

only a Portion of it: And the other in the case where they are all bound for the whole Debt in such a Manner, that any one of them alone may be constrained to pay the whole. The Engagement which obliges every one of the Debtors to the Creditor for the whole Debt, is called Solidity among Debtors. Several Persons come under one Obligation either as coprinicipal Debtors, or as Principals and Cautioners: In both which Sorts of Obligations, the Debtors, called Correi debentur fellow-Debtors, may be bound either jointly, or jointly and severally. Where two or more Persons are bound as Coprinincipals jointly, each is liable pro rata, only for his own Part or Share of the Debt. l. 1. §. 2. ff. de duob. reis. So long as all are solvent, if the Matter of the Obligation is divisible Stair Lib. 1. Tit. 17. §. 20. Yea an Obligation by three Persons jointly to cause a Minor relieve another of a certain Debt, was found not to bind every one of them in solidum as for an indivisible Fact, viz. the Minor's relieving that other, in Respect the Debt to be relieved of, which is the Result of the Obligation, was a divisible Sum 16 July 1669 Demiston contra Temple of Fulwood. But tho' where two Persons are obliged jointly to pay a Sum in a Bond subscribed by both, each of them is subject only to pay the equal Half: Yet where one of the two only did sign the Bond, that one was made to pay the whole Sum who should have seen to his Relief of the other Half, when he subscribed the Bond 13 Feb. 1624 Sinclair contra Sinclair. If some of those so bound as Coprinincipals jointly turn afterwards insolvent, their Shares will lie upon the solvent Debtors Stair Tit. Who must answer for them, and every one bears his Part of the Deficiency in Proportion to his own Share. The joint Obligation of the fellow-Debtors implies the Condition, that each Debtor obliges himself for the Creditor's greater Security to pay for the others only in case that some of them fail to pay their Proportion. Where several Persons stand jointly engaged to deliver an indivisible Species or Corpus, as a Horse, Cow, &c. which cannot be divided without destroying it, or to perform or not to hinder the Performance of a Fact which also is indivisible they are liable in solidum Stair Tit. with out Division. Thus an Obligation ad faciendum by two Owners of a Ship, viz. to carry Barrels of Beef to a Sea Port, was found to oblige both in solidum for Damage and Interest in case of not Performance, tho' it bore not jointly and severally. Albeit some were of Opinion, that the Owners were liable only pro rata seeing the principal Fact to which they were obliged, viz. to transport Goods from one Port to another, was divisible and might have been performed by them separately, and Damage and Interest terminating in a liquid Sum was unquestionably divisible. For tho' Damage and Interest terminate in a Sum yet seeing said Fact, it behoved to be ruled conform to the principal Obligation, which according to the Meaning of Traders who contract summarily and plainly is not so to be understood, as that every Owner should be obliged only for transporting his Part of the Cargo, and thereby put the Merchant to attend and accept of Performance by Parts. And tho' if both the Owners had brought their Parts of the Cargo at the same Time to the Port, and of

forced them together, the Merchant could not have complained, because he had nothing wanting to him: Yet it doth not follow, that when both failed each should answer only for his Part 14 June 1672 Fisher Land contra Great and Flat. Correi also in other Cases are liable also in solidum, as Tutors and Curators vid. Supra Pag. 165. 184. Copartners vid. infra Pag. 1093. If Persons oblige themselves as Principal and Cautioner jointly, the principal Debtor must be discussed before the Cautioner can be distracted or called upon to pay. Nov. 97. Cap. 1. Where they stand bound, whether as Coprinincipals (Stair Tit.) or as Coprinincipals and full Debtors 26 Decemb. 1707. Cleghorn contra Yorsen or as Principal and Cautioner and full Debtors 26 January 1695 L. Clobertill contra L. Ladyland, or bound as Principal and Cautioner and the latter as full Debtor for and with the former 5 July 1665 Dumort contra S. Tunsce 18 June 1713 Montgomery contra Esingbrowne, every one is liable in solidum for the whole Debt. But where two Persons grant a Bond obliging them conjunctly and severally to pay a Sum of Money at the Term contained in the Bond with an of them in their own Part, each of them was found liable in the one Half tho' not in the whole 28 July 1638 Farquhar contra McKinn. and 5 July 1725 Grant of Plehis contra Strachan.

It was once agitated, but not decided, whether there could be a Contract and Transaction between the Masters of a Craft and the journyemen thereof, that would oblige the future journyemen of that Craft. Seeing journyemen are not an Incorporation, no one can have Successors but single Persons or Incorporations are decided 1 June 1657 Deacon of the Weavers contra Magistrates of Edinburgh.

Movables are the Subject of Personal Rights and acquired either with or without Writ. Albeit Property in immovables is feudal and requires to be established by Writ or other solemnities, and may be affected with Services and many collateral Interests: Yet Property in Movables is allodial and more absolute, not wanting to be instructed by Writ, and presumed from Possession 26 July 1672 Capt. Hamilton contra Master of the Ship of Station 18 July 1675 Taylor contra Randon. Because Movables passing in Commerce without Writ, and often without Witnesses perhaps thro' a Thousand Hands, it were impracticable to instruct a Progress of Rights to them. Movables acquired bona fide for onerous Causes, are not liable to any Hypothecation, or Condition in a written Disposition thereof to the Acquirer's Author: For our Law acknowledges only a Hypothec of the Fruits of the Ground and of invecata et illata into Houses within Burgh for the Mad-