meeting could have rendered ſuch a tranſaction binding upon the Partners at large? It certainly could not; and neither could any reſolution of a general meeting, acting under the contract of copartnery, *create* an obligation upon the Partners to ſubmit to the burden of an annuity-tranſaction. It was the *neceſſity alone* of the Company's affairs at the time, which was the baſis and foundation of the claim of relief; and we will venture to ſay, that this is the fair, candid, *legal*, view of the caſe; nor can we be perſuaded, that any lawyer, diſpoſed to give a ſerious opinion, will view the matter in another light.

* Branch 1. § 11. † *Vide* App. N° 8. (*b*)

It is upon this ground *alone*, that we apprehend the tranſaction can at all be deemed effectual againſt the Partners at large; and this only *in equity*, as being *in rem verſum* of them, and to the effect of intitling thoſe individuals who interpoſed their ſecurity upon that occaſion to claim *relief* of their engagements from the Company, whoſe debts had been paid, and whoſe credit had been ſaved, by the money raiſed in that way. And ſuch being the caſe, it muſt follow, That although the ſubſequent approbation of that meaſure in the general meeting of the Company, in November 1772 *, may have ſo far confirmed the proceedings of our Managers, and aided their claim of relief; yet in reality the Company only then did what they were previouſly bound to do, at the ſuit of thoſe individuals who had interpoſed their ſecurity. The obligation upon the Company, ariſing from the neceſſity of their affairs at the time, did previouſly exiſt. The Company thereafter only homologated this obligation; and their reſolutions, in adopting and approving of ſo unconſtitutional a meaſure, could not have any other effect than this, or *create* any obligation upon the Partners, agreeably to the terms and conditions of the contract, and the powers veſted in general meetings.

to the effect of intitling the granters of annuities to relief of their engagements from the Company.

Such we apprehend was the proper nature and effect of the proceedings of our Managers in the annuity-tranſaction. But as the conſequences of it have proved calamitous, far beyond expectation,

* *Vide* App. N° 8. (*c*). N. B. There were preſent at this meeting, perſonally 112, by proxy 79, abſent 50.

and

and beyond what the Partners were at that general meeting led to believe would be the result: and as the Company, owing to the inacceſſible ſtate of their own funds, remained ſo long under the burden of the annuities, and have been expoſed to ſuch a vaſt train of conſequential and inexplicable expences always attending tranſactions of that deep and hazardous nature, it becomes a matter of ſerious conſequence to the unfortunate and innocent Partners of this Company, to inquire, how far they are not intitled, in name of the Company, to ſeek relief *from another quarter*, of that heavy *extraordinary* loſs which at once annihilates our capital, and which ſtands at preſent *wholly* charged to the debit of the *Company*, whereby the Partners at large are made to pay their proportion of it, according to their *ſhares of ſtock*.

But the Company again intitled to relief from their debtors,

We muſt own, that, upon attending to the circumſtances, we cannot perceive any ſolid ground for apportioning this extraordinary loſs in that manner. We cannot help feeling the groſs injuſtice of it; and we are perſuaded, that there are ſolid grounds for dividing it in a more juſt and equitable manner: for as the individual Partners, who took up the annuities, and ſigned the annuity-bonds, were, upon the principles before mentioned, intitled to ſeek relief of their engagements from the Company, whoſe affairs they were managing, and whoſe credit had been ſaved by the tranſaction; ſo we cannot help thinking, that, upon the ſame principles, the Company itſelf was intitled again to demand relief from their own debtors, whoſe debts, as they were the true cauſe and occaſion of the Company's debt in London, were of courſe the *mediate* cauſe of the annuity-tranſaction, as well as the proper and natural funds which ought to have relieved the Company, and ultimately fell to do ſo.

at leaſt from the Partners debtors.

We do not ſay, That the Company would be well founded in this demand againſt ſuch debtors as they are not otherwiſe connected with, than as being their creditors. The *ſimple* connection of debtor

or and creditor may ſeem too ſlight to found any ſuch claim of relief; but we conſider the ſituation of ſuch debtors as were Partners of the Company, to be very different from that of *ſtranger* debtors: for beſides the common relation of debtor and creditor, they are connected with their fellow-partners in a more cloſe and intimate manner. It has already been ſhown, that a very great and extraordinary proportion of the debts due to this Company belonged to the Partners themſelves: they were therefore *ſo far* the occaſion of the London debt, and the *mediate* cauſe of the annuity-tranſaction; and ſeveral of thoſe Partners were the very conductors of it. We cannot therefore help thinking, that it would be inconſiſtent with the *bona fides* inherent in all copartneries to ſay, that the individual Partners who had interpoſed their ſecurity in this tranſaction, ſhould be intitled to relief of their engagements from the Company, becauſe the credit of the Company was thereby ſaved; and that this relief, at leaſt a juſt proportion of it, ſhould be denied to the Company itſelf, againſt the Partners who were indebted to the Company, whoſe credit was as eminently ſaved, and whoſe debts were in a very great degree the true cauſe and occaſion of all the diſtreſs and *dilemma* into which the Company was thrown. It has already been mentioned, that, at every period, the Company were *debtors* in London, only becauſe they were *creditors* in Scotland. The *former* ſituation was the neceſſary conſequence of the *latter*; and, therefore, as the Company's debt in London was contracted on account of their debtors in Scotland, the above claim of relief, at the inſtance of the Company againſt them, as the *ultimate* debtors, ſeems to be ſtill more ſtrongly founded than that of the annuity-managers againſt the Company.

It accordingly appears from the proceedings of the general meeting in November 1772, that as the annuity-tranſaction had been undertaken for the relief of the Company, and in order to diſcharge their engagements, ſo the Company agreed to take it upon themſelves, and to come under the burden of the annuities *for the relief*

and

and accommodation of their debtors *. At this period the *real* ſtate of the debts due to the Company, ſeems to have been induſtriouſly kept out of view; at leaſt it was not known among the Partners, however much it may have been known among the Managers; and perhaps it was not foreſeen, that the conſequences of the annuity-tranſaction were to prove ſo calamitous. It is otherwiſe not probable, that the Partners would have given ſo looſe and unreſerved an approbation *at large* to the meaſures propoſed as they then did †. Had they known the real ſtate of affairs, and foreſeen the conſequences, it is at leaſt preſumeable, that before going ſo inconſiderately and cordially into thoſe meaſures, it would have occurred to them to ſtipulate, that the proportion of the enormous loſs which was to ariſe from the annuity-tranſaction ſhould be laid upon the

† *Nota.* In the Addreſs, p. 22. it is ſet forth, That great pains were taken at the general meeting in November 1772, to explain the ſtate of the Company's affairs to the Partners; and that every one might *then* have got the fulleſt information upon the ſubject, particularly with reſpect to the ſtate of their debts. We know, that whatever *full* information may have been given the partners upon that occaſion, there were a few *trifling* tranſactions, ſuch as, the miſapplications of annuity-money, — the compoſitions with bankrupt-houſes,— the loans to Mr Alexander,— the loans to Mr Fordyce, and ſome others, which were kept, like ſtate-ſecrets, from the knowledge of that meeting. But, independent of this, every perſon knows how idle it is to think of any uſeful inveſtigation at a general meeting of this ſort; and we can hardly think that the authors of the addreſs, acquainted as they ought to be with the ſtate of the Company's affairs at that time, and in particular knowing how dark and inexplicable the ſtate of the debts then was, can ſeriouſly mean to tell the Partners, at this enlightened period of our affairs, that they ought then to have informed themſelves, and were to blame in not doing ſo. It is well known, that the *real* ſtate of the debts was impenetrable, not only then, but for a long time after, and indeed did not begin to be diſcovered till after the actual diſſolution of the Company. Such being the caſe, it is, we apprehend, rather an ungracious obſervation now to communicate to the Partners, who, in another part of the addreſs, are flattered with the compliment of acting upon that occaſion like *good and virtuous men*, that they ought to have informed themſelves at that time, of the particulars of their ſituation, and that they are now barred from demanding juſtice on account of their own neglect.

* *Vide* Sederunts of general meeting, Nov. 1772, App. N° 8. (*c*).

Partners,

Partners, not *pro rata* of their ſhares of ſtock, but *pro rata* of the debts then due by them; and that every man among them ſhould take upon him a proportion of that loſs, correſponding to the debt due by him, which he found he was not then able to pay in to the common fund for relief of the Company.

This claim of relief voluntarily ſubmitted to by a few individuals to a certain extent,

and even propoſed as a general meaſure to general meeting May 1773;

The claim of relief which we have here ſuggeſted appears to have been, with much propriety, voluntarily ſubmitted to by a few individuals, to a *certain extent*. It alſo appears, that, ſo ſoon as the inacceſſible ſtate of the debts due to the Company began to diſcover itſelf, and to be felt, the above ſcheme was frequently thought of by the Managers of the Company, as a *general* meaſure; and was even carried ſo far as to be propoſed by them in their report to the general meeting in May 1773; when the propoſal was approved of *. In conſequence of this, ſome preparatory ſtates were ordered to be made out, in the view of that method of relieving the Company being adopted as a general meaſure †; and ſo little was the real nature and latent ſtate of the debts due to the Company known or diſcovered even at this advanced period of their affairs, or ſo much was that matter kept in diſguiſe, that, according to the prophetic ſtates made out upon this occaſion, almoſt the whole of the debts due the Company were to have been paid within ſix months, or otherwiſe the Company was to be relieved of a correſponding burden of annuities ‡. But the chief object of the after management ſeems rather to have been, to get quit of the annuities *upon any terms*, than to adjuſt the loſs ariſing from

* *Vide* Appendix, N° 8. (*d*).

† *Vide* Appendix, N° 8. (*e*).

‡ *Nota.* It is now ſix years ſince theſe ſtates were made up, and from a peruſal of the ſtate of the debts *at this day* the partners may be enabled to diſcover what degree of *prophetic truth* dwelt in the compilers of thoſe ſtates.

them

but never purſued or inſiſted in.

them among the Partners. The plan was therefore never ſeriouſly ſet about, or purſued with any ſteadineſs; and the annuities, after very vigorous exertions, and extraordinary aids, having been got redeemed, the whole of the enormous loſs ariſing from the tranſaction, and from all its conſequential expences, ſtands charged to the debit of the Company, according to the preſent ſtate of their affairs.

No foundation in the contract for apportioning ſuch loſs *pro rata* of ſhares of ſtock:

We do not, however, ſee any grounds in law or juſtice for ſupporting this method of apportioning among the Partners the extraordinary loſs ariſing from the annuity-tranſaction; nor is there any foundation for it in the contract of copartnery. It is true, that by the *fifth* article of the copartnery, it is provided, "That the loſſes "ariſing from the *ſaid copartnery-buſineſs*, if any are, ſhall be ſuſtain-"ed by the ſaid Partners, according to their ſaid ſhares of ſtock *." But it is equally true, that this clauſe, as well as every other clauſe in the contract, can only be underſtood to apply to an *ordinary* ſtate of the Company, and to the loſs which might naturally ariſe from the *proper* buſineſs of the copartnery; and it is impoſſible to maintain, that this, or any other clauſe in the contract, could be meant to apply to the ſtate to which the Company was reduced by the annuity-tranſaction, or to the extraordinary loſs thence ariſing, which it cannot be ſuppoſed was in the view of the parties; which was therefore not provided for; and which was, beſides, altogether *out* of the buſineſs, and ineffectual againſt the Partners as under the contract of copartnery, as has already been ſhown.

Let it be ſuppoſed, that at the framing of the contract, ſuch an *extraordinary* loſs as the preſent, as well as the cauſes of it, had been foreſeen, and in the view of the parties, is it poſſible to ſuppoſe, that the clauſe would have been ſo conceived, as to lay the ex-

* Branch 1. § 4.

traordinary

traordinary loſs ariſing from ſuch a tranſaction, entered into in the circumſtances the Company was reduced to in 1772, upon the Partners at large, *pro rata* of their ſhares of ſtock? Would it not, on the contrary, have been ſtipulated, that a different method of dividing ſuch loſs ſhould take place, viz. *pro rata* of thoſe debts at the time which ſhould be the occaſion of incurring it? And would not the flagrant injuſtice and iniquity have at once ſtared them in the face, of making the innocent to ſuffer as well as the guilty, and of obliging a ſet of independent Partners, who perhaps might be due nothing, and might have no hand, mediately or immediately, in bringing this loſs upon the Company, to pay the price of credits by which they had no advantage, but which might be diſtributed with profuſion and partiality among a few intereſted individuals? For example, ſuppoſing one Partner to be poſſeſſed of four ſhares of ſtock, and to be due nothing to the Company; and another Partner, a Manager, perhaps, to be poſſeſſed of only one ſhare of ſtock, but to be likewiſe poſſeſſed of L. 30,000 or L. 40,000 of the Company's money at the period when the ſuppoſed annuity-tranſaction was to take place; would any ſet of men, poſſeſſed of common ſenſe, or common principles of juſtice, when entering into a contract of copartnery, have agreed to inſert a clauſe by which theſe two partners ſhould be upon ſo unequal a footing, as that the former, who was due nothing to the Company, ſhould pay *four* times more of the ſuppoſed extraordinary loſs than his fellow-partner, who was due ſo large a debt, and was therefore ſo far the occaſion of that loſs being incurred?

It is impoſſible to ſuppoſe, that ſo abſurd and iniquitous a condition could ever have been propoſed by men joining in a copartnery-buſineſs upon fair and honourable principles; and therefore the *fifth* article of the contract ought by no means to be applied as the rule for apportioning the extraordinary loſs ariſing from the annuity-tranſaction, if any other more equitable and ſolid rule of diſtribution occurs. Beſides, the above clauſe, as well as all the other

clauſes

clauſes and articles of the contract, only applied to the ſhares of *ſtock*, which alone are ſubjected to theſe articles; it cannot therefore be extended beyond the ſtock. As to any *further* loſs, it is out of the queſtion; and as the ſtock in this caſe is annihilated, there can be no room for applying that clauſe in ſo far as the loſs ſhall appear to *exceed* the ſtock.

But it falls to be charged upon the Partners who were debtors at the time *pro rata* of their debts.

In ſhort, the obligation which ſubjected the Company to the conſequences of the annuity-tranſaction, did not ariſe from the contract of copartnery, but from a ſort of ſubſequent *quaſi* contract, to which the neceſſity of our affairs at the time gave birth: and the proper and juſt rule therefore, which obviouſly occurs for diſpoſing of the extraordinary loſs thence ariſing, is, to charge it upon the partners who were indebted to the Company at the time, *pro rata* of the debts due by them; and we cannot perceive upon what principle the Partners who were in that predicament can oppoſe ſo reaſonable a demand. It was evidently their debts which were ſo far the occaſion of the annuity-tranſaction; and it was for their relief and accommodation that the Company agreed to relieve the annuity-managers of the tranſaction, and to come under the burden of the annuities. Thoſe debtors not being in condition in 1772 to afford relief to the Company, by payment of their debts, it was in default thereof that the annuity-ſcheme was reſorted to for the common benefit: and ſuppoſing, that previous to the meaſure being adopted, a meeting of the Company had been called, a liſt of the debts exhibited, and the ſcheme propoſed; is it to be imagined that any Partner who found himſelf in that liſt, could have objected to the meaſure, or refuſed to bear his proportion of the loſs which might thence ariſe *pro rata* of the debt due by him? The anſwer to ſuch a Partner, if ſuch a Partner there had been, was ſhort and deciſive, "Pay us your debt, or accede to the meaſures "propoſed."

It is impoſſible, however, to ſuppoſe, that any Partner could have acted in this manner; and much leſs can it be imagined, that any

any one largely indebted to the Company would have had the effrontery to propoſe, that the annuity-ſcheme ſhould be agreed to as a neceſſary one, but that the loſs thence ariſing ſhould be divided among the Partners *pro rata* of their ſhares of ſtock, and not *pro rata* of their debts. Had ſuch an attempt been made, would not the independent Partners immediately have been alarmed, and rouſed to an attention to their own intereſt? Would they not have immediately oppoſed the unjuſt attempt? and if the annuity-ſcheme had nevertheleſs been carried through, would they not have diſſented from the proceedings in the ſtrongeſt manner?

More eſpecially as the meaſure was afterwards approved of by them in a generalmeeting.

Although there was no meeting of the Partners on this ſubject previous to the annuity-ſcheme; yet at the ſubſequent general meeting in November 1772, the tranſaction met with the full approbation of the Partners then preſent, who were themſelves the great debtors of the Company. Indeed the real nature and ſtate of the debts was concealed from view, and was in no ſhape known at this time among the Partners at large, though ſufficiently known among the Managers of the Company. They, who knew what an amount of debt was in the hands of a few individuals, could not but be ſenſible of the *beneficial* nature of the annuity-tranſaction; and they could not therefore fail heartily to approve of it. But it ſeems clear, that if it was beneficial to the Company, it was at leaſt equally ſo to the debtors of the Company, and particularly to many of the conductors of that tranſaction; and they cannot now with propriety diſapprove of a tranſaction when applied to themſelves, which they then ſo heartily approved of when applied to the Company.

In ſhort, the extraordinary loſs ariſing from the annuity-tranſaction, at leaſt the proportion thereof correſponding to the amount of debts due by Partners at the time, when compared with the total amount of debts then due to the Company, ought, in our apprehenſion, to be charged upon thoſe Partners *pro rata* of their debts. They have been, by means of that tranſaction, and the indulgence of the

the Company, ſaved from diſtreſs, and from the immediate payment of their debts, ſome of them perhaps from ruin. The ſmalleſt return they can make for the accommodation they have received, is, to indemnify the Company of the loſs which has been incurred on their account, and in order to procure them that accommodation; and they ought to conſider this loſs as the proper and juſt *penalty* of their reſpective debts incurred by them in default of payment *.

We

* *Nota.* The authors of the addreſs to the Proprietors, affect to treat the claim of relief, ſuggeſted againſt the Partners-debtors of the Company, as quite chimerical and abſurd; and ſeem to think, that the debtors are protected from any ſuch claim by the common principles of law reſpecting debtor and creditor. Before deciding ſo haſtily, we beg leave to put a few queries upon that ſubject. Was the Company bound, in 1772, to pay their debts *in London*, by any ſtronger or more effectual obligation than their debtors were bound to pay their debts *in Scotland?* Would not the *legal* conſequences of a failure in payment by either have been the *ſame:* or, in other words, could the Company have been compelled to pay more than their debts, with intereſt and expences, ſuch being the *legal* conſequences of a failure in payment? Were not the debts due to the Company the occaſion of the London debt, as well as the proper funds for paying it; and were they not the funds which fell *ultimately* to do ſo? Was the Company under any ſtronger obligation, either *legal* or *moral*, to relieve the annuity-managers of their engagements, than any other debtors in ſimilar circumſtances would have been, or than the Company's debtors would have been, if their debts to the Company had actually been paid *in form*, by money raiſed upon annuities, *in order* to prevent an immediate and peremptory demand of payment, and to ſave themſelves, with all their cautioners and connections, from bankruptcy and ruin? Was it not for the eaſe and relief of their debtors, that the general meeting of the Company, in November 1772, agreed to ſubmit to the burden of the annuities? Was not the *real* ſtate of the debts, at that time, and long after wrapt in obſcurity, and concealed from view? Of the total debt then due to the Company, was not the proportion belonging to the Partners themſelves immenſe; and was not the proportion of this laſt in the hands of a very few individuals almoſt incredible, while a great number of the Partners were due little or nothing? Were not the chief debtors active in promoting and conducting the annuity-ſcheme? Did not all the deep debtors of the Company approve of the ſcheme at the general meeting in November 1772, as a proper and beneficial meaſure for the Company? In their deliberations upon that occaſion, ought they to have wiſhed, or uſed endeavours,

Certain claſſes of the Partners-debtors more particularly liable in ſuch relief.

We have only further to obſerve, under this branch, that certain claſſes of the Partners of the Company who were debtors at the period of the annuity-tranſaction, may perhaps ſeem to be more properly and immediately liable to the claim of relief which we have ſuggeſted than others.

Debtors on Caſh accounts.

1*ſt*, Thoſe Partners who were indebted to the Company upon Caſh-accounts; with reſpect to whom it will be obſerved, that by the bonds of credit in which they were bound to the Company, the ſums due were payable upon demand, under the uſual *penalty* of a fifth part more in default of payment; and therefore what-

vours, to bring the Company under a burden, to which, in ſimilar circumſtances, they would not have agreed to be ſubjected themſelves? or was it right they ſhould be actuated by one ſet of motives when deliberating as *partners* of a company, and by another ſet when deliberating as *men* and *individuals?* Theſe queries being *fairly* ſolved, the important queſtion may then be *fairly* put, Whether the debtors of this Company are under any obligation, either *legal* or *moral*, to give the relief which has been ſuggeſted? or, Whether they diſcharge all the obligations of juſtice incumbent on them, by *now* paying to the Company the amount of their debts, *with legal intereſt?* If there is a lingering virtue left, we think our debtors ought to ſubmit to the relief propoſed, and not to ſhelter themſelves under the diſhoneſt ſubterfuges of law: "Non omne quod licet honeſtum." The authors of the Addreſs have told us, p. 19. "That the annuity-granters truſted for *their* relief to the principles of juſtice and equity, by which the conduct of *good* and *virtuous* men muſt be for ever influenced; and that they truſted not in vain." We adopt the obſervation, and apply it to the Company's expectation of relief, as now ſuggeſted; and ought we not to hope, that our debtors are *good* and *virtuous?* It is ſaid, That the debtors cannot be liable to the *loſs*, becauſe they would not have been intitled to the *profit* ariſing from the tranſaction. But, in the *firſt* place, the tranſaction was never entered into with any view of profit, although there was juſt chance enough of profit to ſave it from the imputation of uſury. 2*dly*, The annuity-granters were *firſt* intitled to the eventual profit, becauſe they were *firſt* ſubjected to the eventual loſs; the Company ſucceeded to them, and became intitled to the eventual profit, as having relieved them of the eventual loſs; and in the ſame manner, ſo ſoon as the debtors had agreed again to relieve the Company, they would have become intitled to the profit, and expoſed to the loſs: ſo that the obſervation and doctrine with reſpect to profit and loſs, does not apply to the preſent caſe.

ever might have been the caſe, in a queſtion with ſtrangers, as to the effect of that penalty; yet we apprehend, that in a queſtion with the Partners themſelves, that penalty ought in this caſe to be conſidered as incurred, and forfeited, to the effect of indemnifying the Company of a juſt proportion of the extraordinary loſs by annuities, which, it has already been ſhown, the Company was ſo far ſubjected to in conſequence of theſe credits, and for the accommodation of the debtors therein.

Debtors in arrears of Calls.

2dly, The Partners who were at that period in arrears of calls of ſtock, which then amounted to no leſs than L. 25,587, 16 s. Thoſe calls ought to have been punctually paid. It was the capital which the Company ought to have had in their coffers, for the purpoſe of carrying on the buſineſs; the regular payment of them was therefore eſſential: and by the ſecond article of the contract it is accordingly fenced with a *penalty* of a fifth part more, in default of payment within thirty days after an order for payment *; and, beſides, by the terms of the *ſtock-bonds* granted by the Partners, a penalty of a fifth part more is ſpecially ſtipulated in caſe of failure in payment. The neglect and deficiency however of the Partners in this particular was at every period a conſtant ſubject of complaint; and as ſo large a ſum of arrears, which ought to have been in the coffers of the Company, was outſtanding in 1772, when the annuity-tranſaction was reſorted to, we do not ſee upon what principle of common reaſon or juſtice, thoſe deficient Partners can now refuſe to indemnify the Company of the extraordinary loſs by annuities correſponding to their deficiencies. This ought ſurely to be conſidered as the juſt *penalty* which they have incurred; ſince it is plain, that if they had not been deficient, or had *then* paid up their arrears, the Company would have been ſo far relieved, and of courſe a correſponding ſum of what was afterwards raiſed by annuities would have been unneceſſary, and might have been ſaved.

* Branch 1. § 2.

3dly,

Debtors in bills of exchange diſhonoured, and taken up by the Company in London.

3dly, It has been mentioned, that a very large ſum, upwards of L. 180,000, of the bills of exchange which the Company had purchaſed, and remitted to their correſpondents, prior to the criſis of our affairs in June 1772, was diſhonoured, and fell of courſe to be taken up by the Company, and paid for a ſecond time; which therefore neceſſarily occaſioned a ſum of money correſponding to the amount of theſe diſhonoured remittances to be raiſed by the mode of annuities; and it will be obſerved, that of thoſe diſhonoured remittances a very conſiderable ſum was the proper debt of the Partners, for which they were ultimately liable; although the Company, as the remitters, were firſt liable to replace the value.

It appears, that upwards of L. 70,000 was in this ſituation; and with reſpect to this ſum we cannot help thinking, that thoſe Partners whoſe proper debt it was, and who were ultimately liable to the Company in recourſe upon theſe diſhonoured bills, are upon the cleareſt principles bound to indemnify the Company, *to that amount*, of the extraordinary loſs ariſing from the annuity-tranſaction; ſince it is plain, that the managers of the Company were, in conſequence of the diſhonour of theſe remittances, under the neceſſity of raiſing an additional ſum by annuities, for taking up and replacing thoſe bills. Some of the Partners liable in the recourſe were themſelves the conductors of the annuity-tranſaction; they were therefore raiſing money by annuities, in name of, and to be a charge upon, the Company, when it was in fact applied in diſcharge of their own engagements: others of the partners ſo liable in recourſe, afterwards approved of the tranſaction, as a neceſſary and proper mode of diſcharging the Company's engagements in London at that time; and how can they therefore, with any propriety or ſhow of juſtice, now diſapprove of it, as an unneceſſary or improper mode of diſcharging their own?

Theſe ſeveral claſſes of the Partners who were indebted to the Company at the period of the annuity-tranſaction, may perhaps ſeem to be in a *more* particular manner bound to indemnify the Company

of

of a juſt proportion of the extraordinary loſs by annuities: but we apprehend, that the ſolid and equitable ground for adjuſting and apportioning that loſs among the Partners is that which has been ſuggeſted, viz. to charge the *proportion* of it correſponding to the total amount of the debts due by Partners at the time, upon thoſe Partners reſpectively *pro rata* of their debts. In which view, ſuch proportion, which at preſent ſtands charged to the debit of *Profit and Loſs*, will fall to be paſſed to the *credit* of that account, and transferred to the *debit* of thoſe individual partners *pro rata* of the debts then due by them.

BRANCH VI.

Culpable Proceedings at London in the Annuity-tranſaction.

The Company, in no view, bound in relief of annuities ſold without neceſſity.

THough it ſhould be thought, or found, that there are not ſufficient grounds in law for obtaining that relief to the Company which has been ſuggeſted; yet we cannot entertain a doubt, that the Company ought, upon no principle whatever, to be ſubjected to the extraordinary loſs occaſioned by annuities taken up without any neceſſity, or for other purpoſes than thoſe of diſcharging the Company's engagements.

The *nature* of the annuity-tranſaction has already been explained. It was plainly a moſt unconſtitutional one, altogether *beyond* the powers of the Managers, and of a deep and perilous nature to the perſons engaged in it. Neceſſity *alone* could vindicate the undertaking;

king; and it was therefore eſſentially requiſite for them to conduct themſelves in it with the utmoſt caution and reſerve; in particular, to be careful, that this expenſive mode of raiſing money ſhould not be reſorted to but in default of every other reſource, and only for diſcharging the Company's engagements. Theſe were the natural and obvious rules of conduct which they ought to have obſerved; and if, in any inſtance, they tranſgreſſed thoſe rules, it is plain, that the plea of *neceſſity*, which alone could juſtify their proceedings, no longer exiſted; and that they could therefore have no juſt claim againſt the Company for *relief* of their unneceſſary operations in that way. In ſhort, there could be no apology for raiſing a *larger* ſum in that way than was abſolutely *neceſſary* for the Company's affairs; and whatever was ſo raiſed, ought not only to have been juſtified by neceſſity, but to have been actually *applied* to the Company's uſe, and in diſcharge of their engagements; without which the granters of the annuity-bonds could not, upon any principle, ſeek relief of their engagements from the Company. Indeed, the tenor of the annuity-bonds ſeems to be deciſive upon this point; for they bear, *in gremio*, that the purchaſe-money of the annuities is paid by the receiver into the hands of the *granters, for the uſe and behoof of the Company* *; ſo that the receipt of the money being once fixed upon them, they muſt be anſwerable for the application of it, either by themſelves, or by thoſe acting under them.

but this was done in ſeveral inſtances.

We are, however, ſorry to find, upon examining the proceedings and tranſactions of our Managers in London, who took up the annuities, that conſiderable ſums were raiſed in that way, which either were not *applied* to the Company's uſe, and in diſcharge of their engagements, but to the private accommodation of others, or for which at leaſt there ſeems to have been no *neceſſity* whatever.

* *Vide* Annuity-Bond, App. N° 8. (*b*)

It has been mentioned, that after the failures in June 1772, a committee of our Managers was eſtabliſhed in London for the purpoſe of raiſing money for the Company's relief. By *them* the annuity-tranſaction, as well as the other affairs of the Company in London, during the critical and important period between June and November 1772, were conducted. Into *their* hands were remitted from Scotland, from time to time, all the funds which the Managers of the Company there could collect; and from theſe, and the money raiſed by the ſale of annuities, the Company's engagements in London were to be provided for.

Annuity-granters bound to ſhow both the *neceſſity* and *application* of the ſums to be raiſed, before demanding relief.

The method, by ſale of annuities, however, ought evidently never to have been reſorted to, but in default of every other reſource; and every miſapplication during that period of any part of the *funds* put into the hands of our Managers in London, neceſſarily occaſioned an additional ſum to be raiſed by annuities; which, it is to be preſumed, would not otherwiſe have been neceſſary. A ſacred application, therefore, of the Company's *funds* to the purpoſe of diſcharging their engagements, was the indiſpenſable duty of our Managers; and, in particular, thoſe individuals who interpoſed their ſecurity upon that occaſion, by granting the annuity-bonds, ought to have been ſatisfied, both with reſpect to the *neceſſity* and intended *application* of every ſum raiſed in that manner, before granting ſuch annuity-bonds, and thereby creating the burden. The whole *funds* of the Company in London were, or muſt be preſumed to have been in *their* hands, and under *their* inſpection and command, for that purpoſe; and when they came to claim *relief* of their engagements in annuity-bonds, they were bound to ſhow, both the *neceſſity* and actual *application* of the ſums raiſed in that way, beyond which the Company do not appear to have been at all liable in relief. Indeed, it was upon the faith, and in the full belief, that the ſums ſo raiſed were abſolutely *neceſſary*, and properly *applied* to the Company's uſe, that

that the relief was ſo unanimouſly given at the general meeting in November 1772 *.

But they have improperly obtained a *total* relief.

Having theſe obſervations in view, and proceeding upon the principles here laid down, we find, that although the granters of the annuity-bonds, whom we muſt conſider as the raiſers of the money by annuities, appear to have obtained a *total* relief of their engagements in that way, by the ſubſequent general redemption of the annuities; and although the *total* loſs ariſing from the annuity-tranſaction ſtands at preſent charged to the debit of the Company, yet a conſiderable ſum appears to have been raiſed by annuities, either without *neceſſity*, or without being *applied* in diſcharge of the Company's engagements; and to this extent we apprehend the Company ought to be indemnified at *their* hands of the extraordinay loſs thereby occaſioned, of which they have *improperly* obtained relief.

Annuity-accounts kept in a very looſe and ſlovenly manner.

The accounts of our Managers, or of the Caſhiers appointed by our Managers, during the period of this deep and important tranſaction, we are ſorry to obſerve, have been kept in ſo looſe and ſlovenly a manner, that, in ſeveral inſtances, they ſeem involved in almoſt impenetrable obſcurity. In particular, the monies raiſed upon bills, and thoſe raiſed upon the ſale of annuities, have been mingled together in ſuch a manner, that, in tracing the application and payments of money, it is impoſſible to ſay, what *ſpecific* ſums paid away, and taken credit for, aroſe from bills, and what from annuities: but as it has been ſhown, that *every* miſapplication of the Company's *funds*, at this period, was neceſſarily followed by an additional ſum being raiſed by annuities, which would not otherwiſe have been neceſſary; it is to theſe miſapplications that we muſt in this inquiry bend our attention.

* *Vide* Sederunts of general meeting, App. N° 8. (*e*)

L. 10,000 raiſed upon annuities, for the *expreſs* purpoſe of an accommodation to Mr Alexander.

1. In the *firſt* place, we obſerve, that, in conſequence of a private agreement between William Alexander, and ſome of our Managers, at London, the ſum of L. 10,000 was raiſed by a ſale of annuities, for the *direct* and *expreſs* purpoſe of an accommodation to him; and that the money was accordingly paid over to him upon the 4th Auguſt 1772, and is taken credit for by our Managers, or their Caſhiers, in the annuity-accounts *. It does not appear, that there was ever any *regular* authority even of the Managers in London for this deep tranſaction; at leaſt the firſt and only hint of it, in any of the minutes of proceedings in London, is not till the 8th Auguſt, after the loan had been actually given, and the money paid away, when it is mentioned in the moſt ſlight and overly manner, being a matter no doubt of very *trivial* importance, and ſcarce worthy of notice, according to the enlarged ideas of thoſe times †.

For this ſum of L. 10,000, Mr Alexander afterwards granted an heritable ſecurity over ſome lands in Scotland; and it likewiſe appears, that he granted a perſonal obligation to relieve the Company of annuities to the extent of the loan. The heritable ſecurity has never yet produced the money; and though it may perhaps prove ſufficient for the principal ſum and intereſt, yet the perſonal obligation, for the *extraordinary* loſs, has never been, and poſſibly may never be fulfilled; and conſequently the Company at preſent ſtands charged with that loſs, as being included in the *total* loſs, by the annuity-tranſaction charged at large, as already mentioned, to the debit of the Company.

It ſeems almoſt unneceſſary to mention how entirely it was beyond the

* *Vide* Mr Ferguſſon's account of charge and diſcharge during the period of his intromiſſions.

† *Vide* London ſederunts, 8th Auguſt 1772.

the powers of the Managers at London, agreeably to the rules of the Company, to authoriſe this loan; which was, beſides, ſo inconſiſtent with the particular views and purpoſes of their embaſſy in London, the object whereof was to *borrow* money, not to make *loans* of it: and, we apprehend, it will require little argument to ſhow, that the Company is in no ſhape chargeable with the *extraordinary* loſs thence ariſing. The raiſers of the money upon annuities, or the granters of the annuity-bonds, were, upon no principle whatever, intitled to demand *relief* from the Company of annuities which were ſold for the accommodation of Mr Alexander. There was no *neceſſity* for the ſale of thoſe annuities, and there was no *application* of the price of them to the *uſe* of the Company; ſo that in no view were they intitled to relief thereof: and although, in conſequence of the relief which they obtained of the annuity-tranſaction *in general*, before it was properly canvaſſed and inveſtigated, and, in conſequence of the ſubſequent general redemption of the whole annuities, they have, *in fact*, obtained relief of the annuities now objected to, yet they have not *of right* got ſuch relief; and therefore we can hardly entertain a doubt, that they are liable to indemnify the Company of the *extraordinary* loſs thereby incurred, which they have *improperly* got relief of.

We cannot indeed ſee any ſolid ground upon which our Managers, circumſtanced as they then were, could propoſe, in this manner, to raiſe money upon annuities for the *private* accommodation of Mr Alexander, and afterwards to attempt to lay the burden thereof upon the Company. It appears to us unjuſt, and extravagant beyond meaſure; and if they choſe to give any perſon an accommodation in that way, it ſeems a clear propoſition, That it muſt be underſtood to be at their own riſk. Speculative notions were perhaps then entertained with reſpect to the *ſuppoſed* advantages and utility ariſing from the Company's connections with Mr Alexander at that time; and a credulity of that ſort may have given riſe to the tranſaction; but, unfortunately for this Company, ſuch ſpeculative

notions were at all times too prevalent among our Managers; and in no inſtance do they abound more than in that of their ſad and infatuated tranſactions with the Meſſ. Alexanders. The Company, however, have been long enough amuſed in this way. It is now time they ſhould attend to what is their *right*; which, in this caſe, we apprehend is ſufficiently clear and obvious *.

In

* *Nota.* The Addreſs to the Proprietors, p. 23. has given a ſort of explanation of this tranſaction, and of the motives which prompted our Managers to enter iato it; importing, That the Company had at that time in the circle L. 15,000 of bills, indorſed by them, and accepted by Glynn and Halifax, for payment of which, if diſhonoured, the Company were liable on recourſe; and which Mr Alexander, in return for the aid of L. 10,000 given him, engaged ſhould be taken up, and ſhould not return upon the Company; ſo that, by the tranſaction as ſo explained, the Company, it is ſaid, actually *ſaved* the taking up of L. 5000 of annuities. We do not mean, in any ſhape, to deprive our Managers of the benefit of this, or any other explanation to be urged by them in defence of their conduct; but we muſt conſeſs, that the explanation does by no means appear to us ſatisfactory, or ſufficient to exculpate our Managers. Had they been engaged in matters of *ordinary* adminiſtration, they might have had a greater latitude of conduct, and perhaps it might have been juſtifiable in them to have *anticipated* in this manner the future diſtreſſes of the Company. But this was not the caſe: they were engaged in a deep and hazardous tranſaction *beyond* the *ordinary* powers of adminiſtration; and they ought not therefore to have acted in it, unleſs when under the immediate preſſure of actual neceſſity and diſtreſs, and after every other reſource had failed. The inſufficiency of the above explanation, and the danger of admitting as juſtifiable, in a ſituation of that ſort, ſuch *anticipations* of probable diſtreſs, will appear from obſerving, that, in order to give force or relevancy to the defence, it muſt be ſhown, that the tranſaction was in ſome ſhape or other *in rem verſum* of the Company. But, for eſtabliſhing this point, *five* ſeparate and diſtinct events muſt all and each of them be *preſuppoſed*: *Firſt*, That in caſe the L. 15,000 of bills accepted by Glyn and Halifax, had returned upon the Company, they would actually have been obliged to provide for payment of them by a ſale of annuities. *2dly*, That if Glyn and Halifax had become bankrupt, or inſolvent, theſe bills would, *de facto*, have returned upon the Company for payment. *3dly*, That if the Company had paid upon the recourſe, they would not immediately, or at leaſt very ſoon after, have actually recovered the value from the eſtates of the acceptors themſelves, or from other perſons bound in the bills.

2. In the *ſecond* place, it appears, that, during the period of the annuity-tranſaction, the like ſum of L. 10,000 of the Company's *funds* in the hands of our annuity-managers, or their caſhiers, was either intentionally or *by miſtake*, paid over to the ſame Mr William Alexander, without obtaining from him any ſecurity whatever; and indeed it would appear that this *trifle* had been altogether forgot for a very conſiderable time; but a confuſion ariſing upon the adjuſtment of their various and involved accounts, the omiſſion was diſcovered, and acknowledged by Mr Alexander, no ſooner than 29th April 1773, as appears from the minutes of a general meeting of Directors, 4th May 1773 *.

A further loan of L. 10,000 to Mr Alexander during the period of the annuity-tranſaction.

This ſum, however, at leaſt a ſum which exactly correſponds to it, ſeems to be taken credit for in the annuity-accounts, though in a different manner, and under a different deſcription, viz. in four ſeparate articles, of 9th, 10th, 21ſt, and 22d September 1772, *as caſh paid for taking up Walpole's bills* †. But as theſe articles are not only altogether unvouched, but are beſides altogether unwarrantable,

bills. *4thly*, That Glyn and Halifax muſt and would actually have become bankrupt and inſolvent, if the tranſaction between them and Mr Alexander had not taken place, and that their exiſtence as a ſolvent Company depended entirely upon that circumſtance. *Laſtly*, That the tranſaction between Glyn and Halifax and Mr Alexander, would actually not have taken place, unleſs the Managers of Douglas, Heron, and Company, had given him an immediate aid of L. 10,000. Each of the above particulars is *problematical*; yet it will be obſerved, that unleſs the truth of *all* and *each* of them is admitted and eſtabliſhed, it muſt appear, that there was an unneceſſary ſale of annuities to that amount, that the loan to Mr Alexander was improper and unprofitable, and, of courſe, that the explanation of the tranſaction, as importing a defence or juſtification of it, muſt fall to the ground.

* *Vide* Appendix, No 9. (*a*).

† *Vide* Mr Murray's account of charge and diſcharge during the period of his intromiſſions.

they

they fall clearly to be ſtruck out and diſallowed; and a deficiency to that extent, of courſe, ariſes againſt our Managers and their Caſhiers, upon the annuity-accounts.

Beſides, that this loan or accommodation to Mr Alexander, (whether intentional or erroneous it matters not), was altogether beyond the powers of our Managers in London, and inconſiſtent with every one of the eſtabliſhed rules of iſſuing credit formerly mentioned, as well as with the particular purpoſes for which our Managers had repaired to London; it is plain, that this miſapplication of the Company's *funds*, muſt in *effect* have occaſioned an additional correſponding ſum to be raiſed by annuities; ſince the *miſapplied funds*, if they had been applied as they ought to have been, would have diſcharged or *ſet off* ſo much of the Company's engagements, for anſwering which money would be raiſed by annuities. We therefore apprehend, that, upon the principles already ſtated, the granters of the annuity-bonds could claim no relief from the Company of their engagements *to the above extent*; ſince, however much the money ſo raiſed may apparently have been all applied in diſcharge of the Company's debt; yet in fact it was not all *in rem verſum* of the Company, the *neceſſity* of raiſing money in that way, which it has been ſhown was an eſſential requiſite to found their claim of relief, having clearly ceaſed to the extent of the above miſapplication.

In the former article, it has been mentioned, that the heritable ſecurity which was obtained from Mr Alexander for the L. 10,000 raiſed by annuities on his account, may perhaps prove ſufficient for payment of the principal ſum and legal intereſt; and that our claim therefore againſt the annuity-granters *may* only extend to the extraordinary loſs thence ariſing. But in the preſent article the claim cuts deeper, and extends to the principal ſum of L. 10,000, and intereſt, as well as to the extraordinary loſs ariſing from annuities to that extent, no part of either of theſe having been rendered effectual from Mr Alexander's eſtate. In ſhort, our claim in both caſes againſt

gainſt our annuity-managers, is of the ſame nature, and of the ſame extent; only that in the former the principal ſum, and legal intereſt, is ſecured, and the Company is therefore *likely* to ſuffer the extraordinary loſs *only*, whereas in the latter they are likely to ſuffer the loſs of the *whole* *.

Leſſer miſapplications to the extent of L. 4338.

3. In the *third* place, it appears upon examining the annuity-accounts, that there were ſome leſſer miſapplications of the Company's *funds* in the hands of our annuity-managers, or their caſhiers, during the period of the annuity-tranſaction. Thus, the ſum of L. 1818 appears to have been unwarrantably paid to David Campbell, 24th September 1772 †, for which the Company afterwards became creditor to him; and the ſum of L. 2520 is taken credit for *as paid to Mayne and Needham*, 4th September 1772 †, but this ſum, or the receipt which was then given for it, appears to have been afterwards applied in diſcharge of L. 2500 of John Buſhby's bills on Baron Grant in their hands, proteſted for not payment, and conſe-

* *Nota.* With reſpect to this loan to Meſſ. Alexanders, it is ſaid, in the Addreſs to the Proprietors, p. 24. That no ſuch loan was given, and that the only other accommodation they ever got *from the Company*, beſides the L. 10,000 already mentioned, is the one contained in a ſubſequent branch of the report. We are much at a loſs to underſtand what is meant to be inſinuated by this obſervation; becauſe, if there is an eſtabliſhed fact reported by us, it is the one here alluded to, viz. That Mr Alexander, ſomehow or other, actually got at that time L. 10,000 more than he himſelf had aſked, or than the Managers had bargained for with him. As to the accommodation to the Meſſ. Alexanders being given *by the Company*, we deny that theſe gentlemen ever obtained any accommodation from the *Company*. It was from the *Managers* of the Company, whom we therefore conſider as anſwerable for the conſequences.

† *Vide* Mr Murray's account.

quently was not credited to the Company by Mayne and Needham *. Theſe miſapplications are, we apprehend, in the ſame predicament with the former articles. The granters of the annuities were *to that extent* not intitled to claim relief of their engagements from the Company, the *neceſſity* of raiſing money in that way having ſo far ceaſed, ſince it can be clearly demonſtrated, that in conſequence of ſuch miſapplication a correſponding ſum of money would be raiſed by annuities, which would not otherwiſe have been neceſſary.

A confeſſed balance in in the hands of the Caſhiers appointed by the annuity-managers.

4. In the *fourth* place, there was, and is, a *confeſſed* balance to a very conſiderable amount, upwards of L. 9000, in the hands of the Caſhiers appointed by the annuity-managers in London, for receiving the monies raiſed for behoof of the Company, and paying the ſame away †. This balance, therefore, had it been applied in diſcharge of the Company's debts, would clearly have ſuperſeded the raiſing a correſponding ſum of money by annuities; and therefore *to this extent* the annuity-granters were not well founded in a claim of relief againſt the Company; and having improperly obtained it, they ought to indemnify the Company ‡.

* *Nota.* It is obſerved in the Addreſs to the Proprietors, p. 24. That it became as neceſſary to retire the L. 2500 of John Buſhby's bills on Baron Grant, as if they had been drawn by the Company. It may be ſo; but it will be obſerved, that the effect of the tranſaction was to pay theſe bills with the Company-funds; and thus Mr Buſhby was in one hour raiſing money upon annuities, in name of the Company, at the King's-Arms tavern, and the next hour was carrying the proceeds to Jermyn-ſtreet, and applying them in payment of his own engagements.

† *Vide* Mr Ferguſſon's account.

‡ *Nota.* The Addreſs to the Proprietors, p. 24. has ſet forth, That whatever balance may appear due upon the annuity-accounts as *now* made up, there was no balance in the Caſhier's hands at the time he gave up his accounts and vouchers. We will be happy if that gentleman ſhall be able to clear himſelf of a balance which is *confeſſedly* due by *ſomebody*; and we hope he will believe us ſincere in this declaration.

3. In

Large accommodation to Mayne and Needham.

5. In the *fifth* place, it appears from the proceedings at London, that a loan, or accommodation, of a much deeper nature than any that has been mentioned, took place during the period of the annuity-tranſaction, in conſequence of a very ſtrange proceeding upon the part of Meſſ. Mayne and Needham, our bankers, who, it will likewiſe be obſerved, were both of them *partners* in this Company.

in conſequence of their having applied to their own purpoſes L. 46,500 of the Company's funds in their hands;

It would ſeem, that a ſort of private agreement had paſſed between ſome of our Managers and Meſſ. Mayne and Needham, for an accommodation to that houſe, to the extent of L. 10,000. But this *paltry* ſum was not ſufficient for their purpoſes: for it appears, that although our Managers had, from the monies raiſed by annuities and otherwiſe, put into their hands a *ſufficiency* of funds for anſwering their current engagements for the Company, yet, upon inquiring into the ſtate of the account as exhibited by them, it was unexpectedly diſcovered in the beginning of Auguſt 1772, that they had applied to their own purpoſes no leſs a ſum than L. 46,500 of the Company's funds; and that by this means their engagements for the Company were *to that amount* ſtill unprovided for *. Of this ſum ſo intromitted with by Mayne and Needham, it appears, that that L. 15,400 aroſe from bills which had been remitted to them as *cover* for their engagements, and which they had *improperly* got diſcounted; and the remainder, being L. 31,100, aroſe from the annuity-funds paid over to them at different times by our Managers.

which rendered it neceſſary to make a further ſale of annuities.

In this ſituation, it was agreed upon among our Managers, at a meeting upon the 13th Auguſt 1772, that it was neceſſary to raiſe an additional ſum to the above amount, by a further ſale of annuities; and accordingly, a very large ſum, ſuch as the miſapplication by Mayne and Needham had rendered neceſſary, was ſo raiſed, and

* *Vide* Appendix, N° 9. (*b*).

the

the burden thereof afterwards thrown upon the Company, being included in the *general* burden of annuities which they came under.

We do not ſay that our Managers were, in this inſtance, altogether ſo culpable as in that of the loans to Mr Alexander before mentioned; becauſe, although the exigencies of the Company, if there had been a faithful application of their funds, would not have required this additional ſum to be raiſed by annuities; yet as Mayne and Needham had actually ſeized upon, and improperly inverted, ſo large a ſum of the Company's funds put in their hands, their engagements for the Company remained ſtill unprovided for to that extent; and there was on that account an *apparent* neceſſity for a further ſale of annuities.

Annuity-managers culpable in two reſpects,

But although this accommodation to Mayne and Needham was not ſo unjuſtifiable as the former to Mr Alexander, yet we cannot help finding fault with the conduct of our annuity-managers upon this occaſion, in two reſpects: *Firſt*, Conſidering the then ſituation of the Company's affairs, the ſtate of credit in general, the dubious credit of that houſe in particular, and, above all, the expenſive and perilous nature of the annuity-tranſaction in which they were engaged; it was without doubt extremely raſh and unguarded in our Managers, *unneceſſarily* to throw into the hands of Mayne and Needham ſo large a ſum *before* their engagements for the Company became due, and not to provide ſome ſecurity for the faithful application of it. It has already been ſhown, that the raiſers of the money upon annuities, before getting relief from the Company of their engagements, were anſwerable to ſhow the *application* as well as *neceſſity* of the ſums ſo raiſed; and that it was therefore their indiſpenſable duty to attend with the utmoſt caution to the application of the *whole* funds of the Company then among their hands; but if they had done ſo, it was impoſſible that Mayne and Needham could have anticipated ſo large a ſum.

in putting ſo large a ſum in the hands of Mayne and Needham unneceſſarily.

Secondly,

Secondly, When it appeared, that Mayne and Needham had ſo anticipated the Company's funds, it was but common juſtice, and common ſenſe, that they ſhould take upon them annuities to the extent of the ſums they had ſo improperly ſeized upon, at leaſt in ſo far as the Managers had been thereby reduced to the neceſſity of raiſing any additional ſum by annuities more than the real exigencies of the Company required. Our annuity-managers therefore, when they agreed, upon this occaſion, not to puſh Mayne and Needham for repayment of the funds they had anticipated, but to give them an accommodation to that extent, ought, at the ſame time, to have taken them bound, as they had formerly done Mr Alexander, upon a ſimilar occaſion, to relieve the Company of a correſponding burden of annuities. But this, it ſeems, they neglected to do. The burden of theſe, as well as of all the other annuities, is thrown *at large* upon the Company; and the loſs thence ariſing ſtands wholely charged to the debit of *Profit and Loſs*.

and in not ſtipulating that they ſhould take off a correſponding burden of annuities.

In theſe reſpects, it appears to us, that the conduct of our annuity-managers upon this occaſion was very blameable; and one thing is beyond doubt, that, in conſequence of this accommodation to Mayne and Needham, the Company has been ſubjected to a very large additional burden, which in reality the *neceſſity* of their affairs did *not* require. The ſum actually intromitted with by Mayne and Needham, ſo far as raiſed upon annuities, may perhaps have been ſo raiſed while there was an *exiſting neceſſity*; but it had not been *applied* to the Company's *uſe*; and the ſum which was on this account afterwards raiſed upon annuities *a ſecond time* for the Company's relief, though it may have been *applied* in diſcharge of the Company's debt, would evidently not have been *neceſſary*, had there been a proper application of the former funds. To the extent, therefore, of only *one* of thoſe ſums could the Company be properly or juſtly liable in relief to the annuity-granters, upon the principles before laid down; becauſe to that extent only was it *in rem verſum* of the Company; to that extent only did the circumſtances

of *neceſſity* and *application* concur in ſupport of their claim of relief.

So ſtanding the caſe, we muſt conclude, that the Company is intitled to be relieved, *either* at the hands of the annuity-granters, *or* at the hands of Mayne and Needham, of the loſs ariſing from the burden of annuities correſponding to the above accommodation; to which loſs they have evidently been moſt *improperly* ſubjected. And we apprehend, that Mayne and Needham, who were not only our bankers and correſpondents, but were alſo our *fellow-partners*, are certainly liable to refund the loſs ariſing from a large additional ſum having been raiſed upon annuities, on their account, and for their accommodation. We imagine it would be altogether inconſiſtent with copartnery-principles, and with the good faith which is inherent in all ſocieties of that kind, that Meſſ. Mayne and Needham, two of the *Partners*, ſhould enjoy the important *benefit* of ſo conſiderable an accommodation, procured at the Company's expence, and ſhould afterwards refuſe to pay the *price* of that accommodation, and to indemnify the Company of the loſs thereby incurred. But when it is further attended to, that the giving this accommodation was not altogether a *voluntary* act upon the part of the annuity-managers, but was in fact the reſult of a neceſſity and *dilemma*, occaſioned by a moſt improper and *tortious* conduct upon the part of theſe gentlemen, and a breach of truſt committed by them, we do not ſee upon what principle, either in law or honour, they ought not to give their fellow-partners a full indemnification of the loſs thereby occaſioned; more eſpecially as they were always very handſomely rewarded for their tranſactions with the Company.

Mayne and Needham certainly liable to refund the loſs by annuities ſold on their account,

and in conſequence of a very improper conduct on their part.

By our agreements with Mayne and Needham, they were bound to go in advance to a conſiderable amount, viz. L. 10,000, when the

the occaſions of the Company required *; but in conſequence of the accommodation given them in the manner already mentioned, it appears, that after this period, inſtead of being in advance, they became *debtors* to the Company in a very large ſum, and remained ſo for a conſiderable time; and that, although the Company had occaſion afterwards to draw upon them for large ſums, yet they were always kept *full* with remittances ſufficient to *cover* theſe ſubſequent engagements; ſo that they enjoyed the full benefit of the accommodation procured them at the Company's expence, until they found it convenient for their affairs to repay the Company's advance.

It appears to us, therefore, perfectly clear, that Mayne and Needham were and are bound to give their fellow-partners a full indemnification of the loſs ariſing from the above accommodation: but it would ſeem, that theſe gentlemen had entertained very different notions with reſpect to the duty and obligation incumbent on them, either as the correſpondents or partners of this Company: for it appears, that they have not only declined giving the indemnification here ſuggeſted, but likewiſe, in their accounts with the Company ſubſequent to this period, they refuſed to allow even *legal intereſt* upon the large ſum which they had ſo improperly ſeized upon, which our annuity-managers had with ſo much indulgence agreed not to puſh them for payment of at that time, and which the Company did not afterwards inſiſt for till it ſuited their affairs to repay it. Thus the Company was ſubjected to the payment of about 15 *per cent.* intereſt for a very large ſum raiſed for the accommodation of two opulent *Partners*, while they have refuſed to allow even the legal intereſt of this advance. Nay, not ſatisfied with this, theſe gentlemen, in their ſubſequent accounts, and while

but they have not only declined ſuch indemnification,

but even refuſed to pay the legal intereſt for the ſum in which they became indebted to the Company;

* *Vide* Agreement with that houſe, as contained in the Report from the Directors to the Proprietors, May 1770.

they

and afterwards charged the *high* commiſſion *only* due when they ſhould be *in advance*.

they had in this manner ſo much of the Company's money in their hands, did not even ſcruple to charge the *high* commiſſion ſtipulated to be paid *only* when they themſelves ſhould happen to be in advance for the Company. Such ſhameful injuſtice committed by two of our fellow-partners, it would have been inconſiſtent with our duty not to have mentioned.

L. 6220 raiſed upon annuities, and altogether unaccounted for.

6. In the *ſixth* place, upon redemption of the annuities, it appeared, that there had been upwards of L. 6000 raiſed upon annuity-bonds, which had never been accounted for to the Company *by any perſon*. The claim of relief to this extent againſt the annuity-granters, was obvious; and accordingly an action has been brought againſt them for obtaining that relief. We do not, however, perceive any ſolid ground for diſtinguiſhing between *that* part of the annuity-money ſo unaccounted for, and *that* which appears to have been ſquandered and miſapplied in the ſeveral inſtances mentioned under this branch of our Report. The only difference between the two caſes ſeems to be, that in the former caſe, for which the action of relief is brought, the annuity-money is *not* accounted for *at all*; and that, in the latter caſe, it is accounted for *improperly*, and in a manner which it ſeems impoſſible upon any juſt principle to admit of.

BRANCH

BRANCH VII.

Culpable acts of miſmanagement in Scotland poſterior to our ſtop in June 1772.

After the ſtop in June 1772, and the ſubſequent proceedings in London, the Company no longer a ſubſiſting banking company,

IT ſeems ſufficiently plain, that after our ſtop in June 1772, and the ſubſequent proceedings of our Managers in London, in the way of raiſing money by annuities, the embarraſſment of our affairs, and the ſtate of our credit, was neceſſarily ſuch as rendered it impoſſible for us to go on as a ſubſiſting banking company. If the meaſure of raiſing money by annuities had not been reſorted to, the Company muſt have immediately become *legally* bankrupt; and that expedient ſeems only to have ſubſtituted a *voluntary* bankruptcy in place of a legal one.

Managers ought afterwards to have acted with much caution and reſerve.

Such being the caſe, our Managers ought certainly to have conducted themſelves *every where* with the greateſt caution and reſerve, and to have directed their operations entirely towards the relief of the Company's affairs, arrived, as they then were, at ſuch a fatal criſis.

But engage in very deep and ruinous tranſactions.

