No. 57. test taken against him by the charger's messenger. But, even supposing the addition to have been made *ex post facto*, it was perfectly innocent; as no point is better established, than that every acceptor of a bill is liable *in solidum*, whether the words "conjunctly and severally" are added to the address or not.

2*do*, It was not the charger's business to obtain Milliken's acceptance; and it cannot be doubted, that if a bill was addressed to twenty persons, every one becomes bound *in solidum* by his own acceptance; and the creditor has no further concern, if he chooses to rest upon the security granted by the acceptance of one or more: They must themselves provide for their mutual relief against each other.

"The Lords adhered."

Act. *Garden.* Alt. *Lockhart.*

Fol. Dic. v. 4. *p.* 296. *Fac. Coll. No.* 7. *p.* 11.

SECT. XIII.

Heirs Portioners, whether liable IN SOLIDUM or PRO RATA?

1632. *February* 7. HOME *against* HOME, and LAWERS *against* DUNBAR.

No. 58.

WILLIAM HOME having convened Dorothea Home, one of the heirs of umquhile George Home, for payment of 2000 merks, addebted by her father to his, alleged, She being only co-heir, could not be decerned but for her half only. Replied, She might be convened *in solidum*, especially seeing he offered to prove that she had more of her father than the debt craved by the pursuer. The Lords found the exception relevant.

Fol. Dic. v. 2. *p.* 381. *Spottiswood*, (HEIRS) *p.* 139.

*** Durie reports this case:

George Home being, by contract, obliged to pay to Samuel Home 2000 merks, and the heir of Samuel having charged one of the two daughters of umquhile George, as heir to him, to pay the sum; which being suspended by that one daughter, upon this reason, that she could not be liable in the whole sum, being only one of the two daughters, and heirs of the party obliged, and so could not be subject but in her equal half: And the charger replying, that she had succeeded to more through her father's decease than would pay the debt, The Lords found, that in this personal pursuit, she could only be liable to pay her own half; and

found no process against her but for that half, the other sister not being called: But the Lords found this scruple occurring in their consideration, that if the other sister should prove bankrupt, and go to the horn, for not payment of the other half, and had disponed all she had acquired by her father; if *eo casu* the creditor might return to seek real execution against that part of the defunct's lands, bruiked by the other sister, who had paid her own part, for her other sister's part; which sundry of the Lords thought might be found, seeing the creditor was not holden to acknowledge any division of the sisters, made among them; and so long as any of them bruiked any of the defunct's lands, or goods, it behoved to be liable to his debt; but this was not decided, seeing the same occurred not to be discussed. And further the Lords found, That albeit there was a decreet arbitral, betwixt these two deceased contracters, after the said contract, which one of the parties had acknowledged, by payment of an yearly duty thereby appointed, and so thereby the decreet was alleged to be homologated; and that therefore the heir of him, who had so homologated it, could not oppone any nullity against the decreet; yet the Lords found, that he might oppone a nullity, seeing that partial homologation, made as said is, by an illative qualification, and not directly done, nor bearing to be done, conform to the said decreet, and not offered to be proved *specifice* to be so done, or offered to be proved by writ, or oath, was not sustained, as a relevant qualification of homologation, and the allegeance founded thereupon was repelled.—This decision was again found betwixt L. Lawers and Dunbar, where the three sisters being convened as heirs, it was found, that one could not be decerned *in solidum* for all; and that the sentence could not pass against her, but for her own part, albeit the pursuer replied, that seeing he offered to prove, that the one sister, against whom he insisted, had succeeded to more than his debt acclaimed extended to; which was not respected, but found, that here they should be decerned, for their own proportions; but the Lords reserved to the pursuer his action, *de novo* again to pursue *prout de jure*, in case he were debarred from the effect of his execution against any of the rest of the sisters for their parts, to pursue any of the rest for the whole debt, upon any ground competent in law, which might produce that action. No. 58.

Durie, p. 619.

*** Kerse also reports this case:

Found, that an heir-portioner cannot be convened for more than her own part and portion, without citation of the other heirs; but the Lords to make them settle *pro indiviso* if they had been both summoned.

Kerse MS. p. 139.