

1695. *February 19.* SIR THOMAS KENNEDY *against* JOHN RIDDEL.

ARNISTON reported Sir Thomas Kennedy, against John Riddel in Leith. The Lords found it relevant, that Brown and Riddel were in a copartnery as to this bargain of salt; and, there being presumptions that Sir Thomas knew this, they found his buying it from Anderson cannot give him right to the whole, unless it be proven, *scripto vel juramento* of Riddel, that Anderson was common factor for both Brown and him.

*Vol. I. Page 670.*

1695. *February 19.* ELIZABETH OGILVIE and MR PATRICK REID *against* MELDRUM of HALTON.

ELIZABETH Ogilvie, and Mr Patrick Reid, minister, her husband, against Meldrum of Halton, was reported. The defence is,—I am pursued on a bond subscribed by two principal debtors, and they are not bound conjunctly and severally; and so I cannot be convened *in solidum*, but only *pro rata*, for my half. ANSWERED,—The bond acknowledges that both received the money, and so must be liable; seeing it does not bear they should only pay the half; *et verba sunt interpretanda contra eum qui potuit legem contractui apertius dixisse*.

The Lords found this conception did not import an obligation *in solidum* against every one of them, but only for the half; even as cautioners in the Roman law had the *beneficium divisionis*.

*Vol. I. Page 671.*

1695. *February 19.* JOHN MUIR *against* WILLIAM CUNNINGHAM.

IN a case between John Muir and William Cunningham, late provosts of Ayr, a holograph bond was ALLEGED to be prescribed, being past twenty years, unless they also referred to the debtor's oath that he was resting owing. ANSWERED,—The Act of Parliament 1669 bears only that the verity of the subscription be referred to the signer's oath, but not the debt. The Lords, calling to mind that there were frequent decisions otherwise since the date of that act; therefore they forbore to determine till the same were maturely considered. For, if the prescription were only anent proving the subscription, it would be of little importance.

The Lords at last, advising this, adhered to the letter of the act; and found the contrary decisions were in the case of heirs, where the subscribers were dead.

*Vol. I. Page 671.*