Upon examining, however, the proceedings and tranſactions of our Managers in Scotland after the above period, it appears, that they were by no means conducted with that propriety, prudence, and diſcretion, which might have been expected; and we are ſorry to ſay, that, during the buſy and diſaſtrous period from June to November 1772, ſome tranſactions of a very deep nature were ventured upon, and concluded, which appear to us to be partial and extravagant beyond meaſure, prejudicial in a high degree to the

intereſt of the Company, inconſiſtent with the terms of the copartnery, and altogether beyond the powers of Directors. This unfortunate Company appears to have been every where made the victim; and we muſt own, that we ſtand aſtoniſhed at the ſhameful proſtitution of the Company's credit, and at the open ſacrifice of their cleareſt intereſts, which was made during that period, in order to gratify the private views of a few individuals, with whom the Company had unfortunately formed very fatal connections.

We ſhall paſs over the ſmaller improprieties committed at the ſeveral offices after our ſtop in June 1772. The diſtreſs and exigencies of the Company at that time, the novelty of their ſituation, the difficulty of conducting their affairs, may be pled in excuſe of many errors. *Diſcounts* were, no doubt, in many inſtances, granted after this period, which was clearly adverſe to the intereſt of the Company; ſince the neceſſary reſult was, that the Company would very ſoon have the value to pay in London, at the high expence perhaps of a ſale of annuities. Accommodations too were no doubt given to ſeveral individuals in various ſhapes, and even by bills upon our correſpondents; the neceſſary and direct conſequence of which was, that an immediate burden of annuities would thereby be brought upon the Company. But theſe leſſer improprieties we ſhall paſs over without any further obſervation; and ſhall proceed to conſider thoſe which were of a much more deep and flagrant nature.

1ſt, Tranſactions of compoſition with Charles Ferguſſon and Company, and Fordyce, Grant and Company.

1ſt, The firſt *culpable* proceeding which we ſhall take notice of, reſpects the tranſactions of compoſition with Charles Ferguſſon and Company, and Fordyce, Grant, and Company.

It has already been mentioned, that in conſequence of an agreement with theſe houſes, laid before a meeting of Directors at Edinburgh 7th May 1772, and then approved of, a *depoſit* of L. 6000 had been immediately lodged with each of theſe houſes, where it was

was to remain free of intereſt, *in lieu* of the uſual commiſſion for their tranſactions on the Company's account. It has alſo been ſhown, that the granting of thoſe large credits by way of depoſit, was clearly againſt the eſtabliſhed rules of the Company, and againſt the duty, as well as beyond the powers, of our Managers; and upon theſe grounds we have ſuggeſted, that they are anſwerable for the conſequences of that tranſaction *.

In conſequence of theſe depoſits, and of other remittances made to Charles Ferguſſon and Company, and Fordyce, Grant, and Company, in May and June 1772, for the purpoſe of their converting them into caſh, and paying the proceeds over to our bankers, (for ſuch was the *nature* of the buſineſs they were to tranſact for the Company), it appeared upon the failure of theſe houſes, which happened 9th June 1772, that the *former* was due the Company upwards of L. 13,000 †, and the *latter* about L. 8000, excluſive of about L. 14,000 of bills of exchange, formerly purchaſed from their houſe in Edinburgh, and remitted to London, but, in conſequence of their being diſhonoured, taken up, and paid for a ſecond time, by the Company; and ſoon after the failure of theſe houſes, propoſals were made by them to their creditors to pay a compoſition, the one of five ſhillings, the other of ſix ſhillings and ſix pence, per pound.

† *Nota.* In the anſwer given in to the Company upon the part of Charles Ferguſſon and Company, it is ſet forth, That the amount of the debt they were due was only about L. 8000. We do not know from what ſource the gentleman who draws up that anſwer, has obtained his information. Our authority for ſtating the debt at upwards of L. 13,000, ariſes from the books of the Company. It ſeems, however, unneceſſary to enter into any particular examination of that point at preſent. If the compoſition ſhall be found to be effectual againſt the Company, the exact amount of the debt is a matter of ſmall moment. If, on the other hand, it ſhall be found not to be effectual, we are perſuaded there will be little difficulty in aſcertaining and fixing the debt at the full amount we mention.

* *Vide* Branch 3. p. 56. et ſeqq. p. 69. et ſeqq.

Theſe

Procedure therein,

Theſe propoſals having been agreed to by many of their creditors, were communicated to our Managers, who were then in London employed in the annuity-tranſaction; and they were requeſted to accede to the propoſals, in name of the Company. But as our Managers there did not think that they had any powers to do ſo, they declined interfering in the buſineſs; and therefore at their

at London,

meeting 5th September 1772, when the propoſals were laid before them, they returned to theſe gentlemen the following anſwer: "That this meeting have no power to tranſact that buſineſs for the "Bank; and therefore, how much ſoever the meeting may be ſa- "tisfied of the advantage of tranſacting the debt due to the Bank "upon the terms offered, it is not in their power to do it; but upon "application to the *Bank*, if theſe ſtates and offers appear in the "ſame light to the *Bank* which they do to the Directors here, they "will very probably readily adopt the meaſure propoſed *."

What ideas the members of this meeting entertained with reſpect to the powers of Directors, in a matter of this kind, we cannot poſitively ſay; only it would ſeem, from the ſtrain of the anſwer returned to the propoſals, and from their ſuggeſting an application to the *Bank* itſelf as neceſſary, that they did not imagine it was at all in the power of Directors to accept of the propoſed compoſition; but that this was a tranſaction which the Proprietors alone could authoriſe. But however this may be, it appears, that about two weeks

at Air,

afterwards † the matter was laid before a general meeting of Directors

* *Vide* Appendix, N° 10. (*a*).

† *Nota.* It is ſaid in the anſwer in behalf of Charles Ferguſſon and Company, and Fordyce, Grant, and Company, That the tranſactions of compoſitions were laid before a *full* meeting of the Edinburgh Directors 12th September 1772; and that this circumſtance had eſcaped the compilers of the Report. —— The author of that anſwer is miſtaken in ſuppoſing that this was the caſe. The circumſtance was known to us, but appeared to be ſo inſignificant as not to merit obſervation; nothing being done at that meeting. If any thing had been done, we would moſt aſſuredly have taken notice of the proceedings; becauſe an additional irregularity would have thence ariſen; ſince it will be obſerved, that that meeting of the 12th September was not a legal meeting of that branch, no quorum, but *four only*, of the Edinburgh Directors being preſent; ſo that their proceedings, if they had done any thing, would have been void. But this circumſtance, we ſuppoſe, has eſcaped the obſervation of the author of the anſwer.

tors held at Air upon the 18th September 1772; at which, it will be obſerved, that although there was a *quorum* preſent from each of the offices of Air and Dumfries; yet, when this buſineſs was taken under conſideration, there was no *quorum* from the Edinburgh office, *four* Directors only being preſent; and the proceedings of this meeting reſpecting the matter now under conſideration appear from the minutes to be as follows. "The meeting having conſidered a "propoſal from Charles Ferguſſon, Eſq; and Company, to pay a "compoſition of 5 s. per pound upon the amount of their debts to "this Company, payable in manner mentioned in a deed of com- "poſition ſigned by many of their creditors, under the conditions "therein mentioned; and being alſo *informed*, by ſome of the "gentlemen preſent, that they had ſeen at London a ſtate of "the affairs of the ſaid Charles Ferguſſon and Company, from "which it appeared to them, that it was the intereſt of all "their creditors to accept of this compoſition; and that ſuch of "them in London as they had occaſion to converſe with, were "of the ſame opinion. This meeting is therefore of opinion, that "the Company ought to agree to accept of the compoſition of- "fered; *but in regard* they have not an opportunity to inſpect the "ſtate of the affairs of the ſaid Charles Ferguſſon and Company "themſelves, *as the ſame is not before them*, they do remit the conſi- "deration of this affair to the Edinburgh Directors, *or any two of "them*, whom they requeſt to examine the ſtate of the affairs of the "ſaid Charles Ferguſſon and Company; and, *on their being ſatisfied*, "that it is for the *intereſt* of this Company to accept of the ſaid "compoſition on the terms mentioned in the ſaid deed, they are

" hereby impowered to accept of the ſame for their debt due to this " Company, and to accede to the meaſures propoſed by the ſaid " Charles Fergusſon and Company accordingly, without prejudice " to any other ſecurity that may be made good to this Company " for the ſaid debt.

" The meeting having alſo conſidered a propoſal from Meſſ. For- " dyce, Grant, Trotter, and King, to pay a compoſition of 6 s. " 6 d. per pound upon the amount of their debts due to this Com- " pany, payable in manner mentioned in a deed of compoſition, " ſigned by many of their creditors, under the conditions therein " mentioned; and the meeting having conſidered a ſtate of theſe " gentlemens affairs now laid before them; in reſpect ſome things " appeared in that ſtate which could not at preſent be ſufficiently " explained to the meeting, they thought it proper to defer giving " any anſwer to the ſaid propoſal; only they approve, in general, " of the ſcheme of agreeing to a compoſition. But as the meeting " is of opinion, that Mr Baron Grant is bound to this Company " for L. 6000 Sterling, part of the ſum due by thoſe gentlemen, " they do remit the conſideration of this whole affair to the gentle- " men of the Edinburgh direction, or *any two* of them, to whom " they recommend particularly to examine the affairs and ſtate of " theſe gentlemen; and in caſe they ſhall be *ſatisfied*, that it is for " the intereſt of this Company to agree to the compoſition offered, " they impower them to ſign the ſaid deed of compoſition for the " Company, and to tranſmit the ſame to Meſſ. Campbell and " Murray, with inſtructions to deliver it only upon receiving from " Mr Baron Grant an obligation, that their acceptance of this com- " poſition ſhall be no bar to any claim this Company may have up- " on him for the ſaid ſum of L. 6000 Sterling, or what part there- " of is not paid by the ſaid compoſition, in caſe he is bound already " to guarantee this Company for the extent of the ſaid ſum *."

* *Vide* Appendix, N° 10. (*b*).

It

It will be obſerved, that as there was no *quorum* preſent at this meeting from the *Edinburgh office* when the above tranſactions were under conſideration, they could not legally proceed to judge in any buſineſs, either properly belonging to a *general meeting* of Directors, or to the Edinburgh office *in particular*; and they could not therefore legally authoriſe the compoſition to Charles Fergusſon and Company, and Fordyce, Grant, and Company, whoſe operations, it will be obſerved, fell entirely under the department of the Edinburgh office. However, a very few days after this meeting, viz. upon the 24th of September, a meeting of Directors was *pretended* to be held at Edinburgh, conſiſting of no more than *two* of thoſe Edinburgh Directors who had been preſent at the general meeting, together with one Extraordinary Director, who, it will be obſerved, had no power, according to the terms of appointment of Extraordinary Directors, to act, *except* at the general meetings of Directors *. At this meeting it is reſolved, that the compoſitions offered by Charles Fergusſon and Company, and Fordyce, Grant, and Company, ſhould be accepted of; and a power of attorney is accordingly ordered to be made out, impowering Mr John Murray, Mr David Campbell, and Mr John Buſhby, or any of them, to ſign the deed of acceſſion; reſerving, however, the Company's claim againſt Baron Grant upon his letter of guarantee †. at Edinburgh.

It does not appear, that the two Directors who authoriſed this important tranſaction acted from any proper knowledge of the affairs of Charles Fergusſon and Company, and Fordyce, Grant, and Company, or indeed that any ſatisfactory ſtate thereof was ſo much as laid before them, when they came to this haſty and inconſiderate reſolution, by which they were at once to ſquander or annihilate upwards of L. 30,000 of the funds of the Company. One thing ſeems ſufficiently plain, that they had neither time nor opportunity, nor the neceſſary materials, for examining the matter with any accu-

* Branch 1. § 34.

† *Vide* Appendix, N° 10. (*c*).

racy,

racy, or judging of the expediency or inexpediency of acceding to the propoſed compoſition.

In conſequence, however, of the above reſolution, a power of attorney, ſigned by theſe Directors, was the very ſame day tranſmitted to London. But ſo ſenſible were they, that they had not obtained a proper or ſatisfactory view of the affairs of thoſe bankrupt companies, as, *in terms* of the remit to them, they ought to have obtained before agreeing to the compoſition, that, in a private confidential letter to their delegates in London, dated 24th September, tranſmitted along with the power of attorney, they expreſs themſelves in the following manner: "We are *perfectly convinced*, "that there is ſomething *at the bottom* both of the affairs of Charles "Ferguſſon and Company, and Fordyce, Grant, and Company; "but we cannot make matters better," &c *.

It appears, that the delegates at London, who were to ſign the deeds of acceſſion, were ſomewhat reluctant to interfere in the buſineſs; and, in particular, as to Fordyce, Grant, and Company, they had abſolutely refuſed to accede, on account of Baron Grant having declined to give a letter reſpecting his being bound by his letter of guarantee to the extent of L. 6000. However, this ſcruple was ſoon got the better of by the two Edinburgh Directors already mentioned; and they accordingly, upon the 12th October, thought proper to do themſelves what the delegates at London had declined to do; and tranſmitted a letter to be delivered to Fordyce, Grant, and Company, of the following tenor. "In virtue of the powers "given us by the general meeting of Directors, held, at Air, the "17th of laſt month, we have maturely conſidered the ſtate of "your affairs, and the deed of compoſition, offering 6s. and 6d. "in the pound Sterling, for the debt due by you to Meſſ. Douglas,

* *Vide* App. N° 10. (*d*).

"Heron,

"Heron, and Company; and we hereby agree to accept of the ſaid "compoſition for the debt due to the ſaid Douglas, Heron, and Com-"pany, by you and Meſſ. Fordyce, Malcolm, and Company, and "by any of the individual Partners; reſerving entire every claim "the Bank had upon Baron Grant before the date of this letter *."

Soon after this the tranſactions were concluded, both with Charles Ferguſſon, and Company, and Fordyce, Grant, and Company; and the deeds of acceſſion being ſigned, in virtue of the powers tranſmitted to London, the matter was never more heard of, further, than that it appears to have been mentioned, among a variety of others, as a concluded tranſaction, in the minutes of a ſubſequent meeting of Directors, held, upon the 29th October 1772 †, previous to the general meeting of the Company.

It might indeed have been expected, that ſuch deep and important tranſactions, by which ſo large a ſum of the Company's funds was ſquandered, and underſtood to be loſt for ever, would have been fairly and candidly laid before the Proprietors at this general meeting. We ſhould likewiſe have thought, that the Directors themſelves would have been ſolicitous to do ſo for their own ſakes, both in order to vindicate their conduct in the tranſactions, and likewiſe to have them ſecured and confirmed by the approbation of thoſe who were moſt deeply concerned, and whoſe conſent might at leaſt have been aſked when their property had been ſo freely diſpoſed of. But we obſerve, that neither in the report from the Directors ‡, nor in any other form, is there the moſt diſtant mention made of theſe tranſactions at the general meeting of the Proprietors; and, it is believed, that moſt of the Partners are at this day

* *Vide* Appendix, N° 10. (*e*).

† *Vide* Appendix, N°. 10. (*f*).

‡ *Vide* Appendix, N° 8. (*c*).

ignorant of the circumſtances, and ſtate of that matter, as now laid before them *.

We have given a more particular account of theſe tranſactions, both becauſe we believe the Partners were hitherto unacquainted with them, and becauſe we think the proceedings themſelves bear evidence in the ſtrongeſt manner againſt the propriety as well as the validity of them. The irregular and unwarrantable manner in which the debt due to the Company by theſe bankrupt houſes, was originally contracted, has already been mentioned under a former branch of this report. But we muſt own, that we think the manner in which it has been attempted to ſhut the door againſt any future recovery of the debt, is ſtill more illegal and unwarrantable; and it is therefore with ſome degree of confidence, though, at the ſame time, with ſome reluctance, that, in diſcharge of our duty to the Partners of this Company, we ſhall now endeavour to point out the grounds upon which, we apprehend, that the tranſactions of compoſition with Charles Ferguſſon and Company, and Fordyce, Grant, and Company, muſt be deemed altogether ineffectual as againſt the Company.

Grounds upon which theſe tranſactions are not effectual againſt the Company,

In the *firſt* place, upon conſidering the terms of the Copartnery, and the powers thereby committed to Directors, we apprehend it to be clear, that the *whole* body of Directors aſſembled together had no power to compound any debt to the effect of *diſcharging* the debt-

* *Nota* In the Anſwer for Charles Ferguſſon and Company, and Fordyce, Grant, and Company, an attempt is made to ſhow, that the compoſitions were known to and approved of by the *Proprietors* at this general meeting; chiefly becauſe they were a general ſubject of diſcuſſion at the time. We are utterly at a loſs to underſtand the meaning, or perceive the force, of this obſervation. It ſeems to amount to this: That if the Proprietors, though not made acquainted with theſe deep tranſactions in a conſtitutional manner, had *happened*, of themſelves, to make ſtrict inquiry about them, they might have been informed; and that if they had been informed, they would have known.

or,

or, unleſs ſpecially authoriſed by the Proprietors themſelves for that purpoſe. Individuals may act for themſelves as they incline in matters of that ſort, becauſe they are the arbiters of their own affairs. But we apprehend that no partner of a company, nor any perſon intruſted with the management of the affairs of another, can, without *ſpecial* powers for that purpoſe, compound a debt, or diſcharge it for leſs than the value, ſuch a tranſaction being of a nature which excludes it from the *ordinary* courſe of adminiſtration, and which, in order to render it binding upon the Company at large, requires ſpecial powers from them. The debtor therefore muſt in ſuch a caſe ſtill remain bound; and we can find nothing in the contract of Copartnery which either expreſsly or implicitly confers any powers upon the Directors ſufficient to warrant ſuch a tranſaction, or takes the preſent caſe out of the common rule. *On the contrary*, the only article of the contract which mentions any thing of the affairs of *bankrupts*, viz. the 15th article, points out in *ſuch caſe* a particular mode of procedure, altogether different from and contrary to the method which our Directors in this caſe thought proper to adopt *.

1ſt, being beyond the powers of Directors.

As the *whole* body of Directors therefore aſſembled together, had no power to authoriſe the tranſactions which the meeting of 18th September ventured to authoriſe, nothing but the ſubſequent approbation of a general meeting of *proprietors* could in any view give force or validity to theſe tranſactions. But this was neither applied for nor obtained; and Charles Ferguſſon and Company, and Fordyce, Grant, and Company, are therefore at this day debtors to the Company in the *full* amount of their debts, notwithſtanding the compoſitions they may happen to have paid. The act of the *law*, or the act of the *proprietors*, could alone *diſcharge* thoſe debts for leſs than the value; and neither the one nor the other of thoſe acts

* Branch 1. § 13.

occur

occur in the preſent caſe to bar a claim for payment at the inſtance of the Company.

2d, more eſpecially in the then ſtate of the Company, conſidered as virtually diſſolved.

In the *ſecond* place, although it might be imagined, that, in an *ordinary* ſtate of the Company, the Directors had power to compound the debts due to the Company, and to diſcharge the debtors, without conſent of the Proprietors, yet in the *then* ſituation of the Company ſuch power had ceaſed.

It has already been ſhown, that after our ſtop in June 1772, and the annuity-proceedings in London, we could in no proper ſenſe be conſidered as a ſubſiſting banking company. We were *virtually*, though not *formally*, diſſolved. Our affairs were ſo totally and deeply embarraſſed, and our capital ſo annihilated, that we could no longer be conſidered to ſubſiſt but for the purpoſe of liquidating and concluding our affairs; and as it could ſo eaſily have been ſhown, that upwards of *fifty per cent.* of the capital was loſt, any *one* partner might, in terms of the *fourteenth* article of the contract, have inſiſted for an immediate *formal* diſſolution *.

Such being the caſe, it would ſeem, that the *fifteenth* article of the contract †, which is one of thoſe declared to be *unalterable*, applied to the ſituation in which the Company then was; and it will be obſerved, that by this article it is ſpecially provided, That any *debts* outſtanding twelve months after the diſſolution of the Company, ſhould be divided into lots of a certain extent, to be aſcertained by a general meeting of Proprietors, and thereafter ſold by public roup.

Here, therefore, was a rule clearly eſtabliſhed for the conduct of our Managers, in the then ſituation of the Company, with reſpect

* Branch 1. § 12.

† Branch 1. § 13.

to

to the debts due by Charles Ferguſſon and Company, and Fordyce, Grant, and Company, as well as every other debt in that predicament; and it was directly in face of that *unalterable* regulation eſtabliſhed by the contract, and therefore beyond the powers of our Managers, to take upon them to compound the large debts due by thoſe houſes, and to pretend to *diſcharge* the debtors, upon receiving a trifling compoſition.

3d, Nor are they authoriſed by a legal meeting of Directors;

In the *third* place, Although it ſhould be admitted, that the Directors of this Company had ſufficient powers veſted in them for compounding and diſcharging theſe debts; yet it will be obſerved, that it happens unfortunately for theſe tranſactions, that they are not authoriſed by any legal meeting of Directors, whether conſidered as a *general* meeting of Directors, or as a meeting of the Directors of the *Edinburgh office*, under whoſe department the operations of theſe houſes properly fell.

It is proper here to obſerve, that *general* meetings of Directors had no powers veſted in them by the conſtitution of the Company, *except* in matters remitted to them from general meetings of the *Proprietors*. With reſpect to any other matter, therefore, *properly* belonging to *one* of the offices, a general meeting of Directors could have no powers, greater or more extenſive than the powers of the *proper* Directors of that particular office to which the ſuppoſed buſineſs belongs: but in the preſent inſtance it appears, that at the meetings which authoriſed this tranſaction, there was no legal *quorum* of Directors preſent to conſtitute either a *general* meeting of Directors, or a meeting of the Directors of the *Edinburgh office*, to which the buſineſs properly belonged.

For as to the meeting of the 18th September, there were only *four* Edinburgh Directors preſent when theſe tranſactions were taken under conſideration: but, in order to conſtitute a *general* meeting in matters properly coming under their cogniſance, it will be obſerved,

there being no quorum of Edinburgh Directors present at the general meeting of Directors, 18th September, at Air;

that a quorum of *five* was abſolutely neceſſary from *each* office; ſo that it ſeems clear, that the want of a quorum from the Edinburgh office was a neceſſary bar to their proceeding in that buſineſs as a *general* meeting of Directors. Again, the want of that quorum was likewiſe a neceſſary bar to their proceeding as a meeting of the *Edinburgh office*, ſince it has formerly been ſhown, that the preſence of the Directors of the *other* offices, in a meeting at an office to which they do not properly belong, can in no caſe ſuperſede the neceſſity of a legal *quorum* of the Directors of that office whoſe *proper* buſineſs is under conſideration.

The meeting therefore of the 18th September, ſo far as concerned this tranſaction, was not a *legal* meeting, a quorum being in every view wanting; and it could not therefore authoriſe the tranſaction which afterwards took place. Beſides, this meeting, before whom no ſtate of the affairs of *one* of thoſe bankrupt houſes was laid, as confeſſed in the minute itſelf, and who could not therefore in any ſhape judge of the propriety of the propoſed tranſaction, could not remit the matter *ſimpliciter* to *any two* of the Edinburgh Directors, to judge of and determine as they thought proper. it is undoubtedly true, that two directors could not legally iſſue a trifling caſh-account of L. 100: Is there then either common propriety or common ſenſe in pretending to give full powers to *two* Directors to *judge* of an affair of this importance; and, if they thought proper, to diſcharge and annihilate at one ſtroke ſo large a ſum of the Company's funds?

nor at the meeting of 24th September, at Edinburgh.

As to the meeting at Edinburgh of the 24th September, it ſeems almoſt unneceſſary to obſerve, that it was altogether an illegal and incompetent meeting to authoriſe the deep and important buſineſs which appears to have been there tranſacted with ſo much eaſe and indifference. So far as the Directors there preſent, who ſeem to have been extremely forward in this buſineſs, pretended to derive any authority from the remit of the meeting 18th September, it has been

been ſhown, that that authority muſt go for nothing; and as at this meeting of the 24th September, there were only *two* Directors preſent, who had likewiſe been preſent at the general meeting, together with one extraordinary Director, who had no power to act, it is plain that it was altogether a *mock meeting*. There was not even the *ſhadow* of authority for authoriſing any tranſaction, much leſs a tranſaction of ſo important a nature.

We therefore apprehend, that the meetings by which it is pretended that the tranſactions of compoſition were authoriſed, were illegal, and incompetent for the buſineſs undertaken by them; and that, upon this ground alone, the tranſaction cannot be binding and effectual againſt the Company.

4th, And the tranſactions are beſides concluded without proper evidence as to the ſtate of the affairs of the bankrupts.

But, in the *fourth* place, if any thing was wanting to complete the illegality of the proceedings in theſe tranſactions, we might alſo obſerve, that it plainly appears they were concluded without proper *evidence* as to the real ſtate of the affairs of Charles Ferguſſon and Company, and Fordyce, Grant, and Company. It appears, that, with reſpect to the *former*, not even a general ſtate of their affairs was laid before the meeting of the 18th September held *at Air*. The evidence, as to their affairs, upon which that meeting ſeems to have proceeded was *hearſay* alone; and it will be obſerved, that it was only a very few days afterwards that both the tranſactions were concluded, *at Edinburgh*, by two of the Directors, who had themſelves been preſent *at Air*. Such haſte and precipitation in buſineſs of this moment is ſomewhat unaccountable; and, after what theſe Directors themſelves ſay upon the ſubject, in the private letter of correſpondence before mentioned *, we may, without much impropriety, entertain very well founded doubts, how far theſe gentlemen proceeded in this tranſaction upon ſuch evidence as it ought to have proceeded upon, or how far they had before them ſuch materials as were neceſſary for forming a ſolid opinion with reſpect to

* *Vide* Appendix, N° 10. (*d*).

the

the propriety or impropriety of acceding, in name of the Company, to the propoſed compoſition. Whether the affairs of theſe bankrupt houſes might have afforded to their creditors a higher compoſition than they actually offered, we cannot take upon us to ſay; nor is it any part of our buſineſs at preſent to inquire. Surmiſes have gone abroad, that ſome of the creditors of theſe houſes did recover a much higher compoſition than that which was paid to this Company, and their other creditors; but we are unwilling to give credit to any ſuch reports. One thing, however, is certain, that ſeveral of the creditors of Charles Ferguſſon and Company, and Fordyce, Grant, and Company, did *not* accede to their propoſals; and we cannot diſcover any great loſs which our Company could have ſuſtained, if our Managers had alſo refuſed to accede, inſtead of agreeing to accept of ſo *inſignificant* a compoſition, and thereby to diſcharge ſo *vaſt* a debt.

In ſhort, we cannot figure any tranſaction more completely irregular, and more deſtitute of every eſſential requiſite to give it force or validity, than the tranſaction preſently under conſideration; and if there is juſtice or good faith in the proceedings which have been ſtated; if there is validity in them, or if there is law to ſupport them; there is an end of the diſtinction between right and wrong; there is an end of obligation and duty; and it is in vain, that the Partners of this Company ſhould inquire into any of the proceedings by which their affairs have been brought to ſuch deſtruction *.

2. The

* *Nota.* The gentleman who writes the anſwer, in defence of theſe tranſactions, has ſet forth, That the compoſitions were prejudicial to the bankrupts themſelves; that their affairs could not admit of a higher compoſition; that they are willing now to pay a premium, to be relieved of their former affairs; and, therefore, that as no damage can be qualified from the compoſitions having been entered into, they muſt now be effectual againſt the Company. We apprehend, that few words will ſuffice to

2. The ſecond *culpable* proceeding of our Managers in Scotland, which we ſhall take notice of, ſubſequent to our ſtop in June 1772, is that which reſpects our tranſactions with the Meſſ. Alexanders for large loans of money, amidſt the height of our misfortunes and diſtreſs, and during the buſy and diſaſtrous period of the annuity-tranſaction. 2. Loans to Mr Alexander.

It is to be obſerved, that at the period of our ſtop in June 1772, the Meſſ. Alexanders were not indebted to the Company in all for above L. 6000 or L. 7000. Even this, indeed, was a debt irregularly contracted to the Company, as ariſing, partly from the balance of an account-current which they had been allowed to overdraw conſiderably, and partly from bills of exchange which had been ir-

to ſhow the inſufficiency of the argument founded upon ſuch topics as theſe. As to the real ſtate of the bankrupt affairs at the time, we judged it unneceſſary to inquire very minutely into that matter, becauſe we imagined there were legal grounds ſufficient to ſet aſide the tranſactions, independent of any objection ariſing from the nature and particulars of the ſtate of theſe affairs; and if it ſhall be thought proper to challenge them upon this laſt ground, a more particular inveſtigation than we have had either opportunity or materials for making, may, perhaps, be ſtill neceſſary. But as the caſe is ſtated in the Report, the argument made uſe of in the anſwer ſeems to reſolve into a begging of the queſtion. A few plain queſtions will ſet the matter at iſſue in the proper point of view: *1ſt*, Were the Proprietors of Douglas, Heron, and Company, bound, in 1772, to accede to thoſe compoſitions *againſt their will*, and thereby to diſcharge about L. 35,000 of juſt and lawful debt *for a ſong?* *2dly*, If the proceedings of their Managers, at that time, did *not* bind them, are the Proprietors of Douglas, Heron, and Company, *now* bound to diſcharge that debt *againſt their will?* *3dly*, Suppoſing a man to become really inſolvent, and, without obtaining any legal diſcharge, to launch out again in buſineſs, under the acquieſcence and indulgence of his creditors, and to acquire not only independence but opulence, is that man bound to pay his debts; or will it be a ſufficient defence againſt a demand of payment, That his affairs were once in a bankrupt ſtate, that he is ready to prove they were ſo, and that his creditors can qualify no damage from his now refuſing to pay their debts, becauſe he was once unable to pay them?

regularly purchaſed from them. But although it is a fact, which, when coolly and deliberately conſidered, is almoſt beyond our belief; yet we are ſorry to ſay, that it is undoubtedly true, that, before the month of November 1772, that houſe was indebted to the Company in a ſum nearly amounting to L. 60,000.

Of this ſum L. 20,000 has already been treated of, under the former branch of this Report, reſpecting the annuity-proceedings; and we ſhall now endeavour to give ſome account of the remainder of this vaſt ſum, which appears to have been laviſhed upon the Meſſ. Alexanders in ſo infatuated and prodigal a manner.

L. 2000, upon a depoſit of bills, 23d June 1772.

In the *firſt* place, it appears, that a loan of L. 2000, on a depoſit of bills, was given to Mr Alexander, at Edinburgh, upon the 23d June 1772, juſt at the time of our greateſt diſtreſs. There is not a veſtige of authority in the proceedings and minutes of the Directors at that time for authoriſing this loan or accommodation. They bear no evidence whatever of the tranſaction. It is only diſcoverable from an examination of the *office-books* of that period, and from a ſlight mention made of it in a ſederunt of the 6th March 1773 *. And we cannot help thinking, that ſo wanton an accommodation, at a time of ſuch diſtreſs, admits of no defence; and is therefore chargeable, with all its conſequences, upon the Caſhier who iſſued the loan, and his cautioners, and upon thoſe Directors who may have privately authoriſed it. The conſequence of the accommodation was, to increaſe our London debt to that amount, and thereby to occaſion an additional ſum to be raiſed by annuities; and indeed, as the loan was given by bills drawn upon our correſpondents

* *Vide* Appendix, N° 10. *(g)*.

ſpondents in London, the above conſequence was immediate and direct *.

Propoſals for a loan of L. 30,000 upon heritable ſecurity,

In the *ſecond* place, the Meſſ. Alexanders, not being ſatisfied with the loans they had already obtained from the Company, but having conceived the bold idea of obtaining an additional loan of no leſs than L. 30,000, it appears, that they accordingly gave in regular propoſals for that purpoſe to our annuity-managers in London; which were laid before a meeting of the 5th September 1772; and, what is ſtill more ſurpriſing, our Managers appear to have liſtened to them †.

laid before the Managers in London 5th September 1772,

Of this loan L. 10,000 was to be ſecured upon ſome ſubjects belonging to them in the *Adelphi* buildings in London; and the other L. 20,000 was to be ſecured upon their lands in Scotland; and as their *title* to demand ſuch an accommodation, they ſet forth in theſe propoſals the ſervices which they had performed, and meant to perform, to the Company, in the way of an exchange of the Company's bills upon Mayne and Needham, to a certain extent, for bills upon Walpool and Aliſon, which Mr Alexander had been inſtrumental in procuring, and which it was pretended had already been of eſſential conſequence to the Company. What the real nature and effect of this tranſaction of exchange of bills was, it is difficult preciſely to ſay. In its conſequences, however, it appears to us to have been almoſt inexplicable; and certain it is, that the Company, inſtead of reaping any ſubſtantial advantage from that traffic, were in the end moſt undoubtedly deceived and bit.

* *Nota.* It is ſet forth, p. 26. of the Letter to the Proprietors, That this loan of L. 2000 to Mr Alexander was given at a meeting of Directors called on purpoſe. We beg to know where the evidence of this is lodged. We are certain it is not where it ought to be, otherwiſe we muſt have diſcovered it.

† *Vide* Appendix, N° 10. *(b)*.

Indeed

Indeed the ſuppoſed advantages of it ſeem to have ſprung from one of theſe ſame ſpeculative contrivances which had ſo often betrayed our Managers into a deviation from their duty; and we are perſuaded, that it would have been a *ſaving* ſcheme, if our Managers, inſtead of flattering themſelves with the notion that ſuch an exchange of bills with Walpool and Aliſon was really uſeful to the Company, and might perhaps be the means of preventing their raiſing ſome money by annuities, had never engaged in the hazardous tranſaction, but had at once raiſed an additional ſum upon annuities, which would have given the Company equal relief at the time, and in the end would not have been attended with ſuch bad conſequences.

But however this may be, it ſeems abundantly plain, that the ſuppoſed ſervices of Mr Alexander were by no means a ſufficient reaſon for the Managers of the Company, circumſtanced as they were, taking upon them to authoriſe the propoſed exorbitant loan, which was evidently ſo highly adverſe to the intereſt, as well as to the eſtabliſhed rules of the Company; and whatever individuals might have done in their own affairs, they were not intitled, from any ſpeculative notions whatever, to depart from their proper duty and buſineſs, to proſtitute, in this manner, the credit of the Company, and to ſport with the fortunes of their conſtituents.

and approved of by them;

Our Managers, however, whoſe ideas at that time were unfortunately too much enlarged, appear, from their proceedings of the 5th of September, to have approved of the propoſals by Mr Alexander for the loan of L. 30,000; but as difficulties had ariſen with reſpect to the value of the ſubjects in the *Adelphi*, upon which L. 10,000 of the loan was to be ſecured, they remitted the whole matter to the branch at Edinburgh, to finiſh the tranſaction, or not, *as they ſaw cauſe*; with this recommendation, That they *ſhould accommodate*

but remitted to Edinburgh branch.

commodate the Meſſ. Alexanders, if it could be done with convenience *.

A more incompetent proceeding can hardly be imagined, than for a few of the Managers of a Company, circumſtanced as we then were, who had repaired to London in order to raiſe money upon annuities for the Company's relief, and to ſave them from bankruptcy, to pretend to judge of and determine in this manner, with reſpect to the extravagant loan propoſed by Mr Alexander; and, as if they had been veſted with ſpecial and full powers from their conſtituents, to pretend to remit the matter to the branch at Edinburgh, to do *as they ſhould ſee cauſe*. However, the Directors of the Edinburgh office appear not to have ſeen any impropriety or incompetency in the proceeding; but at a meeting held there a few days after, at which it will be obſerved there was not a *quorum* preſent, referred the whole affair to the enſuing general meeting of Directors, which was to be held at Air upon the 17th September †.

Remitted by Edinburgh branch to general meeting of Directors at Air 17th September.

Agreed to at this meeting.

At this meeting the propoſed tranſaction with Mr Alexander was taken under conſideration; and the proceedings appear from the minutes to have been as follows. "The meeting having conſidered the tranſaction, of date the 1ſt current, between the gentlemen in the direction at London and Mr William Alexander; and having reaſoned thereupon, they are of opinion, that it is proper to agree thereto; and do therefore direct their Secretary, at the ſight, and with the approbation of the Directors at Edinburgh, or any two of them, to make out the neceſſary deeds, to be granted by Mr William Alexander and Sons, for their ſecuri-

* *Vide* Appendix, No 10. (*b*)

† *Vide* Edinburgh ſederunt 12th September 1772.

" ty; and theſe being ſo executed, the Caſhier at Edinburgh is di-
" rected to grant the following promiſſory notes, payable to Meſſ.
" William Alexander and Sons, in theſe diviſions: five of L. 1000
" each, at nine months, L. 5000; five ditto, at fifteen months,
" L. 5000; fifty of L. 100 each, at nine months, L. 5000; fifty
" ditto, at fifteen months, L. 5000, in all L. 20,000. But the
" meeting not being acquainted with the value of the ſubjects pro-
" poſed to be mortgaged by Meſſ. Alexanders, except the eſtate of
" Blackhouſe, which they are informed is worth the ſum put upon
" it by Meſſ. Alexanders, recommend it to the Edinburgh Directors
" to be ſatisfied, that the brewery at Edinburgh, and the other
" ſubjects, Blackhouſe excepted, are of the value put upon the
" ſame by Meſſ. Alexanders; and alſo, that they take the ſecurity
" mentioned in the London minutes from Meſſ. Alexanders and
" Meſſ. Adams, relative to the ſubjects in the Adelphi *.

Concluded by two Edinburgh Directors.

In conſequence of this remit, the ſame celebrated meeting at Edinburgh, of 24th September, conſiſting of *two* Directors, whoſe proceedings, in another tranſaction, have already been conſidered, upon being informed by Mr Robert Alexander, that the ſecurity for L. 10,000, upon the Adelphi ſubjects, had been completed, ordered promiſſory notes, to that amount, to be granted, and to be tranſmitted to London, to be delivered to Mr William Alexander, which order was immediately complied with †.

With reſpect to the other L. 20,000, the heritable ſecurities having been immediately got completed, the Company's notes, to that amount, were, upon the 6th October, delivered to Mr Alexander. The whole tranſaction, along with ſeveral others, was afterwards reported by the above two Edinburgh Directors, to a general

* *Vide* Appendix, N° 10. (*i*).

† *Vide* Appendix, N° 10. (*k*).

meeting

meeting of Directors, held 29th October 1772, previous to the general meeting of the Company, and approved of by them *; but no mention whatever was made of it in this general meeting of the *Proprietors*, whoſe fortunes and credit had been ſo proſtituted.

Afterwards reported to general meeting of Directors, 29th October; — but no mention of it in the general meeting of the Company.

The reſult of the whole tranſaction has been, that the affairs of the Meſſ. Alexanders having gone to ruin, and their eſtate being utterly unable to ſave the Company from going in advance, when the numerous promiſſory notes, which had been previouſly indorſed away, and uſed by the Meſſ. Alexanders as a fund of credit, became due, the Company was under the neceſſity of paying them; and they now remain creditors upon the eſtate of the Meſſ. Alexanders, in conſequence of the above tranſaction of loan, to the amount of L. 20,000, the other L. 10,000, which was ſecured upon the Adelphi ſubjects, having been recovered upon the ſale thereof.

We have thus ſtated the particulars of a very ſtrange and unaccountable tranſaction of loan with the Meſſ. Alexanders, which we believe the Partners of this Company have hitherto been altogether unacquainted with; and we judge it entirely unneceſſary, after what has already been ſaid with reſpect to the proper powers and duty of the Managers of this Company, to point out in what particular reſpects the tranſaction was illegal and unwarrantable. It would be conſuming time unneceſſarily to do ſo: the tranſaction itſelf, as well as the other tranſactions with thoſe dark and dangerous projectors, muſt ever bear evidence againſt themſelves, and carry along with them the moſt obvious and pregnant grounds of redreſs. Nor were they illegal and unwarrantable only; in their conſequences too, they have been moſt diſmal and calamitous; and even though we were in the end to make theſe large debts effectual, the recovery of them would by no means be ſufficient to juſtify the loan. It is not enough for the Managers of this Company to ſay, That the ſecurities will, *in the end*, be ſufficient for the debts; for though a kingdom had been pledged for payment of them, it is plain,

* *Vide* Appendix, N° 10. (*f*).

plain, that, in the *then* ruined ſtate of the Company, if that kingdom could not give us relief when wanted, the tranſaction evidently tended to increaſe the embarraſſment of our affairs, to leſſen our credit, and to diſtract ſtill more the management. In this view, therefore, *alone*, it was a moſt prejudicial tranſaction; but when the real conſequences of it are conſidered, it muſt be added to the catalogue of our *poſitive* misfortunes; ſince, beſides the actual loſs by inſolvency, which the Company may, in the end, ſuffer, in conſequence of the wild and extravagant accommodations given to that houſe in the manner before mentioned, the conſequences which we have already felt are ſufficiently ſevere. Amidſt all the diſtreſs and danger which the Company has encountered ſince the year 1772,—amidſt the great *private* diſtreſs which the poorer partners among us, innocent of the Company's misfortunes, are ready to ſink under, which overcaſts the proſpects of thoſe who may hope *juſt* to ſurvive, and which diſquiets even the rich and the opulent, thoſe vaſt ſums which ought to have been in the coffers of the Company, ready to ſupply their wants, and relieve their exigencies, have been locked up in the hands of the Meſſ. Alexanders, and to this hour are inacceſſible to the Company.

It is impoſſible that redreſs ſhould not be competent to the Company, for ſuch high and flagrant injuſtice, and for ſuch a ſhameful proſtitution of credit as occurs in theſe tranſactions; and, if there is legality and propriety in thoſe proceedings, ſufficient to ſupport them, and to vindicate the conductors and promoters of them, it muſt be admitted, that there were no boundaries whatever to limit the powers of our managers, and that in the ſame manner that they diſſipated L. 30,000 of the Company's funds, in order to give an accommodation to a bold projecting houſe, they might have veſted L. 100,000, or any ſum whatever, upon ſimilar ſecurity, and expoſed the partners to all the neceſſary conſequential diſtreſs.

Upon

Upon the whole of this tranſaction, we cannot entertain a doubt, that the Managers of the Company, who were promoters of, and acceſſary to the proceedings which authoriſed it, are anſwerable to the Company for the whole conſequences which have already thence enſued, or may hereafter enſue.

3. Loan to Mr Fordyce of L. 29,000.

3. Of a nature preciſely ſimilar, though perhaps in its conſequences not quite ſo calamitous, was a tranſaction entered into about the ſame period with Mr John Fordyce, who, together with Mr Andrew Grant, compoſed the company under the firm of *Fordyce, Grant, and Company*.

The tranſaction of compoſition with that houſe has already been treated of under this branch of the Report; and it has been mentioned, that upon the 24th September 1772 the compoſition was agreed to by two of the Edinburgh Directors, and powers tranſmitted to London to ſign the deed of acceſſion; that the delegates at London, however, had at firſt rather declined to do ſo; but that the ſame two Directors who had formerly directed the compoſition to be agreed to, having become more enlightened upon the ſubject, took the tranſaction upon themſelves, by the letter of the 12th October, which has already been mentioned, and which was underſtood to put an end to the affair.

It muſt appear to the Partners of this Company not a little extraordinary, that our Managers had ſcarcely agreed to annihilate in this manner upwards of L. 20,000 of the Company's funds, upon receiving a trifling compoſition of 6 s. 6 d. per pound, when Mr Fordyce, in order to enable him to pay the ſtipulated compoſition to his creditors, conceived the bold idea of obtaining a loan from the Company of L. 20,000, to be ſecured upon his heritable ſubjects. Extraordinary however as it may appear, it is a fact well aſcertained, that upon the very 12th October already mentioned, regular

 propoſals

Propoſals reſpecting it given in by him to Edinburgh Directors, Oct. 12. 1772.

propoſals were given in by that gentleman to the Edinburgh branch, for obtaining ſuch a loan. Theſe propoſals were as follows.

" 1. That he will aſſign or diſpone to Meſſ. Douglas, Heron, " and Company, the following ſubjects.

" The eſtate of Torrerie, worth about	L. 17000	0	0
" The lands of New Grange, near St Andrew's, " worth - - -	2000	0	0
" A houſe in Edinburgh, which he is now about " ſelling, - - -	2500	0	0
" Another houſe in Edinburgh, -	300	0	0
	L. 21800	0	0

" 2. That, on the above-mentioned ſecurity, he hopes Meſſ. Douglas, Heron, and Company, will grant their obligations, or accept bills, for L. 10,000, payable in eighteen months from the 29th of this month, and for L. 10,000 payable in thirty months, that is, two years and one half, from the 29th of this month.

" 3. That in conſideration of Meſſ. Douglas, Heron, and Company having entered into the above tranſaction, Mr Fordyce will keep part of the funds of his office with Douglas, Heron, and Company, from this time forward; though as the amount of the money in the office fluctuates, he cannot ſtipulate a poſitive ſum: That he will never draw it entirely out; and, from motives of gratitude, he will endeavour to make the amount as valuable to Meſſ. Douglas, Heron, and Company as he can, *without* great *diſadvantage* to himſelf; and the money depoſited with him ſhall always be in Edinburgh notes, ſpecie, or in transferences from the treaſury to their correſpondents in London.

" 4. That the above-mentioned ſubjects ſhall be diſpoſed of as " ſoon

" ſoon as poſſible; and if the value of all, or any part of them, " ſhall be received before the term of payment of Douglas, Heron, " and Company's acceptances or obligations, the money ſhall be " immediately paid into their hands, there to remain until it ſhall " be neceſſary to apply it to the payment of theſe acceptances or " obligations.

" 5. In order to prevent the poſſibility of any inconvenience to " Douglas, Heron, and Company, from the above tranſaction, Mr " Fordyce will, with Sir Adam Ferguſſon's approbation, give an " obligation to the following effect: That in caſe the whole, or as " much of the ſubjects before mentioned, ſhall not be turned into " money, as ſhall be neceſſary to anſwer the punctual payments of " the obligations or acceptances granted by Meſſ. Douglas, Heron, " and Company, Mr Fordyce ſhall, in that event, keep at leaſt as " much money in their hands, out of the funds at this office, as " ſhall be equal to the deficiency, ſo as that Meſſ. Douglas, Heron, " and Company, may in no event be ſubjected to any advance of " money in conſequence of their having entered into this tranſ- " action *."

approved of by the meeting, conſiſting of three Directors;

The meeting, before whom theſe propoſals were laid, conſiſted only of *three* Directors; but indeed our Managers appear now to have forgot altogether, what the extent of their powers, and of their duty, was. They neglect even the *form* of buſineſs; and, at this meeting, with the utmoſt eaſe, approve of the propoſals as *advantageous* to the Bank; juſt as if *Directors* had truly been veſted with powers to authoriſe ſuch a tranſaction, and as if that meeting had conſiſted of a legal quorum †.

† *Nota.* The Anſwer in behalf of Charles Ferguſſon and Company, and Fordyce, Grant, and Company, ſets forth, That the propoſals for the above loan were laid before the Directors at Air upon the 7th October 1772, and approved of by them. We deny the fact, and appeal to the Air ſederunts.

* *Vide* Appendix, N° 10. (*l*).

The

afterwards approved of, at general meeting of Directors, 31ſt October; but loan enlarged from L. 20,000 to L. 29,000.

The tranſaction was not however quite completed at this time; but the propoſals being afterwards laid before a general meeting of Directors, held, at Dumfries, 31ſt October 1772, previous to the general meeting of the Company, were there alſo agreed to; only the loan was enlarged to L. 29,000 inſtead of L. 20,000, as required in the original propoſals *; and, in conſequence of this reſolution, the tranſaction was immediately thereafter concluded, the promiſſory notes of the Company delivered to Mr Fordyce, and the ſtipulated ſecurities granted by him; but no mention whatever was made of the tranſaction in the ſubſequent general meeting of the Company.

The reſult of the tranſaction has been, that although, by the terms of the agreement, the Company was never to be forced into advance for Mr Fordyce, when the promiſſory notes became due; yet, in fact, the Company has generally been in advance L. 6000, L. 7000, or L. 8000, upon this tranſaction, and may eventually be in advance a much larger ſum; which has of courſe all along occaſioned, and may ſtill occaſion, additional diſtreſs, and additional expence, to the Company, independent of its having, from the very firſt, increaſed the embarraſſment of their affairs, leſſened their credit, and involved the management †.

4. Another

* *Vide* App. N° 10. (*m*)

† *Nota.* The authors of the Addreſs to the Proprietors, as well as the author of the Anſwer for Charles Ferguſſon and Company, and Fordyce, Grant and Company, have ſet forth, That the tranſaction of loan to Mr Fordyce was highly *beneficial* to the Company; in particular, that L. 14,000 was procured to the Company by loan upon the heritable ſubjects, and conſiderable ſums immediately put in the Company's hands. We, and, we believe, every one concerned in the preſent management of the Company's affairs, differ ſo widely from thoſe gentlemen, in our ideas upon this ſubject, that it is quite unneceſſary to enter into any argument concerning

4. Another very improper accommodation, to the extent of L. 11,000, appears to have been granted at the Dumfries office, to Alexander Johnſton, Hugh Lawſon, and Company, amidſt our greateſt diſtreſs, and during the period of the annuity-tranſaction. 4. Loan of L. 11,000 to Johnſton, Lawſon, and Company.

The tranſaction which took place with that Company in the year 1771, has already been mentioned. It was evidently a moſt injudicious, raſh, and unprofitable bargain; and, indeed, in its ſad conſequences, was highly inſtrumental in haſtening the criſis of our affairs, which happened about ſix months afterwards, and in then rendering them altogether irretrievable.

By the terms of that tranſaction, moſt abſurd and extravagant accommodations in the way of credit were to be given to the partners and debtors of the former bank; and we were not even allowed to judge of the *ſufficiency* of the ſecurity which was to be granted for theſe credits, this matter being left to the deciſion of Mr Buſhby and Mr Carruthers *. It has, however, already been ſhown, under a former branch of this Report, that, extravagant as the terms of that tranſaction were, yet the management of our affairs at Dumfries, after that period, was ſo much influenced and tainted by our

cerning it. We ſhall only obſerve, that the boaſted accommodation of L. 14,000 borrowed upon heritable ſubjects, happens to be ſecured upon an eſtate which turns out not to be near worth the money; and which has already been unſucceſsfully offered to ſale again and again for much leſs. This, however, may perhaps be conſidered as one of the *benefits* ariſing from this *lucrative* tranſaction. Another is, that although one of the conditions of the agreement was, That Mr Fordyce ſhould keep ſo much of the money of his office with the Company as would prevent their being ever put in advance; yet the Company very ſoon fell in conſiderable advance, by that part of the agreement being broke through; and have ever ſince, till very lately, remained ſo.

* *Vide* Contract, App. N° 6. (*i*).

new connections, that attempts were ſoon made, and ſucceſsfully too, to render the tranſaction ſtill more ruinous. In particular, it has been ſhown, that although the obligation which the Company had come under, in conſequence of the tranſaction, to furniſh loans to the debtors of the Dumfries bank, had been fully canvaſſed, and the extent of it particularly fixed and aſcertained by the general meeting of Directors in November 1771; yet, a few weeks afterwards, the Directors at the Dumfries office took upon them, at their own hands, to grant a moſt unwarrantable loan of no leſs than L. 10,000 to Mr Murray of Broughton *.

granted by Dumfries Directors, 3d Oct. 1772.

Our Managers, however, ſeem to have thought, that the Company had not yet paid ſufficiently for their *lucrative* ſucceſſion to the buſineſs of the Dumfries bank: for it appears, that, upon the 3d of October 1772, in the very height of our diſtreſs, a ſtill more unwarrantable accommodation, to the extent of L. 11,000, was given to Johnſton, Lawſon, and Company, in order to enable them to diſcharge a debt which was due by them to Mr Lidderdale of Caſtlemilk, at the time they gave up buſineſs in favour of Douglas, Heron, and Company, and which Mr Lidderdale was about to demand in a peremptory manner †.

Motives for granting it

The pretence made uſe of upon this occaſion was, that, by the terms of our agreement, we were bound to diſcharge this debt for account of the Dumfries bank; and although there is not a veſtige of any ſuch obligation upon the Company in the articles of agreement, yet our Managers at Dumfries were willing to believe, or ſeduced into a belief, that this was the caſe; and accordingly gave authority for bills on London being furniſhed to the extent of Mr Lidderdale's debt.

* Branch 3. p. 72. et ſeqq.

† *Vide* App. N° 10. (*n*)

found to be erroneous, 7th October;

A few days afterwards, viz. on the 7th October, at a meeting of the Directors, the deceit is found out; and the minute of the 3d October being reconſidered, the meeting became ſenſible, that the Company was not bound by their agreement to furniſh the propoſed loan. But what is extremely curious, after finding out the error, they do not incline to correct it, but nevertheleſs give authority for the loan. The proceedings are as follows. "They are of opi-

but the loan nevertheleſs authoriſed.

"nion, That the Company are not bound by that agreement to "furniſh this loan, but being deſirous to accommodate Meſſ. Alex-"ander Johnſton, Hugh Lawſon, and Company, upon this occa-"ſion, till they can call in their own funds, they authoriſe the "Caſhier to furniſh the bills as mentioned in the ſaid minute, on "getting a proper order from Mr Riddick, as the Caſhier of the "old bank, to debit their account therewith *."

It will be obſerved, that this moſt wanton and unjuſtifiable accommodation was granted at the very time when we were raiſing money upon annuities in London at the rate of 15 per cent.; and yet our Managers preſent at theſe meetings do not ſcruple directly to increaſe our London debt, moſt unneceſſarily, to the extent of L. 11,000, and thereby to occaſion an additional burden. We cannot figure the moſt diſtant apology for the conduct of our Managers upon this occaſion: and their having previouſly diſcovered the error and deceit into which the former meeting had been betrayed, renders their conduct ſtill more unjuſtifiable; ſince they evidently knew their duty, but refuſed to act agreeably to it. And one thing will readily occur, that if they thought proper to give Johnſton, Lawſon, and Company, an accommodation which they were in no ſhape bound to give, they ought at leaſt to have made it a condition of the loan, that the Company ſhould be relieved of the burden of annuities to that amount, ſuch being in effect the reſult of the

* *Vide* Appendix, N° 10. (*o*).

tranſaction.

tranſaction. Nor does it appear, that we owed any favour to Johnſton, Lawſon, and Company, or to the partners of it. We were deeply injured by the bargain itſelf which had formerly taken place with that bank, and which was in many reſpects ſo adverſe to our intereſt. The Company had likewiſe been frequently abuſed as to the interpretation of the terms and import of the tranſaction; and at this very period we were creditors to that bank in a very large ſum of money, which had occaſioned a correſponding amount of London debt, and of courſe a correſponding ſale of annuities; and which, inſtead of being increaſed by an additional loan, ought to have been demanded in a peremptory manner for the relief of the Company; at leaſt a correſponding burden of annuities ought to have been ſubmitted to, as was afterwards frequently, though in vain, propoſed, to the full amount indeed of the debt due by that bank *.

In ſhort, the Company was under no ſort of obligation, either of equity or of law, to grant the propoſed loan: for, as to the articles of agreement with the Dumfries bank, we were not bound to pay any of the debts of that Company, other than the *notes in the circle*; and though the Company was to have the *benefit* of any loans which the Dumfries bank had formerly enjoyed, yet this could not, in any ſhape, imply an obligation upon the Company to pay the debt of that bank contracted upon ſuch loans, *without our receiving the value*. The accommodation, therefore, before mentioned, to the extent of the L. 11,000, was illegal and unwarrantable, and a moſt *culpable* act of miſmanagement; and we cannot therefore have a doubt, that the Managers who authoriſed it are liable to indemnify the Company of the extraordinary loſs which can be ſhown to have thence ariſen. For it is not enough for them to ſay, that the above ſum was placed to the *debit* of the Dumfries bank, and has ſince,

* *Vide* Appendix, N° 8. (*e*) p. 106. & 107.

with

with the legal intereſt thereof, been recovered; ſince, beſides the additional embarraſſment which the loan at that period would occaſion in the Company's affairs, it is plain, that they muſt neceſſarily have been ſubjected to the extraordinary loſs ariſing from a correſponding burden of annuities, which would either be thereby occaſioned, or at leaſt would *remain* a burden upon the Company, while the above loan, if with-held, might have been the means of preventing the continuance of that burden *.

5. The only other culpable act of miſmanagement which we ſhall mention under this branch, reſpects ſome tranſactions of our Managers in purchaſing up ſhares of ſtock *as for behoof of the Company*. Purchaſe of ſhares for behoof of the Company.

* *Nota.* The authors of the Addreſs, p. 31. have endeavoured to juſtify the loan to Johnſton, Lawſon, and Company, which is here complained of. But we own, that their reaſoning upon this ſubject appears to us unintelligible; and we are perſuaded, if the gentlemen had not been too ſparing of reflection, they would themſelves have ſeen the ſelf-evident abſurdity of the demand which was made by the Dumfries bank upon this occaſion. In order to ſet this matter in a proper point of view, we beg to aſk a few plain queſtions. 1*ſt*, Douglas, Heron, and Company were to have the *benefit* of all loans formerly depoſited with Johnſton, Lawſon, and Company, and the L. 11,000 which was due Mr Lidderdale, was lent them at *five per cent.* intereſt: we therefore aſk, What *benefit* was to be derived to Douglas, Heron, and Company from this loan, at five per cent, in conſideration whereof it is ſaid, they were bound to pay the debt when demanded? 2*dly*, Upon Douglas, Heron, and Company paying the debt to Mr Lidderdale, were not Johnſton, Lawſon, and Company to become their debtors for the value? 3*dly*, If ſo, were not Johnſton, Lawſon, and Company bound *immediately* to repay Douglas, Heron, and Company; or, was it any where ſtipulated, that this demand of payment was to be ſuſpended for a certain period? 4*thly*, If Johnſton, Lawſon, and Company were bound *immediately* to repay Douglas, Heron, and Company their advance, would it not have been as eaſy, and as convenient, for them to have paid Mr Lidderdale the debt they were due him; or were Douglas, Heron, and Company bound to pay with one hand, while they were intitled, at the ſame moment, to receive with the other? We would purſue the reaſoning, but we begin to think it is fit only to amuſe children.

