

this bond fell under the prescription of the act 1695? We agreed that a bond of presentation to present or pay in common form does not fall under that act; 2dly, that a corroboration by a principal and cautioner falls under the act, though it be not for money instantly borrowed but for an old debt;—and as we looked upon the obligation to present as inept and superfluous, since whether that was performed or not, the cautioner remained bound, unless the debt was also paid, therefore found it fell under the said act 1695. *Renit.* Kilkerran, and Dun reporter.

No. 11. 1741, July 30. TRUSTEES OF KINCAID'S CREDITORS *against*
FARQUHAR.

ON a voluntary roup by these trustees, the purchaser having given a bond, with James Farquhar cautioner for the price, and to perform the other articles of roup, the Lords found that the bond falls not within the act 1695 anent cautioners.

No. 12. 1742, Feb. 3. SPENCE *against* CAVES.

BANNERMAN granted bond in 1710 for L.600, and Spence gave an obligation, bearing, that at his desire the money was lent, and obliging him that Bannerman should pay the money, or otherwise that he should pay it upon an assignation. The Lords found that Spence had not the benefit of the act 1695 anent cautioners. The Court was divided. Arniston in the chair was against this interlocutor, as I was. 14th January Adhered.— (3d December.)

No. 13. 1742, June 29. MIDDLETON *against* BURNET.

A BOND by two persons, the one acknowledges him to have borrowed and received the money, and therefore he and with him the other bind them conjunctly and severally to pay that money, (but not with and for him.) The other person found not a cautioner in the sense of the act 1695 to have the benefit of that act.

No. 14. 1743, Nov. 23. HUNTER *against* HAMILTON.

See Note of No. 15. *voce* PROCESS.

No. 15. 1744, Feb. 21, 29. SINCLAIR of Scotscahill *against* M'KAY.

THE Lords refused this bill of suspension, which to me appeared infinitely stronger even than the case of Hunter 23d November last, for here both suspension and bond of caution referred to a bill that actually once had a being, but was different from that charged on, and yet they found the cautioner bound,—*renit.* ———, Royston, Justice-Clerk, *et me.*—29th Adhered.

No. 16. 1745, July 10. SIR ROBERT POLLOCK *against* MRS LOCKHART.

THOMAS POLLOCK as principal and Sir Robert Pollock as cautioner, granted bond for L.1000. Thomas died within the seven years. After his death Sir Robert Pollock, and

James the brother of Thomas, joined in a bond of corroboration, not only of the debt, but also another small debt of L.150 due by the defunct, in which neither of them was bound, and proceeding on the narrative that the creditor has "at our desire superseded payment,"—therefore they jointly and severally bind them, &c.;—and James having paid the debt, his executrix pursued Sir Robert for a total relief. The defence was, that he was only a co-cautioner, and therefore only liable *pro rata* according to the decision 15th December 1722, Murray of Broughton, and 19th December 1738, Mr Lockhart against Lord Semple. The voucher of the debt of L.150 was not produced, and therefore there could be no judgment as to it; but as to the L.1000, the answer was, that here it must be presumed that James Pollock interposed at Sir Robert's desire, because they joined in the bond when the cautionry in the former bond was near expiring, whereas in Broughton's case the new cautioner acceded in a bond with the principal debtor, or one of them, and in Mr Lockhart's case he became bound alone in the corroboration. The Lords found Sir Robert liable in a total relief, and adhered to Drummore's interlocutor, *renit. inter alios Tinwald et me.*

No. 17. 1747, June 5. MR ROBERT BLACKWOOD *against* HALIBURTON.

SIR ROBERT, William, and Robert Blackwood, *anno* 1715, granted bond to Birnie of Broomhall for L.2000, and Sir Robert got a bond of relief from the other two. In 1735 Broomhall pressed Robert for the money, and 13th December 1735 he gave the money to his brother-in-law Mr Haliburton to pay it, but at the same time took from Mr Haliburton an accepted bill for L.180 sterling, payable at Candlemas next, and Haliburton that day paid the bond and took an assignation. 18th December, Robert Blackwood borrowed from the Bank L.146 upon his own bill, and deposited Mr Haliburton's L.180 bill in security, and 10th August 1736 paid the Bank. But 25th September 1736, Haliburton and he joined in borrowing from the Bank L.180. 10s. on their joint bill of that date, and in April 1737 Robert Blackwood paid part of that bill, and they both gave a new bill for the balance of L.121, which Haliburton paid after Blackwood's death: and thereupon sued the heirs of William and Robert Blackwood, as assignee by Broomhall to the L.2000 bond, for payment of that L.121 sterling as the balance still due him, and got decret; which coming to the knowledge of Mr Blackwood's son and heir of Sir Robert, he pursued a declarator of extinction of the L.2000 bond, as paid with the money of Robert Blackwood the debtor. Alleged for Haliburton, it was his money and not Robert's, for that he gave his bill to Robert for it, which bill he afterwards used, and at last Haliburton got to pay it, or of another bill that came in place of it L.121 with interest, and therefore is still creditor in that balance. But we thought this was no more than a device for Robert Blackwood to pay his debt with his own money, and yet keep the security against the cautioner for a fund of credit for after borrowings; for on that 13th December Robert Blackwood did not mean to lend Haliburton L.180, but to pay his own debt to Broomhall, nor did Haliburton mean then to borrow from Blackwood, for he had no use for the money, and Haliburton was brother-in-law to Blackwood, and could not be ignorant whose debt it was:—Therefore we sustained the declarator of extinction *quoad* Sir Robert, and declared accordingly, reserving his action against Robert's heirs,—*nem. con.*, only Kilkerran first differed but at last seemed convinced.