

1724. *November 25.*JOHN CAMPBELL, Grandchild to the deceased JOHN REID of Merkland, *against*
JAMES FARQUHAR of Gilmilscroft.

No. 3.

Where there is the term "conjunctly" only, without "severally," or "co-principal or full debtor," parties liable only *pro rata*.

JAMES FARQUHAR of Gilmilscroft, Mr. John Reid of Balochmyle, advocate, and Robert Farquhar of Townhead, by their bond acknowledged them to have borrowed and received from Mr. John Reid of Merkland, 2,000 merks, which they bound and obliged them conjunctly, and their heirs, executors, and successors, to pay to him at the term therein mentioned.

Though all three were bound, yet the money was borrowed for the use of Balochmyle, who failed in his circumstances; and the said John Campbell, as assignee to the bond, charged Gilmilscroft for the whole sum in it; which charge he suspended, alleging, that by the conception of the bond, he was only liable for a third of the sum.

The Lords found Gilmilscroft only liable *pro rata*, or for a third part of the sum; but found it relevant to prove by Gilmilscroft's oath, that it was the intention of the parties, and so understood by him, that he, and each of the two obligants, should be liable *in solidum*.

Act. *Ja. Boswell.* Akt. *Arch. Hamilton, sen.* Reporter, *Lord Grange.* Clerk, *Dalrymple.*

Edgar, p. 119.

SECT. II.

Divisible Prestation.

1630. *January 20.*L. URIE *against* CHEYNE.

No. 4.

Two parties being bound conjunctly to re-deliver a particular *corpus*, or, in lieu of it, a certain sum, the obligation was found divisible, and each liable *pro rata*.

Two persons by their bond granting the borrowing of a powder-mill, and the furniture thereof, and obliging them and their heirs, to re-deliver the same, when they should be required upon so many days warning preceding, and if they did not, to pay a certain sum therefore, specified in their bond; and it being questioned, if every one of these two borrowers were subject in the whole sum conditioned in the case of failzie foresaid, or if the same should divide betwixt the two obliged; for the bond bore not, That they were obliged conjunctly and severally; and therefore, the one of the two persons convened, alleged, that he could not be found addebted in the whole, but for his own half, for which half he alleged, that com-