Five ſhares ſaid to be in this ſituation.

There appear to be five ſhares of ſtock, which it is pretended are in this ſituation, viz. the four ſhares originally belonging to James Dalziel, three of which appear to have been transferred to one of our Directors, and the fourth to another of our Directors; and the ſhare belonging to James Craig, which does not appear to have been ever transferred to any particular perſon.

With reſpect to all theſe ſhares, it is ſaid, that they were purchaſed by our Managers for behoof of the Company, in virtue of the powers veſted in them for that purpoſe; and it accordingly appears, that the value of theſe ſhares, at the rate of L. 400 each, has been paid out of the Company's funds.

Regulation with reſpect to purchaſe of ſhares for behoof of the Company.

The purchaſe of ſhares *for behoof of the Company*, was ſo far authoriſed, that, by a general meeting of the Company held 5th and 6th November 1770, it was declared, "That it ſhould be left to the "*whole* Directors, when any Proprietor means to ſell out, either to "admit of a transfer to the perſon to whom he propoſes to ſell, or "otherwiſe to purchaſe his ſhare for behoof of the Company, and "and to pay him his proportion of ſtock and profits, according to "the laſt ſettlement of the Company's affairs; and that all *ſuch* "transferences ſhall be *regularly entered and reported to the immediate* "*ſubſequent general meeting* *."

Such was the regulation reſpecting the purchaſe of ſhares for the Company; and it will be obſerved, that the power of making ſuch purchaſe was veſted in the *whole* Directors; and that when any *ſuch* purchaſe was made, it ought to have been regularly *entered*, and *reported* to a general meeting. Some enlargement of the powers of Directors in this particular ſeems indeed to have been the ſubject of correſpondence among the Directors of the different offices in February

* Branch 1. § 31.

bruary or March 1772, when it ſeems to have been propoſed as a ſort of general rule, That the Directors, in order to keep up the price of ſtock, ſhould every where purchaſe up for the Company whatever ſtock ſhould be in the market *. But it is clear, that as the Directors could not by any reſolution among themſelves enlarge their own powers in any particular; ſo the reſolution of the Company in November 1770, muſt neceſſarily be underſtood to regulate the conduct of our Directors in that reſpect, until altered or varied by a general meeting of the Proprietors.

So ſtanding the caſe, we muſt own that we do not obſerve any ſolid ground upon which the ſhares of ſtock before mentioned, or any of them, can be underſtood to have been purchaſed *for behoof of the Company*, or can now be impoſed upon us *as ſuch*.

Four of theſe ſhares tranſferred to Mr Home and Mr Cockburn.

With reſpect to the four ſhares firſt mentioned, no proceeding whatever appears as to the purchaſe of them; except that in the Report of the general meeting of Directors to the general meeting of the Proprietors in May 1772, it is mentioned, that three of Dalziel's ſhares were transferred to Mr Home, and one of them to Mr Cockburn †.

The other ſhare never transferred out of Mr Craig's perſon.

With reſpect to the ſhare belonging to James Craig, there is not a veſtige of evidence, that there ever was any bargain for the purchaſe of it *by any body*; it accordingly appears never to have been transferred out of the perſon of Mr Craig; and the only mention any where made of the tranſaction, is in the Edinburgh ſederunts 1ſt February 1773; when it is ſet forth, that the tranſaction had been made with Mr Craig *in the month of May preceding* ‡.

It is now pretended, that a purchaſe of all theſe ſhares was made *for behoof of the Company*; and indeed with reſpect to the *three*

* *Vide* letter 10th February 1772, from Edinburgh office to Air and Dumfries.

‡ *Vide* Report, App. N° 5. (*l*).

†‡ *Vide* App. N° 10. (*p*).

ſhares

ſhares transferred to Mr Home, ſeveral facts and circumſtances are condeſcended upon, and have been communicated to us, which ſeem to ſhow, that the tranſaction was truly intended by him, not for his own behoof, but for behoof of the Company *; and we are perfectly ſatisfied, that this was Mr Home's intention at the time. But as to the ſhare transferred to Mr Cockburn, we do by no means ſee any facts or circumſtances which at all demonſtrate, that his intention was likewiſe to tranſact this ſhare for the Company; *circumſtances* ſeem rather to occur which are unfavourable to any ſuch hypotheſis; and we apprehend, that this ſhare muſt clearly be underſtood to have been purchaſed for his *own behoof*. As to Mr Craig's ſhare, it has already been mentioned, that there does not appear a veſtige of evidence with reſpect to any bargain concerning it having ever been made by any perſon, much leſs by any Director for behoof of the company; and we cannot therefore entertain a doubt, that Mr Craig is at this moment a partner of the Company as much as any of us, whatever *private* tranſaction may have taken place concerning it, or whatever grounds of private relief or indemnification he may have in conſequence of ſuch tranſaction.

But though there were circumſtances ſufficient to ſhow, that there had truly been an *intention* at the time, of purchaſing all theſe ſhares for the Company; yet we do not imagine, that this intention of purchaſe will ſubject the Company to the conſequences of thoſe tranſactions, or relieve the purchaſers of the loſs thence ariſing. They appear, however, to have endeavoured to relieve themſelves; and accordingly the price of thoſe five ſhares have been paid out of the Company's funds. In particular, at a meeting of the Edinburgh Directors of 8th March 1773, an order is given for the four ſhares of Mr Dalziel being ſettled by the acting Director, and the price paid him; and at the ſame meeting it is

Price of all theſe ſhares paid out of the Company's funds.

* *Vide* State of Facts by Mr Home.

likewiſe

likewiſe declared, That upon conſidering the ſtate of facts relative to Mr Home's concern in this matter, it appeared, that he was only purchaſer of three of thoſe ſhares *for behoof of the Company*; and conſequently ought to be relieved. As to Mr Cockburn, no opinion is there given *.

The ſums paid out of the Company's funds as the purchaſe-money of theſe ſeveral ſhares, amount to L. 2183, 6s. And we ſhall now endeavour to point out the grounds upon which we apprethe Company ought to be relieved of the conſequences of theſe pretended tranſactions of purchaſe, and of the loſs thence enſuing; and we conſider it to be the more neceſſary to ſet this matter in its true light, becauſe we believe ſeveral other claims of a ſimilar nature are awaiting the Company.

amounting to the ſum of L. 2183, 6s.

In the *firſt* place, in order to render ſuch a purchaſe effectual againſt the Company, it was neceſſary that it ſhould be made by the *whole* Directors, in whom the power is lodged for that purpoſe; and who, it is to be preſumed, would deliberately judge of the propriety or expediency of the tranſaction, before giving their authority for carrying it into execution; and that the purchaſe, when made, ſhould be regularly *entered*, and *reported* to a general meeting. But it will be obſerved, that there is in this caſe no manner of evidence that the *whole* body of Directors, ever took under their conſideration the purchaſe of any one of the ſhares before mentioned, as propoſed to be made for behoof of *the Company*; or that they ever gave any authority for *ſuch* tranſaction. As to Mr Craig's ſhare, there is not the leaſt mention of any tranſaction with reſpect to it in the proceedings of the Directors, either in a general meeting, or at any of the offices; and as to the other four ſhares, the proceedings of the general meeting of Directors at which the tranſfer of theſe ſhares took place, do not bear the leaſt evidence, not e-

Grounds upon which theſe purchaſes cannot be effectual againſt the Company:

not being authoriſed by the *whole* Directors,

* *Vide* Appendix, N° 10. (*q*).

ven a hint, that the purchaſe was for behoof of the Company; nor are the terms of the purchaſe ſo much as mentioned. The evidence of every tranſaction of that nature ought certainly to have appeared in the minutes of their proceedings; and it is abſurd to ſuppoſe, that, without ſuch evidence, the tranſaction could, with any propriety, be deemed effectual againſt the Company, or that the evidence of it was to be allowed to be collected from a variety of vague facts and circumſtances. If any individual Director, relying perhaps upon the private advice or recommendation of the other Directors, ſhould inconſiderately take upon him to make a purchaſe *as* for the Company, without regular authority previouſly obtained for that purpoſe, we apprehend, that whatever relief might in ſuch caſe be competent to the purchaſer againſt the other Directors; yet, in a queſtion with the Company reſpecting ſuch purchaſe, it would by no means be ſufficient for him to ſay, that he acted by private advice, or in conſequence of a private underſtanding among the Directors reſpecting that matter. Indeed if the Company was to be ſubjected, upon ſuch ſort of evidence, to the bad conſequences ariſing from ſuch a purchaſe, their ſituation would be ſomewhat ſingular, ſince they certainly would have no evidence upon which they could compel the purchaſer to communicate the *benefit* of that purchaſe, if the conſequences of it ſhould prove fortunate. So that the Company would, in ſuch a caſe, be clearly in this ſituation, that they might be ſubjected to the *loſs*, but could not be intitled to the *profit*, of the tranſaction; which, according to the reſult of it, would either be a purchaſe for behoof of the Company, or for behoof of the private adventurer. If it proved a bad adventure, he would immediately put on the maſk, and appear a *nominal* purchaſer, *for behoof of the Company*; and if it turned out a *good* one, he would remain unmaſked, and appear as purchaſer *for his own behoof*.

In the preſent caſe, therefore, although there may be circumſtances, as already mentioned, in ſo far as Mr Home is concerned in this matter, which may have the effect of intitling him to his relief againſt the other Directors; yet, we apprehend, that there is by no means any ſuch legal evidence, even of the ſhares tranſferred to him, much leſs of the other ſhares having been purchaſed for behoof the Company, as can at all be held ſufficient to ſubject the Company to the loſs which muſt thence enſue.

In the *ſecond* place, as the regulation in November 1770 expreſsly required, that any ſuch tranſactions of purchaſe *for behoof of the Company* ſhould be regularly *entered*, and *reported* to the immediate ſubſequent general meeting of Proprietors; and as, in the proceedings of the general meeting of Directors at which the four ſhares before mentioned were transferred, no mention whatever is made of the purchaſe being for behoof of the Company; ſo it likewiſe appears, that there was no ſubſequent report of the tranſaction, *as ſuch*, to the general meeting of Proprietors, who could therefore know nothing of the matter, and who, when they approved of theſe tranſactions as contained in the Report from their Directors, could only approve of them as ſimple and abſolute transfers in favour of thoſe individual purchaſers themſelves, and not as transfers to them nominally, for behoof of the Company.

nor entered as purchaſes for behoof of the Company, or reported as ſuch to a general meeting;

In the *third* place, although it were to be admitted, that it was truly the intention and private underſtanding of the Directors preſent at the above general meeting, that the purchaſe of the four ſhares then transferred was for behoof of the Company, and not for behoof of the *nominal* purchaſers; and although ſuch *private* underſtanding of a general meeting of Directors were to be deemed ſufficient to render ſuch a tranſaction effectual againſt the Company; yet it will be obſerved, that this general meeting of Directors was not a legal meeting, and could not even expreſsly have given authority for the purchaſe of theſe ſhares for behoof the Company, or for any other buſineſs properly belonging to a general meeting of Directors. It has already been mentioned, that the power of purchaſe was veſted in the *whole* Directors; and that,

and beſides, the general meeting of Directors transferring four of the ſhares, could not purchaſe for the Company,

no quorum being present from the Dumfries branch.

that, to constitute a *general* meeting of them, the presence of a legal quorum from *each* office was necessary; but it happens, that at this meeting, although there was indeed a quorum present from the the offices of Air and Edinburgh, yet there was no quorum from the Dumfries office, only *three* Dumfries Directors being present: so that the sense of the three Boards of Directors was *not* obtained.

It is plain, therefore, that this meeting, however willing, could not legally authorise the purchase of those four shares *for behoof of the Company*, on account of the want of a legal quorum. And upon this ground alone the transaction cannot be supported as effectual against the Company, not having the sanction of that authority which was necessary to give it effect. The regulation respecting this matter required the concurrence of the *whole* Directors, or of the *three* Boards of Directors, to authorise such a purchase. But in this case, there is only the concurrence of two Boards, viz. Air and Edinburgh. There is no concurrence from Dumfries, since there were only three Directors present from that branch; and, consequently, it cannot be said that the sense of that branch was obtained upon the subject.

Upon all these various grounds, we apprehend, that the Company will fall to be relieved of the purchases pretended to have been made for behoof of the Company, of the five shares before mentioned; and that the purchasers therefore must refund to the Company the price of those shares, which has been improperly paid out of the Company's funds.

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CONCLUSION.

WE have now completed the investigation of the affairs of this Company, recommended to us by the general meeting of the Partners, in so far as we judged such investigation necessary. A variety of other lesser articles of mismanagement, during the period of our inquiry, might have been mentioned, and many have no doubt escaped our observation; but we judged it improper, for the purpose of this Report, to occupy ourselves with the *minutiæ* of bad management, or to load our Report with trifling facts, which could not have opened up any view of substantial relief, and might have tended to divert the attention of the Partners from the greater objects which present themselves.

Reasons for not pursuing the inquiry further.

We likewise judged it unnecessary to pursue our inquiries farther than the period which we have reviewed, *first*, Because, at a general meeting, November 1772, after the annuity-transaction was approved of, the management of the affairs of the Company was new-modelled, and was afterwards entirely directed towards the relief of the Company, and the liquidation of their affairs. *2dly*, Because we have reason to think, that the subsequent management has been as properly conducted as the singular situation of the Company's affairs could admit of: and though this management, if critically examined, might not perhaps appear to have been quite so *œconomical* in some instances as it might have been; yet the peculiar embarrassment of the Company, the novelty of their situation, and the urgent necessity and various exigencies of their affairs, may justly be pleaded in vindication of errors of that sort. *3dly*, Because the *detail* of the posterior management, together with all the vast expence attending it, was the necessary result of the former proceedings; and, if the partners of this Company cannot obtain redress or indemnification for the series of injuries which we have endeavoured to show

they have ſuffered, in conſequence of the many irregular proceedings, unwarrantable tranſactions, and culpable acts of miſmanagement, which we have collected, it will be in vain for them to look for any ſubſtantial relief from the ſubſequent management.

The firſt *chief* object of that ſubſequent management was the redemption of the annuities, which, after many fruitleſs attempts to accompliſh it from the Company's own funds, was at laſt effected, after a burden of *two years*, in conſequence of an act of parliament, obtained in 1774, for iſſuing transferable bonds for that purpoſe, which, at the ſame time that it accompliſhed the redemption of the annuities, gave the Company opportunity and leiſure for gradually recovering the command of their funds, which they had ſo totally and completely loſt. In this arduous and diſagreeable work, the Manager of the Company's affairs has been employed ſince that period. We believe the Company has been in general much indebted to his prudence, attention, and abilities; and we are ſatisfied, that that branch of management has been conducted as well as the ſtate and nature of it would admit of.

It would therefore have been occupying our own time and attention, as well as that of the Partners, very unneceſſarily, to have entered upon any particular inveſtigation of the management of the Company's affairs ſubſequent to the period which we have reviewved. And we have only now to recommend to our fellow-partners, a cool, deliberate, ſteady, and diſpaſſionate peruſal of this Report, — of the terms of the Copartnery, — of the ſeveral ſtates referred to, — and of the proceedings and evidence upon which the various complaints are founded. From theſe, we hope, they will be enabled to form ſuch opinions, and ſuch reſolutions, as may be moſt likely to obtain that ſatisfaction which is due, and may tend to relieve them, in ſome degree, of the hardſhips and perplexity of their ſituation.

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Chief objects for the attention of Partners.

There is, however, one great object to which we think the Partners of this Company ſhould bend their attention; we mean the annuity-tranſaction. The extraordinary loſs thence ariſing, and the vaſt train of conſequential inexplicable expences attending it, amount to a moſt enormous ſum, almoſt equal to the capital of the Company, and compoſe by far the greateſt part of our loſſes. It is therefore of eſſential conſequence for the Partners to inquire, if there is not ſome material and ſubſtantial redreſs or indemnification competent to the Company with reſpect to that deep tranſaction; and the Partners will obſerve, that upon this ſubject we have ſuggeſted three different claſſes of Partners who appear to us to be liable to the Company in a partial claim of relief. Firſt, The Managers of the Company, who, in conſequence of the irregular and unwarrantable proceedings collected under Branch *third* of the Report, had occaſioned ſuch a vaſt debt to be irregularly contracted to the Company, and of courſe a correſponding load of London debt to be contracted by the Company, which fell to be *ſo far* provided for by the annuity-tranſaction. Secondly, The Partners who were the debtors of the Company at the criſis of our affairs, when the annuity-tranſaction was through neceſſity reſorted to, in order to ſave the credit of the Company, and the credit of the debtors of the Company, whoſe debts were the real cauſe and occaſion of the London debt, and of the Company's diſtreſs, as well as the natural funds which ultimately fell to bring relief. And, thirdly, The conductors and managers of the annuity-tranſaction, or the granters of the annuity-bonds, who obtained a *total* relief from the Company of their engagements, upon the principle of their having acted from neceſſity alone; and in the belief that there was not only a *neceſſity* for the tranſaction to its full extent, but that the ſums ſo raiſed, the burden of which was to be ſubmitted to, had been truly and faithfully *applied* to the Company's uſe.

Theſe

Theſe ſeveral claſſes of our Partners appear, in our apprehenſion, to be liable in a claim of relief, or indemnification, at the inſtance of the Company, for a juſt proportion of the loſs occaſioned by the annuity-tranſaction. How far that proportion may extend, it is no part of our buſineſs to ſay. We fulfil our duty, when we ſuggeſt to the Partners the probable means of relief; and that claim, together with the tranſactions with Charles Ferguſſon and Company, and Fordyce, Grant, and Company, and the unwarrantable loans to the Meſſ. Alexanders, and others, before mentioned, ſeem to compoſe the chief and proper objects for the attention and deliberation of the Partners.

But there is one obſervation we have made, which we cannot refrain from mentioning, becauſe it is a circumſtance peculiarly favourable to the claims we have ſuggeſted. We mean, that the ſeveral culpable tranſactions, from which our chief calamities have ariſen, were never made known in a conſtitutional manner to the Partners of this Company, ſo as to receive the ſanction of any general meeting of Proprietors. The diſguiſe which covered the affairs of the Company was ſuch, that it is poſſible, perhaps probable, that if the culpable tranſactions complained of had been brought under the view of a general meeting during the buſy period of our great misfortunes, the Proprietors might have been ſeduced into an inconſiderate and raſh approbation of them; but, ſo far as we can diſcover, there is no reſolution or proceeding of a general meeting which can diſappoint or bar our claims of redreſs. We own, it excites our aſtoniſhment in no ſmall degree, to find that no attempt was ever made to get the many deep and ruinous tranſactions mentioned in this Report approved of or homologated at general meetings; and we cannot, therefore, refrain from conſidering the ſilence preſerved upon theſe occaſions, as a very fortunate eſcape which the injured Partners of this Company have made from ſnares which might have been laid for them, perhaps with fatal ſucceſs.

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In the mean time, however, the preſent ſituation of our affairs is ſuch, that we cannot entertain a doubt of its being the true intereſt of all the ſolvent Partners of this Company, and particularly of thoſe who we think have been ſo much injured, and in whoſe favour the claims ſuggeſted in the preſent Report may *in the end* operate as a partial relief, to contribute their joint endeavours to bring to a concluſion the affairs of the Company, in ſo far as their engagements to the public extend. It is plain, that whatever may be the reſult of an accounting among the Partners themſelves, the engagements of the Company muſt yet be fulfilled, in the firſt place; and as the preſent apparent loſs is ſuch as renders conſiderable contribution from the Partners at large neceſſary in order to fulfil theſe engagements, it is the obvious and eſſential intereſt of all concerned to make ſuch contribution as ſhall be deemed neceſſary by our Managers for that purpoſe. The common intereſt obviouſly points out the plan of finiſhing our engagements to the public as one of the chief objects of our attention; and which ought, in the firſt place, to be provided for; becauſe till then our loſſes cannot terminate: and upon conſidering the preſent ſtate of the Company's affairs, and the nature and extent of their engagements, we cannot help recommending it in the moſt earneſt manner to all the Partners, and particularly to the injured Partners, to make the neceſſary contributions for ſtrengthening the hands of our Managers, and enabling them to accompliſh that ſalutary work.

If the claims ſuggeſted in this Report ſhall prove ineffectual for the purpoſe of the expected relief, the contributions which we now recommend muſt, in the end, be made with more diſadvantage, and perhaps with a conſiderable addition, occaſioned by loſſes that may yet emerge. On the other hand, if the claims ſhall prove effectual, the propoſed contributions can be attended with no manner of detriment, other than an inconvenience, which the preſent advance may perhaps, in ſome inſtances, occaſion; and as we have reaſon to think, that there is ſolidity in our claims of relief, the injured

Partners, when they make the preſent contribution, may, with juſtice and propriety, conſider it rather as a depoſit in the hands of our Managers, to inſure the payment of our engagements, and prevent diſtreſs on that account, than as a contribution for the purpoſe of anſwering a liquidated loſs, which they have parted with without any proſpect of return.

At the ſame time, however, if theſe ſentiments are adopted, we ſee no impropriety in meaſures being immediately taken for having ſuch of the claims ſuggeſted in this Report as may be thought well founded, put into a proper channel for being adjuſted, either in the way of judicial inquiry, or private treaty, if ſuch is practicable in a caſe of this nature. And ſo ſoon as any claim is aſcertained and liquidated, it will fall of courſe to be placed to the credit of the Company; and will therefore ſo far operate a relief to the Partners.

In this manner our affairs will gradually be brought to a concluſion; loſſes that otherwiſe may ariſe will be prevented; and all poſſible redreſs will in the end be obtained, for the unparallelled injuries which we think have been done to a large body of the Partners.

Reported Auguſt 30. 1777.

N O T A.

In a Poſtſcript to the Anſwers for Charles Ferguſſon and Company, and Fordyce, Grant, and Company, which has made its appearance ſince the Report was printed, it is ſet forth, p. 30. with reſpect to the loan of L. 29,000 to Mr Fordyce, That although the compilers of the Report have denied, that the propoſals reſpecting that tranſaction were laid before, and approved of by, the Directors at the Air office upon 7th October 1772; yet "it happens, that "Mr Fordyce is in poſſeſſion of the *original* ſederunt, with the "ſubſcriptions of the Directors annexed to it." The fact is in itſelf of no moment; but we would be extremely to blame, if we ſhould permit any perſon whatever to call in queſtion the veracity of our Report, ſo far as warranted by evidence. In this inſtance we are ſorry that the Gentleman compels us to accumulate blame both upon the Directors at Air and upon Mr Fordyce himſelf; and we therefore beg of him to look into the Air ſederunt-book, which he ought already to have done, and then to acquaint the Partners of this Company, if any evidence thence ariſes of the propoſal from Mr Fordyce having ever been laid before the Directors of that office. If no ſuch evidence thence appears, we beg to know, what title Mr Fordyce had to elicit, or the Directors to enter into a private minute of ſederunt, not intended to be made public to their conſtituents through the channel of their records, but to be kept in the private cuſtody of Mr Fordyce.

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APPENDIX.

NUMBER I.

Contract of Copartnery.

WE the perſons after named and deſigned, and hereunto ſubſcribing, conſidering, that the buſineſs of *Banking*, when carried on on proper principles, is of great public utility, particularly to the commerce, manufactures, and agriculture of a country, at the ſame time that it may yield a reaſonable profit to the Bankers concerned in it; and likewiſe conſidering the neceſſity there is, in the preſent ſituation of the country, that a Banking Company ſhould be erected on proper principles at this juncture, have therefore reſolved to eſtabliſh a Banking Company upon a ſolid, creditable, and reſpectable footing: That is to ſay, in conſideration of the *mutual truſt and confidence* we repoſe in one another, we have agreed, and by theſe preſents do covenant and agree, to unite and join ourſelves into a Society or Company, for carrying on a joint trade and buſineſs of *Banking*; for iſſuing notes of hand, payable at our office; lending money on caſh-accounts, bills, or permanent ſecurities; for purchaſing bills of exchange, and diſcounting inland bills or notes, all under the firm, name, and deſignation of DOUGLAS, HERON, AND COMPANY, BANKERS IN AIR, and that for the full ſpace and term of twenty-one years from and after the 6th day of November in this preſent year of our Lord 1769, which is hereby declared to be the time of the commencement of this Copartnery; during which ſpace, at leaſt ſo long as the ſaid Company ſhall ſubſiſt, and not be diſſolved in conſequence of the 14th article hereafter mentioned, we the ſaid parties bind and oblige ourſelves, mutually, ſeverally, and

reſpectively,

reſpectively, to promote and advance *the true intereſt and advantage* of the Company to the utmoſt of our powers. For which end, and towards raiſing a capital ſtock for purſuing and ſupporting this undertaking, we do each of us, ſeverally for our own parts, oblige ourſelves, our heirs, executors, and ſucceſſors whatſoever, to contribute and pay the reſpective ſeveral ſums under written, in manner and at the ſeveral periods after mentioned; namely, his Grace Charles Duke of Queenſberry and Dover, the ſum of L. 2000, (follows the other ſubſcribers); and which ſeveral ſums, with the ſum of L. 54,000 not as yet ſubſcribed for, making in whole a capital ſum of L. 150,000 Sterling money, we hereby declare is at preſent the capital ſtock intended by us for carrying on and proſecuting the aforeſaid buſineſs of *Banking*; but which capital ſtock may be increaſed and augmented (if found neceſſary) in manner herein after mentioned. And in further proſecution of our ſaid agreement and copartnerſhip, for the better regulating, carrying on and conducting the buſineſs thereof, and for preventing as much as may be all debates and queſtions relative thereto, we do hereby become mutually, reciprocally, and reſpectively bound to one another, and ſubject ourſelves, *our ſhares and intereſt in the ſtock* of the ſaid Copartnery, to the articles, conditions, and obligations following; namely,

1. That a ſhare of this Copartnery-ſtock ſhall be the ſum of L. 500 Sterling; but that no Partner ſhall be allowed to ſubſcribe for, or hold more than four ſhares, or have leſs than one ſhare; nor ſhall any perſon be allowed to ſubſcribe by a company-firm, or in name of or for the behoof of a company, ſeeing the perſon only who ſubſcribes ſhall be intitled to vote and act as a member of this preſent Company.

2. That every Copartner ſhall, and hereby becomes bound to pay into the hands of the Caſhier for the Company, 20 *per cent.* of each ſhare ſubſcribed for by him, at ſuch times, and by ſuch proportions, as a general meeting ſhall appoint; as alſo to pay the remainder

der of his ſtock or ſhare to the Caſhier for behoof of the Company, at ſuch times, and by ſuch proportions or calls, as a general meeting of the Company ſhall afterwards appoint and direct, and that within thirty days of any order of a general meeting to pay ſhall be made and entered in the ſederunt-book thereof, *with one fifth part more* in name of penalty in caſe of failure, and the legal intereſt of the ſaid proportions or calls, from the times appointed for payment, until the actual payment thereof; and which order the Caſhier for the time is hereby required, within three days of its date, to intimate to each Copartner, by a miſſive letter ſubſcribed by him, and put into the poſt-office: And in caſe any Partner ſhall fail to make payment as aforeſaid within the ſpace of ſixty days after the day affixed for payment, with the legal intereſt from the day ſo affixed, then it ſhall be in the power of the next general meeting, after ſuch failure, to order a proſecution to be carried on in the name of the Company, againſt ſuch deficient Partner; and in caſe of a decree paſſing againſt him, and that he ſhall not within the days of the charge to be given thereon, pay up the whole ſums thereby found due or decreed, that then it ſhall be in the option of the Company, either to proceed in legal diligence thereupon, or to declare and find his ſhare in the ſaid Copartnery for ever forfeited and loſt; and that the whole money paid in by him preceding that time, ſhall, *ipſo facto*, belong to the Company, without his having any further intereſt or concern therein; ſuch payment to be made always at the Company's principal office; and the failure therein to be certified by the Company's Caſhier for the time, ſo as to aſcertain the forfeiture, without declarator, proceſs, or other order of law requiſite in aid thereof; upon the declaration and finding of which, all further diligence ſhall ſtop upon the decree obtained in manner foreſaid.

3. In order to render this concern as general as the public utility ſeems to demand, it is hereby declared, That, by a general meeting, a committee ſhall be named, conſiſting of twenty-three perſons, whereof

whereof five to be a quorum; which committee, or their quorum, is hereby impowered to receive all ſuch further ſubſcriptions, towards this undertaking, as may be tendered to them betwixt and the firſt Monday of May next to come, by ſuch perſons as they ſhall judge may prove proper and uſeful Partners of this Company, for promoting the general ends and purpoſes in view; and which additional ſum ſo to be ſubſcribed for, are hereby declared, and, by a ſeparate deed to be executed by the ſubſcribers relative hereto, ſhall be alſo declared, to be a further capital ſtock for carrying on and proſecuting the ſaid buſineſs of Banking: Provided always, That the preſent ſubſcribed capital ſtock, with ſuch additional ſubſcriptions, ſhall not *in cumulo* exceed the ſum of L. 150,000 Sterling: That the ſaid acceding ſubſcribers, ſhall have the ſame privileges and profits, be ſubjected to all expences and loſſes, and, in general, to the whole rules and regulations herein contained, in the ſame manner as if they had been original partners, and had ſubſcribed theſe preſents along with us; they being always bound to pay the ſeveral calls upon the ſhares they may take, with the legal intereſt thereof, from the period the ſame had been paid by us before their admiſſion: Provided nevertheleſs, That it ſhall be in the power of the Company, at any general meeting, further to augment and increaſe their capital ſtock, by the admiſſion and aſſumption of more copartners, if the ſame ſhall be found expedient and proper by two thirds of a general meeting, convened either perſonally, or by proxy; but that no further increaſe ſhall take place until a motion be made to that effect, and recorded in the ſederunt of one general meeting, to remain undetermined till the next following general meeting in courſe, when, and no ſooner, ſuch motion may be adopted by a majority of two thirds of the partners preſent, either perſonally, or by proxy, as ſaid is.

4. That it ſhall not be allowable for the ſaid *Company*, or the *Directors* thereof for the time being, *upon any ground or pretence whatſoever*, directly or indirectly, to uſe, exerciſe, or follow *any other* commerce,

commerce, traffick, or buſineſs, with the joint *ſtock* of this Company, or any part of it, except towards the undertaking of *Banking* intended by this Copartnery, as above mentioned.

5. That the profits ariſing from the ſaid joint ſtock and copartnery, are to be divided among the partners, in proportion to the ſhares or intereſt which each of them have, or may acquire, in the capital ſtock, by ſuch a rate of dividends, and at ſuch times, as ſhall be ordered by the ſederunt of a majority of two thirds of any general meeting, perſonally, or by proxy, convened; and that the loſſes *ariſing from the ſaid copartnery-buſineſs* (if any are) ſhall be ſuſtained and borne by the ſaid Partners, according to their ſaid proportions and ſhares in the ſtock; of which loſſes the partners oblige themſelves ſeverally to relieve each other accordingly.

6. That the ſeat of the Company's capital operations, particularly for payment of caſh, ſhall be at Air, or ſuch other place as two thirds of the votes of any general meeting ſhall think proper to remove it to; a motion having been firſt made at a previous general meeting, and the reaſon for ſuch removal aſſigned by the perſon making the motion; which motion is to be inſerted in the ſederunt-book, and the propriety of it to be conſidered at a ſubſequent general meeting, as already mentioned.

7. That, beſides this general office, ſeparate branches are to be eſtabliſhed at Edinburgh and Dumfries; at which branches caſh-accounts may be opened, and operations made thereon, by iſſuing notes, diſcounting bills, and receiving payments; but that no caſh ſhall be paid for notes at theſe branches, unleſs in ſuch caſes as the Directors reſident at that place, or a quorum of their number, ſhall permit or appoint; and, in the event of the Company's principal office being removed from Air, in manner above mentioned, a branch is to be eſtabliſhed at that place, having the ſame powers, and being ſubject to the ſame regulations with the branches above

mentioned: And it is hereby declared, That it ſhall be in the power of a majority of a general meeting to open other branches, having the ſame powers with thoſe to be eſtabliſhed at Edinburgh and Dumfries, at ſuch places as the conveniency of buſineſs, the utility of the public, and the intereſt of the Company, may ſeem to require.

8. For the proper management of the Company's buſineſs, there ſhall be choſen annually a Governor, or Preſes, of the general meetings; whoſe buſineſs it ſhall be, to preſide in the general meetings; and who, in caſe of any equality, ſhall be intitled to a double or caſting vote; and in caſe of the abſence of the Governor, or Preſes, from any general meeting, a Vice-Preſident may be choſen by the meeting, who ſhall, at that meeting, have the ſame power of a double or caſting vote. There ſhall alſo annually be choſen, nine Directors to officiate at the principal office at Air, *five whereof to be a quorum*; nine Directors to officiate in the branch at Edinburgh, *five whereof to be a quorum*; and nine Directors to officiate in the branch at Dumfries, *five whereof to be a quorum*; and in caſe of any other branch, or branches, being eſtabliſhed elſewhere, the number of Directors to officiate at that branch, or branches, together with their quorum to be determined by the general meeting eſtabliſhing the ſame; all which Directors ſhall be *intitled*, in caſe of their being preſent either at the principal office, or in any of the branches, at the time any buſineſs is tranſacted there, which properly belongs to the management of Directors, to vote and act *together with* the Directors properly belonging to the ſaid principal office, or branch, where they are for the time, although they were originally nominated and deſtined to act in another place: That the buſineſs of theſe Directors ſhall be, to ſuperintend and direct the Caſhier, Accountant, Tellers, or other officers, to be employed by the Company, whether at the principal office, or branches; to diſcount bills; allowing of caſh accounts or credits, and recalling them, when found neceſſary; authoriſing the granting of poſt-bills, promiſſory notes, in favour of a

a creditor named therein; and, *in general*, to conduct the proper buſineſs of the Company in the manner that ſhall be found moſt expedient and beneficial: and their actings ſhall be binding upon all the partners, to the extent of their reſpective ſhares, *unleſs thoſe are varied and altered by a general meeting*: That theſe Directors, or their *quorum*, ſhall meet once a-week at the general office and branches of the Company, on ſuch day of the week as ſhall, from time to time, appear moſt expedient to, and at a place to be appointed by, a general meeting; and at theſe their weekly meetings ſhall appoint one of their number to attend each day of the ſubſequent week, and, failing one, another, in order to tranſact the buſineſs of the Company in general, and, in particular, to give directions to the Caſhier and other officers, to authoriſe the granting of poſt-bills and promiſſory notes, and to do every other thing in common courſe; only, in the caſe of diſcounting bills, he is to call in the aid and advice of another Director; which Director, or Directors, acting from day to day, ſhall be reſponſible to the weekly meeting of the Directors, the proceedings of the weekly meetings being always ſubject to the review of a general meeting; which Directors ſhall have a reaſonable allowance for their attendance and loſs of time, to be fixed, from time to time, by the general meetings: That all the above Directors ſhall be annually choſen at the general meeting held upon the firſt Monday of November yearly.

9. That there ſhall be appointed, for the principal office, and at each branch, a Caſhier, who ſhall receive all payments made to the Company, and who ſhall make ſuch payments as fall to be made in the courſe of buſineſs, at the place where he is employed, and to manage ſuch other buſineſs as ſhall be allotted to him by the Directors. There ſhall likewiſe be appointed, at the principal office, and each of the branches, an Accountant, whoſe buſineſs it ſhall be, to keep the books of the Company, to make calculations, and to do ſuch other pieces of buſineſs as ſhall be allotted to him by the Directors; beſides which ſervants, at the principal office, there ſhall be appointed

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one or more Tellers, as ſhall be found neceſſary, for the purpoſe of giving caſh for ſuch of the Company's notes as ſhall be preſented at the office for payment, aſſiſting the Caſhier in making and receiving payments, and tranſacting ſuch other buſineſs as ſhall be allotted him by the Directors: That each of theſe ſervants ſhall receive ſuch a ſalary as ſhall be fixed and allowed of at a general meeting, in full of all perquiſites, fees, or emoluments whatever, which they are expreſsly prohibited to exact or receive: and, *in reſpect of the truſt* neceſſary to be repoſed in the Caſhiers and Tellers, they ſhall not only give an oath *de fideli*, but, *at their admiſſion, ſhall find ſufficient caution* for the due, honeſt, and faithful execution of their office, and for the *full damages* to be incurred by their non-performance, as alſo to pay up what arrears ſhall be found owing to the Company; it being always held to be a ſufficient foundation for a charge for payment of ſuch arrears, that the amount of them is aſcertained by an account, certified under the hand of the Accountant, to be taken from the Company's books; and if a charge is given, no ſuſpenſion ſhall paſs but upon conſignation only, this being to be made a ſpecial condition in the bonds to be granted by the Caſhiers and Tellers, and their cautioners: That the Accountants ſhall alſo take an oath *de fideli*; and that none of theſe ſervants ſhall be removeable, unleſs by a general meeting, in the event of its being declared, by two thirds of the votes of ſuch meeting, that their conduct has been exceptionable, or that they have been remiſs or inattentive to their charge; provided that theſe ſervants ſhall be taken ſpecially bound, not to quit nor give up their offices without a previous premonition, to be made at the diſtance of at leaſt ſix months, in due form, to the weekly meeting of Directors, at the office or branch to which ſuch ſervant belongs, ſo as that the Company may have full time to ſupply any vacancies properly, without any ſtop or hinderance of buſineſs.

10. That a general meeting of the whole Partners ſhall be held at the principal office of the Company twice in the year, viz. upon the firſt

firſt Mondays of the months of May and November, to lay down ſuch rules, and to give ſuch directions, anent the Company's buſineſs and affairs, as to them ſhall ſeem proper; that they ſhall regularly record all their proceedings in a ſederunt-book, to be ſigned by the Preſes of each meeting, and the Directors preſent for the time, in preſence of the meeting, and after being read over to them; that the Directors ſhall be bound by every general rule preſcribed to them by a general meeting; and that for the accommodation of ſuch Partners who may reſide at a diſtance, or be neceſſarily detained from any general meeting, they ſhall have liberty of giving a general or ſpecial power of proxy, by a miſſive under their hands, addreſſed to any Partner, authoriſing him to act and determine in the choice of Directors, or other officers, or ſervants, or in any queſtion relating to the continuance or diſſolution of the Company, or in any other queſtion, in the determination of which a majority of two thirds of the voters is requiſite; ſuch miſſive being always marked in the ſederunt-books, and lodged at the Company's office, to aſcertain the authority of the Partner who acts under it until recalled by the granter; but no proxy ſhall intitle any perſon to vote, or act, in ſuch matters as fall within the ordinary adminiſtration of the Company's affairs; all which are to be determined by a majority of the voices of the Partners preſent, as theſe only can form a proper opinion of the matters brought before them: That no ſmaller number than one third-part of the Partners, that is, having a third part of the ſtock for the time, ſhall be deemed a general meeting, or have the powers in thoſe caſes where a majority of votes are deciſive; and no ſmaller number than one half of the Partners, or thoſe poſſeſſing a half of the ſtock of the Company, including proxies, ſhall be deemed a general meeting in thoſe caſes where two thirds of the votes are requiſite to determine a queſtion; and that all queſtions to be canvaſſed in theſe general meetings ſhall be determined by ballot, each partner having a voice, or ballot, for every ſhare he holds in the capital ſtock of the Company.

11. That, beſides the general ſtated meetings above mentioned, it ſhall be in the power of the Governor, or Preſes, of the general meetings, as alſo of five Directors, to call a general meeting when the affairs of the Company ſhall require; which meeting is to be called upon fourteen days previous notice, by an advertiſement inſerted in the Edinburgh news-papers, and alſo to be intimated to each partner, by a miſſive letter, ſigned by the Caſhier, and put into the poſt-office, within three days from the time that the firſt intimation is inſerted in the news-papers.

12. That the whole of the Company's tranſactions and buſineſs ſhall be fully and fairly entered, and kept, in a ſet of regular and diſtinct books, which ſhall be filled up, poſted, and brought to a juſt and true balance once every year; and ſhall be atteſted and ſigned as ſuch by the Directors, Caſhier, and Accountant, of every year, ſo as to be ready for the inſpection and reviſal of the next general meeting, on the firſt Monday of May thereafter; and ſo forth yearly at every general meeting during the ſubſiſtence of this Company: That theſe books ſhall remain and be kept at the general office, or at the branches to which they belong reſpectively, and ſhall not be removed therefrom, without the conſent of a majority of two thirds of the Partners, at a general meeting; and that any three of the Partners concurring together in demanding inſpection thereof, ſhall have free acceſs and liberty to examine and peruſe the ſame in the preſence of two of the Directors and the Caſher, at all times when required.

13. That all *promiſſory notes*, *bonds*, *bills*, *contracts*, *and other writings*, relating to the ſaid joint buſineſs, ſhall be taken and given under the aforeſaid firm, name, and deſignation, of DOUGLAS, HERON, AND COMPANY, BANKERS IN AIR; and their *Caſhier* and *Accountant*, *at their principal office*, *ſubſcribing*, *on powers from the Company*, to be given, and entered in their ſederunt-book aforeſaid, ſhall bind the whole Company as effectually as if they had ſigned every note, bond, bill, or other

other writing themſelves, or as if they had granted a ſpecial power for ſigning every ſuch deed and tranſaction; diſpenſing hereby with, and renouncing, all exceptions or objections which in law may, or can, be offered againſt all notes to be iſſued by the Company, in manner foreſaid; as alſo the *Caſhier and Accountant*, at the ſeveral branches, ſhall have power to grant receipts for payments made on caſh-accounts, ſubſcribe poſt-bills, or promiſſory notes, by order of the Directors, and ſuch *other writings* as the neceſſary buſineſs of the Company to be tranſacted at the branch to which they belong may require; all which ſhall be binding on the Company; they being always obliged to relieve their ſaid Caſhiers and Accountants ſo ſubſcribing, of all notes, bonds, bills, and other writings, to be granted by them, in virtue of the ſaid powers, and under the ſaid firm and deſignation, which is hereby agreed upon, ſhall be retained by the Company, ay and until the final diſſolution thereof; and that the Company's caſh, notes, and other ſecurities, or deeds of importance, which are not neceſſarily connected with the buſineſs carried on at particular branches, ſhall be kept in a vaulted place, or iron cheſt, in their principal office, under three ſeparate locks, the keys whereof to kept by the Caſhier and two of the Directors by turns, to be taken out from time to time, and delivered to the Caſhier, upon his receipt, to be entered in a book; who again ſhall deliver to the Teller what notes or caſh he may need for iſſuing or changing, upon a like receipt by him to the Caſhier.

14. That notwithſtanding of the term ſtipulated for the endurance of this Copartnery, yet it ſhall be lawful to and in the power of any number of Copartners poſſeſſed of two third-parts of the capital ſtock for the time, to diſſolve and put a period to this Company, and their ſaid joint buſineſs of Banking, at the end of the firſt ſeven or the firſt fourteen years of this Copartnery, but at no other period during the ſubſiſtence thereof; and if the ſame ſhall happen to be ſo done at the end of either of theſe two periods, entered

tered and recorded in their ſederunt-book, and ſigned by their Preſes, all further buſineſs in the iſſuing of notes, &c. ſhall be ſtopped and diſcontinued, and the diſſolution of the Company ſhall be duly advertiſed in the Edinburgh news-papers: *Provided always*, that in caſe it ſhall appear, on bringing the affairs of the Company to a yearly balance, that *fifty per cent.* of the capital ſtock is loſt; or if, *at any time*, it can be ſhown from the Company's books, that a *loſs* hath been incurred *to that extent*; in either of theſe events it ſhall be in the power of any *one* of the Partners, at the next general meeting of the Company thereafter, or at any other ſubſequent general meeting, provided before that time the affairs of the Company are not in a better ſituation, to *inſiſt*, that the ſaid Company ſhall be forthwith diſſolved; and ſuch meeting is hereby impowered to diſſolve the Copartnery, *and ſhall be obliged to diſſolve it accordingly*, by a minute to be entered in their ſederunt-book, and to be advertiſed as ſoon as poſſible in all the news-papers publiſhed in Scotland.

15. And *in any of the events* above mentioned, it is agreed upon, that immediately thereafter, or at the expiration of the foreſaid term of twenty-one years, the general meeting ſhall be obliged to authoriſe and appoint proper perſons, with all convenient diligence, to levy the whole debts due to the Company, and to turn their eſtate and effects into caſh, and apply the neat proceeds thereof, in the firſt place, to the extinction of the debts due by the Company, and next, towards reimburſing the ſaid Partners of ſuch ſums as ſhall have been advanced by them for carrying on the ſaid joint buſineſs, and the remainder or reſidue ſhall be divided amongſt the ſaid Partners proportionally, according to their reſpective ſhares and intereſts aforeſaid; *and in caſe any of the debts* and effects belonging to the Company ſhall happen to be outſtanding at the expiration of twelve months, to be computed from the act of diſſolution of the Company as aforeſaid; then, and in that caſe, *the ſaid outſtanding debts* and effects ſhall be divided into lots, and a value fixed thereon by a general meeting of the ſaid Partners, with this reſtriction, That

That none of theſe lots ſhall exceed in original value the ſum of L. 500 Sterling; and *which debts* and effects, divided as aforeſaid, ſhall be ſold by public roup, at Edinburgh, intimation being always made thereof in the Edinburgh news-papers thirty days preceding the ſale.

16. That if any Partner ſhall incline to ſell or transfer his ſhare or ſhares in the Copartnery, he ſhall be obliged to give notice of the intended ſale, and perſon or perſons to whom he propoſes to ſell, to the Caſhier, thirty days prior at leaſt to a general meeting; and of which the Caſhier ſhall immediately adviſe the whole Partners, by circular letters: That at the following general meeting the perſon or perſons named as the propoſed purchaſer or purchaſers, muſt be approved of by two thirds of the whole votes preſent, otherwiſe no ſale can take place. The Company hereby bind and oblige themſelves to free and relieve the ſeller of all their debts, deeds, and contractions, made poſterior to the actual ſale, which are hereby declared to be transferred from the ſeller to the purchaſer to all intents and purpoſes whatever, and the purchaſer ſhall be taken bound in theſe terms.

17. That in the event of the death or inſolvency of any of the Partners, the heir, executor, or the aſſigns, of the deceaſed, and the creditors of the inſolvent Partner, ſhall be obliged to receive and draw their ſhare in the ſtock and profits thereof, according as the ſame ſhall ſtand at the laſt and preceding ſettlement of the Company's affairs, with intereſt thereof at 4 *per cent.* from that ſettlement till payment is demanded, and the legal intereſt thereafter until complete payment.

18. That none of the Company's ſtock, profits, or effects of any kind, ſhall be made ſubject to the particular private debts of any of the Partners, nor be affected by any diligence at the inſtance of their creditors, ſo as to give ſuch creditors uſing diligence any other

right to the ſubject, than the preciſe ſum at which it ſhall ſtand fixed by the laſt preceding ſettlement of the Company's affairs, in manner mentioned in the preceding article.

19. That as every neceſſary particular which experience and trial may diſcover, cannot at preſent be foreſeen, ſo the Partners convened at their ſeveral general meetings, ſhall have power, from time to time, not only to ſettle their plan of management, but alſo to alter any of the foregoing regulations, *excepting thoſe hereafter declared to be unalterable*; and to make ſuch further rules, regulations, and by-laws, as they ſhall find to be neceſſary, and conducive to the true intereſt of this Company, and agreeable to the confeſſed intent and meaning of this preſent Copartnerſhip: and all *which rules or by-laws*, being duly recorded in their ſederunt-book, and ſigned in their preſence by their Preſes and Directors preſent at ſuch meeting, ſhall be equally binding, *as if the ſame had been inſerted in this preſent contract*, until the ſame are altered, varied, or repealed, by a ſubſequent general meeting; or others adopted in their place, as more conducive to the general good of the whole Company: *Declaring always*, That the following articles are not to be varied or altered by any ſuch regulations, viz. the *firſt*, *fourth*, *twelfth*, *fourteenth*, and *fifteenth*; which articles before written are hereby expreſsly declared and agreed upon to be fundamental and *immutable* articles of this Copartnery, and *unalterable*, either by the *whole*, or by any of the ſubſcribing Partners, or by any perſon or perſons who may hereafter become Partners in the ſaid Company; and that nothing herein contained ſhall be underſtood to import a power in any general meeting whatever to compell any Partner to pay or contribute any more to the Company's ſtock than the preciſe ſum by him originally ſubſcribed for.

20. And whereas it may tend to the utility of the public, and the intereſt of the Company, to aſſume as partners in this concern ſundry perſons reſiding in England who have no domicil in Scotland, and

and who are therefore not ſubject to the juriſdiction of the courts of law in Scotland, whereby ſome of the clauſes in this contract may become ineffectual in ſo far as reſpects them; therefore it is hereby provided, That all ſuch perſons ſhall not only ſubſcribe and execute this deed, in ſuch way and manner as that it may become actionable againſt them in the courts of law in England, but ſhall alſo at the time of ſubſcribing it, by a proper writing under their hand, conſtitute to themſelves a domicil in Scotland, at which all citations, charges, requiſitions, and premonitions, may be uſed againſt them, to the ſame effect as if they were perſonally reſident in Scotland.

21. The whole Partners, by theſe preſents, become bound, each of them to the other, for the true, honeſt, and faithful performance of their reſpective parts of the premiſſes, in the whole heads, clauſes, and articles thereof, with the *good faith* neceſſary to ſo public an undertaking, and that under the penalty of one fifth part of each ſhare of the capital ſtock to be paid, by the party failing, to the Company's Caſhier, for behoof of the Company, over and above performance.

22. That an extract of this contract, with an extract under the hands of the Company's Caſhier and Accountant, of any minute, order, or reſolution of any general meeting, or of the Directors for the time being, at their principal office, or at any of the branches, ſhall be a ſufficient ground and warrant for diligence, by horning, or otherwiſe, in terms of the clauſe of regiſtration after mentioned, at the inſtance of the Company, for payment of the ſeveral ſhares ſubſcribed for, or of ſuch parts thereof as ſhall be called for from time to time.

Laſtly, In regard it is impoſſible that all the Partners can have room to ſign the joinings of the ſeveral ſheets on which this contract is wrote, they have, therefore, impowered the ſaids Meſſ. Andrew

Croſbie

Croſbie and Alexander Fergusſon, Advocates, two of their number, to ſign the joinings of the ſeveral ſheets hereof, which they hereby declare to be as valid and ſufficient as if the ſame had been ſigned by all and every one of themſelves, diſpenſing hereby with every objection that can be made on that head. And they all conſent to the regiſtration of this preſent contract in the books of council and ſeſſion, in Scotland, or in any other competent record, that, upon a decree to be duly interponed, letters of horning, upon a ſimple charge of ſix days, and all other neceſſary execution, may paſs, and be directed, in the uſual form. For which purpoſe, they all of them conſtitute

their procurators. In witneſs whereof, &c.

NUMBER II.

The By-laws eſtabliſhed for the conduct of Directors and Caſhiers.

(*a*) AT a general meeting of Proprietors held at Air the 7th November 1769,

The by-laws for the conduct of the Directors were read, article by article, and, with the obſervations made thereon, unanimouſly approved of, ordered to be ingroſſed, and copies to lie at each office; and the by-laws for the Caſhiers, and the other officers of the Company, are remitted to the whole Directors, with power to them to adjuſt the ſame, and to order copies for each office. *Vide* art. 11. of that day's ſederunt.

At

At a general meeting of Directors at Air 7th November 1769,

The meeting having conſidered the by-laws as made out for the conduct of the Caſhiers, and other officers of the Company, with the obſervations and amendments made thereon, they do approve thereof, and direct a copy of the ſame, with the by-laws for the Directors, (already approven of by laſt general meeting), to be entered in the ſederunt-book of each office. *Vide* art. 5. of that day's ſederunt.

(*b*) *By-laws for regulating the conduct of the Directors.*

1. The Directors are to meet once a-week, on any day they ſhall find moſt convenient for them, at the hour in the forenoon they ſhall appoint; when the operations of the former week ſhall be laid before them by the acting Director; which ſhall be examined, and a plan propoſed for the buſineſs of the enſuing week.

2. The weekly meetings to diſcount good bills, of no longer dates, however, than three months, and to purchaſe good bills on London; to give and withdraw caſh-accounts, under theſe limitations: That no caſh-account ſhall be ſmaller than L. 200 Sterling, *nor exceed* L. 1000 Sterling, except in *particular caſes*, where the honour and intereſt of the Company may require to give larger credits, the propriety of which muſt be determined by the Directors of *all the branches*; and in caſe any one Director, in giving of caſh-accounts, or ordering them to be withdrawn, ſhall object thereto, and if he inſiſts that his objections, to which, if he pleaſes, he may add his reaſons for objecting, ſhall be marked in the ſederunt-book of the Directors, in which caſe the affair ſhall be brought under the review of next general meeting; but in mean time the order of the Direc-

tors ſhall take place; unleſs the meeting of the Directors is not a full one, in which caſe the matter muſt lie over undetermined for a fortnight, unleſs a full meeting of the Directors happens ſooner; and every queſtion relating to diſcounting or purchaſing bills, giving or withdrawing caſh-accounts, &c. to be determined by ballot, when the majority of votes ſhall carry it.

3. Each Director ſhall have charge of the buſineſs in his turn, week about; and if he is obliged to go out of town, he muſt prevail on another Director to officiate for him.

4. The acting Director to attend every day in the office, at ſuch hour, in the forenoon, as will beſt anſwer the buſineſs of each branch, (but that hour to be fixed); and to continue in the office as long as buſineſs requires.

5. The buſineſs of the acting Director is, to inſpect the conduct of the ſervants; to give the neceſſary caſh and notes out of the iron cheſt, and to ſee the proper depoſits made in it; both of which muſt be entered in the proper books, and marked with his initials, and alſo by the other attending Director, to whom the weekly meeting ſhall, from time to time, commit the charge of the third key; to deliver to the Caſhier the neceſſary checks for drawing bills on London, and on the different branches, and to ſign thoſe bills; to regulate the quantity of money the Teller ſhall keep in his hands; to inſpect the Caſhiers and Tellers balances, examine the vouchers, and, as often as he thinks proper, to count over the money in their hands, by numbering the bags and parcels, which muſt at leaſt be once a-week; and that on no ſtated day, but occaſionally, as he has leiſure; and, on ſuch days, to ſign the balances; and, every time he counts the money, he muſt untie and count over, one by one, two bags of gold, two bags of ſilver, and two parcels of notes.

6. The

6. The acting Director to read the correſpondence, and give directions to the Caſhier for anſwering the letters, and to inſpect ſuch anſwers before they are forwarded.

7. At Edinburgh there are to be two days for diſcounting bills; one of them the day of the weekly meeting, the other, ſuch day as ſhall be found moſt convenient for the diſpatch of buſineſs; when the *acting Director*, with the aſſiſtance of *other two* Directors, to determine what bills ſhall, or ſhall not, be diſcounted; with liberty to any of the other Directors to attend that pleaſe, and to give their vote in every queſtion, which are to be taken by ballot, when moſt votes ſhall carry: *bills on London to be purchaſed in the ſame manner*; and both with this reſtriction, That in caſe any one of the Directors ſhall object either to the diſcounting any inland bill, or bills, or to the purchaſing any bill or bills of exchange, although the other Directors give their opinion for diſcounting or purchaſing ſuch bill or bills, yet the Director objecting, if he thinks the matter of importance, may inſiſt, that it ſhall lie over till next day; when as full a meeting of all the Directors as can be got ſhall be called, to conſider, whether ſuch bills ſhall be diſcounted or purchaſed; and the queſtion ſhall alſo be determined by ballot: the purchaſing bills of exchange to be part of the *daily* buſineſs of the *acting Director*, and his *aſſiſtants*.

8. A *Minute-book* for diſcount, and for purchaſing bills of exchange, to be kept; and every bill ordered to be bought, or diſcounted, *to be entered therein*; and the *entries* of the day to be *ſigned* by the attending Directors, or their Preſes; and as all the Directors have charge of the buſineſs in their turn, the *two next* in order to the acting Director to attend for *purchaſing* and *diſcounting* bills. If neceſſity prevents them, they muſt procure others to attend for them, that the buſineſs of the bank may not be delayed.

9. The

9. The acting Director of the week to receive the key of the iron cheſt from the preceding Director; and, if he pleaſes, to ſatisfy himſelf of its contents, by counting over the bills and parcels; and that Director to keep the key ſafe until he deliver it to his ſucceſſor; the other key to be kept by any Director the weekly meeting may appoint.

10. The Directors ſhall, every week, correſpond with one another, and forward to each other a ſtate of their affairs, in manner as exemplified; and ſhall ſend to the different branches ſuch quantities of notes and caſh, note-paper, and printed notes, as ſhall be found to be of general utility.

11. The Directors at Edinburgh to keep the frames for making paper, and the types, in the iron cheſt, with the greateſt care; and to give out, on receipt, ſuch a quantity of types as ſhall be needed, for printing the notes; which ſhall be counted in again before giving up the receipt; and one of the Directors to attend while the notes are printing, or ſome one for them in whom they can confide.

12. At Air, the Directors to keep the ſeal, with the greateſt care, in the iron cheſt; and one of them to be preſent at ſealing the notes; which he ſhall deliver to the Caſhier upon receipt.

(*c*) *By-laws for regulating the conduct of the Caſhiers.*

1. That the Caſhier ſhall give punctual attendance at the office; as, beſides his own particular department, he is overſeer and inſpector of all the other clerks, to keep them to their duty.

2. That he ſhall receive all the letters; and after conſulting the acting

ing Director, ſhall give the neceſſary anſwers; which ſhall be ſhown to the acting Director, if he chuſes it, before being forwarded.

