

The Lords did decern the whole year's stipend to be due to the pursuer ; but, as to the case of transplanting of ministers from one kirk to another, the terms of Martinmas and Whitsunday are the legal terms.

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1671. November 8.

GROTE against SUTHERLAND.

GROTE having freighted a ship belonging to Sutherland, and some other copartners, for carrying merchant goods from Caithness to Leith ; it being proved that the goods were spoiled through the skipper's fault, in leaving the ship at anchor in the road with one single buoy ; and that another ship having run upon her in the night, which might have been prevented if she had had sufficient men on board :

The owners who had subscribed the charter-party were found liable for the damage : but Sutherland and his copartner being both bound to perform the voyage, but not conjunctly and severally, the question did arise, If each of them was liable *in solidum*, or only *pro rata portione*.

The Lords, having considered the case, and in law, that generally, where two or three are only *correi debendi*, and have not obliged themselves conjunctly and severally, then the obligation divides : As, likewise, the case in law, where two or three are obliged *ad factum indivisibile*, any one of them is liable *in solidum* ; if the deed may be performed by either of them : as also, that case in law arising from charter-parties, how far *exercitores navis* are liable *in actione exercitoria*. Without determining these cases, they did decern, conform to the libel, against both the subscribers ; but did not decide if they were liable, every one *in solidum*, or only *pro rata portione* : for, *de exercitoria actione*, there is a distinction made,—if *Exercitores per magistrum exercent, aut per se* : and, in the first case, where a contract is made *cum magistro navis*, (*leg. 1. sect. ultima*,) *omnes exercitores tenentur in solidum* ; and the reason is given, (*leg. 2.*) *ne in plures adversarios qui cum uno contraxerit*. But, where the owners of the ship, *per se navem exercent, proportionibus exercitationis conveniuntur ; neque enim invicem sui magistris videntur*.—(*Leg. 4. eodem tit.*)

Thereafter, upon the 13th June 1672, this case being resumed, each one of the owners subscribing was found liable *in solidum*.

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1671. November 9. SAMUELL and ————— HOYLES against The GENERAL and MASTER of the MINT and OTHERS.

THE said Hoyles, as executors to their father, having pursued the Master of the Mint, upon a contract, whereby he was obliged to pay to the defunct, monthly, a sum of money for a quantity of copper, which he was obliged to melt for their use, whereof there was two months resting :

It was alleged for the defenders, That the said Hoyles having served ten months, whereof two are only resting, and during the former months, the copper melted by him having suffered great prejudice through his default in not melting it conform to the conditions agreed upon, the damage whereof did ex-