

engage for and with others *qua* cautioners; or, 2^{do}, such in whose favours there was a clause of relief inserted in the bond; or, 3^{tio}, to whom there was a bond of relief apart intimate to the creditor: Now the defender here is in a distinct case from any of these three. And the Lords, 21st January 1708, Ballantine *contra* Muir, No 211. p. 11010., did find, that it did not extend to bonds bearing clauses of mutual relief, but only to bonds where one of more *correi* is bound to relieve the rest. And 16th February 1710, Moir *contra* Foveran, No 212. p. 11011., they found, that an obligatory missive, whereby the writer obliged himself to procure security to the creditor of a former bond, or to pay the debt betwixt and a precise term, did not fall within the verge of the said act.

No 213.

Replied for the defender; That the bond of corroboration being an accessory security, and no innovation of the debt, doth entitle the granter to the privilege of the act as cautioner: And that the first decision was nowise parallel to the present case; because a clause of mutual relief is only an explication of what the law provides, where several persons are bound as full debtors for one and the same debt: And that the second decision did as little quadrate; because the granter of the missive had bound himself *ad factum præstandum*, which was not of the nature of a cautionary for a debt.

THE LORDS found, that the granter of the bond of corroboration is not in the terms of the act of Parliament 1695.

Act. Hay.

Alt. Sir Ja. Stuart.

Clerk, Alexander.

Bruce, v. I. No 61. p. 74.

1724. February 19. CORONET NORIE *against* PORTERFIELD of that Ilk.

PORTERFIELD being cautioner in a bond granted by George How to Coronet Norie, dated the 25th April 1699, did in December 1705, before elapsing of seven years from the date of the bond, subscribe a note on the foot of it, by which 'he dispensed with any benefit he might have from the act of Parliament 1696 anent prescription of the cautioner's obligation, and declared himself bound notwithstanding thereof.'

No 214.
Found that
a cautioner
could not
renounce the
benefit of the
act 1695.

In February 1713, Porterfield was charged upon this bond, and in a suspension he insisted, that he was free by the act of Parliament 1696, which statutes, 'That no cautioner shall be bound longer than seven years after the date of the bond, but was thereafter, *eo ipso*, free of his cautionry.' And that though by the docquet he had renounced that benefit, yet the law being a public one introduced to prevent the bad consequences which might follow from men's facility in binding themselves as cautioners, it could not be dispensed with.

No 214. THE LORDS found, that Porterfield could not dispense with the act of Parliament; notwithstanding that it was pleaded for the charger, that one might renounce any benefit introduced by law in his own favours.

For the Charger, *Sir Tho. Wallace.* Alt. *Arch. Stewart jun.* Clerk, *Murray.*
Fol. Dic. v. 4. p. 102. *Edgar, p. 37.*

No 215. 1726. *February.* FORBES *against* DUNBAR.

It was found, that action for relief competent to one cautioner against another, is not cut off by the septennial prescription, but runs the course of 40 years. See APPENDIX.

Fol. Dic. v. 2. p. 119.

No 216. 1728. *January.* MUIR *against* FERGUSON.

Two persons bound conjunctly and severally in a certain sum, a fourth part whereof was the one's debt, and the rest the debt of the other, and bound to one another in a proportional relief, the one was charged for the whole after the seven years prescription; who *pleaded*, That he ought to be free, in so far as he was cautioner for his co-obligant. *Answered*, The act 1695 relates only to the case, where one or more *correi* are obliged to relieve the rest of the whole debt; but where persons engage themselves not from mere friendship and facility, but upon account of having interest in the matter, the statutes gives no protection. THE LORDS found this clause fell under the act of Parliament. See APPENDIX.

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

No 217. 1729. *December 11.* ROSS *against* CRAIGIE.

Two persons being bound conjunctly and severally in a bond, the one as principal, the other as cautioner, the cautioner was found to have the benefit of the septennial prescription, though there was neither clause of relief in the bond, nor a bond of relief intimated to the creditor at receiving of the bond, which was thought unnecessary, though mentioned in the act, the defender being bound expressly as cautioner. See APPENDIX.

Fol. Dic. v. 2. p. 115.