3. That he ſhall have the charge of, and be anſwerable for, all the note-paper, bank-notes, and ſpecie, he receives; which ſhall, however, be lodged in the caſh-cheſt, and be put in and given out at ſight of the acting Director, who keeps one key, and one of the other eight Directors appointed to keep the other key.

4. That he ſhall immediately enter, in their proper books, all depoſits made in the iron cheſt, and all outgivings from it, whether of *note-paper*, bank-notes, or ſpecie; and ſhall mark the ſame with his initials, and ſhall alſo ſee it marked with the initials of the attending Directors.

5. That he ſhall keep his own caſh-book in a regular, accurate manner, charging himſelf with all the bank-notes and ſpecie he receives, and taking credit for all the money he pays away, and ſhall balance his book every night, and have his caſh, balance, and vouchers, ready to be examined by the acting Director, or any two Directors who may require it, at any time they pleaſe; ſuch examination being always made in preſence of other two of the Directors, or Company's ſervants.

6. That he ſhall deliver to the Teller the neceſſary ſums of money and ſpecie, taking his receipts for the ſame; and ſhall inſpect his caſh-book every night, compare and receive the vouchers, ſum the pages, and always mark it,

" Examined the caſh-tranſactions for this day, find them
" right, and have received the vouchers.

A. B. Caſhier."

7. That he ſhall next morning quote up the vouchers, and lay them by in their proper places.

8. That he ſhall act as ſecretary at the meeting of Directors, keep their ſederunt-book, and *enter in the minute-book* for purchaſing bills of exchange and for diſcounting inland bills, *all bills they ſhall order to be bought or diſcounted*, and ſhall cauſe the meeting, or the Preſes, *ſign ſuch order*; and that he ſhall cauſe regularly proteſt ſuch bills as are not duly paid.

9. That he ſhall calculate the exchanges and diſcount on all bills ordered to be bought or diſcounted; and, after they are checked by the Accountant, ſhall deliver them, with a note thereof, to the Teller.

10. The Caſhier at the Edinburgh branch, ſhall, at ſight of the attending Directors, deliver out, on receipt, the note-paper that from time to time ſhall be ordered to be printed; and, when printed, ſhall examine the quantity, before giving up the receipt, in caſe thoſe attending on the printing may have have committed any miſtake; all which he ſhall enter in the proper books.

11. The Caſhier at the Edinburgh branch ſhall forward all the printed note-paper to the office at Air, in manner as the Directors there ſhall order him; and the Caſhier at Air ſhall forward, to the different branches, *bank-notes*, in ſuch quantities, and in ſuch a manner, as the acting Director, or Directors, ſhall order; both taking receipts for what they forward, and adviſing the different offices how much is forwarded; who ſhall, in courſe of poſt, own receipt thereof after receiving it.

12. The Caſhiers ſhall, in ſame manner, forward ſpecie to the different branches, as they ſhall be ordered by the Directors.

13. The

13. The Caſhier at Air office ſhall, at ſight of the attending Directors, receive out of the iron cheſt the neceſſary quantity of printed note-paper, to be ſigned and filled up; which ſhall be regularly entered in the proper book, and for which he ſhall be reſponſible.

14. The Caſhier at the Air office ſhall ſign all the bank-notes to be iſſued by the Company.

15. The Caſhiers ſhall fill up and ſign all the bills upon London, and on the different branches; which ſhall be marked by the Teller's initials on his receiving the money, after being firſt ſigned by one of the Directors.

16. The Caſhier ſhall execute what further orders the Directors, or acting Directors, ſhall give him; and ſhall give the greateſt attention to the proper diſcharge of his duty.

17. The Caſhier ſhall not engage in any trade or buſineſs which may interfere with the duty and attendance due to the Company.

18. The Caſhier ſhall on no account apply any of the Company's money to any other purpoſe than the Company's buſineſs, under pain of immediate forfeiture of office.

19. The Caſhier ſhall take none of the Company's books or papers out of the office, but by order of the Directors.

20. The Caſhier ſhall take care, that the fires and candles are properly put out at night, and the doors and windows properly ſhut.

21. The Caſhier ſhall put up his money in the following manner, viz. The ſilver in ſmall bags, containing ten pounds each, which

which he ſhall tie, and mark the ſum and his initials on the bag; and ſhall put ten of theſe bags in a larger one, which he ſhall tie and ſeal, and mark the ſum and his initials thereon: and, in like manner, one hundred guineas ſhall be put up in a ſmall bag, and marked; and ten of theſe put up in a large bag, and ſealed, and marked: the twenty ſhillings and guinea notes to be put up in parcels of twenty each; and five of theſe tied up together and marked: and the larger notes to be put up in parcels of one hundred pounds each; and ten of theſe put up together, tied, and marked thus:

"L. 1000. A. B. Caſhier."

NUMBER III.

The Sederunts of General Meetings of Proprietors or of Directors making Alterations or Additional Regulations.

AT a general meeting of Proprietors held at Air 6th and 7th November 1769,

November 7.

(*a*) A motion was made, That the Caſhiers, Accountants, and the other officers in the employ of the Company, ſhould on no account be allowed to be bail or ſurety for any perſon in caſh-accounts, or any other tranſaction with this Company. The ſame was unanimouſly reſolved, and ordered to be ſtrictly obſerved. *Vide* art. 10. of that day's ſederunt.

(*b*) It

(*b*) It was moved, and unanimouſly reſolved, That there ſhall not be above one member of any trading company or ſociety whatever in the direction of this Company, at any of their offices, at one and the ſame time, whatever be the number of ſuch members in one ſociety or company. *Vide* art. 13. of that day's ſederunt.

At a general meeting of Proprietors held at Air 7th May 1770,

(*c*) Upon conſidering the ninth article of the contract, which requires, That the Caſhiers of the Company do find unlimited bail for the due, honeſt, and faithful execution of their office, without reſtriction to any ſpecific ſum, which the meeting finding to be a hardſhip upon the bailſmen for their caſhiers, while they remain bound to the ſociety without being able to know to what extent any ſuch obligation may ſubject them; they do, therefore, unanimouſly agree to vary the bail required by this article thus far, That the cautioners and bailſmen for their caſhiers, at the office, and different branches, ſhall never be further bound to the Company than to the extent of L. 15,000 Sterling for each Caſhier, be their errors in management, or intromiſſions, (if any be), ever ſo great; the Caſhiers themſelves being nevertheleſs bound for the whole of their tranſactions and intromiſſions, in terms of the ſaid article; and ſeeing two of the Caſhiers have already found bail in general for their management in terms of the ſame, the meeting agree, that they ſhall be at liberty to take up theſe bonds on lodging new ones agreeable to this preſent reſolution of the Company. *Vide* art. 5. of that day's ſederunt.

At a general meeting of Proprietors, held at Edinburgh, 5th and 6th November 1770.

November 5.

(*d*) That as the 16th article of the contract, with regard to transferring of ſtock, ſeems to render transferences difficult, may be attended with inconvenience to the preſent proprietors, and may prevent others from ſubſcribing, that the ſame ſhould be varied, and that it ſhould be left to the whole Directors, when any proprietor means to ſell out, either one or more ſhares, either to admit of a transfer to the perſon to whom he propoſes to ſell, or otherwiſe, to *purchaſe his ſhare for the behoof of the Company*, and to pay him therefor his proportion of the ſtock and profits, according as the ſame ſhall ſtand at the laſt preceding ſettlement of the Company's affairs, with intereſt at the rate of 4 *per cent.* from that ſettlement; *and that all ſuch transferences ſhall be regularly entered, and reported to the immediate ſubſequent general meeting.*——N. B. This is the 11th article of the Report from the Directors to the Proprietors, as approved of by the above general meeting. *Vide* art. 2. of that day's ſederunt.

(*e*) That by the 17th article of the contract, as matters ſtand at preſent, no heir, executor, or legal repreſentative, of a deceaſed Partner, can be received a Partner of courſe; and as this is an obvious hardſhip, the ſame ought to be varied, and power ſhould be given to the *whole Directors*, either to admit as a Partner the legal repreſentative if one, or one of the legal repreſentatives if there are more than one, of any deceaſed Partner, or elſe to pay to ſuch repreſentatives the deceaſed's ſhare of the ſtock and profits of the Company, as in the immediate preceding article: And alſo, that, in the caſe of inſolvency, the Directors ought to be allowed to receive

ceive any perſon to whom the creditors may legally convey ſuch ſhare, or to purchaſe the ſame for the Company, in terms of the ſaid 17th article of the contract.——N. B. This is the 12th article of the Report from the Directors to the Proprietors, as approved of by the above general meeting. *Vide* art. 2. of that day's ſederunt.

At a general meeting of Proprietors, held at Dumfries, 6th May 1771,

(*f*) That as the times of endurance of the contracts of ſome of the Banking Companies in Scotland are near an end, the general meeting may authoriſe the Directors to receive the propoſals of ſuch Companies as may, on or before their diſſolution, incline to join this Company, to treat with them thereanent, and to aſſume the whole, or ſuch of them as they ſhall ſee cauſe, upon ſuch terms as may be beneficial to the Company, ſo ſoon as any of them ſhall make offers for that purpoſe, or agree to propoſals made to them for that effect.——N. B. This is the 6th article of the report from the Directors to the Proprietors, as approved of by the above general meeting. *Vide* art. 2. of that day's ſederunt.

At a general meeting of Proprietors, held at Air, 4th, 5th, and 6th November 1771.

November 4.

(*g*) That as it is of the utmoſt importance to this Company, that the Proprietors have thorough confidence in the conduct of their Directors, *and as it is impoſſible*, that a full inveſtigation can be made of the Company's affairs in any general meeting of the copartners, it is therefore propoſed, that an extraordinary committee, conſiſting

ing of at leaſt nine Proprietors, to be called *Extraordinary Directors*, ſhould be annually choſen at the general meetings in November, veſting them with full powers, to meet and act with the ordinary Directors *at all their ſtated or extraordinary general meetings*, to review all their proceedings, and to offer ſuch obſervations thereon as they may think proper, or for the greater good of the Company. ——N. B. This is the 5th article of the Report from the Directors to the Proprietors, as approved of by the above general meeting. *Vide* art. 2. of that day's ſederunt.

(*b*) That in conſequence of the remit laſt general meeting to the Directors to treat with any banking ſocieties in Scotland, who ſhould be diſpoſed to give up their buſineſs in favour of this Company, and to aſſume the whole or ſuch of them as they ſhall ſee cauſe, the Directors did depute two of their number, namely, Sir Adam Ferguſſon, Baronet, and Mr Alexander Ferguſſon, Advocate; who having entered into a treaty with the Airſhire bank, under the firm of *John Macadam and Company*, did, by contract, ſtate, and miſſive, of date 19th June laſt, and by a mutual miſſive exchanged 19th October laſt, finally conclude a bargain with them, whereby they give up their banking buſineſs as at the firſt of January laſt, and agreed to diſcontinue the ſame thereafter, on account of the ſum to be paid them in full thereof, as more particularly mentioned in the contract, ſtate, and miſſive, all herewith laid before and reported to this general meeting: That after maturely conſidering this treaty, and hearing their two deputies upon it, they were unanimouſly of opinion, that they had made a moſt rational bargain, which in the end they could not doubt would be very beneficial to this Company: That they had returned them their ſincere thanks for the trouble they had taken, and hoped their treaty would appear in the ſame light to this general meeting.——N. B. This is the 6th article of the Report from the Directors to the Proprietors, as approved of by the above general meeting. *Vide* art. 2. of that day's ſederunt.

November

November 6.

(*b*) Mr Alexander Ferguſſon, Advocate, having, in conſequence of the 7th article of the Report of the Directors made to this meeting in their firſt ſederunt of the 4th current, produced, and read to the meeting, the principal articles and preliminaries of the agreement with the Dumfries bank, under the firm of *Alexander Johnſton, Hugh Lawſon, and Company*, with the contract of agreement made with them reſpecting their diſſolution, and their giving up the banking-buſineſs for the future, both of date the 10th Auguſt laſt; as alſo a miſſive-letter by Mr John Buſhby, one of the members of that ſociety, addreſſed to this Company of this date, reſpecting ſome of the preliminary ſtipulations made by the agreement in his favour, together with an unſigned ſtate of that Company's affairs, made out upon the 29th ult. the day of their diſſolution; the meeting having reaſoned upon the whole, and having heard Mr Ferguſſon at great length explain the reaſons of the ſundry articles in this treaty, they are unanimouſly of opinion, That the ſame was made upon terms as favourable as could be expected, conſidering the ſituation of that banking ſociety, and the buſineſs they carried on; and therefore the meeting do approve thereof, and do return Mr Ferguſſon, and Mr Carruthers of Holmain, his aſſiſtant in the ſame, their ſincere thanks for the trouble they had taken therein. *Vide* art. 9. of that ſederunt.

November 4.

(*i*) As to the 11th article of the Report, reſpecting the alteration propoſed on the 13th article of the reſolution of the general meeting 7th November 1769, this alteration is made, That if two or more Partners in any Company ſhall be in any direction at the ſame time, none of them ſhall be preſent at the diſcounting of any bills, or any other money-tranſaction relative to that Company. *Vide* art. 2. of that day's ſederunt.

At a general meeting of Directors, held at Air, 8th November 1769,

(*k*) The meeting do unanimouſly agree, That in *every* obligation for a caſh account or *credit*, from L. 1000 downwards, *there ſhall be two cautioners or bailſmen at leaſt*. *Vide* art. 2. of that day's ſederunt.

At a general meeting of Directors, held at Edinburgh, 6th November 1770,

(*l*) Ordered as a general rule to be obſerved at each office, That all who are concerned in any company or copartnery-trade, ſhall be obliged to lodge a liſt of the whole names and firms of ſuch companies, at the office where they have any occaſion to deal in diſcounts or other money-tranſactions; and that copies of ſuch liſts ſhall be duly tranſmitted to the other offices, along with their weekly ſtates of tranſactions; and that the ſame ſhall be entered in a book to be kept by the Caſhiers. *Vide* art. 5. of that day's ſederunt.

At a general meeting of Directors, held at Dumfries, 4th May 1771,

(*l*) That all copartners in company who have any money-tranſactions by diſcounts, credits, or otherwiſe, with this Company, ſhall be immediately required to lodge at the office or branch where ſuch tranſactions are, a complete liſt of their whole firms and names, to be entered in a book to be kept for that purpoſe, patent to every Director; and copies thereof, as ſo entered, to be directly tranſmitted

mitted with the weekly ſtates from the office to the two branches, and from them to the office, ſo that all the names and different firms of every company who deal with any of them, may be known to the whole; under a certification, that no diſcounts made to any company without the previous liſt being lodged, will be ſuſtained at reviewing the weekly ſtates. *Vide* art. 2. of that day's ſederunt.

At a general meeting of Directors, held at Dumfries, 4th May 1771,

(*m*) The meeting having conſidered, that the number and extent of caſh-accounts given at the office and branches, are already become *burdenſome*, and likely to be unprofitable, many of them being uſed more as *loans* than in the proper operations of buſineſs, do therefore reſolve, That for the future *no caſh-accounts* ſhall be given, at the office, or any of the branches, without previouſly correſponding with and obtaining the conſent of *the three boards of Directors, or the majority of them, when convened as a board*. *Vide* art. 16. of that day's ſederunt.

At a general meeting of Directors, held at Air, 5th November 1771,

(*m*) That *no caſh accounts or credits* ſhall, for the future, be granted by the Directors, at the office, or any of the branches, but by a *general* meeting of the *whole* Directors, ordinary and extraordinary, to be held twice in the year, in the months of November and May, immediately preceding or ſucceeding the general meetings of the Company, appointed by the contract to be held twice a-year in theſe two months. *Vide* art. 1. of that day's ſederunt.

NUMBER

NUMBER IV.

Remonſtrances from the Directors at Edinburgh and Dumfries to thoſe at Air, previous to the general meeting in May 1770.

Copy of a letter from the Directors at Edinburgh to thoſe at Air, dated the 11*th January* 1770.

Jan. 11. 1770. THE operations at your office have of late produced ſuch effects upon the circulation of the Company, as muſt, if not quickly varied, at leaſt for ſome time, till we have more the command of our capital, very ſoon bring the iſſuings of the Company into great diſrepute, and infallibly put a period to their operations at this branch. That this is owing to the operations of the Company at your office, we have diſcovered from an accurate obſervation upon the numbers of the notes preſented at this branch, the perſons who have brought them, and a compariſon of theſe two circumſtances, with the particulars of the bills diſcounted with you, ſo far as your Caſhier has given us the particulars of theſe in the ſtates tranſmitted us by him.

We are fully ſenſible, that the buſineſs of the Company cannot be properly carried on, unleſs the operations at the principal office, and each of the branches, be fairly and openly communicated to each other. If this was not the caſe, any perſon who was carrying on a circulation in the bill way, (of which ſort of people we are ſorry to ſay there are too many in this country), might have bills diſcounted at the principal office, and each of the branches, far beyond the amount which any one of them would incline to truſt him, although perhaps not ſo many diſcounted at any of them as would appear hazardous or improper; as alſo people wanting caſh-credits, although good

good for one of L. 500, might hold them to the amount of three times that ſum.

We have been at the utmoſt pains to examine the particulars of the ſtates tranſmitted us by your Caſhier, from the 6th of November to the 1ſt January, and ſhall with candour and fairneſs now lay before you the reſult of that examination. We are ſorry to ſay, that we do not approve of ſeveral of the operations carried on at your office; and as that is the caſe, we think it our indiſpenſable duty to point out to you ſuch of them as appear to us improper; truſting, that if you view them in the ſame light, you will regulate your future conduct accordingly; and we rely upon the ſame animadverſions from you upon our conduct, if it ſhall at any time appear to you in the ſame light as yours at preſent does to us. This is a duty we reciprocally owe to one another, and is incumbent upon us as adminiſtrators of the funds of other people in ſo extenſive a company.

By the ſtate of your tranſactions from the 6th to the 21ſt of November, although, during that period, there are bills diſcounted to the amount of L. 12,812 : 6 : 5, yet not the leaſt mention is made of the particulars of theſe bills; ſo that during this period we can form no judgement of your operations, nor give our opinion concerning the propriety of them, without knowing the perſons in whoſe names they were conceived, and particularly, whether the bills themſelves had been offered for diſcount at this or the other branch.

By your ſtate from the 21ſt of November to the 2d of December, it appears, that bills were diſcounted to the amount of L. 2848, 11 s. 8 d.; but not one word of the particulars of the bills. During this period you have alſo drawn upon Kilby and Syme to the amount of L. 2430 : 17 : 9; yet no notice is taken of what dates or ſums your draughts were, or in whoſe favour.

By your ſtate from the 2d to the 9th of December, bills are diſcounted for L. 4284 : 18 : 3; now, for the firſt time, does the particulars of the bills make their appearance; and, in theſe particulars, does a bill of Maclure and Maccree on Buſhby and Kirkpatrick for L. 2170 ſtand diſcounted. This leads us to obſerve, that, in the diſcounting of bills, at leaſt at the commencement of a banking company, it ought to be particularly attended to, how the money is to be applied. It is evident, that this money, if it was to be applied to the mutual uſe of the drawers and acceptors, (who, as we are informed, carry on a joint foreign trade), that it behoved to return upon you immediately either for ſpecie or London bills. If it was to be applied to the uſe of the acceptors, it behoved to return in the ſame way, or go to the Dumfries bank, which was equally bad: if to the uſe of the drawers, as they are our Partners, and very good people, we would naturally expect, that this uſe would not be made of it; but, at the ſame time, we can ſee no channel by which they could put them into a proper circulation for the benefit of a company hardly ſet upon its legs. In this ſtate there alſo appears bills drawn by your Caſhier, and diſcounted by him, to the amount of L. 1250: how he diſpoſed of that money, is beſt known to himſelf; but it muſt be confeſſed by all of us, that we do not readily ſee how he could put the notes into any proper circle, ſeeing he is, by his bargain with us, debarred from carrying on any trade or buſineſs whatever that can in the leaſt interfere with the banking buſineſs of our Company.

By your ſtate from the 9th to the 16th, bills are diſcounted to the amount of L. 838 : 9 : 5; but no notice is taken of the particulars of the bills: and there is drawn upon Kilby and Syme L. 5404, 15 s. 4 d. without mentioning the dates and ſums of the draughts, or the perſons in whoſe favour they were drawn.

By your ſtate from the 16th to the 23d of December, bills are diſcounted to the amount of L. 4161 : 1 : 11; amongſt the particulars

lars of which are, Macnaught on Blair two bills of L. 1000 each, and Buſhby on Blair for L. 1118, 18 s. Here allow us to remark, that it is altogether improper for the Directors at one office, or branch, to diſcount bills to people who properly fall within the circle of another; and the caſe now before us affords a very ſtriking inſtance of the impropriety of the contrary conduct. Mr Blair had firſt applied to the old Dumfries bank to diſcount theſe bills, or bills to a like amount: they were refuſed there: next he applied to our branch at Dumfries, and then to us here: a *nolumus* was put upon them at both; and for a very good reaſon; the ſtate of Mr Blair's funds we are unacquainted with; we even do not know whether he is in the fee of the eſtate of Dunrod or not; but that is a matter of no conſequence: it is a bad affair for bankers to have the proſpect of recovering their payments, by leading an adjudication againſt the eſtate of their debtor, and getting their money, after lying out of it for ſome years, through the medium of all the artillery of the law. Macnaught, the drawer of the firſt two bills, is a drover; one of thoſe whoſe fortunes are very precarious, and whoſe funds, for the moſt part, are not very attachable.——Mr Buſhby, the drawer of the other bill, is a man whoſe credit is very good: he is very active in buſineſs; but his concerns are very extenſive: at any rate, he is but the drawer, and the acceptors muſt be firſt diſcuſſed before he can be come at: Notwithſtanding all theſe circumſtances, Mr Blair's bills, to the amount of L. 3118, 18 s. are diſcounted with you, without an objection appearing, why did he not apply to our branch at Dumfries? In this ſtate, too, another bill of your Caſhier's makes its appearance for L. 360; and there are alſo more draughts upon Kilby and Syme in the ſame ſituation as formerly.

By your ſtate from 23d of December to the 1ſt January, bills are diſcounted for L. 2275 : 8 : 11; and from the liſt of particulars, there is a bill drawn by Wilſon and Son upon Macclintock, 22d November, at ſix months date, which we apprehend was againſt

gainſt our rules to diſcount, as being current for more than three months. In the particulars of this ſtate is another bill, drawn by one Park, whom, we are informed, is either a ſmuggler himſelf, or an agent for people who carry on that trade, on Maclure and Maccree, for L. 1203, 5 s. What became of a conſiderable part of this ſum we are pretty well enabled to tell you. That ſame gentleman, Mr Park, in as ſhort time as he could travel from Air, preſented L. 700 of our notes at the branch here, and demanded a bill upon London. When he was aſked his name, he ſeemed unwilling for ſome time to tell it, well knowing the game he had been playing; but, upon being a little expoſtulated with, told his name, and got his bill.—As another remarkable incident, we muſt obſerve, that a bill drawn by your office in favour of Mr Park, bearing date 26th December, for the ſum of L. 367, was not preſented for payment by himſelf, when he came to this office, 3d inſtant, but was indorſed away to Meſſ. Couts and Company, and by them afterwards received payment of by a London bill for L. 1500; in which ſum was comprehended another bill drawn at Dumfries in favour of David Currie, and a number of our notes which they preſented for payment here. We beg leave to inform you, that the ſtate for that week was not regularly tranſmitted us by your Caſhier; and the apology made for the delay was, that he was taken up in ſigning notes. Had the ſtate been regularly tranſmitted, we ſhould have had it in our power to have detected Mr Park's manœuvres, and would moſt certainly have ſent him to Air to demand his payment there.

From the above ſtate of affairs, it is clear, that your operations have been as follows, viz.

Bills

Bills diſcounted, the particulars of which we are totally ignorant of, - -	L. 16499	7	9
Bills of which we have the particulars, -	8721	9	1
Of theſe laſt our animadverſions, as above, amounting to - - -	8169	1	9

So that of bills which you have diſcounted, the particulars of which we are poſſeſſed of, there is a pretty large ſum thrown into the circle, evidently attended with no degree of advantage to the Company. This ſurely is not the way for a company, young in their buſineſs, and ſet up upon profeſſed principles of public utility, to throw their notes into the circle, to give credit and reputation to their paper, or to fix themſelves upon a ſtable and laſting foundation.

We obſerved ſome time ago a very ſlovenly tranſaction of your Caſhier's, which was, his deſiring Mr Hogg to take up a L. 400 draught upon him, without ſending Mr Hogg any order upon our branch for it; and upon notice taken of the irregularity in his next letter, he ſends a poſtſcript, ſigned by one of your Directors, who ſays, That he knew of the tranſaction, and authoriſed it. This only confirms the irregularity. Looſeneſs in money-tranſactions, when they may run to a conſiderable extent, is a moſt dangerous thing, and has been often attended with fatal conſequences, and therefore ought to be guarded againſt with the utmoſt care and attention.

Thus we have taken the liberty, as joint with you in the management of the Company's affairs, to lay candidly before you what has occurred to us exceptionable in your operations. If theſe ſhall appear in the ſame light to yourſelves, we cannot doubt of your future tranſactions producing more beneficial effects; ſo that, from our mutual labours, and candid obſervations on the proceedings at each office, we may in time arrive at ſuch a ſtate of perfection, as

to obtain the favour of the public, confirm our motto, and promote the intereſt of the Society. We are, &c.

At a meeting of the Directors of the Dumfries Branch, 16th January 1770,

Jan.16.1770. Upon a peruſal and examination of Meſſ. Mayne and Needham's correſpondence, both with this branch and that at Edinburgh, the meeting obſerve with regret, the ſituation of the Company's credit with theſe gentlemen, and the diſagreeable circumſtances in which they are involved, by the large acceptances they have come under for the Company; and the more ſo, as that houſe has always conducted itſelf with a candour and friendſhip towards this Society which merits their gratitude and future confidence. They are fully ſatisfied in their own minds, that the preſent critical ſituation of the Company's buſineſs has taken its riſe from the number of bills *diſcounted at Air*, by people there engaged in foreign trade, whoſe concerns abroad, have, as they apprehend, occaſioned their demanding ſpecie, or bills on London, for the notes iſſued to them upon the bills ſo diſcounted; and the meeting are alſo of opinion, that the tranſacting buſineſs of this kind does by no means anſwer the patriotic intention and plan upon which the Bank was originally conſtituted, and for the proſecution whereof numbers of people have been induced to become ſubſcribers. That plan, they conceive, was the promoting of manufactures, fiſheries, and improvements in agriculture, in Scotland; by giving moderate credits to the public-ſpirited trader, the induſtrious farmer and mechanic; and by increaſing the circulation, which in ſome views they thought too limited to accompliſh theſe purpoſes. They ſtill hope matters may be retrieved, and their credit at London put upon the eſtabliſhed and ſolid foundation they once expected, if the plan adopted by the Edinburgh branch, and approved of by them, is ſteadily followed, ſince a retrenchment of their operations becomes every day more

more neceſſary; *and it is their ſenſe*, that the branch here and at Edinburgh ſhould fully explain themſelves upon this head to the office at Air, *and put a negative upon their proceedings*, in diſcounting of bills, or giving further caſh-credits, until they are inſtructed by the two branches.

The meeting obſerve with ſatisfaction, upon inſpecting the account of diſcounted bills at this branch, that they are moſtly done, as far as could be diſcovered, upon the principles laid down by the Society; and that the circulation of the Bank's paper has in general been promoted by them: they therefore greatly approve of the manner in which the buſineſs has hitherto been carried on.

When the meeting had proceeded thus far, they received copy of a letter from the gentlemen in the direction at Edinburgh, addreſſed by them to the gentlemen in the direction at Air, of date the 11th current; and having conſidered the ſame, they very much approve thereof, and reſolve to write a letter to the Directors at Air, letting them know, that what is therein contained is quite agreeable to their own ideas; and that they hope theſe gentlemen, in their future operations, will beſtow that attention thereupon which it ſo highly merits, and which the preſent ſituation of the Company ſo evidently calls for.

Copy of a letter from the Directors at Edinburgh to thoſe at Air, dated 13th April 1770. Vide *Letter-Book of private correſpondence.*

Your favour, without date, but holograph of Mr John Campbell, we received ſome days ago; and as it is expreſſed rather in ſtrong terms, we are well pleaſed that ſuch friendly remonſtrances with each other be entered in a book kept for that purpoſe, that they may not be liable to the inſpection of the Company's ſervants; their Caſhier, in character of their Secretary, excepted. For this purpoſe Apr.13.1770.

we

we have opened a book, under the title of *Private Correſpondence*; in which it is propoſed the Director for the week ſhall ingroſs any letters that may come from our branch to the Directors at the office, or at the Dumfries branch, which may be improper to be entered in the ordinary letter-book.

We are all perfectly ſenſible of how much conſequence it is, not only that the people without doors ſhould believe we go on with confidence and harmony amongſt ourſelves, but that we actually do ſo. It ſhall be our buſineſs always to act upon that plan; but, at the ſame time, we ſhall conſider it to be our duty to open ourſelves very freely, and with candour, whenever we think that any improper ſteps have been taken. If we err in our opinion at any time as to your proceedings, we ſhall be happy to find ourſelves corrected, upon matters being properly explained; and when we ourſelves are guilty of any piece of miſconduct, we ſhall hope from you, and our brethren at Dumfries, a friendly reproof.

With regard to the bill diſcounted at your office, upon perſons reſiding within the Dumfries diſtrict, the particular occaſion whereof we could not know from your ſtate, we did think it an improper tranſaction; and we are ſtill of opinion, that neither the office, nor any of the branches, ſhould diſcount bills drawn upon and accepted by perſons reſiding within another diſtrict. You ſay, you know of no ſuch rule of the Company, and that it is not to be found in any of the ſederunts. It may be ſo; but if you look back, you will find a full remonſtrance on that head from the gentlemen at Dumfries, and another from us on the ſame ſubject; and as we did, from that time, conſider it to be a rule agreed to, we are ſatisfied, that, except in one inſtance, which paſſed this office inadvertently, (I mean a bill accepted by Major Gordon), you will find it has never been tranſgreſſed by us ſince; and even as to that bill, our ſtate of that week the Directions would not approve, till the cauſe of diſcounting was aſſigned by one of the gentlemen, who ſaid, he had

had promiſed it ſhould be diſcounted, as he ſaw it indorſed by a gentleman reſiding in Edinburgh; and upon that very place we have refuſed to diſcount ſeveral that have been offered to us. We may indeed have approved of ſome of your ſtates where the ſame thing has occurred; but it was then paſſed over in expectation that the practice would be diſcontinued, and from a deſire not to complain of what we ſuppoſed might not happen again. You are likewiſe pleaſed to ſay, that you think it ſhould not be a rule. We are of a different opinion: we may indeed be miſtaken; but our reaſons are theſe: 1*mo*, That it muſt be ſuppoſed the Directors of the office, and each branch, can beſt know the circumſtances of thoſe who reſide within their diſtrict; and, 2*do*, That a bill may be diſcounted at one branch when it would be refuſed at another, becauſe the acceptor was already deep in the Company's debt; whereas, if the rule we propoſe were to be followed, there can no ſuch miſtake happen. Nor do we ſee how it ſhould prevent you from buying bills payable at Edinburgh, or getting bills made payable at Edinburgh. We never meant, that a bill ſhould not be diſcounted or purchaſed, unleſs both the acceptor reſided within the diſtrict, and the bill was payable there. It is of no conſequence where the bills are payable, provided the acceptor reſide within the diſtrict where it is offered for diſcount; and as to buying bills on Edinburgh, which is very different from diſcounting, we would be obliged to you for as many as you can get.

You ſeem to be ſurpriſed at our having got ſo large a ſum in caſh of late from Dumfries. We aſſure you it was not with a view to tranſgreſs what was agreed upon at Hamilton; and you will ſee from our ſtates, that ſince the meeting at that place our payments in ſpecie have been very trifling. The reaſon for our ſending for it, was an alarm we took, leſt the forgery of our notes might bring a greater run upon us than our Edinburgh money might ſerve to anſwer. We have however eſcaped the danger we dreaded.

As to your having ſo large a ſum lying with you in the office, as you propoſe, we cannot ſee the leaſt uſe for it: as long as we pay in Edinburgh, the demand upon you muſt be very trifling, unleſs in the event of a concerted run, which cannot come from any of the private banks as long as the exchanging with them continues, and which neither of the public banks dare attempt, even though they were inclined to do ſo. If indeed we are to be reſtrained from paying here, you will have immediately demands enow; and we honeſtly believe, and ſay, that had we not anſwered every demand made here ſince we opened, a few weeks would have forced you to ſhut ſhop: but this is a ſubject of too great a field for a letter, and may be diſcuſſed with greater propriety when we all meet together in the beginning of May. We have only further to mention, that, in Mr Chriſtian's laſt letter, he adviſes two bills drawn on us; one at fourteen days date, and the other at two days date; which we think is a preference which no perſon ought to get, as all bills ſhould be drawn at the common date, and any Partner ought rather to accommodate the Company by taking bills at a longer than a ſhorter date.

On the whole, we are inclined to think, that the Company have been too rapid in iſſuing their notes to ſundries; as every well-regulated bank ought to ſet out with caution, otherwiſe experience will convince, that it is not only attended with danger, but expence; and that the ſupply of paper-currency ſhould always bear a proportion to the real trade, manufactures, &c. of that part of the country where it is given. We are with great regard, &c.

Copy of a letter from the Directors at Edinburgh to thoſe at Air, dated 17th April 1770. Vide *Letter-book of private correſpondence.*

April 17. 1770 Under favour of the invitation given us in your laſt letter, of opening ourſelves with freedom to you on whatever occurs that concerns

cerns the good of the Company, we embrace this opportunity of again addreſſing ourſelves to you; more eſpecially, as, from the ſituation of the Company's affairs, we run the hazard of being involved in the greateſt difficulties, from which nothing but a prudent ſteady conduct can extricate us.

When our new bank opened, the country expected great things from us, and they have not been diſappointed. All our directions, ſenſible of the diſtreſs their fellow-citizens laboured under from the ſcarcity of money, were forward to relieve them; and, in their application for caſh-accounts, and diſcounting bills, met them half way. In return, we were intitled to expect that countenance from the country, without which our generous diſpoſitions muſt of courſe be cruſhed in the bud. In this we have been greatly diſappointed: And although the cauſes of it may in ſome meaſure be concealed from us, the effects have been ſeverely felt: demands have been made upon us for exchange of our notes, with a perſeverance that has aſtoniſhed us; ſcarcely does any note make its appearance in the circle, when it is picked up, and poured in upon us at Edinburgh or Glaſgow. Of L. 6000 that was lately diſcounted at the laſt-mentioned place, in the courſe of a fortnight the greateſt part of it was paid in Edinburgh, on exchanges made with our Glaſgow agent to anſwer theſe demands. We have been at a conſiderable expence in paying with ſpecie; and, as the cheapeſt method, have at laſt reſolved to pay only in Edinburgh notes; which, when other methods failed, we were obliged to procure by drawing bills upon London; which we have done, in the courſe of theſe large tranſactions, to ſuch an extent, that we are juſt now indebted to that place about L. 85,000. God knows how we are to reimburſe this, and at ſame time provide for the current demands that may come upon us. This, Gentlemen, is a thing that demands your ſerious conſideration, and beſt advice; and for this we apply to you at preſent, and have made the ſame application to our friends at Dumfries: for it is evident, that while matters are upon their preſent footing,

footing, we lie wholly at the mercy of one or two banking-houſes at London; and who, in managing our buſineſs, have gone out of the common road of tranſacting buſineſs. It is dreadful to imagine the conſequences that would ariſe from our London friends putting a negative on our tranſactions with them: what occurred to us as the proper meaſures to be taken in theſe circumſtances, we now proceed to lay before you.

1. To grant no more caſh-accounts but to ſuch people as our bank are ſo connected with, that it is impoſſible to avoid it; and who, in the circulation of our notes, can be of ſervice to us.

2. To diſcount few or no bills; and theſe only to people that can properly diſpoſe of our notes.

In theſe two articles we cannot at preſent be too cautious, nor do too little.

3. To buy no bills on London but ſuch as will diſcount, or have under thirty days to run; as undiſcountable bills only lumber us; no uſe is to be made of them until they fall due; whereas the money is paid for them the moment we receive them, and probably next day exchanged with us for ſpecie or London bills. If we remit them to our London correſpondents, as payment of the bills running upon them, it throws them in a large advance, and chagrins them, at a time when we ought to do every thing in our power to keep them in good humour with us.

4. To make the great bulk of our payments in 20s. and 21s. notes, as what have the beſt chance of continuing in the circle.

Theſe, Gentlemen, are the rules that appear to us neceſſary to be obſerved; and which we ſubmit to your better judgement, earneſtly begging of you, that you would adopt what of them you approve of,

of, and point out to us whatever properer method may occur to you, as it is evident ſomething muſt be done. It might perhaps be better, in the preſent ſituation of affairs, to decline giving out any caſh-accounts, and to continue only a very ſmall diſcount of bills, that, by ſtanding ſtill until we receive in all our calls, and the bills already diſcounted be paid, we may get over our preſent difficulties; when we can be more cautious in iſſuing our paper, and by diffuſing them more gradually into the circle, ſecure to ourſelves a beneficial trade; as it is only the gentle ſtream, overflowing its banks, that enriches a country, and not the impetuous torrent, which ſweeps every thing away with its violence.

In proſecution of part of our ſcheme, we gave Mr Campbell, our agent at Glaſgow, inſtructions to purchaſe no bills on London, but ſuch as would diſcount, or had under thirty days to run. In this we were influenced by another motive, which was the profit of the Company: for as Mr Campbell, by being confined to purchaſe at the rate of fifty days date par in buying bills at ſeventy days date, of which no uſe can be made until they fall due, can only get twenty days diſcount, or 5s. 5d. per L. 100; whereas in Edinburgh we can purchaſe bills, at the very ſame date, at 10s. per L. 100 diſcount; ſo Mr Campbell, continuing to purchaſe at that rate, was an evident loſs to the Company. In anſwer to which letter, Mr Campbell, amongſt other things, informed us, that two gentlemen from your direction had, upon ſeeing the letter, given him orders to purchaſe for your office, all the bills he could get, at the rate of fifty days date par, even tho' it had as long to run as three months. We will not mention how much it hurt our delicacy, to find any of your Directors in that ſtrong manner diſapproving to our agent the conduct of our board here; for the inſtructions were communicated to Mr Campbell, not by our Caſhier, but by our acting Director by orders of the board; but candidly to give you our opinion what we think muſt be the unavoidable conſequence of ſuch purchaſe. On every bill ſo purchaſed there muſt be an evident

loſs of one fourth per cent.; for as you draw on London at fifty days date par, and purchaſe bills at the ſame rate of exchange, you muſt preciſely loſe the commiſſion you pay to your bankers. But this is not all: In the purchaſe of theſe long-dated bills you do not in the leaſt accommodate yourſelves; for they are generally ſuch as will not diſcount, and muſt therefore remain with you until near due; or, if remitted to your correſpondents, greatly incommode them, without any advantage to yourſelves. Another riſk that is run is this, that theſe bills are moſtly circulation-bills, which are never in repute, and always attended with danger. It is true, Mr Campbell comes between us and hazard to a certain extent; but is it not hard to make him run that hazard when it is no accommodation to ourſelves? In ſhort, we ought at preſent to be very cautious in giving out our money, until our circumſtances are made eaſier; and having done enough for the accommodation of the country, ought not to part with one farthing but what is to accommodate ourſelves. This we think peculiarly neceſſary to be done *in the proſpect of a general meeting of the Proprietors*, who will no doubt be aſtoniſhed to find us ſo much in debt to our London correſpondents, and having a greater ſum running upon them than we have notes in the circle. It will be ſome ſatisfaction to them, if we can ſhow them that we are leſſening that debt; but if it increaſes in the ſame proportion it has hitherto done, it will bring a burden upon us that we will not be able to bear; *and we will be obliged to aſk relief from them.* How diſagreeable this will be, every one in the directions muſt feel; *but the danger of our ſituation muſt get the better of every other conſideration, and the duty we owe our conſtituents oblige us to ſtate the matter fairly to them.*

We have further to incloſe you, copy of a letter this day laid before us; and have to obſerve with regard to having granted Campbell of Saddle a caſh-account of only L. 500, that on viewing the many propoſals for ſuch accounts that lay before us, and willing to be as extenſively uſeful as poſſible, we had granted only a part to many;

many; and hope, that you will approve of the plan, and not counteract us therein, although Mr Chriſtian points out many methods how it may be done; eſpecially when we inform you, as a proof of the quick paſſage that notes iſſued at your office find to Edinburgh, that we have already exchanged a great many of the twenty-ſhilling notes of book N° III. adviſed by your laſt ſtate to be iſſued in the currency of that week. We are, very reſpectfully, &c.

P. S. Since writing we have your favour of the 16th; and, as acting for the week, am deſired to acquaint you, that the hint in our laſt, about diſcuſſing ſome points at our meeting beginning of May, did not mean at the general meeting, but at the previous meeting of Directors, which it will be neceſſary to hold two or three days preceding. I am, very reſpectfully.

NUMBER V.

Sederunts, and other evidence, explanatory of the conduct of the Directors towards the Proprietors in general meetings.

(*a*) AT a general meeting of Directors held at Air 5th May 1770,

The meeting having cauſed read over the whole minutes of the laſt general meeting held at this place on the 6th and 7th days of November 1769, with the minutes of a general meeting of Directors held alſo at this place on the 7th and 8th days of that month, and the minutes of a deputation of the Directors held at Hamilton the 13th of March laſt, they do report as follows.

1. That

1. That the office was opened, and the buſineſs of banking was begun, at Air, upon the 6th of November laſt; that the Dumfries branch was opened upon the 14th, and the Edinburgh branch upon the 17th of ſaid month: That at Air the officers employed are, (Here follow the names of the officers).

2. That plates are now cut for the office, and each of the branches, for throwing off their poſt-bills or draughts on London: That ſpecimens of theſe bills are now ready, &c.

3. Agreeable to the appointment of laſt general meeting, and the ſederunt at Hamilton, Meſſ. Douglas, Croſbie, and Ferguſſon junior, having communed with moſt of the banking-houſes in London towards ſettling a correſpondence for the Company, found, after the utmoſt pains and inquiry, That the terms offered by the houſes of Meſſ. Kilby and Syme, of Meſſ. Dimſdale, Archer, and Byde, and of Meſſ. Mayne and Needham, were the moſt reaſonable, and beſt ſuited for the accommodation of this Company. (Here follow the propoſals of the different banking-houſes, and approbation thereof by the meeting).

4. The meeting alſo report, That they have appointed the following gentlemen agents for the Company, &c.

5. The contract with Mr Atkinſon and Brother, for furniſhing ſpecie, which is for one year certain from the 21ſt October laſt, being read. (Here follows a propoſal to put an end to that contract).

6. The ſtock ſubſcribed for at the time of the laſt general meeting was L. 133,000 Sterling; ſince that time there has been further ſubſcribed the ſum of L. 10,500 by the perſons mentioned in the ſubjoined liſt; ſo that there is ſtill wanting the ſum of L. 6500 to complete the original ſtock of L. 150,000 Sterling: That notwithſtanding of

this deficiency, which, from the particular ſituation of the country at and ſince the Company's commencement, is eaſily to be accounted for, they give it as their unanimous opinion, that, in terms of the motion made at laſt general meeting, the capital ſhould be increaſed L. 100,000 ſtill more; and that the Directors ſhould be allowed to open a ſubſcription for the ſame, by aſſuming ſuch new Partners as to a majority of them ſhall appear proper, and uſeful to the general concern, until the ſaid increaſed capital be made up.

7. The motion made at laſt general meeting, for a change of the ſeat of the Bank, and of the general meetings, to Edinburgh, as more centrical, in place of Air, being conſidered, the Directors agree to report it as their opinion, That the general meeting of the Company to be held in terms of their contract in November next, ſhould be held at Edinburgh, and the ſubſequent general meeting of the Company, which will happen in May next 1771, ought to be held at Dumfries, in order to preſerve a regular rotation, and thereby render the acceſs of thoſe Partners who may be too diſtant from one place, more contiguous to another; but that at preſent they ſee no cauſe for changing the principal ſeat of the Bank.

8. That in conſequence of the remit of laſt general meeting to the Edinburgh Directors to audite and ſettle the different accounts of the expence of inſtitution, &c.

9. With reſpect to the ſettlement of an agent at Kelſo, mentioned in the minutes of laſt general meeting, the Edinburgh Directors do report, &c.

10. That as the period for the payment of the fourth call of 10 *per cent.* on the ſubſcribed capital, ordered by laſt general meeting, was left to be fixed by the enſuing general meeting, the Directors report it as their opinion, That the ſame ſhould be paid in, at the office or branches, moſt contiguous, betwixt the 10th and 14th of Auguſt

next, by good bills on London, at thirty days date; and that Mr Chriſtian, the Caſhier at Air, be directed to write circular letters to each Proprietor, adviſing him thereof; and, at ſame time, to notice to all ſuch who are ſtill in arrear of their firſt, ſecond, and third calls, or any of them, that if they do not pay up the ſame on or before the ſaid 15th of Auguſt next, they will be delated to the general meeting in November thereafter, that they may, in terms of the contract, order a proſecution, or forfeit their ſhare in the Company, as they ſhall ſee cauſe.

11. The Directors report, That, by order of the laſt general meeting, they have, at the office, and each branch, taken in money at 4 *per cent.*; and that the enſuing general meeting ſhould allow them to continue this practice, if they ſee cauſe, impowering the Directors, at the different offices, to take in money at 4 *per cent.* for ſuch terms, and in ſuch ſums, as they may judge convenient, or uſeful for the Company.

12. That, agreeable to the order of the Directors of 8th November laſt, they have, at the Air office, diſcounted herring-buſs bounties. (Here follow the terms of diſcounting theſe bounties.)

13. They do alſo report, That, in November laſt, they had purchaſed, from Mr Campbell of Wellwood, the houſe in Air where the office is kept. (Here follows an account of the houſes procured for each office).

14. Upon conſidering again the 10th article, ordering the payment of the fourth call, they think it would be proper and reſpectable to order a further call of 20 *per cent.* 10 *per cent.* whereof to be paid on the 1ſt of December next, leaving it to the general meeting, in November next, to fix the time when the remaining 10 *per cent.* ſhould be paid.

At

At a general meeting of Proprietors, held at Air, 7th May 1770,

(*b*) The minutes of the laſt general meeting, held at this place, upon the 6th and 7th days of November laſt, being read over, the Preſes preſented to this meeting a written Report from the court of Directors, of date the 5th current, containing a full ſtate of their proceedings ſince the laſt general meeting; what particulars ſtill remained to be done; and that beſides the fourth call of 10 *per cent.* ordered by laſt general meeting, which they think ought to be paid on or before the 15th of Auguſt next, that it would be neceſſary and reſpectable for the Company to order another call of 20 *per cent.*; one half of it to be paid on or before the 1ſt of December next, leaving the time for payment of the other half to the general meeting in November next; and which Report being read and heard at full length, the ſame was unanimouſly, and without a vote, approven of by this meeting in every article thereof. *Vide* art. 2. of that day's ſederunt.

At a general meeting of Directors, held at Edinburgh, 3d November 1770,

(*c*) The meeting having cauſed read the whole minutes of the laſt general meeting, they do report as follows.

1. That the following aſſumed Partners, (Here follow Partners to be ſtruck off.)

2. That the ſtock-bonds remaining ſtill unſigned by ſundry Proprietors, ſhould be immediately forwarded to them. (Here follow

low regulations as to ſigning ſtock-bonds, and contract of copartnery.)

3. That the Caſhier ſhould be ordered to write all Partners who are deficient in all or any of the calls made, &c. (Here follows an order as to payment of arrears of calls.)

4. That, ſince the laſt general meeting, the Directors have aſſumed the following copartners, &c. (Here follow the names of aſſumed Partners, which completes a ſubſcribed capital of L. 150,000.

5. That, in terms of their laſt Report, the next general meeting of the Company, in May 1771, ſhould be held at Dumfries, &c.

6. That the remit formerly made to the Edinburgh Directors, reſpecting the ſettlement of the accounts of the inſtitution, &c.

7. That as no concurrence of new Partners has as yet appeared from the Kelſo quarter, &c. (Follows recommendation as to Kelſo agent.)

8. That the Directors ſhould be allowed and authoriſed to diſcount all ſuch herring-bounties as may to them, either at the office or branches, appear beneficial to the Company.

9. That the call, the time whereof was left to the general meeting in November, ſhould be ordered to be paid betwixt and the 1ſt and 8th of March next; and that the Caſhier ſhould write circular letters, acquainting the Proprietors, That the ſaid call, and the other, appointed by the laſt meeting to be paid in November next, muſt both be paid in London bills at thirty days date.

10. That the 10th article of the contract of copartnery, reſpecting the number of proprietors and amount of ſtock neceſſary to conſtitute

conſtitute a general meeting, ought to be limited to L. 40,000 of ſtock, ſo that Proprietors holding to that extent, perſonally preſent, may hereafter make up and conſtitute a general meeting of the Company; ſeeing, from the diſtant ſituation of many of the Proprietors, it has been found difficult to collect the number preſcribed by that article.

11. That as the 16th article of the contract, with reſpect to tranſferring of ſtock, (Here follows the alteration reſpecting that article).

12. That by the 17th article of the contract, as matters ſtand at preſent, no heir, executor, or legal repreſentative, of a deceaſed Partner, can be received a Partner of courſe. (Here follows the alteration with reſpect to that article).

At a meeting of the Directors of the Edinburgh branch, 25th February 1771,

(*d*) A letter drawn by Mr Ferguſſon, to be ſent the Air office and Dumfries branch, anent our London correſpondents, and the neceſſity of eſtabliſhing a third houſe, was read, approven of, ordered to be ingroſſed, and ſent off to-night, under the ſignature of the preſes.

At a meeting of the Directors of the Edinburgh branch, 8th March 1771,

(*d*) The Caſhier reported, That letters were come from Air and Dumfries, (in anſwer to Mr Ferguſſon's to them), agreeing, that the Directors from this and the other offices at London ſhould have

power to enlarge and eſtabliſh our London credits on a more reſpectable footing, but ſubject to the review of next general meeting.

Eod. die.

(*e*) The meeting being ſenſible, that, from the bad uſage they had met with from Meſſ. Dimſdale, Archer, and Byde, one of the Company's correſpondents at London, it was inconſiſtent with the honour of this Company to have any more connection with them; they therefore authoriſe Meſſ. Wight, Croſbie, Inglis, and Ferguſſon, who ſet out for London on the 10th, with any other of the Directors of the Company who may be in London at the time, to ſettle and finally cloſe the Company's account with them, in the way and manner they think moſt expedient for the honour and benefit of the Company; and further authoriſe them to fix and eſtabliſh what credits they may think neceſſary for this branch at London, and to inform Mr Hogg, the Caſhier, when he may begin to operate upon any one or more of the correſpondents they may ſettle with. Whereupon the Caſhier reported, That, at Mr Ferguſſon's deſire, with a view to raiſe a fund of Edinburgh money for office-uſe, until the London credit was ſettled and enlarged, he had, as Caſhier to the Company, drawn three bills, all dated 6th current, and payable at the bank of Scotland; the firſt upon Meſſ. Campbell of Saddle, Croſbie, Cockburn, and Ferguſſon, conjunctly and ſeverally, for L. 5000 Sterling, at ſixty days date; the ſecond upon Meſſ. Wight, Orr, Hay, David Campbell, and Inglis, conjunctly and ſeverally, for L. 4500 Sterling, at ſixty-ſix days date; and the third on Meſſ. Campbell of Saddle, Cockburn, Orr, Hay, and Croſbie, conjunctly and ſeverally, at ſeventy-three days date; for L. 5000 Sterling: That theſe bills were accordingly ſo accepted by the ſeveral gentlemen Directors: That the firſt bill was, upon the 6th inſtant, diſcounted at the ſaid bank of Scotland; the ſecond would be offered on the 13th, their next diſcounting

ing day; and the third on the 20th: Of all which the meeting do approve, as a very proper meaſure in the preſent ſituation of this branch with their London correſpondent-houſe of Meſſ. Dimſdale, Archer, and Byde.

Copy of a letter from the Directors at Edinburgh to thoſe at Dumfries, dated 22d March 1771. Vide *Letter-Book of private correſpondence.*

(*f*) As the late demur, occaſioned by the * * * * conduct of Dimſdale's houſe, has brought an extraordinary demand upon us, we find it neceſſary to be poſſeſſed of as much caſh as poſſible by Monday morning; and for that purpoſe we run this expreſs, who may eaſily return againſt that time. By him, and another from you, we hope you can ſpare us as much as they can carry, with L. 400, or ſo, in ſilver. We beg alſo you will direct your caſhier to write Mr Aitkinſon to provide, as quickly as poſſible, a large ſupply of gold, L. 10,000 at leaſt, which we wiſh you to forward here, periodically as it arrives with you; for we have alſo wrote to Air by this day's poſt, to ſend us all the gold they can ſpare, keeping for yourſelves what your offices may need. But as the demands are here, whilſt we pay, neither of your offices can have much need. We are, &c.

Copy of a letter from the Directors at Edinburgh, to the Caſhier at Air, dated the 22d March 1771. Vide *Letter-Book of private correſpondence.*

(*f*) As the late demur, occaſioned by the * * * * conduct of Dimſdale's houſe, has brought an extraordinary demand upon us, we have thought it moſt adviſeable to be poſſeſſed, upon Monday morning,

morning, of all the funds poſſible. We have diſpatched an expreſs to Dumfries, and write this to beg you will inſtantly ſend us, by two faithful horſemen, as much gold as they can carry, to be here on Monday forenoon: for whilſt we pay, there can be no extraordinary demands on your office. We would have addreſſed this to your Board; but leſt you had not a quorum at hand, we hope you will of yourſelf diſpatch immediately the ſpecie wanted. Though the Receiver-General, on the 16th, paid Dimſdale's houſe L. 3000 per receipt we have now ſeen, they have not yet deigned to adviſe us of it, and to-day's poſt is arrived. We are, &c.

Copy of a letter from the Directors at Edinburgh to the deputation at London, dated 22d March 1771. Vide *Letter-book of private correſpondence.*

(f) We make no doubt but you are at this inſtant exerting yourſelves as much as poſſible for our relief; and be you ſucceſsful when you will, it can never happen on a more preſſing emergency than the preſent. We are at this moment ſitting here in a very diſagreeable agitation of ſpirits, without any Edinburgh paper to aſſiſt us, no gold in the houſe, people waiting in the office for change, who have repeatedly called, and as often been denied, unleſs they would take draughts on London. There are now but four of us in town, and all of us under the neceſſity of walking the ſtreets, and begging ſupport to ſave the honour of the houſe. The Old Bank informed us Wedneſday laſt, that they would diſcount no more of our bills; and the New Bank this day, upon ſending the laſt one per L. 3500, that remained, gave us the ſame anſwer. By what means we ſhall weather out the ſtorm, which not only impends, but has burſt upon us, God knows. Mr Grant and King have been extremely ſerviceable; and without their aſſiſtance, our ſituation would have been incomprehenſibly diſtreſſing. The * * * conduct of Dimſdale's houſe gave riſe to a report in the country to our diſadvantage,

tage, which has been propagated with the greateſt induſtry by our enemies. There is no help for ſuch rumours making impreſſions on weak minds; and the notion they have given a great many, of our circumſtances being tickliſh, has brought upon us a terrible and unprepared-for inundation of our paper. We have only one houſe to draw upon now, inſtead of two; ſo to ſuch as would take London bills, we are prevented from drawing; and to anſwer the demands of others, we have neither caſh nor Edinburgh paper; and whatever was the caſe before, it is a certain fact, that though we could draw, neither of the banks will purchaſe from us; nor have ſuch of the bankers as are our friends Edinburgh money to ſupply us. We have wrote you thus fully, that you may perceive the perplexity of our ſituation. By this time we hoped, that ſome meaſures would have been fallen upon by you, after your arrival in London, to render our operations ſomewhat more eaſy; and we intreat you, as you regard the intereſt of this country, the reputation of this ſociety, and your own honour and characters, to proceed with all poſſible expedition, in getting our matters put upon a more eſtabliſhed footing; and if this will require more time and deliberation, you muſt at leaſt do ſomething to quiet us in the mean time, and give us a greater command of London money. Many peoples demands have not been anſwered this day, which no doubt will add conſiderably to the diſtreſs waiting us to-morrow. We are this afternoon to ſend expreſſes to Dumfries and Air, for what caſh they can ſpare; but that will be but a very momentary relief. As the tranſmiſſion of caſh by you would be tedious and expenſive, we wiſh, nay we intreat, that you would ſend us down directly poſt-bills, at leaſt to the amount of L. 20,000, or ſuch other ſum as you can procure. Mr Hay wrote to Mr Ferguſſon laſt night in the ſame ſtrain, to which we refer.

We have this moment, it's now five o'clock, received a letter from Mayne and Needham, and have heard Mr Hay read one from Mr Ferguſſon, which, to our great diſappointments, ſaid not one ſyl-

lable of any thing having been concerted for our relief. The gentlemen will remember, that the device of diſcount at the Old Bank was with the expreſs intention of keeping us eaſy, till ſuch time as your arrival in London for our behoof. Notwithſtanding L. 3000 was paid to Dimſdale's houſe on the 16th, by the General-Receiver, of which we ſaw the receipt to-day; yet they have not honoured us with the advice of it. Gentlemen, once more, begging your ſpeedy attention to what has been ſaid, we are, &c.

