

rupt; and Ralston, another of them, paid the whole debt, and took assignation from the creditor, and pursued another *correus* for the three parts, deducing his own fourth.

No. 32.

Alleged for the defender: That he ought to have allowance for a fourth part of the bankrupt's proportion.

Answered: They are not bound conjunctly and severally by the clause of relief, but only for their own parts; and as they would not have been obliged to the creditor for that bankrupt's part, had the principal obligation been so conceived, neither can they be obliged for it to one another, according to the terms of the relief.

Replied: By the clause of relief, they are to bear equal burden with other, which imports an equality of loss by the cautioner; and if the pursuer did not bear as great a part of the loss, by the insolvency of the *correus*, as the defender, there would be an inequality.

The Lords sustained the allegiance and reply.

Fol. Dic. v. 2. p. 380. Harcarse, (CAUTIONERS), No. 237. p. 56.

* * A similar decision was pronounced, 26th December, 1707, Cleghorn against Yorston, No. 2. p. 14624.

1682. February. LAMBERTON against EARL of ANNANDALE.

No. 33.

By a clause of relief in a bond, my Lord Annandale, Lamberton, and four more, bound therein as co-principals to Craigiehall, being obliged to relieve each other for their own part, without the taxative word *allenary*, and Lamberton having, upon distress, paid the debt, pursued my Lord Annandale to relieve him of the half of the debt.

Alleged for the defender: That he could be liable only for a sixth part, they being obliged to relieve him *pro rata*.

Answered: The other four *correi debendi* being absolutely bankrupt, the pursuer, who paid the whole debt, ought to be relieved of the half by the defender.

The Lords, in respect of the notour insolvency of the other four co-principals, decerned the defender to pay half of the whole debt.

Fol. Dic. v. 2. p. 379. Harcarse, No. 239. p. 57.

1705. July 26. LILLIE against CRAWFORD.

No. 34.

MR. WILLIAM DUNDAS of Kinkavil, Halbert Gladstains, merchant in Edinburgh, and James Crawford of Mountquhany, being all bound as cautioners for Bonhard, to Robert Halyburton, in a bond of 5,000 merks, Mountquhany paid

One of three cautioners being insolvent, and an