

1630. February 2. KER against LIMPIDLAW.

No. 118.

A DECRET bearing in the narrative, that the persons against whom the same was obtained, were bound conjunctly and severally to pay the sum, and in that conclusion decerning the said persons to pay the said sum; it being suspended at the instance of the said persons, alleging that each one of them should pay but their own parts, in respect they are only decerned *conjunctim*; the Lords found that the conclusion of the summons should be ruled by the antecedent.

*Fol. Dic. v. 2. p. 387. Auchinleck MS. p. 58.*

1630. March 17. SEMPLE against M<sup>c</sup>NEISH.

No. 119.

Two executors confirmed having obtained decree against a debtor, decerning him to pay to them, but not conjunctly and severally; each of them can only discharge his own half; so that one of their discharges, upon payment of the whole, was only sustained for his own half.

*Fol. Dic. v. 2. p. 387.*

\* \* This case is No. 75. p. 2739. *voce* COMPETENT.

1675. February 9. PRARIS against CAPTAIN MARTINE and his OWNERS.

No. 120.

IAN Praris, master of the ship called The Brown Fish of Druntoun, did obtain reduction of the Admiral's decret, condemning that ship as prize; by which the Captain and owners of the privateer were decerned to restore the ship and loading, or such a price therefore; and some of the owners being charged, they suspend on this reason, that they are charged for the whole sum, and are only liable for their share, not being decerned by the decret conjunctly and severally, or *in solidum*; and because by the Lord's decret they had ground of suspicion whereupon to bring up the ship, and so it cannot be esteemed as a spuilzie. It was answered, that seeing the decret neither expresses *in solidum* or *pro rata*, it must be understood *secundum naturam negotii*; so that all the owners of the privateer must be liable *in solidum*, because the suspicion might restrict the spuilzie, *quoad* the privilege of oath *in litem*, &c. yet it remains wrongous intromission. 2. Partners are liable *in solidum*, and the owners are partners. 3. Exercitors are liable *in solidum*, for the Captain or master of the ship are in-put by them. 4. *Correi debendi* are liable *in solidum*, especially *in facto indivisibili*; and they being obliged to restore the ship, must be all obliged *in solidum*, the ship neither being *species* nor *quantities*, but *unicum corpus*, and the price comes only in the place thereof, and must be liable in

A prize being adjudged by the Admiral, and assoilzied by the Lords, and having been sold, all the owners of the Privateer which took the ship so sold were found liable *in solidum* for the price thereof, though they were not decerned against conjunctly and severally.

No. 120. the same manner ; and if this were not sustained, strangers needed never offer to reclaim ships, because they could not know the owners, and if any of them were insolvent, could never recover their share, and therefore the owners ought to seek relief amongst themselves, and may impute to themselves, if they have entered in society with insolvent owners.

The Lords found the whole owners liable *in solidum*, although they were found to have seized the ship upon sufficient ground of suspicion.

*Fol. Dic. v. 2. p. 387. Stair v. 2. p. 319.*

\* \* \* Dirleton reports this case :

A SHIP being taken by a caper, and being found by a decret of the Admiral to be a prize, thereafter, upon a decret of the Lords, reductive of that of the Admiral, being found to be a free ship, the stranger did urge payment against the Captain and the owners of the value ; and it was alleged, that the decret of the Lords ordaining restitution was against them *correi debendi*, and not *in solidum*, and that they are only liable for their own parts. Whereunto it was answered, that though it was found, that the Captain had probable reasons for bringing up the said ship, yet upon the matter the stranger was wronged by the taking of his ship, and *in casu delicti*, by spuilzie or wrongous intromission or otherwise, decreets against the persons therein contained are construed to be *in solidum* ; and the stranger cannot know what the respective interests and parts of the owners are, and ought not *distrahi*, and to be put to process against every one of them for declaring of their parts.

The Lords found that they were liable *in solidum*, reserving their debate and relief amongst themselves as to their several interests and proportions.

Reporter, *Lord Forrest.*

Clerk, *Gibson.*

*Dirleton, p. 118.*

## SECT. XX.

Quorum of Judges.—Arbiters.—Auditors.—Trustees.

1558. July 10. ROBERT HENRISON *against* JAMES FIDDES.

No. 121.

If any commission be directed by the Lords to divers persons, making them Sheriffs in that part in any action or cause, and one of them give sentence or de-