

No 1.

1000 merks;—THE LORDS therefore liquidated the distress to 1000 merks, for which they found the pursuer might seek execution against the defender; and which sum, if he recovered, the LORDS found, that the said pursuer should make equally and alike profitable to the whole rest of the heritors of the land affected, to the effect that the whole tenement thereby might be relieved of the said burden, and that the annualrenter might receive payment of the principal sum thereby: And the LORDS found, that albeit the annualrenter might distress any part of the tenement affected for the whole annualrent; yet that the heritor of that part which should happen to be distressed, or which was distressed some time by-past, might well and lawfully seek his own relief off the rest of the land and tenement affected with the burden, and off the heritors of the same *pro rata*, and for their own parts proportionally, according to the worth and rent of their lands, to be equally divided amongst the saids whole heritors; and that every one of them ought to bear his own part of the burden, both for by-gones already paid, and also for all years to come, while the principal sum might be recovered for all their reliefs.

Act. *Nicolson & Heriot.*Alt. *Absent.*Clerk, *Gibson.**Fol. Dic. v. I. p. 221. Durie, p. 769.*

No 2.

Where persons are bound conjunctly and severally, they are entitled to relief against one another.

1662. June 19. MR JOHN WALLACE *against* FORBES.

ROBERT and WILLIAM FORBES', and Hugh Wallace, being bound in a bond as co-principals, Hugh Wallace being distressed for all, consigned the sum to this charger's son. Forbes suspends, on this reason, that there is no clause of relief in the bond, and Wallace being debtor *in solidum*, and having gotten assignation *confusione tollitur obligatio*. The charger *answered*, That though there was no clause of relief, *hoc inest*, where many parties are bound conjunctly and severally, that each is obliged to relieve others.

THE LORDS repelled the reason of suspension for the suspender's part, and found them liable therefor, but not for the other co-principal parties.

Fol. Dic. v. I. p. 221. Stair, v. I. p. III.

. The like was decided in the cases of Monteith *against* Anderson, *voce* BANKRUPT, No 133. p. 1044.; and Ferguson *against* More, *voce* COMPENSATION.—RETENTION, No 119. p. 2652.

No 3.

An annualrent being payable out of two tene-

1662. June 26. ADAMSONS *against* LORD BALMERINO.

ADAMSONS being infeft in an old annualrent out of two tenements in Leith, and having thereupon obtained decret of poiding the ground in *anno* 1661.