

he who is bound along with the principal in the original bond; and not he who accedes *ex post facto*. No 221.

*Rem. Dec. v. 2. No 35. p. 54.*

\* \* This case is also reported by Kilkerran :

1743. *January 3.*—An obligation having been granted by David Spence secretary to the Bank of Scotland, in the following terms: “Whereas James Clark, engraver in the mint, did, at my desire, 22d November 1710, lend to Robert Bannerman L. 50 Sterling, conform to his bond given thereupon; therefore, I hereby oblige me and mine, that the said Robert Bannerman shall truly and faithfully repay the said sum and annualrents, or else to content and pay the same myself upon demand, upon the said James Clark his giving me an assignation to the said bond;” it was found, That the granter had not the benefit of the act 1695 anent principals and cautioners.

The second clause in the act of Parliament, providing, &c. was so far thought explanatory of the first, that from no implication could one plead the benefit of cautioner, nor indeed from any words, other than that of being bound expressly as cautioner, having a clause of relief in the bond, or a bond of relief intimated.

*Kilkerran, (PRESCRIPTION.) No 10. p. 420.*

1747. *January 20.* BLAIR *against* DEMPSTER.

No 222.

FOUND, that the statute, relative to the septennial prescription of cautionry obligations, must be strictly interpreted.—*See APPENDIX.*

*Fol. Dic. v. 4. p. 101.*

1748. *November 16.* Lady HENRIETTA GORDON *against* TYRIE.

No 223.

IN the year 1700, George Gordon at Mill of Ruthven as principal, and John Ross of Wardhouse as cautioner, became bound in a bond to the Duke of Gordon for L. 195 Scots. In 1705, John Ross the cautioner, and with him David Tyrie, on the narrative of the said bond, in which the said Ross was cautioner, became bound in corroboration thereof to the Duke for L. 192, as all that was then resting of the original bond.

In a process at Lady Henrietta Gordon's instance, as executrix to the Duke her father, against Tyrie for payment, he pleaded the septennial prescription, on the act anent cautioners, on this ground, that Ross was by the original bond only cautioner, nor did he cease to be cautioner by granting the bond of corroboration; and as the defender, by the bond of corroboration, only became

A cautioner granting a bond of corroboration cannot plead the septennial prescription.