Copy of a letter from the Directors at Edinburgh to the Deputation at London, dated 26th March 1771. Vide *Letter-book of Private Correſpondence.*

(*f*) You would perceive from our letter of the 22d, in what a tickliſh ſituation we then were. On Saturday and Monday we made a ſhift to go through, which we could not have effectuated on the laſt of theſe days had it not been for a ſupply of caſh we received from Dumfries and Air: That indeed gave a philip to our ſpirits, and made us appear ſomewhat more hearty. This day matters as yet have been pretty eaſy; but it is entirely owing to the cauſe before mentioned, and to nothing elſe. We have had no Edinburgh money worth mentioning in the houſe; and, notwithſtanding every effort has been made to procure it, we are ſtill without any hopes of being ſucceſsful. The Banks have certainly come now to a reſolution to keep their paper as much as lies in their power out of our hands; and unleſs they give it us, as they were in uſe to do, for bills on London, we can get it from no other quarter. Any little aid we have received, has been altogether from private friends, who draw it for us out of their caſh-accounts, and who will no doubt be needing it again in a few days. What we mentioned to you in our laſt, reſpecting poſt-bills, becomes now in ſome meaſure abſolutely neceſſary; and we ſubmit to you what would be the moſt expedient method of procuring theſe, ſince Edinburgh paper is not to be got. Poſt-bills, or

or caſh, is the only thing that can ſupply the want of it. The laſt may be no more expenſive, but is tedious, and uncertain in the conveyance; and we know now, that in the manner we are ſerved at preſent, it often happens that we pay a premium for our own ſpecie. Poſt-bills may be got for any ſum, and will circulate through the whole kingdom, and may be expeditiouſly and regularly procured. By this time we hope you have ſeriouſly conſidered the ſubject of Mr Gaſcoigne's propoſal, and that by Monday next we ſhall hear of ſome effectual meaſures being taken for the relief of this branch, and the honour of the whole Society. Mr Fordyce and his houſe, whom we daily confer with, though they have the greateſt inclination, find themſelves abſolutely unable to furniſh us with any Edinburgh money worth the mentioning. There is indeed little or none in the circle; and what is of it is not in the hands of our friends. We are, &c.

Copy of a letter from the Directors at Edinburgh to the Deputation at London, dated 28th March 1771. Vide *Letter-book of Private Correſpondence.*

(*f*) From the hint we laſt week got from the Old Bank, we did not adventure to offer our laſt acceptance for L. 3500 to them for diſcount yeſterday, but thought of trying it at the Royal Bank, by the aid our friend Mr Guthrie. Yeſterday morning our A. Orr waited of him, ſeeing, from our aſſiſtance to his friend Mr Sherriff, we had a claim to his. He declared himſelf well diſpoſed, and keen to do it; but owned, that, with others of his brethren Directors, he had the day before waited of Lord Alemore; and from what paſſed he would not bid us offer the bill. He was candid enough to hint, that he now foreſaw, the plan of both banks was, to keep their notes out of our hands by every fair means in their power: That they were now ſenſible from our conduct hitherto, that we never paid in gold, whilſt we could by any means command their paper;

paper; that this was hurtful to them, prevented their circulation, and was beſides not ſo reputable for ourſelves: That were he to adviſe, it would be for us to bring down at once a large ſupply of ſpecie, never to pay a note but in ſpecie or bills on London: That though he owned the doing this would be expenſive to us at firſt, yet in the end it would be returned, and give reputation to our operations. On the other hand, we would take in payments all their paper that came in our way, and daily ſend it *avowedly* to their offices for change; which might with the one hand bring back what ſpecie we paid with the other, and could not in the end miſs, he thought, to bring about ſuch a coalition among the three, as to ſuppreſs all provincials, give ſuitable aid to the country, and reaſonable profits to ourſelves. After ſome reflection on theſe hints, we muſt acknowledge, that, were we in their places, we ſhould readily complain of making the paper of one ſociety the given value of another; and theſe two banks, now ſenſible of our practice, have too good reaſon to with-hold their paper from us by every means in their power, ſeeing whatever we can grip of it is back upon them the ſame day. We are at ſame time ſenſible, that our paying in ſpecie muſt be very expenſive; ſhould it, however, in the end produce a proper coalition of parties, it might be borne; if not, we are much afraid it will ſoon be too evident, that an office here can be of no advantage to the concerned, and that we muſt fall back to the provincial ſtate of others, a thing to be by every rational meaſure avoided. You'll perhaps think us too ſoon alarmed; but we do aſſure you, that we have much reaſon to believe a ſcheme is formed, to with-hold from us all reſources in Edinburgh money: ſo that. had we even the moſt creditable correſpondence in London, and however indiſpenſably neceſſary that is, it would not altogether deliver us, whilſt it is in the option of every holder to decline that mode of exchange; and this we have daily found more frequent ſince you left us. The ſcarcity at leaſt of Edinburgh money, makes every one who muſt remit here uncommonly active in poſſeſſing themſelves of our paper. We have already found many of our *virgin* notes got back from Inverneſs. Yeſterday

Yeſterday there was a full meeting at Royal Bank of ordinary and extraordinary. We have not learned any thing particular, but know that * * * * * * * * * * * * * * Our W. Hay had an interview this forenoon with Mr Guthrie to the ſame purpoſe, honeſtly owning, that till we pay in ſpecie, we will have no reputation or credit with the banks. That done, with a proper eſtabliſhment at London, we may ſurmount all oppoſition, and perhaps ere long bring about a deſireable union. In daily expectation of having agreeable news from you, we remain, with much eſteem, &c.

P. S. We beg leave to put you in mind of the Air poſt, a newspaper for this office; and if there is likely to be any parliamentary order for payment of the herring-bounties, this would bring us a ſeaſonable ſupply.

Copy of a letter from the Directors at Edinburgh to the deputation at London, dated 9th April 1771. Vide *Letter-book of Private Correſpondence.*

(f) Your favour of the 2d we duly received, acknowledging receipt of ours of 28th ult.; though you have not yet acknowledged receipt of ours 22d and 26th, which no doubt you have received; indeed they were all much on the ſame ſubject. We are happy to obſerve your ſpirits are ſo high; though here we are ſtill in the labouring ſtyle; yet by one means or other, and the remittance of ſpecie from Dumfries, we hold out, and hope to go on, by your aſſiſtance. Any ſpecie you could carry down would be but a very temporary relief, and was not what we had in view on that head; and unleſs neceſſity force us, we would incline to keep from drawing upon Sir George Colebrooke's houſe, till we receive your confirmation of the terms, which we have expected for ſome poſts. As we are now ſatisfied, that Mr A. Aitkinſon gets much of our

 ſpecie

ſpecie from Scotland, nay much of it from ourſelves, we took the hint Mr Guthrie gave, of making a contract at London for all our ſpecie, on terms at leaſt more reaſonable than thoſe given Aitkinſon: and if it is true, that the Royal Bank have their ſpecie delivered here free of riſk, at $1\frac{1}{4}$ *per cent.* might not you try to eſtabliſh terms of the ſame kind for us, to ſuperſede Aitkinſon, and all other border-collectors of ſpecie? who, without doubt, draw it back again by every art in their power. This, we hope, you will think of, and do what you can to ſettle ſuch a contract; ſo that by our writing, at any time, we may command ſuch a quantity as is neceſſary. At ſame time, if you can bring down L. 10,000 or L. 12,000, let us know, that bills may be ſent; though, as already obſerved, we would wiſh to be ſparing of draughts on our new houſe till we have the terms confirmed by themſelves or you; and wiſh how ſoon that were done, for two reaſons; That our draughts on Mr Mayne's houſe, do what we can, are now exceeding our remittances; and, ſecondly, That the people here having now advice of Sir George's houſe being our correſpondents, are daily ſeeking bills on them, which hitherto we refuſe; and if they won't take them on Mr Mayne, we pay in gold. We might add a third reaſon, that our L. 10,000 credit on Kilby and Syme, is all drawn ſave L. 80; and though our Air brethren rely on us to replace it, we have not been able to make them any remittance, deſirous to give all we can command to Mr Mayne, who is greatly under acceptance, beſides, of this date, L. 5000 in advance. Your A. Ferguſſon's letter of the 28th ult. adviſing, that he and Mr Inglis had that morning ſettled the terms with Sir George Colebrooke, gave us much ſatisfaction; but as you mentioned in it, that the terms were to be adjuſted by Mr Mayne, you cannot be ſurpriſed at our anxiety to hear theſe are confirmed, and to know the particulars. Our letter and ſignatures to them we ſent open on the 5th to Mr Inglis, under cover from Mr Hay; and we would gladly bear off till we hear more fully from them or you. We ſhould wiſh alſo to know, if you have heard from, or ſeen, Mr Gaſcoigne, or if any

any part of his plan can be made ſerviceable to us, as you'll readily ſee there is an abſolute neceſſity of another market than the preſent for the purchaſe of bills. We remain, &c.

P. S. Our Caſhier begs you'll bring down the Eſſay on the Theory of Money, price 2 s. 6 d. to be got at Almon's. Dimſdale's account will be ready to ſend by Thurſday night. Mr Hay juſt now ſhowed us Mr Inglis's favour to him of the 4th, which we were glad to ſee.

Copy Letter from the Directors at Edinburgh to the deputation at London, dated 13th April 1771. Vide *Letter-book of Private Correſpondence.*

(f) Your favour of the 6th to the Caſhier we have ſeen; and yeſterday began drawing on Sir George Colebrooke's houſe, as you deſire, and will readily do more on Monday. We are ſorry you ſhould ſuſpect want of confidence or truſt: we want neither in the moſt enlarged ſenſe; though you muſt not be ſurpriſed, we are both anxious and curious to ſee the eſtabliſhment; the rather if you'll but look back to your own letter of 28th ult. where you ſay, "That in as ſhort time as you could take to inform us, you and "Mr Inglis had ſettled the terms; but that no writing had paſſed, "as Sir George had left every thing to be ſettled by Mr Mayne." Now could we poſſibly underſtand this as *final?* for though we have wrote often ſince, till your laſt we never had another word on the ſubject; and even in it you don't ſay an agreement is ſigned. Our fears, by former woful experience, led us juſtly to keep off operating, leſt of any demur. After this place knew, that we drew on them, if there ſhould be any ſtop, how ſhould we then have looked? This was honeſtly our reaſon, which we hope you will view in the proper light. It is a pity you've no clerk; for you may be ſure, in our perplexed diſtreſſing daily ſtate here, paying near L. 2000 in gold to a

Fogo,

Fogo, and ſuch like wretches, how pleaſing would all your intelligence, interviews, and converſations, been; a philip and an agreeable relaxation to us. But need ſay no more, than to aſſure you all, that we ever are, &c.

At a general meeting of Directors, held at Dumfries, 4th May 1771,

(*g*) The meeting having conſidered the whole minutes of the laſt general meeting, and of the meeting of the Directors previous and ſubſequent thereto, do report as follows.

1. That ſince the capital of L. 150,000 was completed at laſt general meeting, the Directors have aſſumed, (Here follows the names of aſſumed Partners, and the transfers of ſtock.)

2. That, ſince the laſt general meeting, many of the Partners have ſigned the contract, &c.

3. That, in terms of their laſt Report, the next general meeting ſhould be held at Air, &c.

4. That in conſequence of the remit to the Edinburgh Directors, for ſettling the whole accounts of the inſtitution, &c.

5. That although, by the 10th article of the contract, it is required, that the proceedings and minutes of every general meeting ſhould be ſigned by the Preſes and Directors preſent, for the time; yet as all the minutes and ſederunts of the three preceding general meetings, in November 1769, May and November 1770, have only been ſigned by the Preſes, and copies of them at length recorded in each of the ſederunt-books kept at the office and two branches, which appears to be check ſufficient, they humbly report,

port, That it is their opinion, that, in ſo far, this article of the contract may be varied, that the general meeting may approve of the former ſederunts ſo ſigned, and declare the ſignature of their Preſes in time coming, as fully ſufficient to anſwer the ſpirit and intendment of that article.

6. That as the time of endurance of the contracts of ſome of the Banking companies in Scotland are near an end, the general meeting authoriſe the Directors to receive the propoſals of ſuch companies as may, on or before their diſſolution, incline to join this Company; to treat with them thereanent; and to aſſume the whole, or ſuch of them as they ſhall ſee cauſe, upon ſuch terms as may be beneficial to the Company, ſo ſoon as any of them ſhall make offers for that purpoſe, or agree to propoſals made to them for that effect.

7. That, ſince the laſt general meeting, they had, in February laſt, appointed James Ford merchant in Montroſe to be the Company's agent, &c.

8. That, agreeable to the contract and rules of this Company, the whole books of their tranſactions and buſineſs have been brought to a general balance on the 5th November laſt 1770, for the firſt year of the buſineſs: That this general balance has been examined and checked by the reſpective Caſhiers and Accountants, and ſigned in the principal books kept at Air, on the 4th of this current month, by all the Directors here preſent: That the whole books thus balanced are here ready for the inſpection of the Company, or any Copartner who chuſes to examine the ſame.

At a general meeting of Proprietors, held, at Dumfries, 6th May 1771,

(*h*) The minutes of the laſt general meeting, held at Edinburgh, the 5th and 6th November laſt, being read over, there was preſented by the Preſes of a court of Directors, held here on the 4th current, a written report from them, of that date, reſpecting the preſent ſtate of the Company's affairs, and an alteration propoſed upon the 10th article of the contract, reſpecting the ſigning of their ſederunts, and a further call of 10 per cent. to be made upon their ſubſcribed ſtock. And which report being read, and heard at full length, article by article, the ſame was unanimouſly approved of by this meeting; and copies of it are appointed to be tranſmitted herewith to the office and branches. *Vide* art. 2. of that day's ſederunt.

Eod. die.

(*i*) The meeting having conſidered the ſtate and general balance of the Company's affairs, do *unanimouſly* order a dividend of 5 per cent. to be paid to the Proprietors, upon the firſt call of 20 per cent. of their ſubſcribed ſtock, which was paid in at the commencement of the Company's buſineſs in November 1769; and that the dividend ſhall begin to be paid to the ſeveral Proprietors, againſt the 1ſt of June next, at the office, or any of the branches moſt contiguous to them; but with this proviſion, that no Proprietor who has not paid up all or any of the ſix different calls formerly made, ſhall be intitled to receive his dividend, until theſe calls are fully paid, in the manner directed by the former general meetings; and, to prevent confuſion, it is ordered, That the weekly ſtate from the office and branches to each other, ſhall bear a particular liſt of the above dividend, as weekly paid to each Proprietor; and that the reſpective Caſhiers give notice of the dividend thus ordered, to the Proprietors

Proprietors within their bounds, that they may call for and receive the ſame at their pleaſure. *Vide* art. 3. of that day's ſederunt.

At a general meeting of Directors, held, at Air, 2d November 1771,

(*k*) The whole minutes of laſt general meeting of the Company, and of the court of Directors previous and ſubſequent thereto, being read, this meeting do report as follows.

1. That ſince laſt general meeting, the Directors have aſſumed the following Copartners, &c. (Here follow the names of aſſumed Partners, and transfers).

2. That as many of the Proprietors of ſtock have never yet ſigned the contract, &c.

3. That as the public have diſcoverd a deſire that the contract of this Company ſhould be recorded, and rather ſeem ſurpriſed that it ſhould be ſo long delayed, (Here follows a recommendation for recording the contract.)

4. That as the books of the Company for the ſecond year of their buſineſs fall to be ſhut on the 5th current, and then to be balanced, the Directors have delayed fixing the ſalaries, &c.

5. That as it is of the utmoſt importance to this Company, that the Proprietors have thorough confidence in the conduct of their Directors, (Here follows the propoſal for electing nine extraordinary Directors.)

6. That in conſequence of the remit laſt general meeting to the Directors, to treat with any banking ſocieties in Scotland who ſhould be diſpoſed to give up their buſineſs in favour of this Company,

pany, and to aſſume the whole, or ſuch of them as they ſhall ſee cauſe, the Directors did depute, (Here follows the account of the tranſaction with the old Air banking-company.)

7. That in conſequence alſo of the ſame remit of laſt general meeting, the Directors did depute, (Here follows the tranſaction with the Dumfries banking-company.)

8. That, in terms of the laſt report, the next general meeting of this Company ſhould be held, in Edinburgh, upon the firſt Monday of May next.

9. Patrick Brown of Barharrow being propoſed this day as a Partner for one ſhare, he was accordingly received.

10. That a memorial for Mr Robert Maxwell, the Caſhier at Dumfries, reſpecting the houſe he had built for the office there, &c.

11. That it is the opinion of the Directors, that the 13th article of the reſolutions of the general meeting of the Company held at this place the 7th November 1769, viz. That there ſhall not be above one member of any trading company or ſociety whatever in the direction of this Company, at any of their offices, at one and the ſame time, (Here follows a propoſal for varying that reſolution.

At a general meeting of Directors, held, at Edinburgh, 2d and 4th May 1772,

(*l*) This general meeting of the Directors, ordinary and extraordinary, of Meſſ. Douglas, Heron, and Company, Bankers in Air, being convened here, to prepare their report to be laid before the general meeting of that Company, to be held here on Monday the 4th

4th current; and having read the whole minutes of the laſt general meeting at Air in November 1771, with thoſe of the Directors previous and ſubſequent thereto, they do report as follows.

1. That ſince the laſt general meeting of this Company, they have aſſumed the following Copartners, (Here follow the names of aſſumed Partners, and transfers).

2. That, notwithſtanding of repeated orders made by former general meetings, intimated as by them directed, the original contract of this Company, and the three after deeds of acceſſion and transference, do ſtill remain unſigned by many Proprietors, &c.

3. That, in obedience to the order of the laſt general meeting, the original contract of this Company was recorded, &c.

4. That, in terms of a remit from the laſt general meeting, the Directors of the Edinburgh branch have fixed the ſalary or allowance of Mr Orr, for his trouble as ſecretary to the Company, at L.50 Sterling yearly.

5. That as no banking ſocieties have occurred ſince laſt general meeting, who were inclined to treat about the giving up their buſineſs in favour of this Company, the meeting report it as their opinion, That the powers veſted by the laſt general meeting in the whole Directors, ordinary and extraordinary, to treat with all ſuch ſocieties as may be found ſo diſpoſed, ought to be continued upon them, in the ſame terms with thoſe given by the laſt general meeting.

6. That, agreeable to the contract and rules of this Company, the whole books of their tranſactions and buſineſs have been brought to a general balance on the 5th of November 1771, for the ſecond

year of the buſineſs: That this general balance has been examined and checked by the two Caſhiers and Accountants at Air and Edinburgh, and ſigned in the principal books, kept at Air office, of this date, by them, and by all the Directors preſent at this meeting; and that the whole books thus balanced are here, ready for the inſpection of the Company, or of any Copartner who chuſes to examine the ſame.

7. That although a dividend to the Proprietors was laſt year ordered by the general meeting in May 1771; yet it is the opinion of the preſent meeting, That the approaching general meeting ſhould order no dividend at this time; in regard the expence neceſſarily incurred in the inſtitution of this Company, the ſtruggle they had to expect on their outſet, and of courſe to maintain with all the other banking companies, and the premium incurred for the diſſolution of two of theſe companies by the approbation of the laſt general meeting, make it not prudent at preſent to order any dividend: And this, as their opinion, they with more confidence report, *ſeeing the Company's affairs are at preſent in a more flouriſhing ſtate* than they have been at any general meeting ſince their commencement.

8. That the judges of the court of ſeſſion having a capital of L. 22,700 Sterling, (Here follows an account of the loan from the Lords of Seſſion to the Company).

9. That, agreeable to the rotation hitherto obſerved, the next general meeting of the Proprietors ſhould be held at Dumfries, on the firſt Monday of November next, 1772.

10. The Directors obſerving, that, by a clauſe in the contract, it is provided, That the Caſhiers, Accountants, and Tellers, at the different offices, ſhall not be removeable, unleſs by a general meeting, (Here follows a new-propoſed regulation as to that matter).

11. That

11. That the amount of ſtock neceſſary to conſtitute a general meeting of the Proprietors, which was, by the general meeting in November 1770, limited to L. 40,000 Sterling, ſhould, by this general meeting, be further limited to the ſum of L. 30,000: ſo that, for the future, Proprietors preſent to that extent may make up and conſtitute a general meeting, and that for the reaſon already aſſigned in the Report to the meeting in November 1770.

12. That although the additional ſtock of L. 100,000 Sterling, ſome time ago opened for ſubſcription, is not yet wholly filled up; yet it is the opinion of the Directors, that the books of that additional ſtock ought to be ſhut at the general meeting in November next; and no more additional ſtock to be thereafter received, unleſs upon a motion made for the ſame at one general meeting, to be thereafter agreed to at the next general meeting.

13. That it is the opinion of the Directors, that no officer of the Company, holding an office of profit, and acting under the Directors, ought to hold or vote under proxies at any general meeting of the Proprietors, &c.

The one ſhare held by Robert Mirrie merchant in Annan, and the one ſhare by Alexander Robertſon of Straloch, are both transferred to Mr John Buſhby writer in Dumfries.

Thereafter the four ſhares held by James Dalziel of Birmingham were transferred, three of them to Mr George Home writer to the ſignet, and the remaining one of them to Archibald Cockburn of Cockpen.

NUMBER VI.

Various evidence referred to in Branch 3. reſpecting particular acts of miſmanagement.

Copy of the contract or agreement with the Airſhire bank.

(*a*) It is contracted, agreed, and ended, between John Macadam of Craigengillan, and William Campbell of Fairfield, Eſqs, for themſelves and their Partners in the Airſhire Banking Company at Air, on the one part, and Sir Adam Ferguſſon of Kilkerran, Baronet, and Mr Alexander Ferguſſon, Advocate, for themſelves and their Partners of the Banking Company in Air, called and known by the name of *Meſſ. Douglas, Heron, and Company, Bankers in Air*, on the other part, as follows: That is to ſay, Whereas the ſaids John Macadam, William Campbell, and Company, of the Airſhire Bank at Air, have, for ſome years paſt, carried on the buſineſs of banking at Air, they now agree to give up and diſcontinue the ſaid buſineſs, and to be hereafter no further concerned therein as a company: And they do further ſeverally oblige themſelves, never hereafter to enter into any banking company in the county of Air, except the ſaid banking company called and known by the name of *Douglas, Heron, and Company*.

2. The ſaid Sir Adam Ferguſſon and Mr Alexander Ferguſſon, for themſelves and Partners foreſaid, are to enter to the trade of the ſaids John Macadam, William Campbell, and Company, as at the firſt day of January laſt, and to have a right and title to draw all the profits thereof, and to be bound to continue James Hunter, the preſent

preſent Caſhier to the ſaid John Macadam, William Campbell, and Company, with their Accountant and Teller, in their ſeveral offices, and to pay their ſalaries and wages till the firſt day of January next, and defray all the neceſſary expences attending the ſame; and oblige themſelves and Partners foreſaid, their heirs and ſucceſſors, to take from the ſaids John Macadam, William Campbell, and Company, their ſtock of all kinds, as it was ſtated the ſaid firſt day of January laſt, agreeable to the ſtate then made up, and atteſted by the Caſhier and Accountant of the ſaid Company, and which the ſaids John Macadam and William Campbell, for themſelves and Company, are to uphold as juſt and right: And whereas, from the ſtate made up at the ſaid 1ſt January laſt, the ſaid John Macadam, William Campbell, and Company, appear to have had entire, free of all deductions, the whole capital paid in by the partners, and a balance of profit beſides, the ſaids John Macadam and William Campbell, for themſelves and Company, oblige themſelves to make up to the ſaids Douglas, Heron, and Company, the deficiencies in theſe articles, if any be: Declaring always, as it is to be underſtood, That out of the article of profit and loſs in the foreſaid ſtate, amounting to L. 1519: 7: $7\frac{1}{2}$ Sterling, L. 1200 Sterling was divided among the partners; for which, therefore, the ſaids John Macadam and William Campbell are not to be liable.

3. That an inventory being now made out, and atteſted by the ſaids John Macadam, William Campbell, and Company, and their caſhier and accountant, of the date of theſe preſents, of the whole debts owing to the ſaid John Macadam and Company, and which are to be ſpecially conveyed to the ſaids Douglas, Heron, and Company, the ſaids John Macadam and William Campbell, for themſelves and Company, hereby bind and oblige themſelves to uphold, that the debtors therein ſhall be good and reſponſible men, for the ſpace of four months from the date of theſe preſents; and alſo to grant, ſubſcribe, and deliver, to and in favour of the ſaids Douglas, Heron, and Company, a legal and valid title to their

houſe in Air. For which cauſes, and on the other part, the ſaid Sir Adam and Mr Alexander Fergusſons, bind and oblige themſelves, and their Partners in the ſaid Company, called and known by the name of *Douglas, Heron, and Company*, to pay the whole debts due to the ſaid John Macadam, William Campbell, and Company, agreeable to an inventory thereof, ſubſcribed by the parties of this date; and alſo to pay the notes of the ſaid John Macadam, William Campbell, and Company; with this proviſion always, That if ſuch notes, whereof payment ſhall be demanded from the ſaid Douglas, Heron, and Company, ſhall exceed the ſum ſtated in the books, or if the debts ſhall appear to exceed the ſum ſtated in the inventory herein referred to, the ſaid John Macadam, William Campbell, and Company, ſhall be obliged to indemnify them of ſuch exceſs. And further, the ſaid Sir Adam and Mr Alexander Fergusſons, for themſelves and Company foreſaid, oblige themſelves to make payment to the ſaid John Macadam, William Campbell, and Company, of the ſum of L. 18,000 Sterling, at the terms of Martinmas, Candlemas, and Whitſunday next, by equal portions, with the due and ordinary annualrent or intereſt thereof from the firſt day of January laſt, during the non-payment. And, laſtly, both parties bind and oblige themſelves to implement, fulfil, and perform, the premiſſes, to one another, in every article, under the penalty of L. 4000 Sterling, to be paid by the party failer to the party obſerver, or willing to obſerve, beſides performance. Conſenting to the regiſtration, &c.

Copy letter from the Directors at Edinburgh, to thoſe at Air, dated 2d Auguſt 1771.

(*b*) As our preſent mode of granting caſh-credits by correſpondence, is attended with a conſiderable deal of trouble, and at the ſame time does not altogether anſwer the purpoſe propoſed by it, we beg leave to ſuggeſt to you, That we imagine it would anſwer much better, if for the future no caſh-credits were to be given, except at the

the two general meetings of the Directors in the months of May and November; and from this period all applications for caſh-credits ſhould be allowed to lie over till the general meeting of Directors at Air in November. It muſt readily occur to you, that at theſe general meetings we ſhall have an ample opportunity of diſcuſſing the propriety of the applications made to us; and the delay need not diſtreſs any proper perſon making ſuch applications, as they may in the interim be accommodated by diſcounting bills.

We have alſo ſent a copy of this to our friends at Dumfries, and hope it will be agreeable to both them and you, to concur with us in this meaſure. We are, with great regard, &c.

At a meeting of the Directors of the Edinburgh Branch, 7th May 1772,

(*c*) Mr Fergusſon alſo laid before the meeting the agreement he had made with Meſſ. Charles Fergusſon and Company, and Meſſ. Fordyce, Grant, and Company, for negotiating a part of the tranſactions of this Company at London. They were approved of, and Mr Fergusſon deſired to write them ſo, and let them know, that Mr Hogg, the Caſhier, had orders to commence the operations of the Company upon them, in terms of theſe agreements; and it is recommended to Mr Fergusſon to mention to thoſe gentlemen, *that it is expected ſome of their friends will give letters of guarantee for their tranſactions with this Company.*

At a meeting of the Directors, Edinburgh branch, 4th March 1771,

(*d*) Mr Gilbert Ker being this day appointed principal Teller, in terms of a former ſederunt, the Caſhier is deſired to cauſe him write to

to Mr Ker of Gaitſhaw, his father, for a letter to the Directors, approving of this appointment, and warranting his tranſactions whilſt he continues in this department. And David Fleming, late tanner in Edinburgh, having been this day appointed deputy-teller, *he is ordered* to find two bailſmen, to the extent of L. 1500 Sterling, and to have a ſalary of L. 50 a-year while he continues in this office.

At a meeting of Directors, Edinburgh branch, 30th December 1771,

(*e*) The Directors, conſidering that Mr Fleming, who acts as aſſiſtant to the Teller, has not lodged a bond of ſecurity with the Bank in terms of the rules thereof, they deſire the Caſhier to inform Mr Fleming, that unleſs he lodge ſuch bond betwixt and Wedneſday night next, the balance will be received from him on Thurſday morning, and another perſon appointed to act in his place; and if Mr Fleming omit to lodge ſuch bond, Mr Hogg the Caſhier is directed to receive the balance on Thurſday morning accordingly.

1ſt January, 1772.

(*e*) The Aſſiſtant-Director having conſidered the above part of the minutes reſpecting Mr Fleming, and underſtanding that he has not got a bond of cautionry, and that there is no appearance of his obtaining one, ordered Mr Hogg to ſuperſede his acting to-morrow, *and to cauſe George Moriſon act in his place*; and alſo ordered Mr Hogg to call an extra meeting of Directors, to be held here at twelve o'clock to-morrow, and to write circular letters for that purpoſe.

The Aſſiſtant-Director intimated to Mr Fleming what he had done, and ordered him to attend the Directors to-morrow.

At a meeting of Directors, Edinburgh Branch, 2d January 1772,

(*e*) The above Directors met in conſequence of an intimation from the Caſhier, at the deſire of Mr Hay; and to them the Caſhier reported, That he had examined Mr Fleming's caſh, and found a deficiency of L. 492 : 9 : 6; which Mr Fleming allowed is the balance that muſt ſtand againſt him to be accounted for; and acknowledged, that he had applied L. 200 of the ſaid balance to his own uſe: but alledged, when all accounts are ſettled between him and Mr Grierſon the principal Teller, the reſt of the balance will appear to be owing to errors or omiſſions. Mr Hogg the Caſhier, and Mr Fleming, having ſigned a minute, containing a declaration to the above purpoſe, the meeting appoint Mr Fleming to grant a bill, at one day's date, for the above-mentioned ſum of L. 200; and ordered Mr Grierſon and him to examine their books, balances, and vouchers, without loſs of time, to diſcover any error that may have been committed; and remit to Mr Orr to take what further ſteps may be neceſſary for the ſecurity of the Company.

At a meeting of Directors, Edinburgh Branch, 2d May 1772,

(*f*) The meeting conſidering, that the office has been broke open between ten o'clock laſt night and ſeven this morning, and money taken out of George Moriſon the Teller's cheſt; and that, from various circumſtances, there is the ſtrongeſt reaſon to believe, the locks of the cheſt have not been picked, *and conſequently*, that George Moriſon, who kept the keys of the cheſt, either knows of, or has been in ſome way *acceſſory* to the robbery; the meeting order Mr Hogg to apply by petition to the ſheriff, for a warrant to examine the ſaid George Moriſon, his mother, and ſervant-maid, and any other perſons who, in the courſe of the inquiry, may ap-

pear to be examined for discovering the criminal: and petitions for the above purpose having been drawn, and approven of by the Directors, they called for Mr Hogg, and ordered him to sign the same in their presence, which he did accordingly.

At a meeting of Directors, Edinburgh Branch, 15th May 1772,

(f) Mr Hay reported, That he had removed George Morison from the Telling-office, and ordered him to assist Mr Hogg, as formerly; and Mr Grierson and Mayelston were to take the charge of the Telling-office: That he had inchested of said George Morison's balance, per the chest-book, on the 12th May,

D. H. and Co. s notes, - -	L. 2000	0 0
Ditto torn and cancelled, - -	254	3 0
Old Air notes, in four parcels, -	1396	6 0
	L. 3650	9 0

And that the remainder of his balance was delivered to Mr Hogg, as per the book, which includes the *deficiencies*, as per George Morison's acknowledgement, signed by the Director of the week, Mr Hogg, and George Morison.

Copy Letter from Alexander Fergusson, to Charles Fergusson, Esq; London, dated 7th May 1772.

(g) I have this day laid before the Directors of Douglas, Heron, and Company, here, the agreement entered into with your house upon the 20th ult. for the purpose of negociating a part of Douglas, Heron, and Company's business in London, which I am desired to acquaint

acquaint you they very much approve of. As we are acting for a number of other people, and consequently must be more scrupulous in our transactions than if they were upon our own account, we hope you will not look upon it as in the least degree disrespectful to your house, that we request of you, at your own conveniency, to transmit us a letter of guarantee from one or two of your friends, for your transactions with Douglas, Heron, and Company. Bills, to the amount of the deposit to be kept with your house, for transacting the business of Douglas, Heron, and Company, free of commission, will be sent you in the course of a *few posts*; which you will be so good as discount, and place the discount to debit of Douglas, Heron, and Company. I am, &c.

Copy Letter from Alexander Fergusson, to Andrew Grant, Esq; London, dated 7th May 1772.

(g) I have this day laid before the Directors of Douglas, Heron, and Company, here, the agreement I entered into with your house upon the 20th ult. for the purpose of negociating a part of D. H. and Co.'s business in London; which, I have the pleasure to inform you, they have desired me to acquaint you, that they very much approve of. As we are acting for a number of other people, and consequently must be more scrupulous in our transactions than if they were upon our own account, we hope you will not look upon it as in the least degree disrespectful to your house, that we request of you, at your own conveniency, to transmit us a letter of guarantee from one or two of your friends, for your transactions with D. H. and Co. Bills, to the amount of the deposit to be kept with your house, for transacting the business of D. H. and Co. free of commission, will be transmitted you in the course of a *few posts*; which you will be so good as discount, and place the discount to the debit of D. H. and Co.

I propoſe that we ſhould do a good deal of our buſineſs with your houſe, by getting bills from your houſe here upon your houſe in London, for the purpoſe of remitting to our bankers, which a receipt will be given to your houſe here for, and bills remitted to your houſe in London for by us ten days before they become due. I am, &c.

At a meeting of Directors, Dumfries Branch, 3d December 1771,

(*b*) The meeting, upon a repreſentation made by Mr Riddick, That Mr Murray of Broughton was, by the preliminary articles of agreement with the Dumfries bank, to have a loan from this Company of L. 10,000 on his bond, with ſufficient cautioners, payable at Martinmas 1772, in order to enable him to diſcharge a debt due by him to the Dumfries bank to near that extent; and that Mr Murray had accordingly ſigned a bond, with Meſſ. Syme and Buſhby as cautioners, for the ſaid ſum, which was now in Mr Riddick's hand, they do therefore appoint the Caſhier to pay the ſaid L. 10,000 to Mr Riddick, and receive from him the bond ſo executed.

Copy of contract or agreement with the Dumfries Bank.

(*i*) Articles and preliminaries of the agreement entered into betwixt Patrick Lord Elibank, James Murray, Eſq; of Broughton, and John Buſhby writer in Dumfries, as having powers from, and taking burden upon them for Alexander Johnſton, Hugh Lawſon, and Company, bankers in Dumfries, on the one part, and Alexander Ferguſſon, Eſq; younger of Craigdarroch, Advocate, and John Carruthers, Eſq; of Holmains, as having power from, and taking burden upon them, for Douglas, Heron, and Company, Bankers in Air,

1*mo*,

1*mo*, Meſſ. Douglas, Heron, and Company, agree to grant caſh-credits to the perſons following, for the reſpective ſums after mentioned, if deſired, on proper ſecurity, viz. to John Lord Garlies, the ſaid James Murray, Robert Riddick of Corberton, and John Buſhby writer in Dumfries, for L. 2000 Sterling each; ſaid Lord Elibank, John Agnew of Sheuchan, William Kirkpatrick junior in Dumfries, Kirkpatrick and Roſs in Dumfries, John Borradil in Wigton, and Simon Brown and Company Glaſgow, for L. 1000 Sterling each; to Robert Cutler in Dumfries, for L. 800 Sterling; and to John Macdouall of Logan, Patrick Brown of Gaygill, and the Honourable Captain Keith-Stewart, for L. 500 Sterling; the ſaid caſh accounts or credits being to be given at ſuch of the branches of Douglas, Heron and Company, as the perſon to have the credit inclines for.

2*do*, In conſideration of the ſaid John Buſhby his becoming a Partner with the ſaid Douglas, Heron, and Company, and as a preliminary fixed in this treaty, the following articles are agreed to relative to him, viz. 1. That the ſaid Douglas, Heron, and Company, ſhall receive from him, at their branch at Dumfries, ſuch ſums of ſpecie as he ſhall from time to time receive, with certificates, that the ſame comes from England or Ireland; for which they are to give him bills on their correſpondent in London at the time he delivers the ſpecie, at fifty days date, and to pay him a premium of 1 per cent. for the amount of what he ſhall deliver from time to time; but the ſaid John Buſhby agrees to take the bills at any date betwixt fifty and ſeventy days date, in the option of the ſaid Douglas, Heron, and Company, they paying him intereſt on the difference betwixt fifty days date and the date they ſhall give the bills at, on the amount thereof. 2. The ſaid Douglas, Heron, and Company, agree to give the ſaid John Buſhby a credit, or an account-current, for L. 6000 Sterling, which he is to repay by London bills at or under ſeventy days date, and the exchange to be allowed betwixt the parties as follows,

viz. fifty days date par; the bills at or under ſeven days date three fourths per cent.; and the bills which are at or under twenty-five days date, to bear a diſcount from three fourths per cent. of the intereſt betwi t ſeven days date and the date thereof; the bills betwixt twenty-five and ſeventy days date to be upon an intereſt-account, declaring the par to be fifty days date as aforeſaid: and in conſideration of the trouble and riſk the ſaid John Buſhby may have in procuring ſuch bills, he is to be allowed the Company's notes twenty days free of intereſt; after which the ſaid L. 6000 Sterling, or ſuch part as he ſhall owe, ſhall bear intereſt; and the ſaid John Buſhby ſhall be obliged to clear the account, by paying up his credit, with bills as aforeſaid, once in ſix months when required; but in caſe any alteration ſhall happen in the exchange of bills on London from Scotland, if the ſame is more or leſs than at preſent, the addition or diminution of the exchange on London bills above mentioned, to be paid to the ſaid John Buſhby, ſhall bear a proportion, and be determined by the ſaid Alexander Ferguſſon, and Mr William Hay writer to the ſignet: and failing of them, by death, or not acceptance, by neutral perſons to be mutually choſen by the ſaid Douglas, Heron, and Company, and the ſaid John Buſhby. 3. The ſaid Douglas, Heron, and Company, is to furniſh the ſaid John Buſhby with a credit to the amount of L. 6000 Sterling; for which he ſhall grant bond, with ſufficient ſecurity, to be uſed as a diſcount-account at pleaſure; and as the ſaid bond is to cover the tranſaction to that amount by ſufficient ſecurity, the indorſement of the ſaid John Buſhby of ſuch bills as he may give in to the ſaid Douglas, Heron, and Company, the ſame not having above three months to run, ſhall be ſufficient to intitle him to draw the amount of the ſaid credit, without regard to the ſecurity of the drawers or acceptors of ſuch bills. 4. The ſecurity and tenor of the bond to be granted by the ſaid John Buſhby, in conſequence of theſe articles, ſhall be determined by the ſaid Alexander Ferguſſon, John Carruthers, and Ebenezer Wilſon bookſeller

ſeller in Dumfries, or any two of them, whoſe approbation ſhall be final, and the credits in favour of the ſaid John Buſhby, above ſpecified, to be eſtabliſhed at the branch of Douglas, Heron, and Company, at Dumfries. Theſe articles and agreements with the ſaid John Buſhby and Douglas, Heron, and Company, to continue in force for ſeven years, from 29th October 1771, and thereafter, until one of the parties, deſirous to alter the ſame, ſhall give the other ſix months premonition.

3*tio*, Mr William Kirkpatrick junior, in Dumfries, to have a credit, for diſcount, to the extent of L. 3000, on the ſame terms with the diſcount-account above mentioned for the ſaid John Buſhby.

4*to*, Whereas John Orr in Morningſide, and Robert Hope in Edinburgh, owe Alexander Johnſton, Hugh Lawſon, and Company, between L. 5000 and L. 6000 Sterling, on an agency-account, they are to be indulged with a delay of payment of ſuch part as they chuſe till Whitſunday 1773 years.

5*to*, David Staig, the preſent accountant to the ſaid Alexander Johnſton, Hugh Lawſon, and Company, at the deſire and recommendation of Mr Murray, is to be appointed joint or aſſiſtant accountant to the branch of Douglas, Heron, and Company, at Dumfries, how ſoon he leaves Alexander Johnſton, Hugh Lawſon, and Company, with a ſalary of L. 80 per year.

6*to*, Lord Elibank, Mr Murray, and Mr Buſhby, in juſtice to Simon Brown in Glaſgow, who has acted as agent there for Alexander Johnſton, Hugh Lawſon, and Company, recommend to Douglas, Heron, and Company, to continue him in the ſame way as agent for them, on ſuch terms as they can agree upon, which Meſſ. Ferguſſon and Carruthers engage they will do on proper and reaſonable terms.

7*mo*,

7*mo*, Alexander Johnſton, Hugh Lawſon, and Company, are to give up their buſineſs as bankers in Dumfries, the 29th October next; after which they are not to iſſue their notes otherwiſe than at the deſire, and for the behoof, of Douglas, Heron, and Company; and thoſe in the circle, as the amount thereof ſhall be aſcertained by the balance-ſheet after mentioned, ſhall be on account of the ſaid Douglas, Heron, and Company; who ſhall have right to the profits and intereſt that will ariſe therefrom, or from the loſs of notes that may be deſtroyed by accident, and never be demanded payment of: and alſo the ſaid Alexander Johnſton, Hugh Lawſon, and Company, ſhall be obliged to deliver over to the ſaid Douglas, Heron, and Company, funds to the extent of ſuch notes as the amount thereof ſhall be ſo aſcertained, or to pay intereſt therefor from the ſaid 29th day of October next till they do ſo; and alſo the ſaid Alexander Johnſton, Hugh Lawſon, and Company, are to give the *benefit of all loans* of money which they have after that period, to Douglas, Heron, and Company; who, by this tranſaction, are to come in their place, and for which they are to pay ſuch intereſt as the ſaid Alexander Johnſton, Hugh Lawſon, and Company, are liable for; ſaid Douglas, Heron, and Company, being bound to retire the obligations granted by Alexander Johnſton, Hugh Lawſon, and Company, on that account, and to deliver the ſame diſcharged to the ſaid Alexander Johnſton, Hugh Lawſon, and Company, as they become due: That, upon the ſaid 29th day of October, the books of Alexander Johnſton, Hugh Lawſon, and Company, ſhall be ſhut, and the balances therein ſtruck as ſoon as convenient thereafter; from which the accountant to the ſaid Alexander Johnſton, Hugh Lawſon, and Company, ſhall make out and certify a balance-ſheet, for the uſe of the parties, and regulating the premiſſes, and in which the amount of the notes in the circle the ſaid 29th October next ſhall be particularly inſerted.

Laſtly,

Laſtly, Douglas, Heron, and Company, ſhall be obliged to furniſh loans to ſuch perſons as ſhall owe money to Alexander Johnſton, Hugh Lawſon, and Company, the ſaid 29th day of October next, to the extent of ſuch debts, *for three months*, on good ſecurity, when requeſted; the ſufficiency of which ſecurity to be determined by the ſaid John Carruthers and John Buſhby; or in caſe of variance betwixt them in any caſe, to any overſman they appoint; and the ſecurity ſo approven of, the ſaid Douglas, Heron, and Company, agree to accept. What is wrote on this and the five preceding pages, is the paper apart referred to in a minute of agreement execute betwixt the parties above deſigned this day. In witneſs whereof, &c.

The Right Honourable Patrick Lord Elibank, James Murray, Eſq; of Broughton, and John Buſhby writer in Dumfries, as having power to act for, and taking burden upon them for Alexander Johnſton, Hugh Lawſon, and Company, bankers in Dumfries, on the one part, and Alexander Ferguſſon, Eſq; younger of Craigdarroch, Advocate, and John Carruthers of Holmains, as having power to act for, and taking burden upon them for Douglas, Heron, and Company, bankers in Air, on the other part, have agreed as follows: That is to ſay, Whereas the ſaid parties having met to treat about the ſaid Alexander Johnſton, Hugh Lawſon, and Company, their giving up buſineſs as bankers foreſaid upon the 29th day of October next, in favour of the ſaid Meſſ. Douglas, Heron, and Company; and having agreed upon the terms thereof, and the ſeveral particular preliminaries relative thereto, as contained in a paper apart, ſigned by the ſaid parties as relative hereto: Therefore we the ſaids Patrick Lord Elibank, James Murray, and John Buſhby, do hereby bind and oblige the ſaid Alexander Johnſton, Hugh Lawſon, and Company, that they ſhall give up their buſineſs as bankers foreſaid, and iſſue no notes after the ſaid 29th of October

 next;

next; and that neither Lord Garlies, John Macdowal of Logan, John Agnew of Sheuchan, Robert Riddick of Corberton, William Kirkpatrick junior merchant in Dumfries, or Robert Cutler there, all Partners of the ſaid banking company, eſtabliſhed under the firm of *Alexander Johnſton, Hugh Lawſon, and Company*, nor the ſaid Lord Elibank, James Murray, or John Buſhby, ſhall be concerned, directly or indirectly, in any banking company that hereafter may be eſtabliſhed in the counties of Dumfries, Galloway, or Air, or ſtewartry of Kirkcudbright: And they bind and oblige themſelves, conjunctly and ſeverally, that the ſaid Alexander Johnſton, Hugh Lawſon, and Company, ſhall fulfil the ſaid agreement as contained in the ſaid paper apart, as incumbent upon them in all reſpects, according to the true intent and meaning thereof: For which cauſes, and upon the other part, the ſaids Alexander Ferguſſon and John Carruthers bind and oblige themſelves, conjunctly and ſeverally, and the ſaid Meſſ. Douglas, Heron, and Company, to pay in to the ſaid Meſſ. Alexander Johnſton, Hugh Lawſon, and Company, the ſum of L. 7350 Sterling, as follows, viz. L. 3150 Sterling at Whitſunday next, and L. 4200 Sterling at Martinmas 1772 years, with the lawful intereſt of the ſaid ſums from the ſaid reſpective terms of payment till payment thereof, and together with a fifth part more than the ſaid reſpective principal moieties, of penalty, in caſe of not due payment: And further, the ſaid Alexander Ferguſſon and John Carruthers bind and oblige themſelves, and the ſaid Douglas, Heron, and Company, as aforeſaid, to free and relieve the ſaid Alexander Johnſton, Hugh Lawſon, and Company, of the payment of ſuch notes iſſued by them as ſhall be in the circle upon the 29th day of October next, according as the amount ſhall be aſcertained by the balance-ſheet mentioned in the ſaid paper apart; and for that end to pay the ſame in Dumfries, regularly, as the holders thereof ſhall demand payment, in the ſame manner as the ſaid Alexander Johnſton, Hugh Lawſon, and Company, are bound to do themſelves; and that they will deliver up and retire, at

at the ſight of any perſon to be appointed by the ſaid Alexander Johnſton, Hugh Lawſon, and Company, the ſaid notes, as they ſhall come in; and that monthly, or ſo often as required: And further, they bind and oblige themſelves, and the ſaid Douglas, Heron, and Company, as aforeſaid, that they ſhall implement and fulfil the ſeveral terms and conditions contained in the ſaid paper apart, and preliminaries relative thereto, therein inſert and condeſcended upon, faithfully, and according to the true intent and meaning thereof: And further, the ſaid parties hereby bind and oblige themſelves, and their reſpective conſtituents, to ſubmit and refer all diſputes that ſhall happen touching or concerning theſe preſents, or the meaning thereof, or of the ſaid paper apart, or any part thereof, to two perſons to be mutually choſen by the parties, with power to them to chuſe an overſman in caſe of variance; and that the parties ſhall enter into a formal ſubmiſſion for that purpoſe, and condeſcend upon their reſpective articles within thirty days after ſuch difference ſhall happen, and requeſt be made to ſubmit as aforeſaid: And, laſtly, both parties bind and oblige themſelves, and their reſpective conſtituents, each for their own part, that the ſaid Alexander Johnſton, Hugh Lawſon, and Company, and Douglas, Heron, and Company, ſhall implement and fulfil theſe preſents, as incumbent upon them reſpectively to each other, and to the particular perſons therein and in the ſaid paper apart intereſted, according to the true intent and meaning thereof; and that under the penalty of L. 1000 Sterling, to be paid by the party failing to the party obſerving, or willing to obſerve, attour performance. And both parties conſent to the regiſtration, &c.

At

At a meeting of the Directors of the Dumfries branch, 12th November 1771,

(*k*) The meeting having under their conſideration the mode of diſcounting bills preſented in this office, the following regulations appear to them proper.

That Tueſday be a general day of diſcounting, when the bills propoſed to be diſcounted ſhall be preſented to the meeting, with the following exceptions.

1. That the daily Director ſhall be at liberty to diſcount to any perſon, any bill, the value of which not exceeding L. 50.

2. That the daily Director, and his aſſiſtant, ſhall be at liberty to diſcount to any perſon, any bill, the value of which not exceeding L. 100: That ſuch bills ſo diſcounted ſhall be reported to the next meeting.

3. That, notwithſtanding Tueſday being the general diſcount-day, yet a quorum of Directors may diſcount ſuch bills as they ſee proper *on any day*.

The meeting alſo deſire the Caſhier to cauſe all bills preſented to this office to be diſcounted to be inſtantly entered in a book, in the manner the bills he this day preſented were.

The meeting alſo deſire the Caſhier to cauſe all bills on London, preſented for ſale, to be entered in a book, in the form of bills diſcounted, to be marked by the Directors *initials*.

NUMBER

NUMBER VII.

State of the Debts due to Douglas, Heron, and Company, 22d June 1772, in conſequence of the irregular credits unwarrantably given out at Air, Edinburgh, and Dumfries, as contained in the third Branch of the Report.

AIR.

					L.	s.	s.
1. Caſh-accounts,	Obj. 1. State, N° 1.	—			11861	9	4
	Obj. 2. State, N° 2.		—		9156	11	10
	Obj. 3. State, N° 3.			—	12603	17	2
	Obj. 4. State, N° 4.	—			8848	1	6
				L.	42469	19	10

Nota, Beſide the ſum thus due on 22d June 1772, the holders of the above accounts had it in their power to operate to the full extent of the credits given them, being L. 59,510. — *Vide* p. 47. of Report.

2. Diſcounted bills, per particular liſt taken from State, N° 5.					—			54997	18	6
3. Bills of exchange, per particular liſt of thoſe diſhonoured, from liſt N° 6.					—			2300	0	0
4. Circulation,	1. General account of circulation,	L.	1481	3	0					
	2. James Gilleſpie,	—	1259	1	9					
	3. John Macdowal,	—	706	9	7					
								3446	14	4
5. Accounts-current,	1. Richard Oſwald of Auchincruive,		2060	2	0					
	2. Hugh Roſe of Kerſe,	—	330	15	4					
	3. William Alexander and Sons,		490	0	0					
	4. Quintin Macadam in Barbeth,		307	10	0					
								3188	7	4
Total due upon irregular credits at Air, 22d June 1772,							L.	106403	0	0

EDINBURGH.

				L.	s.	d.
1. Cash-accounts,	Obj. 1. State, N° 7. — — —			5187	2	9
	Obj. 2. State, N° 8. — —			11375	0	0
	Obj. 3. Credits to C. Fergusson and Co. and Fordyce, Grant, and Co. by way of deposits, -	L.	12000 0 0			
	Deduce as contained in State N° 7.		10000 0 0			
				2000	0	0
	Obj. 4. State, N° 9. — —			157	17	10
				18720	0	7

Nota, Besides the sum thus due on 22d June 1772, the holders of the above accounts had it in their power to operate to the full extent of the credits given them, being L. 27,350. —— *Vide* p. 58. of Report.

2. Discounted bills, per particular list taken from State N° 10. —				21304	10	3
3. Bills of Exchange, per particular list of those dishonoured from list N° 11. — — —				109103	8	7
4. Circulation,	1. Robert Scott, —	L.	1242 9 6			
	2. Jo. Storie in Moffat, circulation-account,		1438 6 5			
	3. Jo. Birtwhistle drover, Yorkshire,		138 2 4			
	4. Jo. Carrick drover at Wardlaw, —		602 3 7			
	5. Jo. Murchison drover, —		241 0 0			
	6. Ja. Main, — —		53 2 0			
	7. Sandiman and Ramsay, —		14 3 8			
	8. James Marshall, — —		64 3 8			
				3793	11	2
5. Accounts-current,	1. William Fullerton of Rosemount,		314 17 6			
	2. William Alexander and Sons,		1593 12 10			
	3. Jo. Fordyce of Ayton, —		2467 9 0			
	4. David Thomson, Mrs Gordon, and others, —		900 0 0			
	5. Sir George Colebrooke, —		1390 0 0			
	6. Jo Storie, at Moffat, —		155 1 6			
	7. Francis Garbet and Company,		350 19 0			
				7171	19	10
6. Security neglected,	1. David Fleming, Teller, —		326 14 4			
	2. George Morison, Teller, —		346 19 3			
				673	13	7

Nota, Under this article would fall to be charged the credits to Charles Fergusson and Company, and Fordyce, Grant, and Company. of L. 6000 each, without obtaining the security recommended and stipulated. But these credits are already charged under the article of cash accounts at Edinburgh, under Obj. 2. & 3.

Total due on irregular credits at Edinburgh, 22d June 1772, L. 160767 4 0

DUM-

DUMFRIES.

				L.	s.	d.
1. Cash-accounts,	Obj. 1. State, N° 12. — —			3266	8	4
	Obj. 2. Loan to James Murray of Broughton,			10000	0	0
				L. 13266	8	4

Nota, Besides this sum due 22d June 1772, the holders of these accounts might operate to the full amount, being L. 19,200. —— *Vide* p. 74. of Report.

2. Discounted bills, per particular list from State N° 13. —				61811	12	8
3. Bills of exchange, per particular list of those dishonoured from list N° 14. — —				12130	0	0
4. Circulation,	1. General account of circulation,	L.	1249 5 3			
	2. Matthew Little, —		3502 2 0			
	3. Samuel Martin and Company, of Whitehaven, —		363 7 0			
	4. John Paxton, —		123 19 9			
	5. Andrew Rome, —		225 8 0			
	6. Robert Ramsay, —		204 0 0			
	7. Robert Whigam, —		315 3 11			
				5983	5	11
5. Accounts-current,	1. James Conway, —		115 2 2			
	2. James Dalziel, —		47 0 0			
	3. John Fraser, — —		30 0 0			
	4. James Gibson, — —		1058 4 5			
				1250	6	7
Total due on irregular credits at Dumfries, 22d June 1772,				L. 94441	13	6
Total due on ditto, at Edinburgh, ditto, — —				160767	4	0
Total due on ditto, at Air, ditto, — —				106403	0	0
				L. 361611	17	6

NUMBER

NUMBER VIII.

Evidence tending to explain the Nature and Effect of the Annuity-tranſaction.

At a meeting of the Directors of the Edinburgh branch, 15th June 1772.

(*a*) The meeting have alſo reſolved, That Mr Fergusſon ſhall ſet off expreſs for London to-morrow; and that he, with Sir Adam Fergusſon, Meſſ. Campbell and Buſhby, do take ſuch meaſures for raiſing money to anſwer the demands upon the Company, either upon the preſent credits, or ſuch other as they can obtain for the bank; and whatever engagements they come under for theſe ends, the Company ſhall be bound to relieve them thereof.

At a meeting of the Directors, Air office, 22d June 1772.

(*a*) This meeting, upon conſidering the preſent ſtate of the Company's affairs in London, do impower Sir Adam Fergusſon, Meſſ. Alexander Fergusſon, John Campbell, and John Buſhby, Directors of this Company, now at London, or any two of them, to take ſuch meaſures as they ſhall ſee proper for raiſing money to anſwer the demands of this Company; and whatever engagements they enter into for this purpoſe, ſhall in every reſpect be held binding on this Company.

At

or and creditor may ſeem too ſlight to found any ſuch claim of relief; but we conſider the ſituation of ſuch debtors as were Partners of the Company, to be very different from that of *ſtranger* debtors: for beſides the common relation of debtor and creditor, they are connected with their fellow-partners in a more cloſe and intimate manner. It has already been ſhown, that a very great and extraordinary proportion of the debts due to this Company belonged to the Partners themſelves: they were therefore *ſo far* the occaſion of the London debt, and the *mediate* cauſe of the annuity-tranſaction; and ſeveral of thoſe Partners were the very conductors of it. We cannot therefore help thinking, that it would be inconſiſtent with the *bona fides* inherent in all copartneries to ſay, that the individual Partners who had interpoſed their ſecurity in this tranſaction, ſhould be intitled to relief of their engagements from the Company, becauſe the credit of the Company was thereby ſaved; and that this relief, at leaſt a juſt proportion of it, ſhould be denied to the Company itſelf, againſt the Partners who were indebted to the Company, whoſe credit was as eminently ſaved, and whoſe debts were in a very great degree the true cauſe and occaſion of all the diſtreſs and *dilemma* into which the Company was thrown. It has already been mentioned, that, at every period, the Company were *debtors* in London, only becauſe they were *creditors* in Scotland. The *former* ſituation was the neceſſary conſequence of the *latter*; and, therefore, as the Company's debt in London was contracted on account of their debtors in Scotland, the above claim of relief, at the inſtance of the Company againſt them, as the *ultimate* debtors, ſeems to be ſtill more ſtrongly founded than that of the annuity-managers againſt the Company.

