

No. 114.

1642. *January 24.* SMITH *against* WILLIAMSON.

ONE of the Magistrates of a town, who himself, upon the creditor's charging, had imprisoned a rebel, being dead after the rebel's escape out of prison, the Lords sustained action against the other Magistrates surviving, conjunctly and severally, and that without any necessity of pursuing the representatives of the deceased.

Fol. Dic. v. 2. p. 386. Durie.

* * This case is No. 33. p. 11705. *voce* PRISONER.

SECT. XIX.

Upon a Decree against several, if each can be charged IN SOLIDUM?—
Can two creditors conjoined in a Decree, charge IN SOLIDUM?

1626. *February 28.* ——— *against* DOUGLAS.

No. 115.

Heir and executor sued and decerned to pay, without adding severally or *in solidum*, were found liable each for the half, though they might have been decerned for the whole.

IN an action of suspension ——— and Douglas of Cashogill, for suspending of a decret obtained against the heir and executor of a defunct, debtor to the obtainer of the sentence; in this process and summons whereupon that sentence was pronounced, both the heir and the executor of the defunct were called *unico contextu*, without distinction, to pay the debt owing by the defunct, viz. the heir as heir, and the other who was executor, was *hoc nomine* called; and the summons was referred to the defender's oath, viz. that the one was heir, and the other was executor; and they both were holden as confessed, being summoned to give their oaths, and not compearing; whereupon sentence followed, decerning them to pay, conform to the tenor of the summons, whereby, as said is, they were both called and desired to make payment; and wherein it was not libelled, that each one of them was debtor *in solidum*, and that therefore they, and every one of them, was holden to make payment of the whole, but the tenor of the summons and conclusion thereof, bore only, that they should be decerned to pay the debt; likeas, the words of the sentence were so conceived; and it being disputed in this suspension, if the sums should divide betwixt the heir and the executor decerned, and that each one of them was subject to pay the half of the sum, or if the creditor might exact the whole, either from the heir or the executor, seeing they were both debtors to him, and every one of them by the law, in the whole sum: The