

*Duplicated* for the pursuer, The words of the act, declaring the diligence good for what fell due within the seven years, must comprehend annualrents in all time thereafter, as accessory to the principal sum that fell due within that time, seeing *dies cessat* as to these *licet nondum venerat*. 2do, The defender's argument *a contrario sensu* (which is the weakest of all arguments) is never admitted in application of a new correctory law.

No 236.

THE LORDS found, that the diligence executed against the cautioner within seven years, stands good only for what fell due in that time. 24th February, thereafter, the pursuer *alleged*, That the act of Parliament 1695 in favours of cautioners, did exempt the defender from annualrent, in virtue of the bond falling due, after elapsing of the seven years; yet he being denounced to the horn before, must be liable from the denunciation in all time coming, not only for annualrent of the principal sum, but also for annualrent of those annualrents that fell due within the seven years, by the act 20th, Parl. 23d Ja. VI.; and a decision 11th February 1673, Smith *contra* Waugh; No 24. p. 491. Which allegiance the LORDS found relevant.

*Forbes, MS. p. 22.*

1728. January 9.

HUNTER against ADAIR.

No 237.

FOUND, That arrestment used against the cautioner, is sufficient to preserve to the creditor all manner of diligence competent against the cautioner for what fell due within the seven years, though it was *pleaded*, upon the express words of the act, That any diligence raised within the seven years must be followed forth after the seven years, but no diligence could be insisted in; it being *answered*, That the statute intended an *ipso jure* liberation to the cautioner for what should fall due after the seven years; but as to what falls due within that space, a proper prescription is introduced to be interrupted by any thing that interrupts another prescription. See APPENDIX.

\* \* \* THE same had been found thrice before, *anno* 1717, Hunter *contra* Muir; December 1720, M'Cornock *contra* Coltran; and, February 1726, Fairholm *contra* Cuninghame. See APPENDIX.

*Fol. Dic. v. 2. p. 117.*

1738. June 13.

ANDREW ROWAND against WILLIAM LANG.

No 238.

THOMAS MITCHELL as principal, and the said Lang as cautioner, granted a bond to John Rowand for 100 merks, of date the 29th of January 1714, in the town-court books of Glasgow, and, that same day, both principal and cautioner

A charge given to a cautioner by a town-officer.