

SOLIDUM ET PRO RATA.

SECT. I.

Effect of the Terms Co-Principal and full Debtor.

1631. January 26. L. CLOBERHILL against L. LADY-LAND.

THE Lord Cloberhill pursuing Lady-land, as heir to his father, who was cautioner for the principal debtor, to make payment of the principal sum and annual-rents thereof, of all years since his father was denounced rebel for not payment of the said sum, the tenor of the bond bearing, That the principal and cautioner were bound as full debtors to pay the sum to the creditor, and not bearing them to be bound conjunctly and severally;—the defender alleging, that in respect of the tenor of the bond, he was not liable, as his father also was no more liable but to pay the equal half of the sum;—the Lords repelled the allegiance, and found him also liable to pay the whole sum without division, seeing the principal was bound in the whole, and he was his cautioner; and the tenor of the bond bore, that they were bound as full debtors, which the Lords found to oblige each one of them, and their heirs *in solidum* for the whole; and the defender further alleging, that he could not be convened as heir upon the act of Parliament libelled, anno 1621, but only to pay annual-rent from the time of his father's rebellion to the time of his decease, and no more terms since; this was repelled, and he as heir found subject to pay, ay and while the re-payment of the principal sum.

Act. *Mowat*,

Alt. *Cunninghame*.

Clerk, *Gibson*.

Fal. Dic. v. 2. p. 377. Durie, p. 559.

No. I.

A cautioner bound as full debtor with the principal, found liable to pay the whole without division.