

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.

No 223.

a new cautioner with Ross, if Ross was entitled to the septennial prescription, so was he.

“ THE LORDS repelled the defence ;” not without observing, that it had been to be wished, that the act of Parliament had been so conceived, as to extend to corroborative securities, as the reason of the thing would seem to be the same. But the LORDS thought themselves not at liberty to find that it did extend to corroborations, in respect of the words of the act, declaring the prescription to run from the date of the bond ; and of the variety of cases, wherein it has been adjudged, that the act did not extend to corroborations ; and of the many cases wherein, though the *species facti* was the same as in this, the defence was not so much as pleaded, in respect of the established practice ; as in Sir Robert Pollock’s case, 10th July 1745, No 53. p. 2125. *voce* CAUTIONER.

Fol. Dic. v. 4. p. 101. Kilkerran, (PRESCRIPTION.) No 16. p. 422.

1749. July 13.

WALLACE *against* CAMPBELL.

No 224.

The benefit of the septennial prescription may be renounced. See No 214. p. 11013.

CAMPBELL of Inverasragan having become cautioner for his brother Archibald, merchant in Inverary, to Campbell of Stonefield, in a bond of L. 100 Sterling, he paid the debt after the seven years were run, and thereafter obtained a disposition from his brother to his tack of a house in Inverary, for his relief.

In a competition between Inverasragan and Thomas Wallace, who had adjudged the subject prior to the said disposition in relief, it was *objected* by Wallace, That it was not in Inverasragan’s power to rear up that debt in prejudice of his adjudication, by his neglecting to take the benefit of the exception he had by law to it, by the lapse of the seven years.

THE LORDS “ Repelled the objection, in respect it could not appear but that Inverasragan had promised payment within the seven years.”

Though it has been doubted, whether one bound as cautioner could renounce the benefit of the act of Parliament anent principals and cautioners, in respect of the words of the act of Parliament, ‘ That no man binding cautioner shall ‘ be longer bound than for seven years after the date of the bond ;’ yet, it is now of a long time a settled point, that these words are only to be understood of the obligation he came under by the bond itself ; but that he may, by writ or promise, referring to the said cautionry obligation, become bound simply ; and, accordingly, a bond of corroboration, granted by a cautioner, has, by repeated decisions, been sustained.

Another objection to this bond *vide*, also repelled of this date, *inter eosdem*, *voce* WRIT.

Fol. Dic. v. 4. p. 102. Kilkerran, (PRESCRIPTION.) No 17. p. 423.