

1713. June.

PATRICK BUCHANAN, Merchant in Glasgow, against JOHN FRENCH, Merchant there.

WILLIAM THOMSON, John Story, and John French, as principals, and Patrick Buchanan, as cautioner for them, having granted bond conjunctly and severally for 1,000 merks to John Acheson, wherein the three principals obliged themselves to relieve one another *pro rata*, and to relieve the cautioner in general terms, without mentioning either *pro rata*, or conjunctly and severally; in a process at the instance of Patrick Buchanan the cautioner, who paid the debt upon distress, and took assignation from the creditor for his relief, against John French, one of the co-principals;

The Lords found John French liable to relieve Patrick Buchanan *in solidum*, and not *pro rata* for his own third part only; albeit the co-principals stood not obliged in the bond to relieve him conjunctly and severally, but only to relieve him in general; in regard, the co-principals being bound to the original creditor conjunctly and severally, were also bound so to the cautioner, who interposed conjunctly and severally for them, and by payment upon the assignation, came in place of the creditor; for the cautioner's relief must be equal to his obligation.

*Fol. Dic. v. 2. p. 380. Forbes, p. 682.*

1775. November 30.

ELIZABETH M'KENZIE against M'KENZIE of Blackhill.

MARTIN and M'Kenzie of Blackhill granted bond, conjunctly and severally, to Urquhart. On this bond diligence was raised, and a caption taken out against both the obligants. Sir George M'Kenzie became bound with them, conjunctly and severally, in a bond of corroboration; which bond proceeds on the recital of the former one, and of the diligence done upon it.

Sir George M'Kenzie paid the debt, and took an assignation to the original bond of corroboration and diligence. Elizabeth M'Kenzie his executrix pursued Blackhill for a total relief.

Blackhill produced a bond of relief granted to him by Martin; from which it appeared, that he had been cautioner only to Martin in the first bond; and he pleaded, That Sir George and he were co-cautioners, and that cautioners are liable to each other in a proportional, not total relief: That it matters not whether all the cautioners become bound in the same, or in separate deeds; and so it was found, 15th December, 1722, Murray *contra* the Creditors of Orchardtown, No. 31. p. 14651.

Answered for the pursuer: A cautioner must be entitled to a total relief from all those for whose benefit he interposed. In this case, caption had been taken out

No. 37.

Extent of cautioner's relief from co-principals.

No. 38.

A cautioner for two persons who were *ex facie* co-obligants in a bond entitled to a total relief against both, though it appeared, by a separate deed, that one of them was only cautioner for the other.