

1715. February 4.

JAMES HOPE *against* FOULIS of Ratho.

JAMES HOPE charges Foulis of Ratho upon a bond of cautionary in a suspension; he suspends upon the 5th act Parl. 1695, whereby cautioners are only bound for seven years, which were elapsed long before the suspender was charged.

It was *answered*; The act of Parliament is only to be understood concerning bonds or contracts for borrowed money, which has no regard to cautionary obligations in other cases; otherwise that act would overturn a great part of our law, which in many cases requires caution to be interposed, as for tutors, curators, factors, and in warrandice of dispositions and contracts of marriage, and in suspensions. In all which cases, seven years for the most part elapse before the debts or claims be liquidated; and, by that act, the seven years run from the date of the obligation; because it only respects such obligations whereof the term of payment follows in a short time, leaving other cautionary obligations as they were before that act, which the Lords have always interpreted strictly. And, upon the 18th of January 1709, Balvaird *contra* Watson, No 206. p. 11005., a cautioner in a bond of corroboration of a wife's liferent-anuity was not found to be free by virtue of the said act after seven years, but liable to subsequent annuities during the wife's lifetime; in like manner, 16th February 1710, Moir *contra* Sir Samuel Forbes, No 212. p. 11011., the said Sir Samuel having obliged himself by a letter to procure a security to a creditor in a bond granted by several obligants (whereof he was none), or else to pay the debt; he was found not to have the benefit of the said act of Parliament, albeit in both these cases the obligations were cautionary, and for sums of money.

It was *answered*; The case is indeed general, and concerns all cautioners in suspensions; but the law is plain for them both in the narrative and statutory words: The narrative is, that great prejudice befalls to persons and families, to their ruin and undoing, by their facility to engage as cautioners; for remeid whereof it is statuted, That no man binding hereafter, for and with another conjunctly and severally, in any bond or contract for sums of money, shall be bound longer than for seven years; but the cautioner shall thereafter *eo ipso* be free. Here the caution is for a sum of money wherein the cautioner is engaged to his manifest prejudice by his facility. -

"THE LORDS found, that the act of Parliament did not extend to the case of cautioners in a suspension."

*Fol. Dic. v. 2. p. 115. Dalrymple, No 135. p. 188.*

\* \* Bruce's report of this case is No 79. p. 2152. *voce* CAUTIONER.

No 208.

The privilege introduced by act 5th Parl. 1695, in favour of cautioners, not extended to cautioners in suspensions.