

1672. *February 9.* Anent HEIRS PORTIONERS.

IT was likewise questioned at this time, whether women being heirs portioners will be liable, each of them *in solidum*, for their predecessor's debt, or if they can be convened only each for their own parts, so that the debt will divide amongst them all. It is uncontroverted but the creditor must call them all; so that if there be two or more, he will not get one of them decerned to pay the whole, unless he has also summoned the rest. [It is otherways amongst more executors. Each will be decerned *in solidum*, if so be, I can prove that each of them has introritted with as much as the sum acclaimed by me comes to. So Dury, *July 13, 1625, M. Mitchell. Vide* Craig, page 257.] But the scruple lies here; whether they all being called, he will get each of them decerned to pay *in solidum*; which seems hard, seeing not any one, but all of them, represents the defunct *adæquate*. And it appears by Hope, *folio 114, in observationibus patris ad Titulum de Hæredibus et hæreditatibus*, and Dury, who sets down the same practise more at large, at the *7th of February 1632, Home against Home*, that the Lords were not altogether so clear in this point, yet inclined to cause them all settle *pro indiviso*; (seeing the creditor is not obliged to acknowledge any division made by the sisters amongst themselves; see another reason, in *L. 27, parag. ultimo, D. de Peculio*;) and not to burden any one with the payment of the hail, suppose she had succeeded to far more than the debt acclaimed extended to, unless the other sister or sisters should prove bankrupt and insolvents for their proportions, in which case they thought it just to give recourse against that sister who, though she had paid her own part already, yet still brooked some of the defunct's lands and goods, and so long must ever be liable to his debts. This was only attempted *in transenna* but not fully decided. And I find it to be most consonant to the common law, *ubi plures hæredes tenentur creditoribus hæreditariis, non in solidum sed tantum pro partibus hæreditariis*; *L. 2, par. ult. L. 3, D; L. 6, et L. 23, C. familiæ erciscundæ*; *L. 25 et 26 C. de Pactis, et lege 2 C. de hæreditariis actionibus*; *lege 2 C. de annonis et tributis*: only, if one of them turned poor, they refused regress against the rest, for recovery of his part; *L. 33 et L. 34 D. de Legatis, 2do. Sic Perezius ad Tit. C. Familiæ erciscundæ, No. 6.* It was otherways *inter confidejussores ante litem contestatam insolvendo factos*; *L. 51, par. 4 D. de fidejussoribus, 17.*

*Advocates' MS. No. 326, folio 130.*

1672. *February 18.* PATRICK SMITH of Bracko *against* ROSSE of Balnagoun.

THIS defender's goodsire having wadset some lands to umquhile Sir John Sinclair of Stevinson, upon the reversion of 25,000 merks, he thereafter disponded the reversion of the wadset lands to Sir John Sinclair of Dunnibaith, (from whose heirs of line Bracko derives right,) with absolute warrandice. After the disposing of which reversion, old Balnagoun dispones the same wadset lands irredeemably to Mr. Thomas M'Keinzie, with all reversions, discharging and renouncing the same. This seeming to be a clear contravention of the warrandice, being double aliena-