It accordingly appears from the proceedings of the general meeting in November 1772, that as the annuity-tranſaction had been undertaken for the relief of the Company, and in order to diſcharge their engagements, ſo the Company agreed to take it upon themſelves, and to come under the burden of the annuities *for the relief*

and accommodation of their debtors *. At this period the *real* ſtate of the debts due to the Company, ſeems to have been induſtriouſly kept out of view; at leaſt it was not known among the Partners, however much it may have been known among the Managers; and perhaps it was not foreſeen, that the conſequences of the annuity-tranſaction were to prove ſo calamitous. It is otherwiſe not probable, that the Partners would have given ſo looſe and unreſerved an approbation *at large* to the meaſures propoſed as they then did †. Had they known the real ſtate of affairs, and foreſeen the conſequences, it is at leaſt preſumeable, that before going ſo inconſiderately and cordially into thoſe meaſures, it would have occurred to them to ſtipulate, that the proportion of the enormous loſs which was to ariſe from the annuity-tranſaction ſhould be laid upon the

† *Nota.* In the Addreſs, p. 22. it is ſet forth, That great pains were taken at the general meeting in November 1772, to explain the ſtate of the Company's affairs to the Partners; and that every one might *then* have got the fulleſt information upon the ſubject, particularly with reſpect to the ſtate of their debts. We know, that whatever *full* information may have been given the partners upon that occaſion, there were a few *trifling* tranſactions, ſuch as, the miſapplications of annuity-money, — the compoſitions with bankrupt-houſes,— the loans to Mr Alexander,— the loans to Mr Fordyce, and ſome others, which were kept, like ſtate-ſecrets, from the knowledge of that meeting. But, independent of this, every perſon knows how idle it is to think of any uſeful inveſtigation at a general meeting of this ſort; and we can hardly think that the authors of the addreſs, acquainted as they ought to be with the ſtate of the Company's affairs at that time, and in particular knowing how dark and inexplicable the ſtate of the debts then was, can ſeriouſly mean to tell the Partners, at this enlightened period of our affairs, that they ought then to have informed themſelves, and were to blame in not doing ſo. It is well known, that the *real* ſtate of the debts was impenetrable, not only then, but for a long time after, and indeed did not begin to be diſcovered till after the actual diſſolution of the Company. Such being the caſe, it is, we apprehend, rather an ungracious obſervation now to communicate to the Partners, who, in another part of the addreſs, are flattered with the compliment of acting upon that occaſion like *good and virtuous men*, that they ought to have informed themſelves at that time, of the particulars of their ſituation, and that they are now barred from demanding juſtice on account of their own neglect.

* *Vide* Sederunts of general meeting, Nov. 1772, App. N° 8. (*c*).

Partners,

Partners, not *pro rata* of their ſhares of ſtock, but *pro rata* of the debts then due by them; and that every man among them ſhould take upon him a proportion of that loſs, correſponding to the debt due by him, which he found he was not then able to pay in to the common fund for relief of the Company.

This claim of relief voluntarily ſubmitted to by a few individuals to a certain extent,

and even propoſed as a general meaſure to general meeting May 1773;

The claim of relief which we have here ſuggeſted appears to have been, with much propriety, voluntarily ſubmitted to by a few individuals, to a *certain extent*. It alſo appears, that, ſo ſoon as the inacceſſible ſtate of the debts due to the Company began to diſcover itſelf, and to be felt, the above ſcheme was frequently thought of by the Managers of the Company, as a *general* meaſure; and was even carried ſo far as to be propoſed by them in their report to the general meeting in May 1773; when the propoſal was approved of *. In conſequence of this, ſome preparatory ſtates were ordered to be made out, in the view of that method of relieving the Company being adopted as a general meaſure †; and ſo little was the real nature and latent ſtate of the debts due to the Company known or diſcovered even at this advanced period of their affairs, or ſo much was that matter kept in diſguiſe, that, according to the prophetic ſtates made out upon this occaſion, almoſt the whole of the debts due the Company were to have been paid within ſix months, or otherwiſe the Company was to be relieved of a correſponding burden of annuities ‡. But the chief object of the after management ſeems rather to have been, to get quit of the annuities *upon any terms*, than to adjuſt the loſs ariſing from

* *Vide* Appendix, N° 8. (*d*).

† *Vide* Appendix, N° 8. (*e*).

‡ *Nota.* It is now ſix years ſince theſe ſtates were made up, and from a peruſal of the ſtate of the debts *at this day* the partners may be enabled to diſcover what degree of *prophetic truth* dwelt in the compilers of thoſe ſtates.

them

but never purſued or inſiſted in.

them among the Partners. The plan was therefore never ſeriouſly ſet about, or purſued with any ſteadineſs; and the annuities, after very vigorous exertions, and extraordinary aids, having been got redeemed, the whole of the enormous loſs ariſing from the tranſaction, and from all its conſequential expences, ſtands charged to the debit of the Company, according to the preſent ſtate of their affairs.

No foundation in the contract for apportioning ſuch loſs *pro rata* of ſhares of ſtock:

We do not, however, ſee any grounds in law or juſtice for ſupporting this method of apportioning among the Partners the extraordinary loſs ariſing from the annuity-tranſaction; nor is there any foundation for it in the contract of copartnery. It is true, that by the *fifth* article of the copartnery, it is provided, "That the loſſes "ariſing from the *ſaid copartnery-buſineſs*, if any are, ſhall be ſuſtain-"ed by the ſaid Partners, according to their ſaid ſhares of ſtock *." But it is equally true, that this clauſe, as well as every other clauſe in the contract, can only be underſtood to apply to an *ordinary* ſtate of the Company, and to the loſs which might naturally ariſe from the *proper* buſineſs of the copartnery; and it is impoſſible to maintain, that this, or any other clauſe in the contract, could be meant to apply to the ſtate to which the Company was reduced by the annuity-tranſaction, or to the extraordinary loſs thence ariſing, which it cannot be ſuppoſed was in the view of the parties; which was therefore not provided for; and which was, beſides, altogether *out* of the buſineſs, and ineffectual againſt the Partners as under the contract of copartnery, as has already been ſhown.

Let it be ſuppoſed, that at the framing of the contract, ſuch an *extraordinary* loſs as the preſent, as well as the cauſes of it, had been foreſeen, and in the view of the parties, is it poſſible to ſuppoſe, that the clauſe would have been ſo conceived, as to lay the ex-

* Branch 1. § 4.

traordinary

vouchers, are lying on the table for the inſpection of every Copartner who chuſes to examine them.

3. That in order to ſave the credit, and *diſcharge the engagements*, of the Company, a committee of the Directors, who went to London for that purpoſe, after trying every poſſible means that the ſituation of affairs would admit of, to raiſe money by diſcount, from the Bank of England, or upon legal intereſt, were drove to the neceſſity (expenſive as it may appear) to take it upon annuities for lives, otherwiſe the delay of an hour would have been fatal to the credit of the Company, occaſioned their London correſpondents to ſtop payment, and, in the end, brought an univerſal bankruptcy among the mercantile people of Scotland; that theſe were objects to be prevented, be the expence what it would, at leaſt till public credit was re-eſtabliſhed, and the Company had time to call in their funds, which cannot be done in a hurry, without bringing diſtreſs upon the country; and if from that ſource, or the loan of money at legal intereſt, *which the Directors have now reaſon to expect*, providing the general meeting of the Company approve thereof, the annuities can be redeemed, *in ſix, nine, or twelve months*, the loſs thereby occaſioned to the Company is not to be put in competition with the preſervation of their credit, and that of the public in general, depending upon them: That a complete liſt of theſe annuities, and an account of the deburſement of the money received on them, is herewith reported, and the whole tranſaction will be more fully explained by ſome of the gentlemen concerned in it; after which the Directors cannot doubt, that the Company, on conſidering the then ſituation of their affairs, and of public credit, will unanimouſly be of opinion, that the meaſures taken by their brethren at London were the beſt that could be followed.

4. That the Directors are of opinion, that this general meeting ſhould order and authoriſe their Caſhier, at their office, with the Accountant, in name of the Company, and in terms of their contract,

to grant a proper bond or bonds of relief to the noblemen and gentlemen who have become perſonally bound in the ſeveral annuity-bonds.

5. That, along with the Caſhier's bond, binding the Company for the money borrowed from the court of ſeſſion, at Whitſunday laſt, the ſeveral ordinary Directors joined in a bond of corroboration thereof, binding themſelves perſonally; and as this loan was approven of by the laſt general meeting of the Company, the Directors think it reaſonable, that this general meeting ſhould authoriſe their Caſhier and Accountant, in name of the Company, to grant a bond of relief to the ſaid Directors of their ſaid engagements to the court of ſeſſion.

6. The Governor and Directors fall to be choſen at this meeting, in terms of the contract; and as the preſent ſituation of affairs makes it neceſſary to contract the buſineſs of the Company, that the number of Directors ſhould be reſtricted to five at Air, and each of the branches of Edinburgh and Dumfries.

7. That the number of Extraordinary Directors ſhould alſo be reſtricted to five; and that theſe Extraordinary Directors ſhould not only have the ſame powers with the Ordinary Directors, at the office, and branches, in the ordinary adminiſtration of the Company's affairs, but alſo a power to controul the operations of the Directors, and the buſineſs of the Company, at the office, and different branches; and if any Director take upon him to act contrary to their injunctions, he ſhall do it at his own riſk.

8. That according to the rotation hitherto obſerved, the next general meeting of the Company ought to be held at Air, on Monday, the 3d day of May 1773.

At

At a meeting of Proprietors, held at Dumfries, 2d November 1772,

(c) The minutes of laſt general meeting of this Company, held at Edinburgh, on the 4th of May laſt, being read over, there was preſented by his Grace the Duke of Buccleugh, as Preſes of a general meeting of Directors, ordinary and extraordinary, held here on the 31ſt ultimo, a written report from them, reſpecting the preſent ſtate of the Company's affairs ſince their laſt meeting; and, in particular, reporting the neceſſity the Directors were under, for a time, to ſtop payment of the Company's notes, occaſioned from the many failures that had lately happened, and the ſhock thereby given to public credit; the meaſures taken by the Directors, to ſave the credit of the Company, and that of the country, by raiſing a ſum ſufficient, from the ſale of annuities, to diſcharge their debts and engagements in London, and pointing out a plan for the redemption of theſe annuities: and which report refers to a ſtate of the amount of theſe annuities, with the account of the deburſement of the money raiſed thereon, and an abſtract ſtate of the Company's whole funds and debts, made out down to the 20th of October laſt; and alſo reporting their opinion, that the Caſhier and Accountant of the Company ought to be authoriſed, in their name, to grant the proper bonds of relief to the noblemen and gentlemen, Partners in this Company, who have become perſonally bound in the ſeveral annuity-bonds; with a like bond of relief to the Ordinary Directors of their engagements, in granting their bond of corroboration of the money borrowed from the court of ſeſſion, at Whitſunday laſt, as approven of at the laſt general meeeting: and likewiſe reporting it as their opinion, that as the preſent ſituation of affairs makes it neceſſary to contract the buſineſs of the Company, that therefore the Directors to be choſen at this meeting may of courſe be abridged, and that, in place of nine, the former number, five may be ſufficient, at the office,

and

and each of the branches; and alſo five Extraordinary Directors, in place of nine, the former number: That the Extraordinary Directors ſhould not only have the ſame powers with the Ordinary Directors, but alſo have power to controul their operations; which, if any Ordinary Director acted in the contrary, he ſhould do it at his own riſk: and laſtly, reporting, that, in the courſe of rotation, the next general meeting of the Company ſhould be held at Air, on Monday, the 3d of May next: Which Report being read, and heard at full length, article by article, the ſame was approven of, with the following additions. 1*mo*, That a committee of Provoſt David Ferguſſon, Mr George Home, and Mr Ebenezer Wilſon, with the Caſhiers and Accountants of the Company preſently here, do attend at the Company's office this evening, and to-morrow all day, to exhibit and explain the general abſtract of the Company's affairs, with the whole particular ſtates from which the ſame is taken, to every proprietor of the Company, who may demand inſpection or explanation thereof, or of the books of the Company, which are to be patent and open to them; and ordered, That copies of the ſaid abſtract-ſheet, and of the whole ſtates from which it is extracted, do lie at the office, and each branch of the Company, for the ſame inſpection; and that the Directors who ſhall be choſen at this meeting be careful to exhibit and explain the ſame to every Proprietor who may incline to inveſtigate them. 2*do*, That after hearing read a letter from his Grace the Duke of Queenſberry, their Governor, to his Grace the Duke of Buccleugh, their Preſes, reſpecting the preſent ſtate of the Company's affairs, the meeting, unanimouſly, not only approved of the conduct of the Directors, in raiſing a ſum ſufficient, from the ſale of annuities, to ſave the credit and *pay the engagements* of the Company; but alſo, after reaſoning fully on the meaſures neceſſary to be taken for the redemption of theſe annuities, they, with the ſame unanimity, came to the following reſolution, which they appoint to be ingroſſed in theſe minutes, viz. That the meeting having conſidered a report of the Directors, Ordinary and Extraordinary, relative to the annuities ſold for raiſing money, to anſwer

ſwer the exigencies of the Bank, and to ſupport its credit in London; and having ſeen and peruſed the account thereof, from which it appears, that the ſum of L. 450,900 Sterling had been received for the ſame, and for L. 430,000 of which, the Bank will have to pay the ſum of L. 55,600 *per annum* upon the different lives mentioned in the ſaid account; of which the ſum of L. 1070 Sterling yearly is irredeemable, and the remainder redeemable or repurchaſeable by the Company at pleaſure, upon payment of the annuity, with the ſum received, and a forfeit or premium of one half-year's annuity more: That for the reaſons mentioned in the ſaid account, the exact amount of the annuities payable for the remaining L. 20,900, cannot juſt now be aſcertained, but they are redeemable on the terms above mentioned: and the meeting having alſo conſidered the inſtructions given by the Directors of the Bank to the gentlemen who went to London, to raiſe money to anſwer the demands, and ſupport the credit of the Company; and having alſo heard Sir Adam Ferguſſon very fully upon the reaſons and circumſtances which induced thoſe gentlemen to raiſe money by the ſale of annuities, to the amount mentioned in the ſaid account, they do approve of their conduct in that matter; and declare the ſaid tranſaction to be for the behoof of, and binding upon, the bank accordingly.

The meeting alſo, in reſpect of the above circumſtances, direct and authoriſe John Chriſtian, the Company's Caſhier, to execute proper bonds of relief, binding the Company to make payment of their ſeveral annuities, ſo ſold *for their behoof*, in terms of the bonds granted therefor, and relieve the Duke of Buccleugh, the Duke of Queenſberry, the Earl of Dumfries, Sir Adam Ferguſſon of Kilkerran, Baronet, Sir John Whiteford of Whiteford, Baronet, Archibald Douglas of Douglas, William Fullarton of Roſemount, John Orr of Barrowfield, Alexander Ferguſſon of Craigdarroch, John Campbell of Wellwood, David Currie of Newlaw, Robert Ferguſſon

of Caſtlehill, and John Buſhby of Kempleton, of the payment thereof accordingly.

The meeting having alſo conſidered the preſent ſtate of credit and money in this country, they are of opinion, that to make an *immediate call upon the debtors* of the bank, for money ſufficient to redeem the annuities, and to enforce that call by the execution of law, would involve the country in great diſtreſs and confuſion, and might in the end bring real loſſes to the Company, which, by prudent management, and *reaſonable indulgence*, may be avoided: and being of opinion, That though the *particular ſituation* of the bank at the time juſtified the raiſing of money by the ſale of annuities, rather than ſuffer the conſequences which muſt have attended the diſhonour of the bank's credit; yet as the ſame is a mode of raiſing money highly expenſive and burdenſome, and that the Company ought to pay off and redeem thoſe annuities as ſoon as money can be procured; therefore, and *in order that the Company's debtors may have full time to pay up the ſums they owe the bank*, without bringing any general diſtreſs upon the country, they do reſolve, (Here follows a plan for raiſing money to redeem the annuities.

At a general meeting of Directors, Air office, 1ſt May 1773,

(d) This general meeting of the Directors, extraordinary and ordinary, of Meſſ. Douglas, Heron, and Company, Bankers in Air, being convened here, to prepare their Report to be laid before the general meeting of the Company, which is to be held here on Monday the 3d current, having cauſed read over the whole minutes of the laſt general meeting, which was held at Dumfries in November 1772, with thoſe of the Directors previous and ſubſequent thereto; and having made choice of his Grace the Duke of Buccleugh to be their Preſes to this meeting, they do report as follows:

1. That

1. That ſince the laſt general meeting of this Company, two of their Copartners have died, &c. (Here follows names of aſſumed partners, and transfers of ſtock).

2. That the adjournment made by the laſt general meeting to the 11th of January laſt was, by the Extraordinary Directors, in conſequence of the powers then given them, ſuperſeded as unneceſſary, and advertiſed in the news-papers, as thereby directed.

3. That agreeable to the contract and rules of this Company, the whole books of their tranſactions and buſineſs have been brought to a general balance on 5th November 1772, for the third year of the buſineſs: That this general balance has been examined and chequed by two of the Caſhiers, and by the three Accountants, and is ſigned by them in the principal books kept at the Air office, and by all the Ordinary Directors preſent at this meeting; and that the whole books, thus balanced, are ready for the inſpection of the Company, or of any Copartner who chuſes to examine them.

4. That in conſequence of the appointment of the laſt general meeting of a committee of their number to procure and negotiate a loan at London to the extent of L. 450,000 Sterling, either upon legal intereſt, or upon ſuch lower rate of intereſt as the ſame could be borrowed at, payable in ſuch manner, and at ſuch times and places, as was thereby directed, for the relief and redemption of the annuities, the committee then named had taken every poſſible meaſure in their power to procure ſuch a loan, both in Holland and at London; but hitherto their endeavours had been ſo unſucceſsful, that they had not obtained any loan of conſequence; and their proſpect of doing ſo ſo very precarious, it was eſſentially neceſſary for the Company to have recourſe to ſome *other plan*, to be relieved of the heavy burden of the annuities: That they can ſee *no other* method the Company have now left for that purpoſe, in the preſent ſcarcity of both money and credit, but by calling in, as quick as poſſible, their

their own debts and funds; *or at leaſt tranſacting with the debtors, ſo as to relieve the Company of the burden of the annuities.*

5. That ſince laſt general meeting, the ſum raiſed upon annuities was leſſened, by the redemption of ſome of them, and by the ſale and transfer of others of them, upon ſecurities of relief, taken to the Company, to the extent of above L. 40,000 Sterling.

6. That the Directors, at all the different branches, have done their utmoſt to the recovery of the debts of the Company, and therewith to take up the notes in the circle, and pay the debts owing by the Company: That they have accordingly paid off their debt in London, (Here follows an account of debts paid.)

7. That notwithſtanding of the utmoſt pains taken to recover from the different Partners the different calls which have been formerly ordered, many of them delay, and ſome of the Partners refuſe, to pay theſe calls; the general meeting will therefore authoriſe the Directors to raiſe diligence againſt all thoſe Partners who delay or refuſe to pay up the calls due by them, in terms of the original contract, and ſtock-bonds granted by the Copartners.

At a general meeting of Proprietors, held at Air, 3d and 4th May 1773,

3d May.

(*d*) The minutes of the laſt general meeting of this Company, held at Dumfries on the 2d and 3d November laſt 1772, being read over, there was preſented by the Duke of Buccleugh, as Preſes of a court of Directors, ordinary and extraordinary, held here on the 1ſt current, a written report from them reſpecting the preſent ſtate of the Company's affairs ſince their laſt meeting, ſigned by his Grace,

Grace, of ſeven articles; which being read over again and again, article by article, it was moved, and ſeconded, That the report ſhould lie upon the table till to-morrow morning, that the Proprietors may have time to conſider it, before the ſame is approven of by the Company; and which was accordingly ordered. *Vide* art. 2. of that day's ſederunt.

4*th* May.

(*d*) The minutes of yeſterday's ſederunt were read, and thereafter the report of the Directors, and ſeveral of the members being heard thereupon, the meeting *unanimouſly* approved of the ſaid report, in the *whole* articles thereof, and do *order accordingly*; with this addition to the fourth article thereof, that the Noblemen and Gentlemen of the committee, named by the laſt general meeting to borrow a ſum ſufficient for the redemption of the annuities, do continue their utmoſt endeavours to procure the whole, or ſuch part of that loan as poſſibly can be got, upon the ſecurities, and in the terms mentioned in the minutes of the laſt general meeting. *Vide* art. 5. of that ſederunt.

At a general meeting of Directors, held at Air, upon the 1ſt, 3d, and 4th May 1773.

1ſt *May*.

(*e*) The meeting having made choice of —— to be their Preſes, and having cauſed read over the whole minutes of the laſt general meeting of the Company, which was held at Dumfries in November laſt, with thoſe of the Directors previous and ſubſequent thereto; and having prepared their Report to be laid before the general meeting of the Company, which is to be held here on the 3d current, they proceeded to the other buſineſs of the Company, in the following order.

1. They appointed three committes to prepare a ſtate: 1*ſt*, Of the whole debts due to the Company at the office, and the two branches, upon caſh-accounts, bills diſcounted, bills of exchange, or other ſecurities: 2*dly*, To diſtinguiſh therein ſuch of the debtors from whom payment may be expected on or before the 1ſt of December next; or who, if they cannot then pay, can and *ought* to give ſufficient ſecurity *to relieve the Company of annuities equal to their debts:* And, 3*dly*, Such of them from whom immediate payment cannot be got, but from whom it may be adviſable to take every means poſſible to procure better ſecurity, ſo as to prevent any loſs upon the debts which they owe. And they appoint (Here follows names of the ſeveral committees); and that they will prepare the ſtate thus ordered to be laid before the meeting on Monday morning by ten o'clock.

3d May.

2. The committee appointed, upon the 1ſt current, to report a ſtate of the debts due to the Company, gave in and read to the meeting three ſeveral Reports; one for the office at Air, and one for each of the branches at Edinburgh and Dumfries. (Here follow the Reports of the committees).

3. The meeting conſidering, that there is a very large debt due to the Company by the late banking ſociety in Dumfries, under the firm of *Alexander Johnſton, Hugh Lawſon, and Company*; and having converſed with Meſſ. Riddick and Buſhby, two of the Partners of that Company, anent the immediate payment thereof; or that this Company ſhould be *relieved of annuities to the extent of the ſum due*; theſe gentlemen agreed to conſider of this demand, and to make an anſwer to-morrow.

4th

4th of May.

4. Meſſ. Riddick and Buſbby having, in anſwer to the demand made upon them yeſterday, alledged, That *however reaſonable* it did appear, that the debt ſhould be paid, *or that the Company ſhould be relieved of annuities to its extent;* yet as they were only two of the Copartners, they could not take it upon them at preſent, without the authority of the other Copartners, to tranſact that debt, or to come under any engagements thereanent; but that they ſhould, as ſoon as poſſible, call a meeting of the whole Proprietors of their late banking ſociety, lay the matter before them, and give this Company their anſwer. The meeting having conſidered the ſame, they order their ſecretary immediately to intimate to Mr Riddick, as Caſhier to that Company, for himſelf and the other Partners thereof, that they muſt, betwixt and the 1ſt July next, pay up the whole balance due to this Company, *otherwiſe* that it is expected they will then *relieve this Company of annuities to the amount of that balance.*

5. The Directors at the office, and each of the branches, are immediately ordered to make out a liſt of thoſe who are debtors to the Company, and who are, in their opinion, able *either* to pay their debts, or to grant ſufficient ſecurity to the Company, to *relieve them of annuities equal to the amount of the debts owing by them*; and theſe liſts are ordered to be tranſmitted to the extraordinary Directors at Edinburgh, within ten days from this date, diſtinguiſhing therein thoſe of the debtors who are Partners in this Company from thoſe who are not.

At

NUMBER IX.

Evidence referred to in Branch 6. *reſpecting culpable proceedings in London during the period of the annuity-tranſaction.*

At a general meeting of Directors, held at Air, 4th May 1773,

(*a*) Meſſ. Campbell and Buſhby, who came laſt day from London, reported to the meeting a ſtate of the late tranſaction between Meſſ. William Alexander and Sons and this Company, reſpecting the loan of L. 30,000 made to that houſe laſt year; and that, *by miſtake of ſome of the Managers for the Company, in harveſt laſt, at London*, a ſum of L. 10,000 of the Company's bills, more than the L. 30,000 conditioned for, was delivered to Mr William Alexander, without any additional ſecurity got to the Company; and that, upon this *diſcovery*, having made out, and given to Mr William Alexander, a ſtate of this tranſaction, and having had many converſations with him thereupon, they had at laſt got his miſſive of the 29th *ultimo*, acknowledging the *error*; and, of ſame date, got him to ſign the ſtate of the tranſaction: ſo that the matter was now perfectly underſtood. The meeting having conſidered the ſame, and being ſuſpicious that the ſecurities which they had got from that houſe may not be ſufficient for ſo large a ſum now in their hands, do remit to Meſſ. Solicitor Dundas and Ilay Campbell, Advocates, to examine theſe ſecurities, which lie at the Edinburgh office, and to give orders what further ſecurities in their opinion ought immediately to be got for the ſafety of the Company; and that they will take what meaſures they poſſibly can to ſecure, in time coming, the produce of the coal wrought upon the

the Blackhouſe eſtate, as a part of the ſecurity conveyed to the Company; but with which they have hitherto had no intromiſſion.

At a meeting of the Annuity Managers, at London, 13th Auguſt 1772,

(*b*) Sir Adam Ferguſſon repreſented, That he had deſired this meeting of the whole Directors of the Bank of Douglas, Heron, and Company, now in London, to conſider the ſituation of their affairs here, the alteration in the account of caſh neceſſary to ſupport the credit of the bank at this time, the circumſtances that occaſioned this alteration, and to ſubmit to their judgement what was proper to be done.

Mr Buſhby produced a ſtate of the annuities already ſold, which amounted, per ſaid ſtate, to the ſum of L. 356,715, and alſo two accounts, betwixt Alexander Ferguſſon of Craigdarroch, Eſq; and the Bank; from which it appeared, that the whole ſum ſo raiſed by annuities had been paid by him to the different bankers concerned with Meſſ. Douglas, Heron, and Company, in London, except L. 367, which remains a balance againſt Mr Ferguſſon; and to compenſate which, he had claims againſt the Bank for ſundry deburſements to near that amount.

Mr Ferguſſon's vouchers, were examined with his accounts; and being found to correſpond thereto, they were returned to him, and the accounts were ſigned by Mr Ferguſſon.

Mr Buſhby alſo produced the accounts of the different bankers concerned with Douglas, Heron, and Company, as he had taken them from their own books, which he informed the meeting, he belie-

ved, were very exact; and from which accounts the ſtate of the Bank's engagements, funds, and reſources, will ſtand as follows.

Due to Sir George Colebrooke and Company,	L. 22054	0	0
Due to Meſſ. Boldero, Carter, and Company, -	25248	0	0
Due to Meſſ. Mayne and Company, -	50000	0	0
Due for bills drawn from Edinburgh branch, on the Directors in London, favours Edinburgh banks, - - -	35100	0	0
Due for bills drawn from ditto, in favours Old Bank, in the hands of Hogg and Kinloch, not accepted, - - -	1750	0	0
	L. 134152	0	0

That to account of theſe ſums, the Directors expected to raiſe from a credit promiſed by Sir George Colebrooke and Company upon their houſe, - - L. 12000 0 0

Ditto by Boldero, Carter, and Company, - -	10000	0	0
From the Carron Company's bills,	13000	0	0
Caſh in Mr Ferguſſon's hand, -	5500	0	0
Balance to provide, -	93652	0	0
	134152	0	0

That from this ſtate, it appeared L. 93,652 was ſufficient to diſcharge the immediate demands upon the bank to their whole bankers in London.

But Sir Adam Ferguſſon informed the meeting, that Meſſ. Mayne and Needham having put a ſtate of their caſh and engagements, in

in which they included the bills drawn on the Directors, and thoſe unaccepted in the hands of Hogg and Kinloch, into the hands of the committee of Directors, it appeared from thence, the Bank would have L. 90,700 to provide this month, and upwards of L. 30,000 the next month, to anſwer their engagements, including as above, *with Mayne and Needham alone:* That the Directors, ſurpriſed at this difference, and to find the ſum neceſſary ſo greatly exceed the calculation formerly made, had inveſtigated their own accounts with great accuracy; but not being able to find any error therein, or difference from the former account, other than what aroſe by ſome bills belonging to the Bank, which had not been duly honoured, they had come to a reſolution to go to Mayne and Needham's houſe, to inform them of the fact, and to inquire an inſpection of their books and caſh, and the bills in their hands belonging to the Bank, ſo as it might appear where the error lay: That, in this inſpection and examination, the Directors found, that Meſſ. Mayne and Needham had raiſed caſh by diſcounting the Bank's bills remitted them as *cover* to the extent of - - - L. 15400 0 0

That they were ſhort of the caſh the Bank had in their hands, excluſive of theſe bills, -	31100	0	0
Making together,	L. 46500	0	0

Which they had intromitted with of the Bank's funds: That the Directors had required an explanation of this operation, and in what manner theſe gentlemen propoſed to replace this ſum: That Mr Mayne had obſerved to the Directors, that he had mentioned to them, when they firſt came to London, that by his large engagements for the Bank, the run upon their houſe had been, and continued to be, ſo great, that he was apprehenſive they might not be able to collect their funds timeouſly to enable them to diſcharge the demands that might be upon their houſe; in which caſe, as the diſtreſs

ſtreſs and run was occaſioned by his connection with the Bank, he expected they would *aid them* to the extent of L. 10,000, till he could get his affairs brought about; *which the gentlemen had not objected to:* That, upon this ground, he had truſted to the aid of the Bank for that amount; and that *the houſe had uſed* the other L. 36,500, upon the ſtrongeſt dependence, that he would have received his own funds before this to have diſcharged that ſum; and he produced to the committee, a letter from Sir John Lambert banker in Paris, by which it appeared he had the greateſt reaſon to depend upon a remittance from him of L. 30,000 by the very firſt mail; and that he hoped, in a very ſhort ſpace, to get his own funds to replace the whole ſum *he had ſo uſed of the bank's money;* and that nothing in his power ſhould be wanting for this purpoſe; but money-matters were in that ſituation at preſent, and he had met with ſuch diſappointments, that it was impoſſible for him *abſolutely* to promiſe this relief upon a particular day, ſo as the bank could place *any* dependence thereon: at the ſame time, he could aſſure them, with the utmoſt confidence, that Mayne and Needham were fully ſufficient for their whole engagements; and that the Bank run *no kind of hazard in the end*; and this aſſurance of the ſafety of Mayne and Needham, for the engagements they were under, was confirmed by Sir William Mayne, brother to Mr Mayne, who was preſent, and declared, that he had examined their books, and inveſtigated their affairs moſt accurately, from which he could bid the gentlemen *rely upon it*.

In this ſituation, the committee of Directors were under very great diſtreſs, as it laid them under the neceſſity to raiſe, by the further ſale of annuities, a larger ſum than formerly reſolved upon, otherwiſe to ſuffer the Bank's bills to be diſhonoured, by which their credit would be deſtroyed, and bankruptcy yet follow; which, under the load of annuities already ſold, would be beyond meaſure more dreadful in its conſequences than if it had happened at firſt: That another difficulty occurred, viz. If it ſhould be agreed to

to raiſe the ſum thus neceſſary to pay the bank's draughts on Mayne and Needham, if that money was put into the hands of theſe gentlemen, in caſe they have further engagements which they cannot anſwer from their own funds, they might apply the bank's money *in that way*, and thereby create the neceſſity of raiſing further ſums by the ſale of annuities.

That theſe circumſtances were ſo diſtreſſing, and the part proper for the bank to act ſo difficult to be determined, that the committee of Directors had agreed, that this general meeting of the whole Directors in London ſhould be called, in order to have their opinions before any reſolution was taken as to what was expedient for the bank to do.

Sir Adam Ferguſſon alſo acquainted the meeting, That in order to have the ſituation of Meſſ. Mayne and Needham clearly before them, he had ſent for Mr Mayne that morning, and informed him, if the gentlemen proceeded any further in raiſing money by the ſale of annuities, he muſt make out a full ſtate of his engagements, yet undiſcharged, to lay before this meeting; and that the bank muſt be aſſured, that the L. 30,000, expected from Sir John Lambert, ſhould be applied in part of the reimburſement of the ſum ſo due the bank; and that the money raiſed by annuities hereafter ſhould be applied to diſcharge the engagements in which the bank were concerned only: That Mr Mayne had promiſed the gentlemen ſhould have every ſatisfaction in his power; and that the ſtate of the engagements that the houſe were under ſhould be ready for this meeting, as requeſted, and ſent to him accordingly.

Sir Adam acquainted the meeting, he had not yet received this account; but as it was material it ſhould be had, ſo as the meeting might take their reſolutions on ſure grounds, he propoſed to ſend for Mr Mayne to attend the gentlemen, and to ſatisfy them of his

ſituation, and to lay before them the ſtate which had been deſired of him.

Mr Alexander Fergusſon obſerved, That it might be as well for one of the gentlemen to go and converſe Mr Mayne privately; and if it was agreeable to the meeting, he would do it: That he would get from him the ſtate deſired; and as a further ſatisfaction to the meeting, and ſecurity to the bank, he would examine Mayne and Needham's books, and ſee if they agreed with the ſtate they ſhould ſend, and report accordingly.

The meeting having agreed to this propoſal, Mr Fergusſon went to Mr Mayne's; and having returned, he produced a letter from Mayne and Needham, addreſſed to Sir Adam Fergusſon, mentioning, that his whole engagements, excluſive of thoſe for the bank, did not exceed L. 7000 of depoſits, and L. 2000 of acceptances; and for which acceptances he was ſecured; and he hoped the funds of the houſe would enter to anſwer theſe demands. And Mr Fergusſon informed the meeting, he had inſpected the bill-book of Mayne and Needham with great accuracy; and that the account, contained in Meſſ. Mayne and Needham's letter, agreed with their books, and might be relied upon by the meeting; and which he had certified upon the back of the ſaid letter accordingly.

The meeting having very deliberately conſidered the Report above written, and the accounts and ſtates contained in theſe minutes, and referred to, and having reaſoned fully on the ſubject, they were of opinion as follows.

1. That if Mayne and Needham ſhould yet have occaſion for L. 6848, which, in the opinion of this meeting, from the ſtate before them, is the utmoſt ſum that can be neceſſary to anſwer their preſent engagements, it is the intereſt of the bank to give this additional

tional aid, rather than permit them to ſtop under their preſent engagements with the bank.

2. That as the ſum which the bank will have to provide for their own demands, per the above ſtate, is - - - L. 93652 0 0

The funds of the bank intromitted with by Meſſ. Mayne and Needham, as above, is - 46500 0 0

The further aid it is poſſible M. and N.'s affairs may yet require, is ſuppoſed to be - 6848 0 0

Makes in all L. 147000 0 0

which the bank may yet have to provide for to ſave their credit: And the meeting are unanimouſly of opinion, That if the ſupport of the bank requires this ſum of L. 147,000 to be raiſed by the ſale of annuities, that the loſs attending the taking up money in that way, ought not to be put in competition with the dreadful conſequences that would attend a bankruptcy; and more eſpecially in the preſent ſituation of the bank, which is under ſuch an immenſe load of annuities on account of the money already raiſed by the Managers for its ſupport.

3. But though the meeting agree to raiſe the whole L. 147,000 by the ſale of annuities, if abſolutely and indiſpenſably neceſſary to protect the bank; yet, on account of the great expence attending the raiſing money in that way, they are unanimouſly of opinion, That the utmoſt exertion of the committee of Directors ſhould be uſed to raiſe money, by diſcounting of bills on Mayne and Needham, and otherwiſe; and that the firſt inſtructions, to ſell annuities, ſhould be to anſwer ſuch part of the L. 93,652 due on the bank's own account *only*, as could not be raiſed otherwiſe; and that after inſtructions, to ſell further annuities, ſhould be delayed as long as it can be

be done with ſafety to the bank, ſo as Mayne and Needham may have more time to obtain the L. 30,000 they expect from Sir John Lambert, and to raiſe money from their own funds; and that, after this, inſtructions be given to raiſe the *neat* ſum wanted, and no more, on annuities.

NUMBER X.

Evidence referred to in Branch 7. reſpecting culpable proceedings in Scotland ſubſequent to June 1772.

At a meeting of the Annuity Managers, at London, 5th September 1772,

(*a*) Mr Buſhby alſo produced two letters; the one from Charles Ferguſſon, Eſq; and Company; the other from Meſſ. Fordyce, Grant, and Company, addreſſed to this meeting, covering ſtates of their reſpective affairs, and a propoſal, on the part of Meſſ. Fordyce, Grant, and Company, to pay 6s. 6d. per pound for their debts; and on the pare of Charles Ferguſſon, Eſq; and Company, to pay 5s. per pound for their debts; and alſo covering deeds of acceſſion, ſigned by many of their principal creditors, which they were deſirous this meeting ſhould ſign on account of the bank, if it appeared to them to be for the intereſt of the bank to accept the compoſitions offered. The meeting having peruſed theſe letters, ſtates, and deeds of acceſſion, they requeſt Mr Buſhby to return them to the gentlemen, with an anſwer, that this meeting have *no power* to tranſact that buſineſs for the *bank*; and, therefore, how much ſoever the meeting

meeting may be ſatisfied of the advantage of tranſacting the debt due to the bank, upon the terms offered, *it is not in their power to do it*; but, upon application to the *Bank*, if theſe ſtates and offers appear in the ſame light to the *Bank* which they do to the Directors here, they will very probably readily adopt the meaſure propoſed.

At a general meeting of Directors, held, at Air, 18th September 1772.—Preſent a *quorum* from each office.

(*b*) That the propoſals of Charles Ferguſſon, Eſq; and Company, and of Meſſ. Fordyce, Grant, and Company, reſpecting the debts due by them to this Company, mentioned in yeſterday's minutes, being laid before the meeting, Sir Adam Ferguſſon deſired, that another Preſes might be appointed, and that he might be permitted to retire while their propoſals were under the conſideration of the Company.

A new Preſes choſen.—Preſent a *quorum* from Air and Dumfries, but only *four* Directors from Edinburgh Branch.

The meeting having conſidered a propoſal from Charles Ferguſſon, Eſq; and Company, to pay a compoſition of 5s. per pound upon the amount of their debts due to this Company, payable in manner mentioned in a deed of compoſition, ſigned by many of their creditors, under the conditions therein mentioned; and being alſo *informed* by ſome of the gentlemen preſent, that they had *ſeen*, at London, a ſtate of the affairs of the ſaid Charles Ferguſſon and Company, from which it appeared to them, that it was the intereſt of all their creditors to accept of this compoſition; and that ſuch of them, in London, as they had occaſion to converſe with, were of the ſame opinion; this meeting is therefore of opinion, that the Company ought to agree to accept of the compoſition offered; *but in regard* they have not an opportunity to inſpect the ſtate

of the affairs of the ſaid Charles Ferguſſon and Company themſelves, *as the ſame is not before them*, they do remit the conſideration of this affair to the Edinburgh Directors, *or any two of them*, whom they requeſt to examine the ſtate of the affairs of the ſaid Charles Ferguſſon and Company; and on their being *ſatisfied*, that it is for the intereſt of this Company to accept of the ſaid compoſition, on the terms mentioned in the ſaid deed, they are hereby impowered to accept of the ſame for their debt due to this Company, and to accede to the meaſures propoſed by the ſaid Charles Ferguſſon and Company accordingly, without prejudice to any other ſecurity that may be made good to this Company for the ſaid debt.

The meeting having alſo conſidered a propoſal from Meſſ. Fordyce, Grant, Trotter, and King, to pay a compoſition of 6 s. 6 d. per pound, upon the amount of their debts due to this Company, payable in manner mentioned in a deed of compoſition ſigned by many of their creditors, under the conſiderations therein mentioned; and the meeting having conſidered a ſtate of theſe gentlemens affairs now laid before them; in reſpect ſomething appeared in that ſtate which could not at preſent be ſufficiently explained to the meeting, they thought it proper to defer giving any anſwer to the ſaid propoſal, only they approve, in general, of the ſcheme of agreeing to a compoſition; but as the meeting is of opinion, that Mr Baron Grant is bound to this Company for L. 6000 Sterling, part of the ſum due by theſe gentlemen, they do remit the conſideration of this whole affair to the gentlemen of the Edinburgh direction, or *any two of them*, to whom they recommend particularly to examine the affairs and ſtate of theſe gentlemen; and in caſe they ſhall be *ſatisfied*, that it is for the intereſt of the Company to agree to the compoſition offered, they impower them to ſign the ſaid deed of compoſition for this Company, and to tranſmit the ſame to Meſſ. Campbell and Murray, with inſtructions to deliver it only upon receiving from Mr Baron Grant an obligation, That their acceptance of this compoſition ſhall be no bar to any claim this Company may have upon

upon him for the ſaid ſum of L. 6000 Sterling, or what part thereof is not paid by the ſaid compoſition, in caſe he is bound already to guarantee this Company to the extent of the ſaid ſum.

At a meeting of *two* Directors, Edinburgh branch, 24th September 1772, with one extraordinary Director.

(*c*) The meeting having likewiſe, agreeable to the remit from the general meeting of Directors held at Air 18th inſtant, taken into their conſideration the ſtate of Meſſ. Fordyce, Grant, and Company, and Meſſ. Fordyce, Malcolm, and Company's affairs; and Mr Cockburn having converſed with Mr Fordyce fully on the ſubject, of being informed by him, that the debt due to him by the York-buildings company, and obſerved by the general meeting not to be contained in the ſtate of Fordyce, Grant, and Company's affairs, was contained in the liſt of his own private effects, and was conveyed by him in the general diſpoſition of them to his creditors, a liſt of which debts was ſhown to the meeting by Mr William Alexander, which contained ſaid debt, a copy of which liſt he was to leave with the accountant; and the meeting having likewiſe diſcovered a debt due by William Littler to ſaid gentlemen, which was alſo obſerved by the general meeting to have been omitted in the ſtate of their affairs; which having taken into their conſideration, with all the other circumſtances relative to their affairs, they are of opinion, that it was the *intereſt* of the Bank to agree to the compoſition, but upon condition only, that Baron Grant give a letter under his hand to the Directors at London, declaring, that their agreeing to accept of ſaid compoſition ſhould be no bar to the claim the Company had againſt Baron Grant for the deficiency of the debt not diſcharged by the compoſition, in virtue of his letter binding himſelf to Douglas, Heron, and Company, for the *depoſit* of L. 6000 Sterling due by Fordyce, Grant, and Company; but that that letter ſhould remain binding on him, notwithſtanding of the Company acceding to the compoſition; which letter was delivered

vered by Mr John Fordyce to the Solicitor-General, in whoſe hands it ſtill remains; and order a power of attorney to be made out and ſigned, impowering Mr John Murray, Mr David Campbell, and Mr John Buſhby, or any of them, to ſign the deed of acceſſion.

But the meeting being ſenſible, ſay ſatisfied, that it is for the intereſt of the Company to accept of the compoſition, even though Baron Grant ſhould abſolutely refuſe to grant a letter in the terms before mentioned, they recommend it in the ſtrongeſt manner to their brethren at London, to uſe every poſſible method with Baron Grant, and his brother Mr Andrew, to prevail with them to grant ſuch a letter, and not to ſign the deed of acceſſion *to the laſt hour*; but in caſe they ſee at that time that the Baron is abſolutely determined to allow his brother's affairs to go into ruin, and come under a ſtatute of bankruptcy, then, when they can do no better, ſign the deed, upon the Baron's granting a letter to them, declaring, that their doing ſo ſhall be no bar to the Company's claim againſt him for the L. 6000, in virtue of his letter above mentioned, in caſe he is already bound for that ſum to the Company.

The meeting having alſo taken into their conſideration the ſtate of Charles Ferguſſon, Eſq; and Company's affairs, remitted to them by the general meeting, they are of opinion, all circumſtances conſidered, that it is for the *intereſt* of Douglas, Heron, and Company, that they accept of the compoſition offered; and they ordered a power of attorney to be made out, impowering the deputation to agree to the ſaid compoſition, under this condition, That their doing ſo ſhall be no bar to any claim that can be made good to the Company upon any perſon whatſoever for recovering the deficiency of ſaid debt; but as ſuch a ſtipulation cannot be inſert in a general deed of compoſition, they recommend to their brethren at London to accede to the compoſition, either by a letter under their hand, if thought ſufficient, or by a ſeparate deed of agreement containing the above proviſion of recourſe.

Copy

Copy of a letter from Meſſ. John Campbell and Archibald Cockburn, at Edinburgh, to Meſſ. John Murray and David Campbell, at London, dated 24th September 1772. Vide *Letter-book of Private Correſpondence.*

(*d*) By the opportunity of Mr Waugh, you will receive a copy of the ſederunt of the general meeting of Directors, held at Air the 17th inſtant, containing a remit of certain articles to the gentlemen of this Direction. You will alſo receive a copy of our proceedings in conſequence of ſuch a remit, as a guide for your conduct; and likewiſe a copy of a propoſed tranſaction between our gentlemen and the Meſſ. Alexanders. Be ſure you let none of the promiſſory notes of this Company now ſent you out of your hands, without being ſatisfied, that the ſecurity upon the Adelphi is equal to the ſum you furniſh them of our notes; and that none other mortgage is before it. *We are perfectly convinced, that there is ſomething at the bottom, both of the affairs of Charles Ferguſſon and Company, and of Fordyce, Grant, and Company. But we cannot make matters better by ſtanding out; ſo, out of neceſſity, we muſt concur. But if you think it more for the intereſt of the Company to let the worſt come to the worſt, don't accede, notwithſtanding our power of attorney to you for that purpoſe, and the contents of our ſederunt of this day's date.* But at all events, uſe all the art you are poſſeſſed of, to compel Baron Grant to give you the firſt letter mentioned in our ſederunt; let the laſt only be wreſted from you at the laſt hour. In ſhort, *if you think it proper* not to accede, we will ſupport you in it. But I believe we will make nothing by a ſtatute of bankruptcy. We are to ſend this letter, and all the papers it relates to, to Dumfries: ſo, if you receive no contrary inſtructions from them, you will act *according to your own diſcretion, and what you think moſt for the intereſt of the Bank.* This office is now the leaſt ſignificant of the three, as we are to do nothing almoſt in the buſineſs, but recover our

 funds.

funds. As for bills on London, we can get none to buy. So, in your diſtreſs, write to Air and Dumfries, and not to us. They have taken the load upon them, as we were unable to bear it. Yours, &c.

Copy of a letter from Meſſ. Campbell and Cockburn, at Edinburgh, to Meſſ. Murray and Campbell, at London, dated 12th October 1772. Vide *Letter-book of Private Correſpondence.*

(*e*) Since receiving your letter, informing us, that you had refuſed abſolutely to ſign the deed of compoſition to Meſſ. Fordyce, Grant, and Company, unleſs Baron Grant ſhould give a letter, declaring himſelf bound by the one now in the Solicitor's poſſeſſion, we are now ſatisfied, from circumſtances that have occurred, and which ſhall be explained to you fully at meeting, that it is much for the intereſt of Douglas, Heron, and Company, to accede to the deed of compoſition. And in caſe you ſhould not chuſe to take ſuch a ſtep upon yourſelves, we have tranſmitted you a letter from us, acceding to the deed of compoſition. But if you chuſe to ſign it yourſelves, according to the powers formerly given you, you may do it.

Copy of a letter from Meſſ. Campbell and Cockburn, at Edinburgh, to Fordyce, Grant, and Company, London, dated 12th October 1772. Vide *Letter-book of Private Correſpondence.*

(*e*) In virtue of the powers given us by the general meeting of Directors, held at Air the 17th of laſt month, we have maturely conſidered the ſtate of your affairs, and the deed of compoſition, offering 6 s. 6 d. in the pound Sterling for the debt due by you to Meſſ. Douglas, Heron, and Company; and we hereby agree to accept

cept of the ſaid compoſition for the debt due to the ſaid Douglas, Heron, and Company, by you and Meſſ. Fordyce, Malcolm, and Company, or by any of the individual partners; reſerving entire every claim the Bank had upon Baron Grant before the date of this letter.

At a general meeting of Directors, held, at Dumfries, 29th October 1772,

(*f*) *Two of the Edinburgh Directors* reported, That, in obedience to the remit of the laſt general meeting of the Directors held at Air, they had agreed to the compoſition offered by Charles Ferguſſon, Eſq; and Company, upon condition, that their ſo doing ſhould be no bar to any claim that can be made good to the Company, upon any perſon whatſoever, for recovering the deficiency of the debt: That they had taken heritable ſecurity for the debt due by Meſſ. Gibſon and Balfour, payable by inſtalments at 25 *per cent.* with intereſt, in four years: That as to the compoſition propoſed by Meſſ. Fordyce, Grant, and Company, and Meſſ. Fordyce, Malcolm, and Company, they had impowered the Directors in London to agree to the ſame: That for the debt by William Caddel junior and Company, they had got their acceptances to the Caſhier, at ſix and nine months date, payable in London, with an aſſignment to their ſtock in the Carron Company for the more punctual payment thereof: That as to the propoſal of Meſſ. Garbet and Company, they had converſed Mr Gaſcoigne upon the ſituation of their affairs, and had previouſly examined their books: That although it was their opinion their propoſal was reaſonable, and for the intereſt of the Company to accept of it; yet as the remit to them was only to make inquiry, and report to this meeting, they gave Mr Gaſcoigne, at his requeſt, an oſtenſible letter, that it was their opinion his propoſal was reaſonable, and that they imagined this general meeting of Directors would agree thereto, as they had not powers of themſelves ſo to do: And

And that, upon the propoſal from Meſſ. William Alexander and Sons, they had, upon the 6th current, in obedience to the remit of the laſt meeting, ſettled with them, and obtained their heritable ſecurity over the eſtates of Blackhouſe, Clermiſton, Langſide, and the brewery-ſubjects in Edinburgh, for L. 20,000 Sterling, payable to the Company, or to their Caſhier, in their name, for the time being, at the houſe of Meſſ. Mayne and Needham, London, in two moieties; the one half on the 6th of October 1773, and the other half on the 6th of January 1774; and the place of redemption and conſignation is made at the houſe of Meſſ. Mayne and Needham, or at the Bank of England, in regard the value given was by twenty promiſſory notes of L. 500 each, at twelve months from that date, and the like quantity at fifteen months, all payable at the houſe of Meſſ. Mayne and Needham, in place of dividing the ſum to nine and fifteen months, as directed by the Air minutes, this alteration in the time of payment being made at the deſire of the Meſſ. Alexanders: That this ſecurity was ſigned by the firm of Meſſ. *William Alexander and Sons*, and by Mr *Robert Alexander*, and was, with the whole promiſſory notes for the L. 20,000, ſent expreſs to London, to Meſſ. Murray and Campbell, to be got ſigned by Mr William Alexander, and thereupon to deliver him the value; and they were deſired at ſame time to get payment of the bills due by them to the Company, amounting to L. 6700, or thereby, which, ſo far as returned diſhonoured, were alſo ſent back by that expreſs; and that they had previouſly, viz. on the 24th of Septemberlaſt, ſent to Meſſ. Murray and Campbell L. 10,000 of promiſſory notes, at twelve months date, to be exchanged, at leaſt ſo much thereof as is equal to the ſecurity granted at London over the ſubjects in the Adelphi; and this, they conſidered, finiſhed the tranſaction contained in the London minutes of the 5th September laſt, and remitted to them by the minute of the Directors of the 18th of the ſame month. The meeting having conſidered this Report, they do approve thereof, with this addition, That if Meſſ. Garbet and Company have got the acceſſion of all the other creditors to their propoſal for the payment of

of their debts by inſtalments, in the ſpace of five years, that this Company ſhould alſo agree thereto; and therefore they do remit the ſame back to the Edinburgh Directors, to accede to their propoſals on ſuch terms as they ſhall think moſt reaſonable to be accepted of in the ſituation of the affairs of that Company; but having obſerved that, among the eſtates pledged by the ſaid Meſſ. William Alexander and Sons, it was alſo propoſed, by the liſt of ſubjects referred to in the original agreement, that a debt of L. 2000 Sterling due to them by an heritable bond, ſhould alſo be mortgaged, in further ſecurity, and which they obſerve is not comprehended in the ſecurity now granted; they therefore think it reaſonable, that the Edinburgh Directors do make inquiry why this additional ſecurity was with-held, and that it ſhould ſtill be demanded, ſeeing it made a part of the ſubjects offered to be mortgaged, in the original propoſal made by Mr William Alexander himſelf.

At a meeting of Directors, Edinburgh Branch, 6th March 1773,

(*g*) Mr Hay to write Mr Alexander, that he muſt pay up the balance of the Parkers caſh-account, *and the L. 2000 he got laſt ſummer on the depoſit of bills*, otherwiſe they will be obliged to take meaſures to force payment.

At a meeting of the annuity-managers, at London, 5th September 1772,

(*h*) Mr Buſhby informed the meeting, That in conſequence of the propoſals betwixt Meſſ. Alexanders and them, for a loan from the bank to the extent of L. 30,000, to be made in manner, and upon the terms and ſecurity, contained in a memorandum, ſigned by Mr William Alexander and the Directors, he had at their requeſt made

inquiry as to the value of the houſes in the Adelphi, propoſed to be conveyed to the bank, and had gone with Mr Brown to obtain the neceſſary deeds and information, to enable him to draw the conveyance thereof in favour of the bank, and which Mr Brown was then employed doing.

Mr Buſhby alſo informed the meeting, That it was Mr Brown's opinion, theſe houſes were not of the value put upon them by Mr Alexander and Mr Adams, and which he had informed Mr Alexander of; that Mr Alexander had propoſed, that Mr Adams and Meſſ. Alexander and Sons ſhould grant joint obligation to pay Meſſ. Douglas, Heron, and Company, the difference betwixt the price they ſhould ſell for by public ſale, or by private ſale, with Mr Adams's conſent, at any time within one year, and L. 10,000; Douglas, Heron, and Company, repeating the ſuperplus, if any there was, deducting their expences.

The meeting are of opinion, it can do no harm to execute the conveyance of the houſes; as that can be deſtroyed, if the tranſaction does not take place betwixt Meſſ. Alexanders and the bank: and they refer the conſideration of what Mr Buſhby has repreſented, and the tranſaction, as contained in the memorandum above mentioned, and the proper ſecurities to be taken from Meſſ. Alexanders for the loan, to the *Branch at Edinburgh*, to *finiſh* the tranſaction accordingly, or refuſe it, *as they ſee cauſe*; with this *recommendation*, that if the ſecurity is ſatisfactory, and as the bank will be accommodated by the *exchange* of L. 10,000 of their draughts on Mayne and Company for L. 10,000 of bills on Walpole and Elliſon; and as Mr Alexander has already accommodated the bank to the very conſiderable amount of L. 18,000 in that way, at a very critical time, and when the aid was of great uſe to the bank, that the bank *ſhould accommodate* Meſſ. Alexanders, if they can do it with conveniency to themſelves.

At

At a general meeting of Directors, held at Air, upon the 18th September 1772,

(*i*) The meeting having conſidered the tranſaction, of date the 1ſt current, between the gentlemen in the direction at London and William Alexander, and having reaſoned thereupon, they are of opinion, That it is proper to agree thereto; and do therefore direct their Secretary, at the ſight and with the approbation of the Directors at Edinburgh, or any two of them, to make out the neceſſary deeds to be granted by Mr William Alexander and Sons for their ſecurity; and theſe being ſo executed, the Caſhier at Edinburgh, is directed to grant the following promiſſory notes, payable to Meſſ. William Alexander and Sons, in theſe diviſions, viz.

5	notes of	L. 1000 each	at 9 months,	L. 5000
5	ditto	ditto	15 ditto,	5000
50	ditto	L. 100	9 ditto,	5000
50	ditto	ditto	15 ditto,	5000
				L. 20000

But the meeting not being acquainted with the value of the ſubjects propoſed to be mortgaged by Meſſ. Alexanders, except the eſtate of Blackhouſe, which they are informed is worth the ſum put upon it by Meſſ. Alexanders, recommend it to the Edinburgh Directors, to be ſatisfied that the brewery at Edinburgh, and the other ſubjects, (Blackhouſe excepted), are of the value put upon the ſame by Meſſ. Alexanders: and alſo, that they take the ſecurity mentioned in the London minutes, from Meſſ. Alexanders and Meſſ. Adams, relative to the ſubjects in the Adelphi.

At

At a meeting of *two* Directors, Edinburgh Branch, 24th September 1772, with one Extraordinary Director.

(*k*) The meeting were alſo this forenoon informed by Mr Robert Alexander, that ſecurity had been granted to D. H. and Co. on Mr Adams's ſubjects of the Adelphi, to the amount of L. 10,000; and therefore begged, that, in terms of the agreement between him and the gentlemen in the deputation at London, approven of by the laſt general meeting of Directors, held at Air, and remitted to this branch to ſee carried into execution, that promiſſory notes ſhould be given to him for that ſum.

The meeting agreed, that notes, to that amount, ſhould be ſigned by their Caſhier, and ſent to Meſſ. Campbell and Murray at London, in order that they may deliver the whole, or ſuch part, of them, to Mr William Alexander, as there is ſecurity granted for upon the *Adelphi*, recommending to Meſſ. Murray and Campbell, or to ſuch of the Directors as are there for the time, to be particularly attentive, that the ſubjects on which the ſecurity is granted, are worth the value put upon them, and that they are not already mortgaged, as the Directors here have not got the eſtimate of theſe ſubjects yet tranſmitted to them; and if they are of a leſs value, then ſuch a ſum of notes *only* to be delivered as the value amounts to; the notes to be of L. 100 each, at twelve months date.

At a meeting of Directors, Edinburgh Branch, 12th October 1772.—Three Directors preſent.

(*l*) There was laid before the meeting the following propoſal of John Fordyce, Eſq; of Edinburgh.

