

No. 120. the same manner ; and if this were not sustained, strangers needed never offer to reclaim ships, because they could not know the owners, and if any of them were insolvent, could never recover their share, and therefore the owners ought to seek relief amongst themselves, and may impute to themselves, if they have entered in society with insolvent owners.

The Lords found the whole owners liable *in solidum*, although they were found to have seized the ship upon sufficient ground of suspicion.

*Fol. Dic. v. 2. p. 387. Stair v. 2. p. 319.*

\* \* \* Dirleton reports this case :

A SHIP being taken by a caper, and being found by a decret of the Admiral to be a prize, thereafter, upon a decret of the Lords, reductive of that of the Admiral, being found to be a free ship, the stranger did urge payment against the Captain and the owners of the value ; and it was alleged, that the decret of the Lords ordaining restitution was against them *correi debendi*, and not *in solidum*, and that they are only liable for their own parts. Whereunto it was answered, that though it was found, that the Captain had probable reasons for bringing up the said ship, yet upon the matter the stranger was wronged by the taking of his ship, and *in casu delicti*, by spuilzie or wrongous intromission or otherwise, decreets against the persons therein contained are construed to be *in solidum* ; and the stranger cannot know what the respective interests and parts of the owners are, and ought not *distrahi*, and to be put to process against every one of them for declaring of their parts.

The Lords found that they were liable *in solidum*, reserving their debate and relief amongst themselves as to their several interests and proportions.

Reporter, *Lord Forrest.*

Clerk, *Gibson.*

*Dirleton, p. 118.*

## SECT. XX.

Quorum of Judges.—Arbiters.—Auditors.—Trustees.

1558. July 10. ROBERT HENRISON *against* JAMES FIDDES.

No. 121.

If any commission be directed by the Lords to divers persons, making them Sheriffs in that part in any action or cause, and one of them give sentence or de-

decret without the rest, the same is of no avail, because he being allenary but one colleague adjoined to the rest, has no power to give any decret without their consent. No. 121.

*Fol. Dic. v. 2. p. 387. Balfour, p. 286.*

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1605. June 5. SUTHERLAND against TORRIE.

No. 122.

IN an action betwixt Sutherland and Torrie, the Lords found, that one decret-arbitral being given by three arbiters proceeding upon a submission, whereby the matter was referred to four, to be null, because it behoved to be supposed to be submitted to them conjunctly, seeing it was not otherwise provided, and that the registration of the submission and decret by compearance and consent of a procurator, could not stay the party to impugn the decret-arbitral of nullity by way of exception.

*Fol. Dic. v. 2. p. 387. Haddington MS. No. 790.*

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1624. January 10. M'MATH against POURE.

No. 123.

IN an action betwixt M'Math against Poure, a commission being given by the Lords to four judges, whereof two were chosen by each one of the parties, to hear the counts betwixt the said parties, and thereafter to report to the Lords their proceedings, the commission not bearing to be given to them conjunctly, but only that it was given to the said four judges, two nominated for the one, and the other two nominated for the other; and the report being returned to the Lords, subscribed only by three of the judges, and not by the fourth, the report was sustained and found sufficient; for it was no reason that the commission and report should be elusory, if any one of the four, either of himself or at the desire of the party, should refuse his concurrence and consent. The four judges were four merchants.

*Act. Stuart.*

*Alt. Larmont & Sandilands.*

*Clerk, Hay.*

*Fol. Dic. v. 2. p. 387. Durie, p. 97.*

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1624. February 13. HUNTERS against M'QUHARS.

No. 124.

IN the action pursued, by Hunters, bairns of John Hunter, against M'Quhars, executors of Thomas M'Mitchell, who was ordained by his defunct wife's testament, to employ 2,000 merks to the behoof of the said Hunters, her oyes, by advice of David Johnston, Mr. John Hay, the said M'Mitchel, John Hunter, and Johnston