

pensions do present the bonds of caution, and are therein; *2do*, That James Nicolson hath the trust to see the sufficiency of cautioners, from the clerk of the bills.

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which he had
neglected to
take caution.

THE LORDS repelled the defences, and decerned Walter Riddel to pay the third part, for which he had taken no caution, the pursuer assigning him to that third part of the bond.—See PUBLIC OFFICER.

Stair, v. 2. p. 799.

* * * Fountainhall reports this case :

WALTER RIDDEL keeper of the bills under Sir William Bruce, upon a complaint given in against him to the Lords by Logie, is decerned in the sum of 1300 merks, for receiving a bond of caution in a suspension for three suspenders, and it was found to be a bond of caution only for two of them, and not for the third ; but they ordained the creditor to assign Walter to the debt for his relief. He confesses, if the creditor-charger lived within the city of Edinburgh or suburbs, ere he accept any caution against him, that he is obliged to intimate it to him, that he may compear and see sufficient caution found ; and if he do not acquaint them, that he is liable ; but denies that he can do any more but try that they are reputed and holden sufficient, where the creditors live not in Edinburgh.

Fountainhall, v. 1. p. 116.

1680. December 2. ALSTOUN against RIDDEL.

JAMES ALSTOUN pursues Walter Riddel, sub-clerk of the bills, upon this ground, that Walter had expedite a bill of suspension, upon caution by a person whose name was put to the bond, though he was dead eight years before, albeit the pursuer required Walter to take sufficient caution, and protested for damage, by an instrument produced. The defender *alleged* absolvitor, because all that he was obliged by the constant custom of the office, was to take information of the sufficiency of cautioners, which he did in this case, and is content to depone thereupon ; but it was impossible for him to know the verity of the subscriptions, nor can he certainly know the condition of the cautioners, and so can be no otherwise liable unless by his oath it appear that he hath colluded with the suspender, or neglected to take information from persons living near that place where the cautioner resides. The pursuer *answered*, That the trust of the clerk of the bills, is to take sufficient caution, which he must do at his peril ; and albeit he might be deceived, whether the cautioner were sufficient, yet he should always know that the cautioner is reputed sufficient ; *2do*, In this case the pursuer having required him by an instrument, he

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The clerk
of the bills
found liable
for a debt,
for taking as
cautioner in a
suspension a
person who
had been long
dead.

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ought to have intimated to his agent, or the writer of the bill, the name of the cautioner offered.

THE LORDS found the clerk liable, in respect of the instrument being attested by the witnesses' oaths, seeing he did make no intimation to the suspender, or the writer of the bill, of the name of the cautioner; but in case the instrument was not approved, the LORDS declared they would hear the general case in their own presence, how far the clerk of the bills is liable for the sufficiency of cautioners, or what diligence he ought to do for finding the same. See PUBLIC OFFICER.

Stair, v. 2. p. 810.

1680. December 10.

No 44.

GEORGE DRUMMOND, Merchant, *against* JAMES DUNBAR, Messenger.

THE LORDS sustained a libel relevant against him, for paying a debt, for malversing, in giving a declaration to the Privy Council that the Laird of Dundas was only incarcerated upon one caption, whereas he was likewise imprisoned by him on the pursuer's caption, by which concealment he was put at liberty.

1681. July 6.—GEORGE DRUMMOND late Bailie in Edinburgh against James Dunbar messenger, anent his arresting the Laird of Dundas; the LORDS found where one is imprisoned for a riot by order of the Privy Council, and is arrested in prison by virtue of a caption for a civil debt, if the Privy Council release him, he cannot be detained on pretence of the arrestment, because it falls by consequence, the first cause of imprisonment on which it depends, being relaxed. Yea Halton, (who stood very high in this cause for the Privy Council's jurisdiction,) and some others, went this length; that though the first cause of imprisonment had been on a caption for debt, and the second only by the Council, yet he might be liberated by the Council's order; which seems most arbitrary and unjust.

Fol. Dic. v. 2. p. 342. Fountainhall, MS. & v. 1. p. 146.

No 45.

Where an inhibition had been marked as registered, but not in fact booked, the clerk and his representative held to be liable for damage and loss thence accruing.

1696. January 3.

SCOTS *against* JOHN GRIEVE.

SCOTS, younger children of Tushilaw, pursue a reduction *ex capite inhibitionis*, served upon their bond of provision against Mr John Grieve of Pinackle, and Michael Anderson, who had purchased the lands after their inhibition was executed. *Alleged*, The inhibition is null, not being duly registrated within 40 days, conform to the act of Parliament 1617; in so far as, though it be marked as duly registrated, and recorded by the clerk and keeper of the shire's Register at Selkirk; yet, upon search, there is no such inhibition standing