

to be paid to any of them that demanded it, to relieve them of that contraction.

No. 56.

The Lords found the pursuers were entitled to the whole contents of the bill.

Act. *H. Home.*Alt. *Hamilton Gordon.*Clerk, *Kilpatrick.**Fol. Dic. v. 4. p. 296. D. Falconer, v. 1. p. 26.*1761. *January 20.*

JAMES GORDON, Merchant in Stromness, *against* JOHN SUTHERLAND, Merchant in Wick.

JOHN SUTHERLAND and John Milliken made a joint purchase, from James Gordon, of rum, to the value of £.83 1s. 3d. for which they granted receipt, and the price was payable in four months thereafter.

This receipt was indorsed to James Stewart, writer in Edinburgh, with an order to pay the price to him.

John Sutherland having come to Edinburgh soon after the term of payment was elapsed, Mr. Stewart took a bill in place of the money, which then ought to have been paid.

This bill was addressed to John Sutherland and John Milliken, merchants in Wick, and was accepted by John Sutherland. The body of the bill and the address were written by John Sutherland; and it appeared that there was added to the address, the words *conjunctly and severally*, in the hand-writing of James Stewart.

John Sutherland alleged, That this addition had been made by James Stewart *ex post facto*; and Stewart insisted, that the addition was made before Sutherland subscribed. Milliken having become insolvent, diligence was raised upon this bill in name of James Gordon, the original creditor to whom it was assigned. A suspension of the charge was obtained by Sutherland; and the Lord Ordinary, upon the 12th February, 1760, “repelled the reasons of suspension, found the letters orderly proceeded, and decerned.”

Pleaded in a reclaiming petition for the suspender: *1mo*, That this addition and superinduction, made to the bill after it was signed by the petitioner, and out of his hands, imports such a *vitium reale* as to render it totally null. *2do*, That if the bill had been accepted by Milliken, as was manifestly intended, the suspender would only have been liable for his half of the contents; and therefore the loss arising through Milliken's supervening bankruptcy, and the charger's neglecting to procure his acceptance of said bill, was no just cause for throwing that loss upon the suspender.

Answered for the charger: *1mo*, It is not true, that the addition was made *ex post facto*. It was made in presence of Sutherland himself, previous to his acceptance; and this he himself had formerly acknowledged, in an answer to a pro-

No. 57.

Where a bill is addressed to more persons than one, each by his acceptance becomes liable *in solidum*.

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.

2do, 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 OF PRO RATA ?

No. 58. 1632. February 7. HOME against HOME, and LAWERS against DUNBAR.

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