

They are liable in Solidum Stair Soc. vid. 6 July 1721 Grant
 of Gleskes Contra Strachan. Thus two Owners of a Ship obliged
 (Without the Addition of Jointly and Severally) to Carry
 some Barrels of Beef to a certain port, being upon their failure
 to Perform, punished for Damage and Interest, they were liable
 In Solidum, tho the Damage Terminating in a Liquidum sum was
 Divisible. 17 June 1672. Sutherland Contra Grant and
 because Subit Locum facti, and Behoved to be Ruled conform
 to the principall obligation which was Indivisible. It might
 have been the Meaning of Parties, that every one should be
 obliged to Transport part to the Charge, and thereby put
 Merchant to Attone, and Accept partial performance. This
 Time, had both brought their parts in several Vessels at the
 appointed time. To the Design'd port, the Merchant could not
 have Complacence, because Nihil illi deerat. But it is not
 to be thence Inferred, that where both have failed in the perform-
 :ance each should answer only for his own part. Again, one of
 two Correis Debendi for the price of a Wood sold to them
 In diviso, was found liable in Solidum, tho they were not
 bound Jointly and severally, 6 Decemb. 1710 Muffet of
 :zihal contra Harvey Blackhouse.

Albeit only the Debtor and his Cautions can be forced
 pay, yet Voluntary Payment may be made by a Stranger
 Whether having or wanting order from the Debtor, c.
 l. 37. ff de solut. l. 45. § ult. ff de reg. j. l. 53. ff de solut.
 Because the Rule, Beneficium non Conferitur in Jurisum. l.
 ff de Reg. jur. Takes no place here, where the payment is not
 only advantage-ous to the Debtor, but also to the Creditor
 Who is Concerned to have his Money, and may Receive that
 which is due to him: And he who payes for another, may
 that favour either to the Creditor, or to the Debtor, or may
 have other Just Causes for doing it. But then he who payes
 Debt for another Against his will, is to Expect Neither that
 nor Release for it from him; Unless the Creditor assigns
 His Debt to the payer: for presumitur Donasse. But ^{who}

Who is payed by another than his Debtor, ~~the~~ assigns over his
 Debt to him who pays him; the Debt will Subsist and pass from
 the person of the Creditor to the Assigny, for what is transacted be-
 tween them is not a payment to Discharge the Debtor, but a sale
 Which the Creditor makes of his Right to him who pays him.
 Again, one Creditor may pay off another who has a more
 Preferable Right upon the Common Debtors Estate, that he may
 have free access to the Subject, for Recovering payment
 of both Debts.

Our Law makes this Difference, be twixt payment made by
 the Principall Debtor; is Recovered by Intromission with the
 Effects of his Estate; and payment made by a Stranger, or by a
 Stranger, or by one Creditor to another. In the former case
 the Debt is extinguished to all intents and purposes, and cannot
 not be assigned to any person. For can a Creditor who hath
 affected the Estates of several Persons jointly bound to him
 for payment of his Debt, taking payment out of the Estate of one
 of those Obligants to the prejudice of his posterior Creditors, be obliged
 to Assign to them his Diligence upon the Estate of the other Obligants
 who were not engaged to them for their Debts: being they could not
 have affected the said Subject with their Diligences. Thus Younger Children
 who were preferred as Creditors upon their Edest Brothers Estates
 to another Creditor, were not obliged to assign him to some other
 Effects, which the father had also disposed to them in Security of their
 Debt: Because the father was not debtor to that Creditor of the son
 And he could not best Assignation to an Estate not belonging to his
 Debtor. Colonel Charles Contra Younger Children
 of Lord Thesdo. One being served heir in Generall, not in Special,
 to an heritor whose Estate was affected by Real Diligences at the
 Instance of Real Creditors; and these Creditors being, after the heirs
 Death, preferred to his own Creditor, for their payment out of their
 own Original Debtors Effects, which the heir had established a right
 to by a General Service and Confirmation: they were found not oblig-
 :ed to assign their Debts and Diligence upon the predecessors Estates in favour
 of the heirs Creditor, in so far as he was debarred by them from the
 Only Fund of his payment 29 June 1714. Her of Chetto Contra Scot
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