1. That

" 1. That he will aſſign, or diſpone, to Meſſ. Douglas, Heron, and Company, the following ſubjects.

The eſtate of Torrorie, worth about - - -	L. 17000
The lands of New Grange, near St Andrews, worth	2000
A houſe in Edinburgh, which he is now about ſelling,	2500
Another houſe in Edinburgh, - - - -	300
	L. 21800

2. That, for the above-mentioned ſecurity, he hopes Meſſ. Douglas, Heron, and Company, will grant their obligations, or accept bills for L. 10,000, payable in eighteen months from the 29th of this month; and for L. 10,000 more, payable in thirty months, that is, in two years and a half from the 29th of this month.

3. That, in conſideration of Meſſ. Douglas, Heron, and Company, having entered into the above tranſaction, Mr Fordyce will keep part of the funds of his office with Douglas, Heron, and Company, from this time forward; though, as the amount of the money in the office fluctuates, he cannot ſtipulate a poſitive ſum: That he will never draw it entirely out; and, from *motives of gratitude*, he will endeavour to make the amount as valuable to Meſſ. Douglas, Heron, and Company, as he can, without great diſadvantage to himſelf; and the money depoſited with them ſhall always be in Edinburgh notes, ſpecie, or in transferences from the treaſury to their correſpondents in London.

4. That the above-mentioned ſubjects ſhall be diſpoſed of as ſoon as poſſible; and if the value of all, or any part, of them, ſhall be received before the term of payment of Douglas, Heron, and Company's acceptances, or obligations, the money ſhall be immediately

paid into their hands, there to remain until it ſhall be neceſſary to apply it to the payment of theſe acceptances or obligations.

5. In order to prevent the poſſibility of any inconvenience to Douglas, Heron, and Company, from the above tranſaction, Mr Fordyce will, with Sir Adam Ferguſſon's approbation, give an obligation to the following effect: That, in caſe the whole, or as much of the ſubjects before mentioned, ſhall not be turned into money, as ſhall be neceſſary to anſwer the punctual payments of the obligations, or acceptances, granted by Meſſ. Douglas, Heron, and Company, Mr Fordyce ſhall, in that event, keep at leaſt as much money in their hands, out of the funds of his office, as ſhall be equal to the deficiency; ſo as that Meſſ. Douglas, Heron, and Company, may, in no event, be ſubjected to any advance of money, in conſequence of their having entered into this tranſaction."

The Directors are of opinion, That the above propoſal is for the *advantage* of the Bank; and as the Directors at Air have unanimouſly agreed to the ſame, we are of opinion, That it ought to be complied with, provided the Directors at Dumfries think ſo, and that the ſubjects are of the value ſtated.

At a general meeting of Directors, held, at Dumfries, 31ſt October 1772,

(*m*) The meeting having taken under conſideration the propoſals given in for Mr John Fordyce, they unanimouſly agreed to authoriſe their Caſhier to grant Mr Fordyce the obligations of the Company for L. 29,000 Sterling; L. 9000 Sterling thereof payable in ſix months, L. 10,000 in eighteen months, and the remaining L. 10,000 in two years and a half from this date; Mr Fordyce giving in to the Caſhier of the Company, previous to his receiving the obligations for

for the above ſum, the ſecurities and depoſits mentioned in the propoſals, to be lodged by him with the Company for their ſecurity.

At a meeting of Directors, Dumfries Branch, 3d October 1772,

(*n*) At a meeting, betwixt Lord Elibank, James Murray of Broughton, John Carruthers of Holmains, Robert Riddick of Corberton, William Kirkpatrick of Conheath, Ebenezer Wilſon, and John Buſhby, Dumfries, relative to the agreement of the old bank of Dumfries, and Meſſ. Douglas, Heron, and Company, to ſtate their affairs, Lord Elibank repreſented, That the old bank of Dumfries were owing to Mr Lidderdale of Caſtlemilk, at the time they gave up buſineſs to Meſſ. Douglas, Heron and Company, L. 11,000 by bond, and which Mr Lidderdale would demand payment of, 13th current, in ſpecie: That the old bank were very much diſſatisfied with this demand, as it laid them under the neceſſity to apply to Douglas, Heron, and Company, in terms of the ſaid agreement, to retire this bond, at the time when the ſituation of money-matters in this country might render the demand inconvenient for D. H. and Company; in conſideration of which, and that they owe Mr Lidderdale no favour, they have reſolved, that unleſs Mr Lidderdale will accept of payment of this bond in bills upon London, at a fair exchange, being the mode in which he lent the money, that they will not expect Meſſ. Douglas, Heron, and Company, to furniſh ſpecie at this time; and will take the opinion of a court of law, whether Mr Lidderdale is intitled to demand payment upon the 13th current, in manner intended by him, or not?

The gentlemen of Douglas, Heron, and Company, obſerved, That it would be very inconvenient for them to furniſh ſpecie to pay Mr Lidderdale's debt, at this time; but that they would be deſirous to do every thing they could conveniently, to accommodate the old bank

bank of Dumfries; and the only way that could be done in this caſe at preſent would be, to furniſh bills on London to the extent of Mr Lidderdale's debt, at 90 days date, at a fair par, which it was hoped Mr Lidderdale would accept.

At a meeting of Directors, Dumfries branch, 7th October 1772,

(*o*) There was laid before the meeting a minute ſigned by Lord Elibank, on the part of the old bank of Dumfries, and Mr Carruthers, on part of this Company, relative to this Bank furniſhing bills on London, at ninety days, to the amount of a debt due by the old bank of Dumfries to Mr Lidderdale, to pay off the ſame, the 13th. The meeting having conſidered this minute, and obſerving in the narrative thereof, this loan is applied for, as being to be furniſhed in terms of the agreement betwixt the two banks; they are of opinion, that this Company are *not bound* by that agreement to furniſh this loan; but *being deſirous* to *accommodate* Meſſ. Alexander Johnſton, Hugh Lawſon, and Company upon this occaſion, till they can call in their own funds, they authoriſe the Caſhier to furniſh the bills, as mentioned in ſaid ſederunt, on getting a proper order from Mr Riddick, as the Caſhier of the old bank, to debit their account therewith.

At a meeting of Directors, Edinburgh branch, 1ſt February 1773,

(*p*) It having been repreſented to the meeting by Mr Ferguſſon, that *in May laſt*, James Craig baker in Edinburgh having given up his ſhare held in this Company, at the agreed price of L. 400, and intereſt from the term of Whitſunday laſt, to anſwer *pro tanto* the balance due by him to the Company on his caſh-account; but that Mr

Mr Craig had never yet lodged the transference of his ſhare, or paid up the remaining part of the balance due by him: The Meeting therefore appoint Mr Craig to lodge the transference immediately, and pay up the remainder of his balance, and remit to Mr Hay, Director for the week, to ſee that a proper intimation of this appointment be made to Mr Craig.

At a meeting of Directors, Edinburgh Branch, 8th March 1773,

(*q*) Ordered, That the ſhares of Mr Dalziel, ſold to Meſſ. Home and Cockburn, ſhall be ſettled by the Director of the week, by paying him by bills on London, in the beſt terms he can.

And having conſidered the ſtate of facts by Mr Home relative to this matter, the meeting are clearly of opinion, That Mr Home was only purchaſer of thoſe three ſhares *for behoof of the Company*, and conſequently ought to be relieved by the Company; and as to Mr Cockburn, they have not the facts ſo fully before them as to give any opinion thereon at preſent.

May 1. 1778.

ANSWERS

FOR

Meſſ. Charles Fergusſon and Company, and for Meſſ. Fordyce, Grant, and Company,

TO

The REPORT of the Committee of Inquiry appointed by a general meeting of the Partners of Meſſ. Douglas, Heron, and Company, held at Edinburgh the 10th of July 1776, for making an inveſtigation into the management of the affairs of the Company.

Reaſons for giving in Anſwers.

IT is not from any apprehenſion of pecuniary loſs that the reſpondents think it neceſſary to make anſwers to that part of the Report which is aimed at them. The authors of that Report muſt themſelves be convinced, that, allowing all their inſinuations to be juſt, and every averment they have made to be founded in truth, the compoſitions entered into with the reſpondents, and the diſcharges granted in conſequence thereof, muſt be effectual againſt them, even ſuppoſing the Company to have a claim againſt

their

their Directors for a pretended abuſe of their powers. This at leaſt they muſt admit, that though, upon account of alledged informalities, the compoſitions ſhould not be binding upon the Company; ſtill the Directors who agreed to them muſt be liable to warrant their own act, and to indemnify the reſpondents, who tranſacted with them in the belief that their powers were ſufficient.

But though, in every view of the caſe, the reſpondents are perfectly ſafe, there is a motive of a different kind which obliges them to take ſome notice of this Report. They regret thoſe misfortunes which made them the involuntary cauſe of loſs to the Company; but while they are conſcious they did all the juſtice to their creditors that their ſituation would admit, they cannot ſilently acquieſce in the charge that has been brought againſt them. It is not enough, that the Directors who agreed to the compoſitions, are bound to ſupport them, or even that thoſe compoſitions are binding upon the Company; they cannot ſatisfy their own minds, till they efface any impreſſion to their prejudice which may have been made by the Report, and convince the *unprejudiced* partners at leaſt, that their original connection with the reſpondents took its riſe from the neceſſity of ſupporting the credit of Douglas, Heron, and Company in London; that the reſpondents agreed with them on terms more advantageous for the Company than any of their other correſpondents; that when, by inevitable misfortunes, and from the general failure of credit at the time, they became unable to fulfil their engagements, full and fair ſtates of their affairs were laid before their creditors; that it was at the requeſt of the creditors themſelves that they undertook to pay a compoſition; and that the rate of it was fixed as high as the funds could poſſibly bear.

Compoſitions beneficial to the creditors, if adequate to the effects.

Every perſon who has had the leaſt experience in matters of this kind muſt know, that the meaſure of a compoſition is much more beneficial to creditors than any other that can be followed. If, therefore,

therefore, the reſpondents ſhall be able to ſhow, that their compoſitions were fairly and deliberately entered into, upon the beſt information as to the value and extent of the funds, and at a rate fully adequate to thoſe funds, it will follow, that the Company have no *intereſt* to challenge thoſe compoſitions; and a very few obſervations will be ſufficient to ſatisfy every impartial and candid man, that they have no *title* to challenge them.

Cauſe of miſtakes in the Report.

None of the gentlemen who ſign the Report ever were in the Direction. This is the only way in which the reſpondents can account for their miſunderſtanding the nature of tranſactions which any of the original Directors could have explained to them.

True origin of the depoſits.

Credits had been obtained for the Company upon ſeveral bankers in London; particularly Sir George Colebrooke and Company, Dimſdale, Archer, and Company, Boldero and Company, to a great extent. The Company had, from time to time, tranſgreſſed the terms of their agreements with thoſe houſes; and in ſpring 1772, when their demands had become more urgent than ever, they applied to them for an enlargement of their credits; and at the ſame time endeavoured to open accounts with other houſes, particularly with Sir Robert Ladbroke and Company, to whom they applied, by means of Charles Ferguſſon and Company. But all theſe applications were unſucceſsful; nay, the houſes with whom they had originally dealt were ſo far from liſtening to their propoſals, that they inſiſted on a reduction of their credits, and refuſed to allow them to operate in future on the credits ſo reſtricted, unleſs depoſits of money were made with them for their ſecurity. The Managers of the Company would have wiſhed to deal upon the uſual condition of paying a certain rate of commiſſion. But it is a fact well known to theſe gentlemen, that not a houſe in London would agree upon thoſe terms. They know equally well, that the Company muſt have ſtopped immediately, unleſs credit on London could be procured; and they were forced to accept of the beſt terms that could

could be got. What thoſe terms were, appears from the minutes of the Directors.

Agreements with other correſpondents.

At a meeting of 7th May 1772, "Mr Alexander Ferguſſon reported, That Meſſ. Dimſdale, Archer, and Company, inſiſted upon "having a depoſit of L. 3000, beſides the commiſſion of one eighth "*per cent.* for doing the buſineſs of this Company; which the "meeting order the Caſhier to cauſe to be paid in to them as ſoon "as poſſible."

Minutes, 30th May.

At a ſubſequent meeting, of 30th May, it was recommended "to "Mr Richardſon, the Accountant, to take care that there be kept "conſtantly in Boldero's houſe a depoſit of L. 5000 or L. 5500; "and that there be on no account more than L. 70,000 bills run-"ning on that houſe at one time: That there ſhall be always kept "in Dimſdale's houſe a depoſit from L. 3000 to L. 4000, and not "more than L. 70,000 running upon them, and to be as much co-"vered as poſſible. And with reſpect to Sir George Colebrooke's "houſe, the depoſit to be from L. 3000 to L. 4000 conſtantly, and "no more bills to be drawn upon them till their account be re-"duced below L. 50,000; and to take care that it ſhall not ex-"ceed that ſum in future."

Theſe paſſages exhibit a pretty ſtrong picture of the ſituation of the Company at the time; and it is to be ſuppoſed, that they eſcaped the obſervation of the compilers of the Report, elſe they would ſcarcely have ventured to repreſent the depoſits made with the reſpondents as mere private accommodations, and perſonal credits given to them, or have attempted to amuſe the leſs-informed part of the Proprietors, with obſerving, "That it would certainly "have been a much more ſafe and beneficial method of conduct-"ing the Company's buſineſs, to have paid theſe houſes the uſual "premium or commiſſion, according to the extent of their tranſac-"tions,

Report, p. 57.

"tions, than to lodge in their hands, in the way of depoſit or "ſtanding credit, ſo large a ſum." No doubt it would have been more advantageous. But this was attempted in vain. Nobody would agree to accommodate the Company upon thoſe terms; and the neceſſity of their affairs obliged them to ſettle upon a different footing.

—leſs advantageous than thoſe with the reſpondents.

The ſubſtance of the agreement with the reſpondents was, That a depoſit of L. 6000 ſhould be made; in conſideration of which, the Company was to be allowed to draw upon each of them to the extent of L. 200,000, ſubject to the ſingle condition of remitting ten days before their acceptances became due. It has been ſeen, that other correſpondents inſiſted upon depoſits almoſt equally great, though the draughts upon them were reſtricted to L. 50,000 or L. 70,000, and though they were to receive their uſual commiſſion into the bargain. Beſides, it will be obſerved, that thoſe gentlemen were always to have caſh actually in their hands before the bills upon them became due: whereas the reſpondents got no more than bills at long dates, which they were obliged to diſcount, not only for relief of their own acceptances, but alſo to the amount of the whole of the draughts upon the bankers; *that* being the only way in which Douglas, Heron, and Company, could raiſe the money to be paid them in terms of their agreements.

The agreement with the reſpondents, therefore, though attended with more trouble and greater riſk, was more favourable for the Company than that with the other houſes; and perhaps it was for this reaſon, that many thouſand pounds were actually drawn, and running upon them, before the terms were finally adjuſted: A circumſtance that ſhows the urgent demand which the Company had for London credit.

It is unneceſſary, and might ſeem invidious, to point out the immediate cauſes of the failure of the reſpondents. Theſe, it is be-

lieved,

lieved, are pretty generally known. Indeed, credit in general was in a very precarious footing at the time; and the reſpondents were no more but joint ſufferers with Douglas, Heron, and Company, in a common calamity.

Debt due by Charles Ferguſſon and Company.

The Company, indeed, loſt a large ſum by the reſpondents, but not near ſo much as is repreſented in the Report. As to Charles Ferguſſon and Company in particular, the debt due by them is ſtated at L. 13,000, whereas it ought to have been ſtated at little more than L. 8000. The difference ariſes from various bills on Alexander Fordyce, remitted by the bank to Charles Ferguſſon and Company, who diſcounted them, and applied the proceeds to the Company's behoof. Theſe bills not being paid when due, came back upon Charles Ferguſſon and Company, and of courſe claimed upon their eſtate, and drew a dividend accordingly. It is true, ſome of them returned upon the Company likewiſe, who were obliged to pay them to the holders, but with little loſs to themſelves, as on all of them they drew dividends from two or three different houſes, to the extent of 16 s. 6 d. per pound. Of the ſum of L. 8000 therefore, L. 2000 having been paid in terms of the compoſition, the loſs, excluſive of what deficiency aroſe from the above-mentioned bills, was little more than L. 6000.

Neceſſity of ſettling by compoſition with the reſpondents.

At the time when Alexander Fordyce went off, in June 1772, there had been remitted to Fordyce, Grant, and Company, L. 7796 : 5 : 6, including the ſum agreed to be depoſited with them. Fordyce, Grant, and Company, owed John Fordyce, receiver-general, L. 32,003 : 1 : 5. Immediately upon their failure, their whole property in England, and their perſonal eſtate in Scotland, with Mr Fordyce's perſonal eſtate in that country, was ſeized on writs of extent from the crown, for ſecurity of the public money which he owed in conſequence of his office. A ſequeſtration was alſo awarded in Scotland, under the ſtatute of the 12th of the preſent King, and diſpoſitions of their whole effects, where-ever ſituated, were of courſe granted to the factor named by the court of ſeſſion.

Thus

Thus matters ſtood, when a meeting of the principal creditors was called, at London, where almoſt all of them were at the time. They had a houſe in Edinburgh, as well as at London. Some of the partners, and ſome of the effects, were ſubject to the laws of Scotland; others of them were ſubject to the laws of England. The Engliſh creditors were deſirous that the whole effects ſhould be put under *their* management, and diſtributed by *their* rules. The Scottiſh creditors were averſe to this. And the queſtion was of importance: Some of the creditors who held bills, had the names of both houſes upon them; others had the name of only one; ſome had the addition of an individual partner: The law of England and the law of Scotland has different rules for the payment of thoſe different claſſes of creditors. Some of the principal lawyers of both countries were therefore conſulted; and they gave it as their opinion, That the caſe of the partners of a company having their reſidence and their effects in different countries, and ſubject to different laws, was altogether new, and unprovided for either in the law of England or of Scotland; and muſt, in the event of diſagreement among the creditors, be productive of endleſs and inextricable litigation.

Meanwhile the creditors agreed to name one truſtee, till ſome general mode of ſettlement ſhould be deviſed; and for that purpoſe the principal creditors inſiſted, that the parties themſelves ſhould offer ſuch a rate of compoſition as the effects could afford, after ſatisfying the crown. Some of them even threatened the moſt rigorous meaſures, unleſs the propoſal ſhould be complied with.

The Directors of Douglas, Heron, and Company, then in London, were preſent at the meeting, and as clear as any of the reſt of the creditors, that matters could not be ſettled in any other manner.

In conſequence of this recommendation, Fordyce, Grant, and Company

Company ſet about making a valuation of their effects; which they did at the ſight of their principal creditors, and, among others, the Directors of Douglas, Heron, and Company, who aſſiſted in examining the ſtates and accounts, and aſcertaining the rate of compoſition that could be afforded, after ſatisfying the crown. This having been adjuſted to the ſatisfaction of the creditors, a deed of compoſition was made out, and immediately ſigned by every creditor in London of any conſequence.

Theſe particulars ſhow the propriety, nay, the neceſſity, of ſettling the affairs of Fordyce, Grant, and Company by a compoſition; and though there was no writ of extent againſt Charles Ferguſſon and Company, yet *his* compoſition was alſo propoſed at the deſire of the principal creditors. His ſtates and valuations were made up under their eye; and the rate of compoſition being ſtruck at their ſight, and by their direction, it was immediately accepted of by all the conſiderable creditors.

Compoſitions laid before the Directors at London.

The Directors of Douglas, Heron, and Company, of whom, at this time, *eight* were upon the ſpot, were abundantly ſenſible of the propriety of the meaſure in general; but as they had been ſent to London for a particular purpoſe, they did not think themſelves at liberty to ſign the compoſitions till they ſhould have adviſed with their brethren in Scotland. This appears from their minutes, which bear, " That Mr Buſhby produced two letters, the one from Charles " Ferguſſon, Eſq; and Company, the other from Meſſ. Fordyce, " Grant, and Company, addreſſed to the meeting, covering ſtates " of their reſpective affairs, and a propoſal on the part of Meſſ. For- " dyce, Grant, and Company, to pay 6 s. 6 d. per pound for their " debts; and on the part of Charles Ferguſſon and Company, to pay " 5 s. per pound for their debts; and alſo covering deeds of ac- " ceſſion, ſigned by many of their principal creditors, which they " were deſirous this meeting ſhould ſign on account of the Bank, if " it appeared to them to be for the intereſt of the Bank to accept of " the

Minutes, 5th September 1772.

" the compoſitions offered. The meeting having peruſed theſe let- " ters, ſtates, and deeds of acceſſion, they requeſt Mr Buſhby to " return them to the gentlemen, with an anſwer, That this meeting " have no power to tranſact that buſineſs for the Bank; and there- " fore, how much ſoever the meeting may be ſatisfied of the ad- " vantage of tranſacting the debt due to the Bank upon the terms " offered, it is not in their power to do it; but upon application to " the Bank, if theſe ſtates and offers appear in the ſame light to " the Bank which they do to the Directors here, they will very pro- " bably readily adopt the meaſure propoſed."

2.—before a full meeting of Directors at Edinburgh.

The deeds of compoſition, ſigned by the principal creditors, were ſoon after laid before a full meeting of the Directors of the Edinburgh branch; but, upon account that a general meeting of Directors had been appointed to be held at Air upon the 17th inſtant, they " delayed the conſideration of what is proper for the Bank to " do, relative to Fordyce, Grant, and Company, and Charles Fer- " guſſon and Company, till the ſaid general meeting of Directors."

Minutes, 12th September 1772.

It may be obſerved, that this circumſtance has eſcaped the attention of the compilers of the Report, though the gentlemen whom they accuſe of precipitancy in their proceedings were preſent at the meeting at Edinburgh upon the 12th of September.

3.—before a general meeting of Directors at Air.

In conſequence of the directions of this meeting, the reſpondents reſorted to the general meeting of Directors at Air, which was begun upon the 17th of September. Upon that day the propoſals of Charles Ferguſſon and Company, and Fordyce, Grant, and Company, were laid before the meeting; but the farther conſideration of both delayed till the day following.

The meeting was one of the fulleſt that had been held ſince the inſtitution of the Bank; there being preſent, *eight* Directors of the Air branch, *five* Directors from Edinburgh, *five* Directors from

Dumfries,

Dumfries, and *two* extraordinary Directors. But one of the Edinburgh Directors, who acted as Preſes at the meeting of the 17th, having, from a piece of delicacy, deſired that another Preſes might be appointed, and that he might be permitted to retire while the propoſals from the reſpondents were under the conſideration of the meeting, a very ſingular argument is maintained in the Report, as if the whole proceedings were ineffectual for want of a quorum from Edinburgh, though care is taken not to mention the cauſe of the ſuppoſed defect.

Minutes, 17th September.

Five or ſix of the Directors preſent were lately returned from London, where they had ſeen the ſtates and valuations of the reſpondents affairs, which indeed had been made up at their own ſight, and where they had an opportunity of learning the ſentiments of the other creditors. The meeting therefore gave it as their opinion, That the meaſure of a compoſition ought to be ageeed to with Charles Ferguſſon and Company; but remitted the final concluſion of the matter to the Edinburgh Directors, or any two of them, whom they requeſt to examine the ſtates, and who are impowered to ſign an acceſſion for the Company, upon being ſatisfied that it was for their intereſt to accede. With reſpect to Fordyce, Grant, and Company, a difficulty occurred, as to certain debts belonging to them which did not appear in the ſtate; and an opinion was entertained, that Mr Baron Grant was bound to guarantee their tranſactions to a certain extent. When the matter came to be afterwards examined, it appeared, that the debts ſuppoſed to have been omitted, had actually been diſponed to the truſtee for the creditors, conform to a liſt in his poſſeſſion; and the validity of the ſuppoſed obligation upon Mr Baron Grant having been brought to trial, it was ultimately found ineffectual, both by the court of ſeſſion, and by the Houſe of Lords. Meanwhile the propoſal for Fordyce, Grant, and Company, was, like the other, remitted to the Edinburgh Directors, or any two of them, to whom it was recommended " particularly to examine the affairs and ſtate of thoſe gen-

Minutes, 18th September.

Minutes,

" tlemen;

" tlemen; and in caſe they ſhall be ſatisfied, that it is for the intereſt " of the Company to agree to the compoſition offered, they impower " them to ſign the ſaid deed of compoſition for this Company, and " to tranſmit the ſame to Meſſ. Campbell and Murray, with inſtruc- " tions to deliver it only upon receiving from Mr Baron Grant an " obligation, that their acceptance of the compoſition ſhall be no " bar to any claim this Company may have upon him for the ſaid " ſum of L. 6000 Sterling, or what part thereof is not paid by the " ſaid compoſition, in caſe he is bound already to guarantee this " Company to the extent of the ſaid ſum."

4.—before the Directors of Edinburgh, on a remit from the general meeting,

Mr Archibald Cockburn, and Mr Campbell of Saddel, two of the Edinburgh Directors, having returned from Air, appointed a particular day for meeting with the different houſes whoſe affairs had been remitted to them by the general meeting at Air. Upon that day they were attended by Mr Waugh on the part of Charles Ferguſſon and Company, and by Mr Fordyce on the part of Fordyce, Grant, and Company; and the ſtates and valuations having been laid before them, and explained to their ſatisfaction, they, in concurrence with an extraordinary Director, came to the reſolution of agreeing to the compoſitions, as appears from the following minute.

—and approved of.

" The meeting having, agreeably to the remit from the general " meeting of directors at Air, taken into their conſideration the " ſtate of Meſſ. Fordyce, Grant, and Company, and Meſſ. Fordyce, " Malcolm, and Company's affairs; and Mr Cockburn having con- " verſed with Mr Fordyce fully on the ſubject, and being informed " by him, that the debt due to him by the York-buildings Com- " pany, and obſerved by the general meeting not to be contained " in the ſtate of Fordyce and Company's affairs, was contained in " the liſt of his own private effects, and was conveyed by him in " the general diſpoſition of them by him to his creditors, a liſt of " which debts was ſhown to the meeting by Mr William Anderſon,

Minutes, 24th September.

" which

" which contained ſaid debt, a copy of which liſt he was to leave
" with the accountant: And the meeting having likewiſe diſcover-
" ed

due by William Littler to ſaid
" gentlemen, which was alſo obſerved by the general meeting to
" have been omitted in the ſtate of their affairs: Which having ta-
" ken into their conſideration, with all the other circumſtances re-
" lative to their affairs, they are of opinion, that it was the intereſt
" of the Bank to agree to the compoſition, but upon condition on-
" ly, that Baron Grant gave a letter under his hand to the Direc-
" tors at London, declaring, that their agreeing to accept of ſaid
" compoſition ſhould be no bar to the claim the Company had a-
" gainſt Baron Grant for the deficiency of the debt not diſcharged
" by the compoſition, in virtue of his letter, binding himſelf to D. H.
" and Company, for the depoſit of L. 6000 Sterling due by For-
" dyce, Grant, and Company; but that the letter ſhould remain
" binding on him, notwithſtanding of the Company agreeing to
" the compoſition: which letter was delivered by Mr John Fordyce
" to the Solicitor-General, in whoſe hands it ſtill remains; and or-
" der a power of attorney to be made out and ſigned, impowering
" Mr John Murray, Mr David Campbell, and Mr John Buſhby, or
" any one of them, to ſign the deed of acceſſion.

" But the meeting being ſenſible and ſatisfied, that it is for the
" intereſt of the Company to accept of the compoſition, even
" though Baron Grant ſhould abſolutely refuſe to grant a letter in
" the terms before mentioned, they recommend it in the ſtrong-
" eſt terms to their brethren at London, to uſe every poſſible me-
" thod with Baron Grant, and his brother Mr Andrew, to prevail
" with them to grant ſuch a letter; and not to ſign the deed of ac-
" ceſſion to the laſt hour. But in caſe they ſee, at that time, that
" the Baron is abſolutely determined to allow his brother's affairs to
" go to ruin, and come under a ſtatute of bankruptcy, then, when
" they can do no better, ſign the deed upon the Baron's grant-
" ing a letter to them, declaring, that their doing ſo ſhall be no
" bar

" bar to the Company's claim againſt him for the L. 6000, in virtue
" of his letter above mentioned, in caſe he is already bound for that
" ſum to the Company.

" The meeting having alſo taken into their conſideration the ſtate
" of Charles Ferguſſon, Eſq; and Company's affairs, remitted to
" them by the general meeting, they are of opinion, all circum-
" ſtances conſidered, that it is for the intereſt of D. H. and Com-
" pany, that they accept of the compoſition offered; and they or-
" dered a power of attorney to be made out, impowering the depu-
" tation to agree to the ſaid compoſition, under this condition, That
" their doing ſo ſhall be no bar to any claim that can be made good
" to the Company upon any perſon whatſoever for recovering the
" deficiency of ſaid debt; but as ſuch a ſtipulation cannot be in-
" ſerted in a general deed of compoſition, they recommend to their
" brethren at London, to accede to the compoſition, either by a let-
" ter under their hand, if thought ſufficient, or by a ſeparate deed
" of agreement containing the above proviſion of recourſe."

With this minute before them, *which is not inſerted in the Report*, joined to the preceding minutes at Edinburgh and Air, and the minute of the Directors at London, the reſpondents do not underſtand what ſhould have induced the Committee of Inquiry to charge their Directors with precipitancy in this matter, or accuſe them of proceeding without proper evidence; concluding this part of their Report with the following ſtrange exclamation. " If there be ju- Report, P. 136.
" ſtice or good faith in the proceedings that have been ſtated, if
" there is validity in them, or if there is law to ſupport them, there
" is an end of the diſtinction between right and wrong, there is an
" end of obligation and duty; and it is in vain, that the Partners
" of this Company ſhould inquire into any of the proceedings by
" which their affairs have been brought to ſuch deſtruction!"

Some weight is laid upon a few lines excerpted from a letter ad- First letter of the two Edinburgh Directors.
dreſſed by two of the Directors who were preſent at the meeting of

 the

the 24th of September, to Meſſ. David Campbell and John Murray at London. But when the whole of that letter, ſo far as it reſpects this matter, is laid before the Proprietors, it will appear, that the fair argument ariſing from it is in favour of the reſpondents; becauſe it will ſhow, that they had no indulgence to expect from thoſe two gentlemen, and, of conſequence, that their agreeing to the compoſitions could ariſe from no motive, but a conviction that it was for the intereſt of the Company to do ſo.

" Meſſ. J. Murray and Dav. Campbell,

" *Edinburgh, 24th September* 1772.

" By the opportunity of Mr Waugh, you will receive a copy of " the ſederunt of the general meeting of Directors held at Air the " 17th inſtant, containing a remit of certain articles to the gentle- " men of this direction. *We are perfectly convinced, that there is* " *ſomething at the bottom, both of the affairs of Charles Ferguſſon and* " *Company, and of Fordyce, Grant, and Company*; but we cannot make " matters better by ſtanding out, ſo out of neceſſity we muſt concur. " *But if you think it more for the intereſt of the Company, to let the* " *worſe come to the worſe*, don't accede, notwithſtanding our powers " of attorney to you for that purpoſe, and the contents of our ſe- " derunt of this day's date; but, at all events, uſe [every] art you " are poſſeſſed of to *compel* Baron Grant to give you the firſt letter " mentioned in our ſederunt. Let the laſt only be wreſted from " you at the laſt hour. *In ſhort, if you think it proper not to accede,* " *we will ſupport you in it.* But I believe we will make nothing by " a ſtatute of bankruptcy. *We are to ſend this letter, and all the pa-* " *pers it relates to, to Dumfries; ſo if you receive no contrary inſtruc-* " *tions from them, you will act according to your own diſcretion, and* " *what you think moſt for the intereſt of the Bank.*"

5. Compoſitions laid before the Directors at Dumfries.

The

The authors of this Letter are beſt qualified to explain it. The reſpondents feel the inſinuation it contains the leſs, that they have not the remoteſt conception of what is meant by it. But they appeal to the candour of the Proprietors, if there is any room to ſuppoſe, that the gentlemen who wrote in that ſtyle were in danger of being biaſſed from their duty by an improper inclination to ſerve the reſpondents at the expence of the Company.

Obſervation on the letter.

Other obſervations might be made upon this Letter; but they ſhall be waved. For it will be more to the preſent purpoſe to obſerve, that the compoſitions were laid before the Directors at Dumfries; and being approved of by them, were tranſmitted to London; where that of Charles Ferguſſon and Company was immediately ſigned; the other having been delayed ſome time, in the expectation of *compelling* Mr Baron Grant to ſubject himſelf to an obligation, from which he was ultimately relieved by a deciſion of the court of ſeſſion, affirmed in the Houſe of Lords. But there is ſome reaſon to believe, that the two Edinburgh Directors had got the better of their ſuſpicions in a ſhort time: for, upon the 12th of October, they ſigned a letter of acceſſion to the compoſition of Fordyce, Grant, and Company, in the following terms:

" In virtue of the powers given us by the general meeting of " Directors, held, at Air, the 17th of laſt month, we have ma- " turely conſidered the ſtate of your affairs, and the deed of com- " poſition, offering 6 s. 6 d. in the pound Sterling for the debt due " by you to Meſſ. Douglas, Heron, and Company; and we here- " by agree to accept of the ſaid compoſition for the debt due to the " ſaid Douglas, Heron, and Company, by you, and Meſſ. Fordyce, " Malcolm, and Company, or by any of the individual partners; " reſerving entire every claim the Bank had upon Baron Grant be- " fore the date of this letter."

Second letter of the two Edinburgh Directors.

Upon

Upon the ſame day, they wrote as follows to Meſſ. John Murray and David Campbell, at London:

Third letter of the two Edinburgh Directors.

" Since receiving your letter, informing us, that you had refuſed abſolutely to ſign the deed of compoſition to Meſſ. Fordyce, " Grant, and Company, *unleſs Baron Grant ſhould give a letter*, " *declaring himſelf bound by the one now in the Solicitor's poſſeſſion*, we " are now ſatisfied, from circumſtances that have occurred, and " which ſhall be explained fully to you at meeting, that it is much " for the intereſt of Douglas, Heron, and Company, to accede to " the deed of compoſition; and in caſe you ſhould not chuſe to take " ſuch a ſtep upon yourſelves, we have tranſmitted you a letter " from us, acceding to the deed of compoſition. But if you chuſe " to ſign it yourſelves, according to the powers formerly given you, " you may do it."

Thus was the compoſition acceded to about the middle of October, which had been propoſed in the month of Auguſt preceding. In that interval, ſurely, there was abundant time for inquiry; and there is every reaſon to believe, that the fulleſt information was obtained, both at London and here, before the general meeting at Dumfries, upon the 29th of October, where both the compoſitions were again approved of.

The effects could not afford a higher dividend.

But there is one moſt capital circumſtance, which ſeems to have been little attended to in compiling the Report. Could the effects of either of the houſes have afforded a larger dividend? The contrary is evident from the general acceſſion of their creditors; and it is admitted in the Report, that many or moſt of the creditors had agreed to the compoſitions before they were accepted of in behalf of the Company. Indeed, what muſt put an end to every inſinuation upon this ſubject, it is a certain fact, that the reſpondents were loſers by their reſpective compoſitions; and they are willing at this moment to pay a premium to the Committee, or to any other

Offer.

ther perſon who will find ſecurity to relieve them of the conſequences of the former affairs, and take the effects of every kind, real and perſonal, as they ſtood at the time. With reſpect to Fordyce, Grant, and Company, in particular, there is an eaſy way of coming at the truth. Their effects remained from the firſt in the hands of the truſtee choſen by the creditors themſelves, who will give every information that can be deſired. If any fund has turned out valuable, which was not valued in the States, the creditors have only to apply to their own truſtee, whoſe accounts will ſhow the profit, if any has been made, and will at the ſame time ſhow the loſs which has actually been ſuſtained.

The reſpondents are not bound by the private rules of the Company.

The authors of the Report have been at great pains to lay down particular rules with reſpect to the powers of their Directors, and the number neceſſary to conſtitute a quorum. Theſe, they ſay, have been broke through in this caſe: and a double inference is made; not only that the Directors themſelves are liable in damages to the Company, but even that the compoſitions may be thrown open ſtill.

It is not the buſineſs of the reſpondents, to enter into a juſtification of the conduct of the Directors; though they muſt obſerve, in paſſing, that it is difficult to figure a claim of damages where no damage was ſuſtained; and none could be ſuſtained here, ſince the rate of compoſition was more than adequate to the value of the effects. But it muſt be obvious to every intelligent perſon, that however the private rules and regulations of the Company may be binding upon the Partners themſelves, third parties cannot be affected by them.

Douglas, Heron, and Company, though extremely numerous, and though they carried on very extenſive dealings, were not a *chartered Company*; they were, to all intents and purpoſes, a private company of merchants or bankers, who had voluntarily enter-

ed into a partnerſhip to carry on a joint trade: they were ſubject to the ſame rules as other private companies are; their affairs were conducted by certain known Directors or Managers, who, though they might very likely be under reſtrictions with reſpect to one another, had it in their power to bind them to all the world beſides. Upon any other footing, no man in his ſenſes would have taken a note of Douglas, Heron, and Company, in payment, or entered into any tranſaction with them whatever.

There are other private companies of merchants whoſe dealings are certainly as extenſive as thoſe of Douglas, Heron, and Company. Let it be ſuppoſed, what indeed was the fact, that, at the time of their failure, the reſpondents were debtors to Hope and Company of Amſterdam. Being ſatisfied that it was for their intereſt to do ſo, they accepted of the compoſition, by ſigning *Hope and Company* to the deeds. At this moment, the reſpondents do not even know the name of the partner by whom that ſubſcription was adhibited; but only that he is acknowledged to be a partner, and has tranſacted various parts of their buſineſs. Suppoſe, that, at the diſtance of *five* years, four or five of the partners of that company, who had never been heard of in the management before, ſhould ſay, It is true, that one of our acting partners ſigned your compoſitions; and that, upon the faith of our being bound by his ſubſcription, you tranſacted with your other creditors; but then, by a ſingular rule in our copartnery, nothing of that kind is effectual, unleſs it is ſigned by two other partners who live in one ſtreet, and two more who live in another; and therefore, though we will hold what we have got, yet we will conſider all that has paſſed as inconcluſive, and you muſt ſtill pay up the deficiency of your debt.

Would not a propoſition of this kind be received with ridicule and contempt, if it came from ſome four or five obſcure partners of Hope and Company? and does it alter the caſe, that it comes from a committee of Douglas, Heron, and Company, the members

bers of which never till now took the ſmalleſt ſhare in the management of the Company's affairs, or were known or conſidered by the world at large as belonging to that Company?

But it would be no difficult matter to ſhow, that even by the rules of the Company, as ſtated in the Report, the compoſitions would be effectual to the reſpondents, though they ſhould admit, that they could be affected by private regulations, which they had no acceſs to know.

But the compoſitions were examined by the Directors at London, and at the branches,

The compoſitions, it has been ſeen, were firſt propoſed to the Directors at London, in the month of Auguſt, and the meaſure was approved of by them. They were laid before a meeting of the Edinburgh Directors upon the 12th of September, and by them referred to the general meeting of Directors at Air. They were laid before that meeting upon the 18th of September, and approved of in general, but remitted, for more particular diſcuſſion, back to the Directors of the Edinburgh branch. Theſe Directors, upon a full examination, approved of the compoſitions, and authoriſed their brethren at London to ſign the deeds of acceſſion; but not till after the whole papers ſhould be laid before the Directors of Dumfries, and receive their approbation likewiſe. They were accordingly laid before the Directors at Dumfries; and it was not till after this had been done, and the approbation of that branch given, that they were at length agreed to by the Directors at London.

After all theſe ſteps had been taken, the propriety of the meaſure was again ſubmitted to a *general meeting* of the Directors, at Dumfries, upon the 29th of October, within a few weeks of the time that the compoſitions had been agreed to, and when, if any objection could have been made, it would not have eſcaped the attention of ſo numerous a meeting, where were preſent *five* Directors from Air,

—and approved of by the general meeting at Dumfries.

Air, *five* Directors from Edinburgh, *ſeven* Directors from Dumfries, and *two* extraordinary Directors. Indeed, the minutes of this meeting were laid before the ſubſequent meetings upon the 30th and 31ſt of October and 2d of November, which were ſtill more numerous, being attended by *two* more Directors from Air and Edinburgh, and *ſix* Extraordinary Directors.

Minutes, 29th October.

At the meeting of 29th October, of which the ſubſequent meetings were a continuation, two of the Edinburgh Directors reported, "That, in obedience to a remit of the laſt general meeting of "Directors held at Air, they had agreed to the compoſition offered "by Charles Ferguſſon, Eſq; and Company, upon condition, that "their doing ſo ſhould be no bar to any claim that can be made "good to the Company, upon any perſon whatſoever, for recovering "the deficiency of the debt." And after a report with reſpect to the affairs of Gibſon and Balfour, they proceed in theſe words: "That as to the compoſition propoſed by Meſſ. Fordyce, Grant, "and Company, and Meſſ. Fordyce, Malcolm, and Company, they "had empowered the Directors at London to agree to the ſame.

Theſe, and other proceedings of the Edinburgh Directors, received the approbation of the meeting, in the following words: "The "meeting having conſidered this report, they do approve thereof."

— with the knowledge of the Proprietors.

It is extremely true, that theſe matters were not formally laid before the meeting of *Proprietors*; but it is no leſs true, that they conſiſted with the knowledge of every one of them who paid the leaſt attention to the affairs of the Company. Had any of them diſapproved, it would have been but fair to have teſtified their diſapprobation before it was too late.

Minutes, 2d November.

The Proprietors, at their meeting of the 2d of November 1772, *approved* of the report of their Directors, with this addition, among others, "That a committee, of Provoſt David Ferguſſon, Mr "George

"George Home, and Mr Ebenezer Wilſon, with the Caſhiers and "Accountant of the Company, do attend, at the Company's office, "this evening, and to-morrow all day, to exhibit and explain the "general abſtract of the Company's affairs, with the whole particu-"lar ſtates from which the ſame is taken, to every Proprietor of the "Company who may demand inſpection or explanation thereof, or "of the books of the Company, which are to be open and patent "to them; and ordered, That copies of the ſaid abſtract-ſheet, and "of the whole ſtates from which it is extracted, do lie at the of-"fice, and each branch of the Company, for the ſame inſpection; "and that the Directors who ſhall be choſen at this meeting be "careful to exhibit and explain the ſame to every Proprietor who "may incline to inveſtigate them." Hence it is obvious, that every *Proprietor* who inclined, had the fulleſt opportunity to know the ſituation of affairs in every particular, and could not be ignorant of the compoſitions ſo recently agreed to, and which indeed were a pretty general ſubject of diſcuſſion at the time.

Propoſal by F. G. & Co for a mutual accommodation,

By the terms of the agreement propoſed by Fordyce, Grant, and Company, ſecurity was to be found for more than one half of the compoſition. They were poſſeſſed of land, but it was impoſſible to give heritable ſecurity to every creditor. The dates of payment of the compoſition were diſtant. The Bank was much in want of ready money, and a tranſaction was propoſed which might be of equal advantage to both parties. The money and diſcountable bills which were in the hands of Fordyce, Grant, and Company, were offered to be immediately depoſited with the Bank, and the heritable property, upon which they could raiſe money to anſwer their moſt urgent demands, was to be aſſigned to them. In return, the Bank was to grant obligations, payable at the diſtant dates when the different moieties of the compoſitions became due.

— laid before the Directors at Air,

This propoſal was firſt laid before a meeting of the Directors at Air,

— and Edinburgh.

Minutes, 12th October.

Air, upon the 7th of October; and having been approved by them, it was laid before the Edinburgh Directors upon the 12th of October. Theſe gentlemen, at a meeting conſiſting of three Directors, gave their opinion, " That the above propoſal is for the advantage " of the Bank; and as the Directors at Air have unanimouſly a- " greed to the ſame, we are of opinion, that it ought to be com- " plied with, provided the Directors at Dumfries think ſo; and " that the ſubjects are of the value ſtated."——How far this *opinion*, for it was no more, deſerves the cenſure beſtowed upon it in the Report, is ſubmitted to the *candid* Proprietors.

Report, P. 124.

— and Dumfries; and referred to the general meeting,

Minutes, 17th October.

The propoſal was next laid before the Directors of the Dumfries branch upon the 17th of October; and their minute is in the following words. " There was laid before the meeting a propoſal from Mr " John Fordyce of Edinburgh, with the opinion of the Air and E- " dinburgh Directors thereon, by their reſpective ſederunts of the " 7th and 12th current, ſaying, That it is in their opinion for the " advantage of the bank to agree to the propoſal; but ſome doubts " ariſing about the value of the funds propoſed for the Bank's ſecu- " rity, the meeting think it proper to delay the farther conſidera- " tion thereof until the general meeting."

— who agreed to it.

Minutes, 31ſt October.

Accordingly the matter was laid before the General meeting of Directors, at Dumfries, where almoſt the whole Directors of all the offices were preſent, upon the 31ſt of October; and " the meeting " having taken into conſideration the propoſals given in by Mr John " Fordyce, they unanimouſly agreed to authoriſe their Caſhier to grant " Mr Fordyce the obligations of the Company for L. 29,000 Ster- " ling, L. 9000 Sterling thereof payable in ſix months, L. 10,000 " in eighteen months, and the remaining L. 10,000 in two years " and a half from this date, Mr Fordyce giving in to the Caſhier of " the Company, previous to his receiving the obligations for the " above

" above ſum, the ſecurity and depoſits mentioned in the propoſals, " to be lodged by him with the Company for their ſecurity."

It was of advantage to the Bank,

The authors of the Report have been pleaſed to admit, that this tranſaction was not *quite ſo calamitous* as ſome others which have been the ſubject of their reſearches. But the reſpondents have no difficulty to ſay, that it was highly beneficial to the Bank. They borrowed upon the heritable ſubjects L. 14,000; and, including the diſcountable bills, and price of the houſes in Edinburgh, they received about L. 20,000; and for two years and a half, that is, until the laſt term of payment of the compoſition, they had a very conſiderable ſum in their hands. It is true, from that period, till the final payment of the Bank, they were thrown into ſome advance, occaſioned by the compoſition having turned out much more diſadvantageous for the reſpondents than was expected, and its taking much longer time to recover the debts, and diſpoſe of the ſubjects. But the advance was by no means ſo great as it is repreſented in the Report; and the tranſaction was, upon the whole, of advantage to the Bank. It threw money into their hands at the beginning, when it was moſt wanted, and the advance came when money could be borrowed upon eaſier terms.

— and a homologation of the compoſition.

But though this tranſaction had been leſs advantageous to the Bank than it truly was, ſtill it would fall to be conſidered as the ſtrongeſt act of homologation of the compoſition. Indeed there is little occaſion to found upon that circumſtance. Nothing can be more evident, than that both the compoſitions are binding upon the Bank, even ſuppoſing the Directors were culpable, or exceeded their powers, in agreeing to them. Even in that caſe it would be idle to talk of overturning tranſactions entered into with the known acting Partners, the acknowledged Managers of the Bank, and of overturning them at this time of day, after an acquieſcence of *ſix* years, and after the ſtrongeſt acts of homologation. Indeed, the reſpondents would have

have no reaſon to be apprehenſive of the event, though their plea ſtood upon the preciſe ſame footing with that of the Directors. They do not ſee, that the committee have been ſucceſsful in ſhowing, that, even by the regulations, as laid down by themſelves, the Directors exceeded their powers. And though they had, it would be nothing to the purpoſe, unleſs it could be ſhown, that *damage* had been ſuffered. This, however, they have not proved; they have not even ventured to aſſert it. And the reſpondents cannot make a fairer offer than they have done already: Let the Committee find ſecurity to free them of the conſequences of the old affairs, and they ſhall have a transfer of every chance of reverſion, with a ſum of money beſides, and hearty thanks for agreeing to undertake what the reſpondents would not have engaged in, had they known the nature of it as well as they do now.

offer repeated.

This offer muſt ſatisfy every *impartial* man, that the agreeing to the compoſitions was a meaſure highly expedient for the Bank. The Committee do not pretend, that the Directors, in ſpite of the opinions of lawyers, in oppoſition to the ſentiments of every creditor of conſequence, and in contradiction to their own deliberate judgement, ought to have prevented amicable meaſures from being agreed to, and endeavoured to bring on ſtatutes of bankruptcy. That would have been too abſurd to paſs with the moſt ignorant. But they ſay, that the Directors ought to have *ſold* the debts.

Idea that the debts ſhould have been *ſold*,

And upon what is this idea founded? The reſpondents are unwilling to do injuſtice to the argument; and therefore will ſtate it in the words of the Report itſelf:

Report, p. 132.

" It has already been ſhown, that, after our ſtop in June 1772, " and the annuity-proceedings in London, we could in no ſenſe " be conſidered as a ſubſiſting banking company. We were vir-

" tually

" tually, *though not actually*, *diſſolved*. Our affairs were ſo totally " and deeply embarraſſed, and our capital ſo annihilated, that we " could no longer be conſidered to ſubſiſt, but for the purpoſe of " liquidating and concluding our affairs; and *as it could* ſo eaſily " *have been* ſhown, that upwards of fifty *per cent.* of the capital " was loſt, *any one partner might*, in terms of the fourteenth article " of the contract, *have* inſiſted for an immediate formal diſſolution. " Such being the caſe, it would ſeem, that the fifteenth article of " the contract, which is one of thoſe declared to be unalterable, " applied to the ſituation in which the Company then was; and " it will be obſerved, that by this article it is ſpecially provided, " That any *debts* outſtanding twelve months *after the diſſolution of* " *the Company*, ſhall be divided into lots of a certain extent, to be " aſcertained by a general meeting of the Proprietors, and there- " after ſold by public roup. Here, therefore, was a rule clearly " eſtabliſhed for the conduct of our Managers, in the then ſituation " of the Company, with reſpect to the debts due by Charles Fer- " guſſon and Company, and Fordyce, Grant, and Company, as " well as every other debt in that predicament."

If the reſpondents underſtand the argument, it amounts to this, That becauſe the Company *might have been* diſſolved by a ſingle proprietor, therefore it muſt be held to have actually been diſſolved, though nobody had even propoſed it; and though, in fact, it was not diſſolved till about a year after, in Auguſt 1773. But leaving this argument to anſwer itſelf, is it poſſible to maintain, that any advantage could have been derived from following this method? Would any mortal have given more for the debts than they were intrinſically worth? that is, more than the rateable proportion of the funds correſponding to thoſe debts? The Company have already received that proportion; and therefore have got more than could poſſibly have ariſen from a ſale: for nobody would have pur-

— has no foundation in the rules of the Company;

— and would have been of no advantage.

chaſed

chaſed thoſe debts, except with a view of profit; nobody, therefore, would have given ſo much as they were truly worth.

Concluſion.

Theſe obſervations are ſubmitted to the peruſal of the proprietors of Douglas, Heron, and Company. They are chiefly founded on evidence appearing upon the face of their own books, upon evidence which the Committee of Inquiry had before them when they made up their Report: And the reſpondents do, with ſome confidence, apprehend, that they have ſhown, in oppoſition to that Report, That their original connection with the Bank took its riſe from the application of the Directors, and not from any ſolicitation upon their part; and was intended to ſupport the credit of the Bank, and not for a *private accommodation* to them: That when, by inevitable misfortunes, it became neceſſary to accept of compoſitions, in place of full payment, thoſe compoſitions were deliberately conſidered by the Directors at London, by the Directors at the three different branches, and at length approved of by a general meeting: That the rate of compoſition was fully higher than the effects could afford; ſo that, even upon the ſuppoſition that the reſpondents could be affected by private regulations which they had no opportunity to be acquainted with, the compoſitions muſt be binding on the Company, who, at any rate, would come too late now to challenge tranſactions completed *ſix* years ago, and acquieſced in by all concerned.

It was neceſſary to point out *ſome* of the miſtakes the Committee have fallen into, and *ſome* of the omiſſions of which they have been guilty. But the reſpondents did not mean to charge them with wilful errors, or deſigned omiſſions: And yet they cannot but think, that a more careful examination of the ſederunt-books of the Company would have prevented them from claſſing the compoſitions agreed to with the reſpondents, among "thoſe tranſactions which "appear to be partial, and extravagant beyond meaſure, and preju-"dicial in a high degree to the intereſt of the Company;—thoſe "ſhameful

Report, p. 121. & 122.

"ſhameful proſtitutions of the Company's credit, and open ſacri-"fices of their cleareſt intereſts, which were made, in order to gra-"tify the private views of a few individuals, with whom the Com-"pany had unfortunately formed very fatal connections."

Perhaps, had the Committee complied with the injunctions they received at their nomination, and communicated their lucubrations to thoſe concerned, before giving them to the public, a great part of the Report, and the whole of theſe Anſwers, might have been ſpared.

Signed, by authority from Meſſ. Charles Ferguſſon and Company, and Meſſ. Fordyce, Grant, and Company, } GEO. FERGUSSON.

Edinburgh, 1ſt May 1778.

January 1779.

N O T E.

THE above anſwers are an exact copy of thoſe which were lodged at the different offices of the Company upon the 1ſt of May 1778; and the reſpondents expect they will be ſufficient to prevent the Proprietors from being led away by the ſtrained arguments in the Report, which are not ſupported by the facts even as ſtated *there*.

Some

Some additional obſervations are made in the Report, *as now printed*, chiefly in the form of *notes*. Theſe are of a piece with the Report itſelf; and though the reſpondents have had no opportunity to ſee the opinions of counſel obtained by a gentleman who is ſaid to have been exceedingly active in the whole of this matter, they will venture to ſay, that no intelligent man, who has acceſs to be fully and fairly informed of the circumſtances of the caſe, will heſitate in being of opinion, that the compoſitions are binding upon the Company.

This will be the leſs regretted by the Proprietors, when they conſider, that the effects could not afford a higher rate of compoſition: A fact verified by the general concurrence of the creditors, as well as by the offer repeatedly made by the reſpondents, to pay a premium to the Committee, " if they will find ſecurity to relieve them of the " conſequences of the former affairs, and take the effects of every " kind, real and perſonal, as they ſtood at the time." In theſe circumſtances it is clear, that a *commiſſion of bankruptcy*, the only meaſure which could have been reſorted to in default of a compoſition, would have produced nothing to the creditors, though it would have been an equal diſcharge to the reſpondents.

A ſ. p. 16, & 24.

With reſpect to Fordyce, Grant, and Company, in particular, it is certain, that, along with the deed of compoſition, a truſt-deed was alſo preſented to the creditors, containing a conveyance of the whole debts and effects in favour of the perſon whom they might chuſe as truſtee. That deed is ſtill in the poſſeſſion of Mr William Anderſon. But the creditors preferred the compoſition; and it is believed the letter from the Managers of the Bank, upon that ſubject, can ſtill be produced.

In anſwer to the queries which are put, with more petulance, perhaps, than might ſeem to ſuit the character of a *Committee of Inquiry*, but

but with an eagerneſs not unnatural to one who finds he has the worſt of the argument, but who has embarked himſelf too far to retract, the reſpondents ſay, in general, That they do in no ſhape touch the queſtion.

But, more particularly, to the 1*ſt* they anſwer, That Douglas, Heron, and Company, could not have been *compelled* to accede to the compoſitions. They were under no other tie to do it than what aroſe from a due regard to their own intereſt. By their acceſſion, they drew a proportion of their debts in common with the other creditors. Had they refuſed to accede, commiſſions of bankruptcy would have been awarded; the expence of which, as well as of the litigation that muſt have enſued, would have exhauſted the whole funds.

To the 2*d*, It has been ſhown, that the Company are bound by the actings of their Managers, ſo far as third parties are concerned, whatever claims of damages they may have againſt thoſe Managers. Indeed, in this caſe there can be no ſuch claim, becauſe no damage was incurred.

To the 3*d*, The reſpondents met with no *indulgence* whatever from their creditors, becauſe they made a fair ſurrender of their whole effects, which were divided among them with perfect equality, in proportion to their debts. And they do not aſk the Company to diſcharge them *now*, becauſe they are diſcharged already. It is difficult to aſcertain the preciſe ſum which the Bank will loſe upon the tranſactions in which they were engaged with Fordyce, Grant, and Company. Their debt aroſe from bills, many of them bought from other houſes, all of which are liable to pay dividends upon theſe bills; and theſe, joined with what they themſelves have paid, will amount, at an average, to about 14 s. in the pound.

The only other thing which the reſpondents think it neceſſary to take notice of, is what is now for the firſt time ſaid in the *printed Report*, with reſpect to the loan to Mr Fordyce, which the compiler pretends was not beneficial to the Company, becauſe a *part* of the heritable ſubjects, pledged *by them* at L. 14,000, has not ſold at that ſum.

— p. 148. *n.*

A little attention will ſhow, that the argument is not only groundleſs, but unfair. Whether it was *intended* to miſlead, the reſpondents ſhall not inquire.

The gentleman ſays, That Mr Fordyce's propoſal for a loan was not laid before the Directors at Air upon the 7th of October 1772; and he confidently appeals to the Air ſederunts. It happens, however, that Mr Fordyce is in poſſeſſion of the original ſederunt itſelf, with the ſubſcriptions of the Directors annexed to it, and containing the following approbation ſubjoined to the propoſal, which is the ſame as ſtated in the Report. " The Directors are of " opinion, that the above propoſal is for the advantage of the Bank; " and, provided the Directors at the Edinburgh and Dumfries " branches are of the ſame opinion, think it ought to be complied " with."

