

\* \* Forbes reports this case :

No. 13.

By contract betwixt Calliquhat, on the one part, and Alexander Stewart of Craigtoun, and John Harvey of Blackhouse, on the other part, 10th April, 1703, Calliquhat disposed his wood to them, for which they obliged them and their heirs to pay to him £.1060 Scots, at the terms therein mentioned. After Craigtoun turned insolvent, and died, Calliquhat charged John Harvey for payment of the whole sum ; who suspended, upon this reason, that he could only be liable for the half of the price of the wood, in respect he was not bound conjunctly and severally with Craigtoun.

Answered for the charger : The suspender and Craigtoun, being co-partners in the bargain, and *correi debendi*, are both liable *in solidum*.

Replied for the suspender : Copartnership is not to be presumed without express consent of parties ; which cannot be alleged here. For every communion infers not a society ; there is no society betwixt heirs-portioners, who are owners of the heritage *pro indiviso* ; nor is there a copartnership betwixt two persons buying, or giving commission to buy, one and the same thing ; L. 31. L. 32. D. Pro socio ; Stair, Instit. Lib. 1. T. 16. § 1. ; albeit there is an accidental communion betwixt these.

Replied for the charger : Albeit, in the case of bonds of borrowed money, which is divisible *eo momento*, that it is received, the co-obligants not being bound conjunctly and severally, are liable *pro rata* only, each being presumed to have drawn his own share ; yet the delivery of a bargain of victual to one of two or more buyers, purifies the contract, though it mention not what quantity each was to receive ; and, in this case, the wood being bought by both *pro indiviso*, each of the buyers is liable *in solidum* for the price.

The Lords found the suspender liable *in solidum* for the whole price, in respect the wood was sold to them *pro indiviso*.

Forbes, p. 452.

1721. July 6.

GRANT *against* STRACHAN.

No. 14.

Two being bound as principal debtors, without mention of conjunctly and severally, the bond importing, that the money went entirely to the use of one, he becoming bankrupt, the other, as cautioner, was found convenable *in solidum*.

Fol. Dic. v. 2. p. 378. Rem. Dec.

\* \* This case is No. 11. p. 14633.