

No 64.

Observed on the Bench: It may be laid down as a general rule, that when there are different cautioners for the same debt, they all stand upon an equal footing as co-cautioners, and are entitled to a proportional relief from one another, whether they are bound in one bond or in separate bonds; unless from circumstances it shall appear, either upon the one hand, that the original bond was meant to be at an end, and the new obligants alone bound; or, on the other hand, that the new cautioners interposed at the desire of the former obligants and to save them from distress, upon the faith of a total relief from them.

THE LORD ORDINARY had found Smiton entitled to a total relief.

THE COURT altered the interlocutor, and found, ' That Millar was only liable to relieve Smiton of a proportional part of the debt due to the British Linen Company, along with the other obligants in the original bond of credit.

A reclaiming petition was refused, without answers, 4th December 1792.

Lord Ordinary, *Henderland.* For Smiton, *Solicitor-General Blair, Wight.*
For Millar, *Rolland, et alii.* Clerk, *Mitchelson.*

R. Davidson.

Fol. Dic. v. 3. p. 120. Fac. Col. No 3. p. 8.

1802. May 20.

MILLIGAN *against* GLEN.

No 65.

A cautioner obtaining security in relief to himself, is bound to communicate the benefit of that security to co-cautioners.

GLEN and Milligan, were co-cautioners for Mouncie in a bond of credit.— Glen obtained for himself an heritable security in relief.

Mouncie became insolvent; and the heritable property over which Glen had security, was sold by trustees appointed by Mouncie. The proceeds were received by Glen, who paid to the bank the half of the sum due by Mouncie upon his cash-account. Milligan, the other cautioner, having been forced by diligence to pay the balance, brought an action against Glen for relief of one half of this balance.

Pleaded for Glen: He had already paid one half of the debt, and could be liable for no part of the other half.

Answered: The sum paid by Glen did not come out of his own pocket, but out of the funds of the bankrupt; and although Glen had obtained an heritable security, *ex facie* to himself only, he was bound to communicate the benefit of it to his co-cautioner.

THE COURT having judged of the cause on informations, decerned against the defender in terms of the libel; thereby deciding, in conformity with opinions delivered on the Bench, that a cautioner obtaining a security in relief to himself, which has the effect of operating payment of the debt out of the funds of the principal debtor, is bound to communicate the benefit of that security to co-cautioners.

Act. Morrison.

Alt. Corbet.

Clerk, Pringle.

See APPENDIX,