Printed Report, p. 147. *n.*

After his propoſal was agreed to by the three different branches, Mr Fordyce put into the hands of the Company heritable ſubjects, which he had valued, in making up the ſtate of his affairs, at above L. 21,000. A houſe in Edinburgh, part of theſe ſubjects, was ſold by the Company, who received the price, being L. 2300. There ſtill remained in the Company's hands the eſtate of Torrery, the lands of New Grange in Fife, and a houſe at Fountainbridge; worth near L. 19,000, at leaſt Mr Fordyce certainly conſidered them to be worth it, elſe he would not have valued them at that rate *againſt himſelf*. Upon the eſtate of Torrery, excluſive of theſe other ſubjects, the Company raiſed L. 14,000. But ſuppoſing it ſhould not ſell

ſell at that ſum, that ſurely is no ground of complaint againſt Mr Fordyce. It will not, and cannot, be denied, that its real value, joined to that of the other ſubjects ſtill remaining with the Company, will be more than ſufficient to relieve them. The complaint, therefore, comes exactly to this, That Mr Fordyce has valued the eſtate too high againſt himſelf; and has paid to his creditors more than it was truly worth. Having done ſo, *he* muſt ſuffer the loſs; but the Company can loſe nothing.

With reſpect to Mr Fordyce's keeping part of the money of his office in the Company's hands, it will be obſerved, that as it was public money, it was ſubject to the demands of the public; and he fully performed what he undertook when he kept ſuch part of it with the Company as could be ſpared from the neceſſary demands to which it was ſubject from time to time. Accordingly, part of that money was generally in their hands. It was only called for at ſuch times as it was neceſſary to anſwer the exigencies of his office, and replaced again ſo ſoon as theſe were ſerved.

A

LETTER

TO

The PROPRIETORS of the Bank of *Meſſ. Douglas, Heron, and Company,*

Upon the ſubject of the REPORT from their Committee of Inquiry.

My LORDS, and GENTLEMEN,

A Conſiderable portion of time has elapſed ſince a Report was laid before you by the Committee whom you were pleaſed to appoint, for the purpoſe of making an inveſtigation into the management of your affairs. It was natural to ſuppoſe, that every Partner would catch the opportunity apparently offered to him by this Report, of judging how theſe affairs had been conducted, and of forming an opinion with regard to the meaſures proper to be followed, either by the Company in general, or by himſelf as an individual. It was at the ſame time equally natural

to expect, that thoſe whoſe conduct was found fault with in that Report, would at leaſt endeavour to juſtify themſelves, and to expoſe the errors (if there were any) into which the Committee of Inquiry might have fallen. What effect the Report may have had with the Partners in general we know not; but from the inattention ſhewn to it by the moſt of thoſe to whom the management of the affairs of the Company had been committed, one would be apt to imagine, that they did not think it contained matters of ſuch conſequence to them as to require a ſerious anſwer.

It will be remembered, that at the firſt general meeting of the Company that was held after the Report was lodged, one of us promiſed to give it an Anſwer; and that, at a ſubſequent meeting, the other mentioned, that he would willingly lend his aſſiſtance.——We then both expected, that every gentleman who had at any time been concerned in the management of the Company's affairs, would have at leaſt ſuggeſted what occurred to him as material to be taken notice of. We are ſorry, however, to be under the neceſſity of acknowledging, that, in framing the obſervations we are now to offer to the Company, we have met with little or no aid from others. We are unwilling to blame any perſon. Our ſilence with regard to particular parts of the Report, may perhaps point out the quarter from which we have received the ſmalleſt information. We ſhould be ſorry, however, if from that ſilence it ſhould be ſuppoſed, that we imagine the neglect to communicate the proper materials to us has ariſen from an inability to juſtify, either the general plan of management, or the particular operations that took place in any of the different departments. We indeed have it not in contemplation, either altogether to juſtify or to condemn: all we propoſe is, to offer a few obſervations upon ſuch parts of the Report as appear to us to be material; and to ſtate ſuch reaſons as induce us to differ in opinion from the authors of that Report.

In

Anſwers to the 1ſt and 2d branches of the Report.

In entering upon a matter of ſuch importance, it will not be improper to take a general ſurvey of the ſtate of the Company, from its commencement to the unfortunate criſis which took place in June 1772.

It was originally compoſed of a great variety of perſons, of different ranks and profeſſions, few of whom had any experience in a buſineſs of that ſort. The proprietors, in place of contenting themſelves with a trial of their abilities upon a ſmall ſcale, which prudence, and a knowledge of the buſineſs they were engaged in, would have dictated, formed the extenſive plan of carrying on buſineſs, at three different and independent offices, in different diſtricts of the country, with the laudable intention of being more generally uſeful. They fell naturally to chuſe their directors from thoſe in whoſe ability and integrity they had confidence, or whoſe characters had been favourably repreſented to them by others. It muſt however be acknowledged, that few, if any, upon whom the choice firſt fell, had experience in that buſineſs, to enable them to judge of the extent of credit that, in prudence, ought to have been given to the country, upon ſo ſmall a capital as that which was advanced at the commencement of the buſineſs. They ſeem, in general, to have had too much confidence in the powers of the Company; and to have puſhed too far the ardent zeal to promote the trade, manufactures, and agriculture, with which many of the ſubſcribers were entirely influenced, and which ſuggeſted the motto they aſſumed. To men raw and unexperienced in a buſineſs of this kind, and fondly expecting to meet with a grateful return from thoſe whoſe intereſt they had it in contemplation to promote, it would not readily occur, that when the ſecurity offered to them was good, too extenſive credits could be given. They did not then foreſee, what from experience they afterwards diſcovered, that the ſudden reflux of the Company's notes would ſoon overbalance the powers of their capital, and lay them under the neceſſity of contracting large debts to their London correſpondents. To diſcharge

theſe

theſe debts, it behoved them to purchaſe ſuch bills upon London as could be obtained. At that period it unfortunately happened, that many individuals and companies, in different parts of the country, were deeply engaged in the buſineſs of circulation, for the purpoſe of raiſing money to anſwer their immediate demands, and ſupport their credit, or to carry on the extenſive ſchemes which they had undertaken at home or abroad. The nature and amount of that dangerous and fictitious trade was, however, unknown to your Directors; and as thoſe who were engaged in it were perſons of credit and reputation, it was natural to purchaſe their draughts. Still however the very notes with which theſe draughts were purchaſed, returned quickly upon the Company, who were obliged to give the holders either ſpecie, or bills upon London. The operations, therefore, in the way of drawing and purchaſing bills of exchange, became early very extenſive; and muſt, of neceſſity, have been attended, not only with very great expence, but with conſiderable riſk.

It was however abſolutely neceſſary to continue the ſame courſe; and the only reſource left, was to deviſe ſome temporary ſcheme for ſupporting the load, until ſuch time as a proportion of the Company's funds could be collected from its debtors, ſufficient to diſcharge their own debt at London. New credits were obtained in that place; and, in ſpring 1772, it was judged expedient to enter into an agreement with two mercantile houſes there, to manage part of this circulation-buſineſs, upon a depoſit with each of them of a certain ſum, which they were to hold without intereſt, in lieu of the commiſſion paid to the banking-houſes upon which the Company were in uſe to draw; and as theſe houſes were to give the Company letters of guarantee from ſome of their friends, for the money to be depoſited with them, no riſk was dreaded; and it at the ſame time appeared to your Directors, that an annual ſaving would be thereby obtained to the amount of L. 2000 or L. 3000 Sterling *per annum*.

But as this was only a temporary expedient, which might ſerve to palliate, but not to cure, the evil, it was reſolved to call in a conſiderable part of the debts due to the Company as ſpeedily as poſſible, and to be more ſparing in giving credit in time to come. Orders were accordingly given at a general meeting of your Directors in May 1772, to cut off, or reſtrict, caſh-accounts to the amount of L. 126,000, which the holders of theſe accounts were required to pay up at the enſuing terms of Lammas and Martinmas: and if the credit of the country had remained upon its former footing for a few months longer, it is at leaſt highly probable, that, in conſequence of thoſe prudent reſolutions, a ſum would have been collected from the Company's own funds ſufficient to have kept their London debt within moderate bounds; and the errors which your Directors had originally fallen into, would have been corrected, without its being known to the world that any ſuch errors had ever been committed. But the unexpected failure of Alexander Fordyce, which was immediately followed by the failure of Fordyce, Grant, and Company, and Charles Ferguſſon and Company, and the other bankruptcies which happened both here and at London, and the general ſtagnation of credit which took place at that unfortunate period, put it entirely out of the power of the Company to derive any benefit from the meaſures their Directors had laid down. Inſtead of being able to leſſen the London debt, it was at once increaſed to an amazing extent, by the diſhonour of a number of bills, which had been purchaſed, and remitted to London, and which the Company was under the abſolute neceſſity of providing for in due time, or of ſtopping payment, and declaring themſelves bankrupt at once. Whether or no the latter of theſe meaſures would have been more prudent than that which was adopted, we ſhall not at preſent inquire; as all we had in view by the foregoing detail, was to ſhow to ſuch of the Partners of the Company as may not be fully appriſed of the conduct of their Directors, that although, from want of experience, they fell into errors at the beginning; yet they became ſenſible of their errors, and were ſteadily purſuing the

proper and probable means of correcting them, when, by the unforeſeen and unexpected calamities which took place in June 1772, it was put altogether out of their power to proceed in carrying theſe meaſures into execution.

Although the authors of the Report from your Committee of Inquiry have ſhown an anxiety to find out grounds for impeaching the conduct of your Managers, and have endeavoured to dreſs up their performance with much art, and even to decorate it often with an acrimony of expreſſion which might perhaps have been ſpared; yet as its *profeſſed* object is only to point out *culpable* acts of miſmanagement, and its obvious aim is, either to perſuade the Company, or to inſtigate individual Partners, to demand relief of the loſs they have ſuſtained from thoſe to whom the conduct of the buſineſs was committed, we do not intend to trouble you with taking particular notice of every ground of complaint which it contains. We ſhall chiefly confine ourſelves to thoſe which are propoſed to be made the ſubject of legal proceedings.

It is unneceſſary to make any obſervations upon the firſt branch of the Report, which contains only an abſtract of the contract of copartnery, and of ſome of the by-laws and regulations eſtabliſhed by the Company from time to time.

The ſecond branch contains ſome remarks upon the general management of the buſineſs at the office at Air, and at the two branches at Edinburgh and Dumfries, and upon the conduct of the Directors at their general meetings: and even on this part of the Report few obſervations ſeem to be neceſſary, after what has been already ſaid with regard to the general ſtate of the Company's affairs down to June 1772.

We do not think ourſelves called upon to take any notice of the complaint made againſt the Directors at Air, for granting too extenſive

tenſive credits within a narrow circle; but we can by no means agree, that a ſimilar complaint can with juſtice be made againſt the Directors at Edinburgh and Dumfries. Indeed one need only look to the number of accounts granted at Edinburgh, and to the operations upon them, to be ſatisfied, that the credits given in that way were neither confined within a narrow circle, nor became fixed and permanent loans perpetually accumulating. And although thoſe perſons who obtained diſcounts were not perhaps very numerous; yet it muſt be remembered, that none could be given but to thoſe who aſked them. None were given but upon ſecurities that were deemed to be unexceptionable at the time; and it is highly probable, that if the circle of diſcount had been made wider, the Report would have complained ſtill more loudly of the Directors for their profuſion.

The authors of the Report muſt be ſenſible, that at Edinburgh it became abſolutely neceſſary to draw largely upon London, and to purchaſe ſuch bills as could be got, in order to put their correſpondents in caſh: and though it is now univerſally known, that ſeveral of the houſes from whom they were in uſe to purchaſe ſuch bills were dealing to a very great extent in a fictitious circulation; yet we have reaſon to believe, that that circumſtance was unknown to the Directors at the time, until the Company was too far involved to have it in their power to recede. William Alexander and Sons, Fordyce, Grant, and Company, Arbuthnot and Guthrie, Johnſton and Smith, &c. were all engaged in the buſineſs of banking, and were thought intitled to great credit. But even though the fictitious nature of their trade had been more early known, the neceſſity of procuring a ſupply of London bills equal to the demands made upon the Company, muſt have juſtified the Directors for purchaſing theſe bills when no other were to be got. They were in a different ſituation from thoſe who purchaſe bills only in order to enable them to draw. They had already been obliged to draw, and were under an abſolute

abſolute neceſſity of buying ſuch bills as were to be had in the market, in order to anſwer their own draughts.

It was the neceſſity of ſupplying the Company's correſpondents at London with remittances, that likewiſe induced the Directors at Edinburgh, upon ſome occaſions, to deal in the exchange of bills: and although, from other avocations, we have not had time to examine ſo very minutely tranſactions which, in our opinion, can be attended with no legal conſequences, we verily believe, that on every ſuch occaſion, and even in giving the diſcounts taken notice of in the Report, to what are there called needy houſes, the Directors were influenced by none but juſtifiable motives, and were ſincerely of opinion, that they were acting for the intereſt of the Company.

In anſwer to the remarks made upon the conduct of the Directors at their general meetings, we ſhall only obſerve, 1*mo*, That ſo anxious were they to give the Company a juſt view of their affairs, that, even in May 1770, a balance-ſheet was made up, and laid before a general meeting of Proprietors; and that at the two meetings held in May 1771 and May 1772, the books were produced regularly balanced to the month of November preceding: ſo that each Partner had an opportunity of ſeeing the nature of every operation that had been carried on. 2*do*, That the credits obtained at London in ſpring 1771, were particularly mentioned in the Report which the Directors laid before the Proprietors in the May meeting of that year; and that the Proprietors not only approved of theſe credits, but empowered the Directors to ſettle others. 3*tio*, That the dividend was propoſed, not in the way of a deception, or in order to give a falſe view of the ſituation of the Company, but becauſe there appeared a profit upon the face of the books, and no loſs of any conſequence had been incurred, or was even apprehended at that time. 4*to*, That the tranſactions with the old banking companies at Air and Dumfries, though, as matters have turned out, exceedingly unprofitable, were then ſuppoſed to be much for the intereſt

intereſt of the Company; and indeed were thought to be the beſt ſcheme for preventing, in a great meaſure, the reflux of the Company's notes at their different offices; and that before any effectual ſteps were taken for completing theſe tranſactions, the meaſure was approved of by the Proprietors at general meetings, and particular gentlemen were authoriſed to carry it into execution. And, 5*to*, That the Directors mentioned every thing in their reports to the general meetings of the Proprietors which it was thought neceſſary to communicate, and had it not in their power, even though they had been ſo inclined, to conceal any of their tranſactions. They were exceedingly careful that all their reſolutions and proceedings ſhould appear: full minutes were made up of every thing that paſſed at their meetings, and theſe minutes were recorded in books kept for that purpoſe, which were upon the table, and open for the inſpection of general meetings.

Anſwer to the 3d branch of the Report.

In conſidering the particular acts of miſmanagement charged againſt the Directors in the Report, we ſhall chiefly confine ourſelves to thoſe which relate to the Edinburgh branch, as we had occaſion to be moſt particularly acquainted with the tranſactions of that office. Indeed they are the only ones which we think it incumbent on us to juſtify.

Anſwer to the firſt charge of miſmanagement, Caſh-accounts.

The firſt charge of miſmanagement at Edinburgh reſpects the Caſh-accounts; which are divided into different claſſes. The firſt is contained in a State, N° 7. referred to in the Report, intitled, "State of Caſh-accounts unwarrantably granted, at Edinburgh, "without a quorum of five Directors." The firſt account contained in that ſtate, is one granted to Duncan Campbell, collector of exciſe at Dundee, for L. 1000. If the authors of the Report had been ſo candid as to ſtate the particular circumſtances relative to it, they muſt have appeared in ſo favourable a point of view as to have put it beyond all doubt, that it was the intereſt of the Company which induced the Directors to grant it. The ſederunt reſpecting this account is as follows.

April 5. 1771. Mr Hay reported, " That Mr Campbell of Saddle and he had " agreed with Duncan Campbell, Eſq; collector of exciſe at Dun- " dee, that for the future he was to lodge all his money with Mr " Ford, the Company's agent at Montroſe, to have 4 *per cent.* for it, " and he intitled to have bills on the Caſhier here, when he needed " them for his remittances to the receiver-general of exciſe: on " the other hand, the Directors to give him a credit on Mr Ford " to the extent of L. 1000, by miſſive; for which he, Mr Robert " Campbell of Aſhniſh his brother, and Mr Campbell of Dunſtaff- " nage, were to grant their joint bond of credit, to pay 5 *per* " *cent.* for what he drew more than he paid in: That the letter " and bond of credit were both made out yeſterday; the letter " given to Mr Campbell, now in town, and the bond ſigned, of " this date, is lodged with the other Caſh-bonds: That it bore a " particular clauſe, that ſhould Mr Campbell die in his office, his bro- " ther, as the bailſman to government, ſhould have liberty, for his " own relief, to operate on the credit, and to have bills on this of- " fice, in the ſame way as his brother could demand them, if on " life at the time: of all which the meeting approved."

From this minute it appears, that this caſh-account was granted to Collector Campbell on account of the benefit that the Company would derive from the operations which the nature of his office enabled him to make with their agent at Montroſe.

With reſpect to the other eight accounts contained in this ſtate, it appears from the very ſtate itſelf, that five Directors were preſent when they were granted. It is true indeed, that one of the Directors was properly a Director for the Dumfries branch; but it will be remembered, that whatever office any Director was choſen for, he had the power of acting at all the other offices when he was preſent; and as five Directors made a ſufficient quorum for granting caſh-accounts, it was certainly a matter of very little conſequence, whether that quorum was made up of five Directors belonging to the

the Edinburgh office, or of four belonging to that office, and of one belonging to any of the other two. But what renders this charge ſtill more abſurd and groundleſs is, that all thoſe accounts were granted poſterior to the general meeting in May 1771, when the reſolution to grant no caſh-accounts but what were agreed to by the Directors at all the different offices was entered into. And it appears from letters from the Caſhiers at Air and Dumfries *, that all theſe accounts, as well as thoſe contained in ſtates N° 8. and N° 9. were agreed to by the Directors at Air and Dumfries, except the two depoſits lodged in the hands of Charles Ferguſſon and Company, and Fordyce, Grant, and Company, which we ſhall take notice of in the ſequel.

If therefore the authors of the Report had taken the trouble to inveſtigate matters with that degree of candour and impartiality which they ought to have done, they would have found, that, inſtead of L. 27,350, which they alledge the accounts unwarrantably granted at Edinburgh amounted to, not a ſingle account was granted but agreeable to the ſtricteſt rules of the Company, except the one to Collector Campbell, the nature and circumſtances of which have been already explained.

Anſwers to the 2d charge of miſmanagement, Diſcount of bills.

The ſecond charge of miſmanagement relates to the diſcounting of bills in an improper and unwarrantable manner; and two ſtates, marked N° 10. are referred to as containing a liſt of the bills alledged to be ſo diſcounted. But when theſe ſtates come to be looked into, and compared with the books of the Company, it is eaſy to account for theſe bills not having been entered in the Directors ſederunt-book. All bills preſented for diſcount were regularly diſcounted by a proper quorum of the Directors; but it was an eſta-

* *Vide* Letters from Mr Maxwell, Caſhier at Dumfries, to Mr Hogg, 31ſt May, and 11th and 29th July 1771; and from Mr Chriſtian, Caſhier at Air, 6th March 1770, and 31ſt July 1771.

bliſhed

bliſhed rule, That if the debtors in theſe bills ſhould apply to have them rediſcounted, the acting Director for the week ſhould have it in his power to do it, if he thought it was for the intereſt of the Company. This was however ſeldom done, without a partial payment being made by the debtor in the bill; and ſo delicate was the Director for the week in authoriſing theſe kinds of negotiations, that he generally delayed them till the weekly meeting of the Directors. Another reaſon, too, why ſeveral bills, regularly diſcounted at the weekly meetings of the Directors, were not entered in their minutes, was, that a liſt of the bills preſented for diſcount was made out by the Caſhier, or Accountant, and laid before the Directors, with the bills themſelves; and that after the Directors had marked upon this liſt thoſe bills which were to be diſcounted, and thoſe which were refuſed, the Caſhier diſcounted ſuch as were agreed to, and the Accountant entered them regularly in the bill-books. That this was the caſe, the authors of the Report would have been furniſhed with the moſt inconteſtable evidence, if they had complied with the ſtrict injunctions they received from the general meeting of the Company that appointed them, by applying to the Directors for an explanation of ſuch parts of their conduct as they thought faulty. Indeed, had they done this, and acted with that degree of candour, fairneſs, and impartiality, which was incumbent on them, as men who declared, that they wanted nothing but to ſearch for and diſcover truth, we firmly believe, that their voluminous Report might have been compriſed within very narrow bounds. We muſt alſo obſerve, with reſpect to this article of diſcounted bills, that many of the bills contained in the ſtates referred to in the Report, were not diſcounted at Edinburgh, but by the Company's agents in different parts of the country; and being payable in Edinburgh, were remitted there by them.

Such being the fair ſtate of the facts relative to this matter, we cannot permit ourſelves to entertain a doubt of the Company's being

ing ſatisfied with the propriety of the conduct of the Directors in this particular.

Anſwer to the 3d charge of miſmanagement, Purchaſe of bills of exchange.

The third charge of miſmanagement reſpects the purchaſe of bills of exchange.

Whilſt the buſineſs of the Company was limited, and few bills of exchange neceſſary to be purchaſed, they were in uſe to be ſubmitted to the conſideration of the two weekly meetings of Directors. But after the buſineſs of the Company became extended, and their tranſactions with their London correſpondents ſwelled to ſo great an amount, as to require remittances to be made to them every poſt, it was abſolutely impoſſible to follow that mode of purchaſing bills of exchange. It was therefore found neceſſary to authoriſe the acting Director for the week, to purchaſe ſuch bills upon the beſt terms he could: and as they were regularly entered in the exchange-bill book, which was ſubmitted to the review of the whole Directors at their weekly meetings; ſo we apprehend that the Directors had full power to adopt this mode, under the following clauſe, contained in the 8th article of the contract of copartnery, viz. " That the buſineſs of theſe Directors ſhall be, to ſuperintend " and direct the Caſhier, Accountant, Teller, and other officers " to be employed by the Company, whether at the principal office " or branches; to diſcount bills; allowing of caſh accounts or cre- " dits, and recalling them when found neceſſary; authoriſing the " granting of poſt-bills, promiſſory notes, in favour of a credi- " tor named therein; and, in general, to conduct the proper buſi- " neſs of the Company in the manner that ſhall be found moſt ex- " pedient and beneficial; and their actings ſhall be binding upon " all the partners to the extent of their reſpective ſhares, unleſs " theſe are altered or varied by a general meeting: That theſe " Directors, or the quorum, ſhall meet once a-week, at the gene- " ral office and branches of the Company, on ſuch day of the " week as ſhall, from time to time, appear moſt expedient to, and

" at a place to be appointed by a general meeting; and at theſe " their weekly meetings ſhall appoint one of their number to at- " tend each day of the ſubſequent week, and, failing one, another, " in order to tranſact the buſineſs of the Company in general; and, in " particular, to give directions to the Caſhier and other officers, to au- " thoriſe the granting of poſt-bills and promiſſory notes, and to do " every other thing in common courſe; only in the caſe of diſcount- " ing bills, he is to call in the aid and advice of another Director." We therefore apprehend, that, in virtue of this article of the contract of copartnery, the Directors had full power to purchaſe bills of exchange in the manner they did; and are ſufficiently juſtified in adopting that plan, from the ſituation the Company's affairs were then in. We cannot help, however, obſerving, that the ſtate N° 11. which is ſaid to contain a liſt of the bills of exchange alledged to be purchaſed unwarrantably by the Directors at Edinburgh, gives a very unfair view of that matter; becauſe it not only contains the bills purchaſed at Edinburgh, but thoſe purchaſed by the Company's agents at Glaſgow, Inverary, Campbelltown, Inverneſs, Montroſe, and Kelſo, and remitted by them to Edinburgh; and alſo ſeveral bills which were remitted by the Carron Company, Francis Garbet and Company, and other people who held credits at the Edinburgh office. From this circumſtance it would ſeem, that the authors of the Report have had it more in view to find fault, than to inveſtigate the real ſtate of the tranſactions as they muſt have appeared at the time they were carried on.

Anſwer to the 4th charge of miſmanagement, Circulation-accounts.

With reſpect to the fourth charge, being money given out in circulation-accounts, there is no inſtance ſpecified in the Report when this was done, or of the Company's ſuffering any loſs thereby. We have been at pains to inquire into this matter, and find, that on ſome occaſions L. 100, or perhaps L. 200, was given to ſome individuals to diſperſe in the country; but in every caſe where this was done, it was upon undoubted ſecurity, and the value returned in a ſhort time, either in London bills, ſpecie, or the notes of other banking

banking companies. We are certain too, that it was a tranſaction very ſeldom entered into; and that the Company, in place of ſuſtaining any loſs, always received a benefit from it: ſo that no degree of blame lies againſt the Directors on this account.

Anſwer to the 5th charge of miſmanagement, Accounts-current.

With reſpect to the fifth charge, of allowing William Fullerton of Roſemount, William Alexander and Sons, and John Fordyce, to become debtors to the Company in accounts-current which they kept with them; the fact is, that Mr Fullerton had lodged a very conſiderable ſum of money with the Company, and when he came to draw it out again, he paſſed his bills on the Caſhier for as much more money than the ſum he had lodged, as he imagined would be equal to the intereſt due him by the Company on that account; and in this manner he happened to overdraw his account, but to no great extent. It was ſoon however ſettled, and the balance paid. With reſpect to the accounts-current kept with the Company by William Alexander and Sons, and John Fordyce, they might perhaps overdraw their accounts for a few pounds; but this happened very ſeldom, and was generally replaced next day. Indeed, in general, ſo far were they from overdrawing their accounts, that they had conſiderable ſums of money lodged with the Company; and as the Company have ſuffered no loſs from theſe tranſactions, we think that the authors of the Report might have ſpared this charge of miſconduct againſt the Directors.

Anſwers to the 6th charge of miſmanagement, Neglecting to take proper ſecurities from the different officers.

With reſpect to the ſixth charge, of neglecting to take proper ſecurity from the officers employed at the Edinburgh office; we do not pretend to exculpate the conduct of the Directors, in neglecting ſo long to obtain a bond of caution from Mr Hogg, the Caſhier; but at the ſame time we muſt obſerve, that it was not in his power to commit any act prejudicial to the intereſt of the Company. His draughts upon London could not paſs, till they were counterſigned by a Director, and entered in the books by the Accountant; and as there were three keys to the caſh-cheſt, two of which were kept by the

the Directors, it was totally impoſſible that any fraud could be committed by him againſt the Company, without the aid and concurrence of others; and as there was no loſs ſuſtained by this neglect, it is rather ungenerous to find fault with it.

With reſpect to Fleming, the Teller; upon his being appointed to that office, orders were given by the Directors to Mr Orr, the then agent and ſecretary for the Company, to get his bond of ſecurity executed, and lodged in the caſh-cheſt; and we and all the other Directors did ſuppoſe, that a bond for that purpoſe had been granted, and lodged; and did not diſcover that it had been neglected, until ſuch time as a deficiency was found in his caſh. He was however then diſmiſſed from the office, and the beſt ſecurity obtained from him that he could give for that deficiency.

As to George Morriſon, he was an apprentice to the Company, and was only employed as a Teller in the abſence of one of the other Tellers, when the neceſſity of the Company required it: ſo that no ſecurity could be aſked, or expected, from him; and in fact the greateſt part of his deficiency aroſe from the office being broke open in the night-time, and robbed, during the time he acted as Teller.

The authors of the Report have in this branch of it again brought under challenge the depoſits made with the houſes of Meſſ. Charles Ferguſſon and Company, and Fordyce, Grant, and Company; and therefore we ſhall now take an opportunity of ſtating what occurs to us with reſpect to this tranſaction.

The abſolute neceſſity which the Directors were under, of entering into tranſactions of that nature, for behoof of the Company, at that period, we have already taken notice of; and it muſt be evident to any perſon who underſtands matters of this kind, that the only object the Directors could have in view was, to abridge the expence attending the London tranſactions, and to leſſen the riſk the Company

pany was expoſed to, by ſupporting the debt they owed in London upon the credit of the Company itſelf, in the place of purchaſing bills of exchange from other people, until ſuch time as the funds of the Company could be collected, to diſcharge that debt on London altogether. It is very true, that the depoſits were remitted to theſe houſes before the ſecurity ſtipulated to be granted by them to the Company were delivered; but this was in a great meaſure owing to the particular exigencies of the Company at the time, and the very ſingular and unforeſeen circumſtances which attended the very commencement of this tranſaction.

It appears from the ſederunt-books 7th May 1772, that the tranſaction with theſe houſes was not only then agreed to upon the part of the Company, but the neceſſity of commencing operations with them ſo great, that the Caſhier got orders to begin doing buſineſs with them immediately. Theſe houſes were at the ſame time adviſed, that the Caſhier had received ſuch inſtructions; and that they muſt tranſmit letters of guarantee for their tranſactions on account of the Company, ſo ſoon as the ſum ſtipulated to be kept in their hands, free of intereſt, in the place of commiſſion, was depoſited with them. The bills for that depoſit, however, were only remitted to them in the end of May; and it is well known, that they ſtopped payment upon the 9th June thereafter: a circumſtance that could not be foreſeeen, and was altogether unexpected. As therefore the Directors were acting to the beſt of their judgement, in commencing operations with theſe two houſes before the ſtipulated ſecurities could be obtained, we hope that their conduct on that occaſion will not appear ſo very reprehenſible in the eyes of the Company, as it has done to the authors of the Report.

After what has been already ſaid with regard to that part of the third branch of the Report which reſpects the operations of the Edinburgh branch, we think it unneceſſary to trouble you with remarks upon the fourth branch, further than to obſerve, in general,

that

that the authors of the Report have not been pleaſed to point out any loſs which has been ſuſtained by the inſolvency of the debtors to whom loans are ſaid to have been irregularly granted; and that they have been rather raſh, in ſuppoſing, that a debt was contracted in London equivalent to the amount of the ſuppoſed irregular loans, and that a correſponding proportion of the loſs ſuſtained by the ſale of annuities muſt be charged as a neceſſary conſequence of theſe loans.

Anſwers to the 5th branch of the Report.

The fifth branch relates entirely to the ſale of annuities, and the manner in which the loſs which has ariſen from that meaſure ſhould be proportioned among the partners.

The authors of the Report have had the candour to admit, that the debts due to the Company, which they very juſtly characteriſe the natural and proper funds for relieving the Company in the emergency occaſioned by the bankruptcies, and the general ſtagnation of credit which took place in June 1772, were totally inacceſſible; and that it would have been altogether chimerical, to look for relief from that quarter: and as they do not pretend, that the money which was neceſſary to anſwer the exigencies of the Company at that time, and to prevent a legal bankruptcy, (the conſequences whereof muſt have been ruinous to the generality of the partners), could poſſibly be procured any other way; and even decline to give their opinion, whether the voluntary bankruptcy which, according to them, enſued from the meaſure that was adopted, of ſelling annuities, or the legal bankruptcy which otherwiſe muſt have taken place, would have proved moſt fatal to the Company, and the unfortunate Partners of which it was compoſed; it would ſeem, that they themſelves do not incline to condemn the noblemen and gentlemen who engaged in that meaſure, as guilty of any thing that deſerved cenſure from the Company. It would be ſtrange indeed, if they were to be blamed for their conduct on that occaſion: they ſurely had nothing in view but the intereſt of the Company in general;

neral; and ſome of them went great lengths to promote it. While pledging their own fortunes for the payment of theſe annuities, until they ſhould be redeemed, it is believed, they had no certain aſſurances of having any legal ground for compelling the Company to relieve them from the conſequences of the engagements they had come under, but truſted to the principles of juſtice and equity by which the conduct of good and virtuous men muſt be for ever influenced: and they truſted not in vain; for, at the very firſt general meeting of the Company, the proprietors unanimouſly approved of their conduct, and gave the neceſſary orders for relieving them of theſe engagements.

This notwithſtanding, the authors of the Report have been pleaſed to obſerve, that they cannot perceive upon what ground, even a general meeting of the Company could adopt, or authoriſe, the annuity-meaſure, ſo as to bind abſent or diſſenting members, or to affect the ſtock of the Company by any loſs thence ariſing. How far it was proper in a committee appointed by the Company to inveſtigate facts, to incite individuals, by obſervations of this ſort, to diſpute the power of a general meeting of the Company to bind all its members, we ſhall ſubmit to your own better judgement.

We by no means blame the authors of the Report, for endeavouring to find out a mode of obtaining relief to the unfortunate and innocent Partners from the heavy loſs which has been ſuſtained by the annuity-ſcheme; but we ſhould think ourſelves much to blame, if, differing ſo widely in opinion as we do from theſe gentlemen, we ſhould paſs over in ſilence that part of the Report in which they propoſe to lay that loſs upon ſuch of the Partners as were debtors to the Company at the period when that meaſure became neceſſary.

The authors of the Report ſeem to be ſatisfied, that they cannot require ſuch of their debtors as were not Partners of the Company, to take upon them any part of the loſs that has been ſuſtained by the

the annuity-ſcheme; and we can diſcover no ground in law to make any diſtinction between them and the other debtors of the Company, who happened likewiſe to be Partners.

It is a general rule, which even ſuffers no exception that we know of, That the utmoſt that can be required from a debtor for the delay of payment is the legal intereſt; and in particular caſes the penalty which he may have adjected to his obligation. It may often happen, that a creditor ſuffers greatly by not getting punctual payment of the debts that are due to him; but how great ſoever ſuch loſs may be, he cannot pretend to throw any part of it upon his debtor. It is not therefore eaſy to diſcover, upon what ground thoſe partners of the Company who happened to be its debtors at the time when the annuity-meaſure was adopted, can be ſubjected to the whole loſs that was thereby ſuſtained.

Even though the incompetency of a claim of that kind were leſs doubtful than it muſt appear to every perſon who is not blinded by prejudice, or miſled by the wild imaginations of fancy, ſtill it would be neceſſary to ſhew, that before the Company adopted the annuity-ſcheme, or approved of the meaſure, they had inſiſted for immediate payment of the debts that were due to them by their partners. We do however believe, that no demand of that ſort was made.

It would likewiſe be incumbent upon the Company, when making a claim of that ſort, to prove that it was owing to thoſe particular debts that were due by partners that it became neceſſary to reſort to the annuity-ſcheme: and that, we believe, would be a matter of conſiderable difficulty.

The matter however does not reſt here: for even ſuppoſing it to have been competent for the Company, prior to their meeting in November 1772, when they approved of the annuity-ſcheme, and agreed

agreed to relieve thoſe noblemen and gentlemen by whom the bonds of annuity were granted, to have inſiſted, that ſuch of the Partners who were debtors to the Company ſhould take upon them the burden of theſe annuities *pro rata* of their debts, the proceedings of that meeting muſt put an abſolute bar upon every claim of that ſort. It is now certain, that great loſs has been incurred by the annuity-ſcheme; but although, at the time the meaſure was adopted or approved of, it was highly probable that a loſs would enſue; yet ſtill there was no certainty of that event, and it was poſſible that the Company might have reaped profit by it; and as the Company then thought fit to take the riſk of profit or loſs upon itſelf, by approving of the conduct of thoſe partners who had adopted that mode of raiſing money, and declaring theſe tranſactions to be for the behoof of and binding upon the Company, it is impoſſible that the Company can now pretend to lay the loſs which has been incurred by theſe annuities upon any particular claſs of the Partners. They took the management entirely into their own hands, and might have redeemed them, or not, as they thought proper. The loſs muſt therefore undoubtedly fall upon the Company in general; and never can be laid upon individual Partners, who could have no pretence to claim profit by the tranſaction, and who had it not in their power to prevent further loſs, by a ſpeedy redemption of the annuities, however able, and how much ſoever inclined they might have been to take a ſtep of that kind.

The ſubſequent operations of the Company are likewiſe ſufficient, in our opinion, to check at once any idea of adopting the plan that has been ſuggeſted by the authors of the Report. Altho' the proceedings of the general meeting in November 1772, by which the ſale of the annuities was approved of, and declared to have been for behoof of the Company, had not been enough; yet ſurely the after proceedings, in conſequence of which heritable ſecurities were taken from ſuch of the Company's debtors as could give them, for the purpoſe of raiſing a fund to redeem the annuities; and an act of

parliament was obtained, to authoriſe the iſſuing of transferable bonds, and the annuities were actually redeemed by the Company itſelf, muſt convince even the authors of the Report themſelves, that their ideas upon this topic are perfectly chimerical and abſurd.

It is ſaid oftener than once in this branch of the Report, that at the period of the general meeting in November 1772, the real ſtate of the debts due to the Company was not known among the Partners, but among the Managers alone; and that it is not probable that the Partners would have given ſo looſe and unreſerved an approbation at large to the meaſures propoſed as they then did, if they had known the real ſtate of affairs, and foreſeen the conſequences of the annuity-tranſaction. But if the authors of the Report had taken the trouble to look into the minutes of the general meeting of the Proprietors held at Dumfries upon the 2d November 1772, they would have ſeen, that a committee of three Partners, together with the Caſhiers and Accountants, were ordered to attend at the Dumfries office, all that evening, and the next day, to exhibit and explain the general abſtract of the Company's affairs, then lying upon the table, and all the particular ſtates from which it had been taken, to every Proprietor who might demand inſpection or explanation thereof, or of the books of the Company, which were ordered to be open and patent to them: and although, from the abſtract itſelf, the Partners could not diſcover the names of all their debtors, or the extent of every particular debt; yet, upon looking into the ſtates which were ready to be exhibited to them, they had it in their power to receive the fulleſt information. Theſe ſtates had been ordered to be prepared by a meeting of the Directors held at Air upon the 17th of September 1772, and the title of them alone muſt be ſufficient to ſhew, that they were calculated to afford every information or communication that could be wiſhed for.

Anſwer to the 6th branch of the Report.

We now proceed to offer ſome obſervations upon the ſixth branch of the Report, intitled, "Culpable proceedings at London in the "annuity-

"annuity-tranſaction;" and in doing this we ſhall follow the order obſerved in the Report.

Anſwer reſpecting the loan of L. 10,000 to Mr Alexander.

The firſt charge is for an accommodation given to Meſſ. Alexander, of L. 10,000, out of the money raiſed upon annuities. With regard to this tranſaction, the fact ſtands thus: When the affairs of the Company went into confuſion, in June 1772, theſe gentlemen, with the aſſiſtance of their friends in London, rendered the moſt important ſervices to the Company, by aiding their Directors in diſcounting bills to ſupport the Company's credit at that time. This circumſtance, we apprehend, might of itſelf have juſtified this tranſaction. But the matter does not reſt here: the ſingle object of that tranſaction was, the intereſt of the Company at the time it was entered into; and that object was obtained ſo far as the ſum went. The Company was then poſſeſſed of bills of Johnſton and Smith, Garbet and Company, &c. on Glyn and Halifax. When that houſe ſtopped payment, the amount of theſe bills was about L. 15,000. Mr Alexander propoſed to the Directors then in London, to give him a loan of L. 10,000, on heritable ſecurity, on obtaining which he engaged that theſe bills ſhould be taken up by Glyn and Halifax, as by paying that ſum to them they would be enabled to go on; which they accordingly did: ſo that the Company reaped a manifeſt advantage by this tranſaction: and ſo attentive were your Managers in London, that they annexed to the condition of theſe bills being taken up immediately, another one, viz. That if the money was not repaid in three months, the Meſſ. Alexanders ſhould relieve the Company of annuities to that amount. This being the real ſtate of that tranſaction, it is evident, that, inſtead of occaſioning more annuities to be ſold, it ſaved the ſale of L. 5000 additional, which would have been neceſſary for the ſupport of the credit of the Company, had not the bills been taken up, as already mentioned. We therefore apprehend, that thoſe who acted for the Company in London at this time, merit their thanks, not their cenſure, for this tranſaction.

As

As to the ſecond charge, of impropriety of conduct reſpecting a further loan of L. 10,000 ſaid to have been given to Meſſ. Alexanders during the time of the annuity-tranſaction, we can venture to affirm, that the authors of the Report are in a miſtake with reſpect to this matter, as no ſuch loan was given them at that time. The only other accommodation that ever theſe gentlemen got from the Company, will fall to be taken notice of in a ſubſequent part of this letter.

Anſwer to the leſſer miſapplications.

With reſpect to the third charge of leſſer miſapplications, to the extent of L. 4338, conſiſting of two articles, little ſhall be ſaid. As to the ſum of L. 1818, ſaid to have been unwarrantably paid to David Campbell, one of us, who was in London during the greateſt part of the time that the annuity-tranſactions were carried on, does aver, that it did not happen in that period. If it did happen afterwards, we muſt leave thoſe who authoriſed it to account for it. And as to the L. 2500 of bills of John Buſhby's, upon Baron Grant, they were remitted from the office at Dumfries to Meſſ. Mayne and Needham, and being diſhonoured by the acceptor and drawer, it became as neceſſary to retire them, for the honour of the Company, as if they had been drawn by the Company themſelves.

Anſwer, as to the confeſſed balance alledged to be in the hands of the Caſhiers appointed by the annuity-granters.

With reſpect to the fourth charge, reſpecting a confeſſed balance alledged to be in the hands of the Caſhiers appointed by the annuity-granters, one of us, who acted in that capacity for ſome time, does aver, that whatever balance may appear upon the accounts now made up of theſe tranſactions, not a ſhilling of balance was in his hands when he gave up his accounts and vouchers; nor was there ever a ſhilling of it in his poſſeſſion above half an hour. How ſoon the money ariſing from the ſale of annuities came into his hands, it was paid in to the Company's bankers, or appropriated to diſcharge the other engagements of the Company. If there be a confeſſed balance in the hands of other people, it is right that they ſhould account for it.

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The fifth article of charge, is a large accommodation alledged to have been given to Meſſ. Mayne and Needham, bankers in London, out of the money ariſing from the ſale of the annuities. This ſcarcely deſerves a ſerious anſwer; and indeed we can hardly permit ourſelves to think, that the authors of the report do themſelves imagine, that the Company's Managers in London are culpable for this part of their conduct. Meſſ. Mayne and Needham were the correſpondents of the Company from the commencement of their buſineſs. As individuals, they were partners of the Company, and had always acted with the utmoſt attention to its intereſt. Is it poſſible then to conceive, that the Directors can be blamed for depoſiting the money raiſed by the ſale of annuities, in that houſe, to be drawn out again to anſwer the demands of the Company, or appropriated by that houſe itſelf for that purpoſe? Where were the Directors to keep this money? In no place ſurely ſo properly as in the hands of the Company's bankers; and the event has ſhewn, that it was fortunate for the Company, that it was lodged in the hands of Mayne and Needham, and not in the hands of another banking-houſe, with which the Company correſponded. Whether the Company are intitled to claim relief from Meſſ. Mayne and Needham on this account, we leave them to judge for themſelves.

Anſwer to the accommodation alledged to have been given to Mayne and Needham.

As to the ſixth charge, of L. 6220 ſaid to have been raiſed upon annuities, and altogether unaccounted for, it is already the ſubject of legal diſcuſſion; and therefore we do not think ourſelves intitled to make any obſervations upon it.

Anſwer as to the L. 6220 ſaid to be unaccounted for.

The ſeventh branch of the Report, which comes now to be taken under conſideration, reſpects what the authors term "Culpable "acts of miſmanagement in Scotland, poſterior to the ſtop of the "Company, in June 1772;" and theſe we ſhall alſo conſider in the order they are contained in the Report.

Anſwer to the 7th branch of the Report.

The

Anſwers to the tranſactions of compoſition with C. F. and Co. and F. G. and Co.

The firſt is the tranſactions of compoſition with Charles Ferguſſon, and Company, and Fordyce, Grant, and Company; and as a very minute detail of theſe tranſactions is already lodged, in anſwer to this part of the Report, we ſhall content ourſelves by referring to it, with this ſingle obſervation, that we are firmly perſuaded, that the Directors who entered into them, were ſatisfied at the time, that it was an eligible meaſure for the Company to adopt. How far it is liable to be ſet aſide upon legal grounds, and whether it would be for the intereſt of the Company to attempt ſuch a challenge, we ſhall not take upon us to ſay; but we will venture to aſſert, that the Directors who entered into it do not deſerve cenſure, and far leſs can be ſubjected in damages to the Company on that account in a court of law.

Anſwer as to the loan or accommodation afforded to the Meſſ. Alexanders.

The ſecond article in this branch of the Report reſpects the loans to Meſſ. Alexanders. We have already mentioned, that theſe gentlemen were of very conſiderable uſe to the Company in ſummer 1772; a fact which is well known to every gentleman who was in London during that period, attending the management of the Company's affairs there; and any accommodation that the Company could afford them without riſk, they were then thought well intitled to. As to the L. 2000 given Meſſ. Alexanders upon a depoſit of bills, it was done at a meeting of the Directors called on purpoſe. William Alexander attended the meeting himſelf with the bills; and one reaſon he urged for obtaining this accommodation, and induced the Directors to grant it, was, that his brother Mr Robert Alexander, then in London, had taken up bills for the honour of the Company, to the amount of above L. 4000 Sterling, after Meſſ. Charles Ferguſſon and Company, and Fordyce, Grant, and Company, had ſtopped payment, on the 9th of June.

With reſpect to the other loan given to Meſſ. Alexanders, upon the credit of the eſtate of Blackhouſe, in Airſhire, and ſome other ſubjects, in London, inſtead of being done in a ſecret and concealed manner,

manner, it ſeems to have been gone about with the utmoſt deliberation. The propoſal was firſt made by Mr Alexander, at London, in the beginning of September 1772, to the gentlemen who were then managing the Company's affairs. By them it was remitted to the Directors at Edinburgh, and by them to a general meeting of all the Directors of the Company, which was to be held at Air, about the end of that month. At that meeting, when there were preſent no fewer than eighteen Directors of the Company, the tranſaction was ſettled; and we can ſafely aver, that, at that time, not one of the Directors had the ſmalleſt idea that ever the Company was to be brought under advance for that money; or that it was to be attended with any further conſequences than merely lending the Company's name upon undoubted ſecurity. For it is to be obſerved, that it was not a loan of money, but of promiſſory notes of the Company, payable in nine or fifteen months. Mr Alexander poſitively engaged to retire theſe notes when they became due, without putting the Company to the leaſt trouble or expence about them; and the Directors had every reaſon in the world to believe, that it was not only his intention, but that he would be able to effectuate it. They knew that he was poſſeſſed of very extenſive property in the Weſt-India iſlands, beſides his landed property in Scotland; and his credit was then ſo good, that the Directors of the Bank of England had agreed to ſupport him, and his friends, to a moſt amazing amount. Conſidering, therefore, the important ſervices that Mr Alexander had, at different times, rendered the Company, and the credit he was then in, we do not think that the Directors were culpable in entering into this tranſaction with him. All that can be required of perſons who are conducting buſineſs for others, is fidelity and attention. If the engagements they enter into appear, to the beſt of their judgement and knowledge at the time, to be proper to be gone into, their turning out afterwards prejudicial, can only be looked upon as a misfortune; and can never be made the ſubject of a legal proſecution.

The

Anſwer to the accommodation given Mr Fordyce.

The third article reſpects the accommodation given to Mr Fordyce; and here we muſt beg leave to bring under view the propoſal given in by that gentleman, as it appears from the ſederunt-book of the Edinburgh Directors, of this date, viz. Oct. 12. 1777.

" There was laid before the meeting the following propoſal of " John Fordyce, Eſq;

" 1. That he will aſſign, or diſpone, to Meſſ. D. H. and Co. " the following ſubjects, viz.

" The eſtate of Torrerie, worth about - -	L. 17000
" The lands of New Grange, near St Andrew's, worth	2000
" A houſe in Edinburgh, which he is now about ſelling,	2500
" Another houſe in Edinburgh, - - - -	300
	L. 21800

" 2. That, on the above-mentioned ſecurity, he hopes Meſſ. " D. H. and Co. will grant their obligations, or accept bills, " for L. 10,000, payable in eighteen months from the twenty-" ninth of this month; and for L. 10,000 more, payable in thirty " months, that is, in two and a half years, from the twenty-ninth " of this month."

" 3. That, in conſideration of Meſſ. D. H. and Co. having en-" tered into the above tranſaction, Mr Fordyce will keep part of " the funds of his office with D. H. and Co. from this time forward; " though, as the amount of the money in the office fluctuates, he can-" not ſtipulate a preciſe ſum: That he will never draw it entirely out; " and, from motives of gratitude, he will endeavour to make the " amount as conſiderable to Meſſ. D. H. and Co. as he can, with-" out great diſadvantage to himſelf; and the money depoſited with " them

" them ſhall always be in Edinburgh notes, ſpecie, or in transfer-" ences from the treaſury to their correſpondents in London."

" 4. That the above-mentioned ſubjects ſhall be diſpoſed of as " ſoon as poſſible; and if the value of all, or any part of them, " ſhall be raiſed before the term of payment of D. H. and Co.'s " acceptances or obligations, the money ſhall be immediately paid " into their hands, there to remain until it ſhall be neceſſary to " apply it to the payment of theſe acceptances or obligations."

" 5. In order to prevent the poſſibility of any inconvenience " to D. H. and Co. from the above tranſaction, Mr Fordyce will, " with Sir Adam Ferguſſon's approbation, give an obligation to " the following effect."

" That in caſe the whole, or as much of the ſubjects before men-" tioned, ſhall not be turned into money, as ſhall be neceſſary to " anſwer the punctual payment of the obligations or acceptances " granted by Meſſ. D. H. and Co. Mr Fordyce ſhall, in that event, " at leaſt keep as much in their hands, out of the funds of his office, " as ſhall be equal to the deficiency, ſo as that Meſſ. D. H. and Co. " may, in no event, be ſubjected to any advance of money, in con-" ſequence of their having entered into this tranſaction."

The Directors at Edinburgh gave no deliverance upon this propoſal; but it appears to have been laid before a very full general meeting of Directors, held, at Dumfries, of this date, when the tranſaction was concluded in the following manner. Oct 30. 1772.

" The meeting having taken under conſideration the propoſals " given in for Mr John Fordyce, they unanimouſly agreed to au-" thoriſe their Caſhier to grant Mr Fordyce the obligations of the " Company for L. 29,000 Sterling; L. 9000 thereof payable in ſix " months, L. 10,000 thereof in eighteen months, and the remaining

" L. 10,000 in two years and a half from this date, Mr Fordyce gi-
" ving into the Caſhier of the Company, previous to his receiving
" the obligations for the above ſum, the ſecurities and depoſits
" mentioned in the propoſals, to be lodged by him with the Compa-
" ny for their ſecurity."

Thus it appears, that this tranſaction had been very deliberately gone into by the Directors; and their inducement to enter into it ſeems very obvious. Mr Fordyce, as Receiver-General for Scotland, had it certainly in his power to keep a conſiderable ſum of money in the hands of the Company, which, in the ſituation it was then in, was of the utmoſt importance; and as he expreſsly agreed to do it, the Directors had no reaſon to doubt of its being done.

At the ſame time, the loan which the Company was to give him, was by bills payable at ſuch diſtant periods, that they had it in their power either to convert the ſecurities he had given them into money, or to borrow money upon them, if they ſaw that Mr Fordyce was not likely to do it himſelf: and, in fact, this was done; for L. 14,000 was borrowed by the Company on the lands of Torrerie, and a conſiderable ſum of money was likewiſe raiſed from the other funds depoſited with them; ſo that they could never really be much in advance upon that account. It is therefore evident, that if Mr Fordyce kept any part of the caſh belonging to his office in the Company's hands, they muſt have been gainers by this tranſaction.

Anſwer as to the loan of L. 11,000, given Meſſ. Johnſton, Lawſon, and Company.

The fourth article of this branch of the Report reſpects what is called a loan of L. 11,000 Sterling to accommodate Meſſ. Johnſton, Lawſon, and Company. When this matter comes to be conſidered in its proper point of view, it appears evidently clear, that the Company was bound, by every tie, of law, juſtice, and equity, to enter into this tranſaction on account of the Dumfries bank; and, indeed, the manner in which it was done ſhows, that the

the ſtricteſt attention was paid to the intereſt of the Company. We have no occaſion here to ſay any thing about the impropriety of the tranſaction with the Dumfries bank. It had received the ſanction of a general meeting; and the Company were undoubtedly bound to perform every obligation incumbent upon them to the proprietors of that bank.

In the ſeventh article of the agreement with the Dumfries bank, there is the following clauſe *. " And alſo the ſaid A. Johnſton,
" H. Lawſon, and Company, are to give the benefit of all loans
" of money which they have, after that period, to D. H. and Co.;
" who, by this tranſaction, are to come in their place, and for
" which they ſhall pay ſuch intereſt as the ſaid A. Johnſton, H.
" Lawſon, and Company, are liable for; the ſaid D. H. and Co.
" being bound to retire the obligations granted by A. Johnſton,
" H. Lawſon, and Company, on that account, and to deliver the
" ſame diſcharged to the ſaid A. Johnſton, H. Lawſon, and Com-
" pany, as they become due."

The clear meaning of this clauſe ſurely is, that the Company were to come in the place of the Dumfries bank, in ſo far as to have the benefit of all money depoſited with them; and to be bound to pay it when demanded. Mr Lidderdale had depoſited L. 11,000 Sterling, upon intereſt, with the Dumfries bank, and demanded payment in October 1772. By the contract with that Company, they ſurely had a title to require D. H. and Co. to retire their obligation to Mr Lidderdale; and accordingly it was done by bills payable at twelve months date. Thus it appears, that the Directors were not only ſufficiently authoriſed to enter into the tranſaction, but under an abſolute neceſſity of doing it, and did it upon the

* *Vide* Contract with the Dumfries bank.

beſt

beſt terms poſſible; which muſt certainly vindicate them from the leaſt blame or cenſure upon that account.

Anſwer to the purchaſe of ſhares for behoof of the Company.

The fifth and laſt charge of culpable acts of miſmanagement under this branch of the Report, reſpects the purchaſing of ſhares for behoof the Company.

It appears from the following reſolutions of the Company, in November 1770, what powers the Directors were poſſeſſed of in this reſpect. Agreed to by a general meeting of the Company, held the 5th and 6th November 1770, "That it ſhould be left to "the whole Directors, when any Proprietor means to ſell out, "either to admit of a transfer to the perſon to whom he pro- "poſes to ſell, or otherwiſe to purchaſe his ſhare, for behoof of the "Company, and to pay him his proportions of ſtock and pro- "fits, according to the laſt ſettlement of the Company's affairs; and "that all ſuch transferences ſhall be regularly entered, and reported "to the immediate ſubſequent general meeting."

The Report takes notice of five ſhares which are ſaid to be in this ſituation. Three of theſe were transferred to Mr Home; and the authors of the Report ſeem to be perfectly ſatisfied, that they were transferred to and held by him for behoof of the Company. So far we agree with them in opinion. But then they ſay, that this tranſaction cannot be effectual againſt the Company, as not having been entered into agreeably to the preceding regulation.

We apprehend, however, that when the circumſtances of the caſe are attended to, it will appear, that this tranſaction was gone about in the very manner pointed out in that regulation. The transfer had been authoriſed at a general meeting of the Directors, held at Edinburgh upon the 4th of May 1772, where there were preſent no fewer than 16 Directors out of 27; and it was reported to a general meeting of Proprietors, held at Edinburgh the ſame day, and by

by them approved of; ſo that it undoubtedly muſt be conſidered a tranſaction conducted agreeably to the regulations of the Company, and therefore binding upon them.

Concluſion.

Thus we have endeavoured, as briefly as poſſible, to ſubmit to your conſideration what has occurred to us, upon an attentive peruſal of the Report of the Committee of Inquiry; and as, ſo far as we have had occaſion to ſtate matters of fact, we have been careful to aſſert nothing but what we can ſupport by ſatisfactory and inconteſtable evidence; ſo we with ſome degree of confidence hope, that we have eſtabliſhed pretty clearly, that the greateſt part of what is termed in the Report *culpable acts of miſmanagement in the Directors*, and for which, it is ſaid, they ought to be ſubjected in damages to the Company, cannot poſſibly afford the leaſt ground for an action at law againſt them.

We hope you will alſo be ſatisfied, that, whatever errors have been committed by the Directors, they proceeded entirely from ignorance of the buſineſs with the management of which they were intruſted, and from no other cauſe or motive whatever.

We doubt not, that after all the pains and labour we have beſtowed, there may be many things in this letter which may perhaps not be ſo ſufficiently and diſtinctly explained as many of the Proprietors could wiſh. As we are, however, ardently deſirous to afford them all the ſatisfaction in our power, with reſpect to every tranſaction of the Company that we are acquainted with, we will be extremely happy, on every occaſion, to throw all the light we can upon theſe matters to any Proprietor who chuſes to apply to us.

We regret exceedingly, that the gentlemen who were concerned in framing the Report, did not afford us an opportunity of giving them every information in our power relative to the various tranſ-

actions

actions which they have found ſo much fault with; as we are perfectly perſuaded, from our own knowledge of the articles, and from the integrity of thoſe gentlemen, that we could have cleared up many particulars to their entire ſatisfaction.

It would be great preſumption in us, to pretend to ſuggeſt to the Proprietors what meaſures they ought to adopt in conſequence of the Report. That we muſt leave to their own prudence and diſcretion. We ſhall only beg leave to add, that a cool deliberate conduct is better adapted to a buſineſs of this kind, than a raſh and precipitate one.

We are ourſelves thoroughly convinced, that no legal challenge whatever lies againſt the Directors for their line of conduct in the general tranſactions of the Company, nor againſt the Directors at Edinburgh, for their particular conduct in the department intruſted to them; and therefore we have not the ſmalleſt dread of any conſequences following from the Report that can affect us in any point of view whatever. We have the honour to be,

My Lords and Gentlemen,

Your moſt obedient humble Servants,

Edinburgh, Oct. 28.
1778.

ALEX. WIGHT.
ALEX. FERGUSSON.