No. 31. is still thought this obligation *ex bona æquo*, can never extend to an assignation further than *pro rata*.

Replied to the *third*: That, as the circumstances of this case stand, it seems impossible to affirm, that Broughton was cautioner for cautioners, seeing he himself did not corroborate, but became cautioner for the principal debtor corroborating: This principal debtor did not, by the corroboration, surely, take upon him the obligation of his own cautioners; but his former obligation, by a second consent, was confirmed and established; and, for the performance of that obligation so undertaken, Broughton became his cautioner: How then can it be said, that he was cautioner for the former cautioners? The defenders therefore conceive, that the corroborating of the first obligation is so far from being an argument for Broughton, that it is directly against him. If a new bond had been granted by the principal for the said sum, without a corroboration of the former, it might, with more reason, been pretended, that Broughton did not accede as cautioner to the first obligation: But where the first bond is corroborated, and he becomes cautioner, there he plainly accedes as cautioner to the first obligation, and is not only bound for the same sum, but truly, in the eye of the law, is bound as if his name had been in that first obligation; so that, upon consideration of the whole, the creditors cannot find any specialty, arising from the form of the writings, that favours Broughton, but rather otherwise; and so the decision must go upon the common rules of law and equity.

"The Lords found, That Broughton, the petitioner's father, cautioner in the corroboration, could only have relief as co-cautioner."

Fol. Dic. v. 2. *p.* 379. *Rem. Dec. v.* 1. *No.* 37. *p.* 77.

*** See p. 6997. *voce* INHIBITION; where it is said this case was affirmed upon appeal.

SECT. VII.

If any of the CORREI prove insolvent.—When several Persons have been found liable IN SOLIDUM, whether passing at the Bar from one of them extinguishes his Part of the Obligation, or if it falls on the rest.

1682. *February* 2.

MUIRE of Glanderston *against* CHALMERS of Gadgirth.

No. 32.

FOUR persons in a bond for money being bound conjunctly and severally to the creditor, and each of them, in the clause of relief, being to pay for their own part, and bear equal burden with other, one of the four *correi* became bank-

rupt; and Ralston, another of them, paid the whole debt, and took assignation from the creditor, and pursued another *correus* for the three parts, deducing his own fourth. No. 32.

Alleged for the defender: That he ought to have allowance for a fourth part of the bankrupt's proportion.

Answered: They are not bound conjunctly and severally by the clause of relief, but only for their own parts; and as they would not have been obliged to the creditor for that bankrupt's part, had the principal obligement been so conceived, neither can they be obliged for it to one another, according to the terms of the relief.

Replied: By the clause of relief, they are to bear equal burden with other, which imports an equality of loss by the cautioner; and if the pursuer did not bear as great a part of the loss, by the insolvency of the *correus*, as the defender, there would be an inequality.

The Lords sustained the allegeance and reply.

Fol. Dic. v. 2. p. 380. Harcarse, (CAUTIONERS), *No. 237. p. 56.*

*** A similar decision was pronounced, 26th December, 1707, Cleghorn against Yorston, No. 2. p. 14624.

1683. *February.* LAMBERTON *against* EARL of ANNANDALE.

No. 33.

BY a clause of relief in a bond, my Lord Annandale, Lamberton, and four more, bound therein as co-principals to Craigiehall, being obliged to relieve each other for their own part, without the taxative word allenarly, and Lamberton having, upon distress, paid the debt, pursued my Lord Annandale to relieve him of the half of the debt.

Alleged for the defender: That he could be liable only for a sixth part, they being obliged to relieve him *pro rata.*

Answered: The other four *correi debendi* being absolutely bankrupt, the pursuer, who paid the whole debt, ought to be relieved of the half by the defender.

The Lords, in respect of the notour insolvency of the other four co-principals, decerned the defender to pay half of the whole debt.

Fol. Dic. v. 2. p. 379. Harcarse, No. 239. p. 57.

1705. *July* 26. LILLIE *against* CRAWFORD.

No. 34.
One of three cautioners being insolvent, and an-

MR. WILLIAM DUNDAS of Kinkavil, Halbert Gladstains, merchant in Edinburgh, and James Crawford of Mountquhany, being all bound as cautioners for Bonhard, to Robert Halyburton, in a bond of 5,000 merks, Mountquhany paid