

1631. February 10.

PROVOST of INVERNESS *against* The TOWN of INVERNESS.

No. 5.

A number of persons having become bound for a community, were found liable each *in solidum*.

THE TOWN of Inverness having employed Duncan Forbes, then their provost, in doing of their affairs; and an obligation being thereafter given to him by fourteen persons, to pay to him for the Town a sum, addebted to him by the Town, debursed by him in doing of their affairs; by the which obligation these persons were not bound conjunctly and severally to pay the sum, but were only all bound *in cumulo* together; and five of them who were charged having offered their own proportional parts; and thereafter upon refusal to receive the same, consigning and suspending, that in respect of the tenor of the obligation, they were not further obliged; for, however the Town was obliged *in solidum* for the whole, and that the whole fourteen were obliged also for the whole, yet any one of them had not obliged himself for the whole; wherefore, seeing they were not otherwise bound, but each one for his own part, and that the creditors had taken that obligation of that tenor, they could not be further obliged than they had obliged themselves. Notwithstanding whereof, the Lords found every one of them obliged *in solidum pro toto debito*, as the town was obliged *in toto*.

Act. Nicolson & Baird.

Alt. Stuart & Gibson.

Clerk, Gibson.

Fol. Dic. v. 2. p. 377. Durie, p. 566.

* * Spottiswood reports this case :

DUNCAN FORBES having obtained a decret against the Provost, Bailies, and Council of Inverness, for payment of £.2,000 that he had debursed in their affairs at their direction; afterwards he dischargeth them the one half thereof, and obligeth himself only to seek £.1,000 of it, for payment whereof, fourteen of the honest men of the town, (private men, not the magistrates) gave bond to him. He having charged some of them, there was a suspension raised in name of five of them, upon this reason, That they not being bound conjunctly and severally, but altogether, the suspenders had consigned their own parts, and could not be charged for the whole. The Lords found, That in respect they had obliged themselves in name of the community, as the Town was one body, so their bond should be taken as made by one for all of them; for they thought it hard to put the charger to seek the sum from every one of them for their parts, but found the suspenders should rather seek their relief from the body of the Town.

Spottiswood, (CONTRACTS) p. 68.