

theless continue obliged in the terms of his cautionry, *mora perpetuante obligationem*; which is plainly Sir Archibald's case, since the act of Parliament, allowing cautioners to be pursued within seven years, states them in no better case than if they had obliged themselves only for seven years; therefore Sir Archibald having wrote a letter demanding delay, and promising payment, which is plainly to be *in mora*, he perpetuates the obligation, and continues bound, notwithstanding the seven years are elapsed.

THE LORDS found the seven years prescription by the act of Parliament 1695, doth in this case run, not from the date of the bond, but from date of the letter.

Act. Geo. Mackenzie.

Alt. Dun. Forbes.

Clerk, Mackenzie.

Bruce, v. Y. No 31. p. 40.

No 233.

1727, February 14.

BELL against HERDMAN.

It was found, that the creditor's private knowledge is not sufficient, but that there must be an intimation by way of instrument, under the hand of a notary, at the time of signing or delivering the bond.—See APPENDIX.

Fol. Dic. v. 2. p. 116.

No 234.

S E C T. IV.

Effect of diligence during the seven years.

1712: January 24.

GEORGE STUART, and his Tutor, against JOHN HILL, Merchant, in Greenock, and Others.

IN the action at the instance of George Stuart, and his Tutors, against John Hill and others, the LORDS found, that executing a summons is not sufficient to found interruption of prescription, the summons having fallen and expired through not being tabled or called within year and day.

Fol. Dic. v. 2. p. 117. Forbes, p. 580.

No 235.