before witnesses; and it were indeed a very affected unnecessary formality to have made such an intimation to the charger, who had written and signed witness to the bond of relief, of the date of the bond charged for. No 232.

"THE LORDS found private knowledge not relevant; but found, that the charger's writing the bond of relief, and signing as witness to it, of the date of the bond charged on, was a sufficient intimation."

Dalrymple, *No* 108. *p.* 151.

1715. *January* 19. GORDON *against* Sir ARCHIBALD CAMPBELL.

No 233.
The septennial prescription in favour of cautioners found to run from the date of a letter by the cautioner promising payment, and not from the date of the bond.

JOHN GORDON charges Sir Archibald Campbell, on his bond, dated 12th May 1704; he suspends on this reason, that he was only cautioner for Mr George Campbell, and seven years elapsed before the charge.

It was *answered*; The prescription did not run from the date of the bond, but from the date of a letter writ by the suspender the 23d March 1710, acknowledging the kindness done him in delaying to seek his money so long, and assuring the charger that he might depend upon his payment against Martinmas then next, and intreating delay till that time.

It was *replied*; That letter was writ within seven years of the bond, when he was truly under the obligation, and in that respect only promised to pay, which is to be interpreted in the terms, and under the conditions implied in that bond; neither can any advantage be taken from his desiring delay; for the charge was given so long after the seven years, that, adding the time of the desired delay from the date of the letter to Martinmas, which is the utmost that can be inferred from the letter, still the prescription was run.

It was *duplied*; The act of Parliament anent cautioners being correctory, and also being found not to carry those advantages that were proposed at making of the act, it was most strictly to be interpreted; and the letter ought to have the most favourable interpretation for the creditor, whereof the true import was this, That the writer of the letter did thereby corroborate the former obligation, and consequently the prescription began to run from the date of that letter; for the promise to pay at a certain term the money for which he was formerly bound as cautioner, is of its own nature a corroborative security; there could have been no question, if that letter had borne these words, 'in corroboration of the former obligation;' which words are implied, and the letter must have the same effect, as if they were expressed; and so the charger has understood it, or otherwise he would not have failed to have used diligence by horning and denunciation, and thereby preserved to himself the effect of his bond; and this suspender, who did not make payment according to his faithful promise, which he said the charger might depend upon, has no reason to complain.

No 233. "The Lords found the prescription did not run from the date of the bond, but the letter."

Fol. Dic. v. 2. p. 116. Dalrymple, No 131. p. 183.

*** Bruce reports this case:

Captain George Campbell grants bound for 2473 lib. Scots, to John Gordon, wherein he as principal, and Sir Archibald Campbell, and Colin Campbell of Bogholl, as cautioners, are bound conjunctly and severally. The bond is dated in May 1704. and payable at Whitsunday 1705, and Martinmas thereafter, by equal portions. Gordon, and Stewart his trustee, coming to insist against Sir Archibald for payment of the bond *in solidum*,

It was *answered* for Sir Archibald, That conform to the act 1695, the bond was null as to him the cautioner, it being more than seven years since granting.

Replied for the pursuers, That the act could take no place in this case, because long after granting the bond, and after both terms of payment were past, Sir Archibald wrote a letter to Stewart, dated in May 1710, wherein he assures him of payment against Martinmass then next, and entreats the foresaid delay; which letter, imports a passing from any privilege he could found on, by virtue of the act of Parliament.

Duplied for Sir Archibald, 1*mo*, That the bond itself, by elapsing of the seven years, is utterly void, and the cautioner free, unless he be bonnd by some complete diligence, or other deed that can subsist by itself. 2*do*, The letter is relative to the bond, and promises payment in the terms of the original cautionry, which becoming void, the letter does in the same manner cease to be binding, as if the principal had paid the debt. And it is absurd to imagine, that an acknowledgment of the debt in that manner, should perpetuate an obligation, which law has made void, upon the creditors neglecting to do diligence. 3*tio*, The letter is writ 12 months before the seven years expired, and there remained six months, in which diligence might have been done after the term to which the delay was sought, which excludes all ground of suspicion, and justifies the defenders founding on the act.

Triplied for the pursuers; 1*mo*, That the letter, if it imports any thing, does doubtless imply Sir Archibald's passing from any right competent to him as cautioner, and undertaking the debt as principal, and an obligation on him to pay the sum, without the benefit of any exception that law might otherwise indulge him in. For if it import any thing, it must be a corroborative security; and certainly a person corroborating another's bond, would not have the benefit of this act. 2*do*, Sir Archibald can plead no other privilege from the act, than could be desired by a person who had become cautioner in a bond *ad certum tempus*, and yet it is agreed on by lawyers, that if such a person be *in mora intra tempus illud constitutum*, though that time is elapsed, he will never-

theless continue obliged in the terms of his cautionry, *mora perpetuante obligationem;* which is plainly Sir Archibald's case, since the act of Parliament, allowing cautioners to be pursued within seven years, states them in no better case than if they had obliged themselves only for seven years; therefore Sir Archibald having wrote a letter demanding delay, and promising payment, which is plainly to be *in mora*, he perpetuates the obligation, and continues bound, notwithstanding the seven years are elapsed. No 233.

THE LORDS found the seven years prescription by the act of Parliament 1695, doth in this case run, not from the date of the bond, but from date of the letter.

Act. *Geo. Mackenzie.* Alt. *Dun. Forbes.* Clerk, *Mackenzie.*

Bruce, v. 1. *No* 31. *p.* 40.

1727, *February* 14. BELL *against* HERDMAN.

No 234.

IT was found, that the creditor's private knowledge is not sufficient, but that there must be an intimation by way of instrument, under the hand of a notary, at the time of signing or delivering the bond.—*See* APPENDIX.

Fol. Dic. v. 2. *p.* 116.

SECT. IV.

Effect of diligence during the seven years.

1712. *January* 24.
GEORGE STUART, and his Tutor, *against* JOHN HILL, Merchant, in Greenock, and Others.

No 235.

IN the action at the instance of George Stuart, and his Tutors, against John Hill and others, the LORDS found, that executing a summons is not sufficient to found interruption of prescription, the summons having fallen and expired through not being tabled or called within year and day.

Fol. Dic. v. 2. *p.* 117. *Forbes, p.* 580.