gence that it might be legal. Put the case he had employed you to lend out 5000 merks on security, and you had taken a bond from the debtors, either holograph, or without designing the witnesses, would not you have been liable to make up his damage, if the bond had been found null, or not probative; and even so here. The *lex aquilia* made a chirurgeon *qui imperite venam secuit* liable in the expense of the cure, and why not you; *nemo debet affectare seu profiteri id quod ignorat.* THE LORDS, by plurality, found Mr Fullarton the writer liable to relieve Wood, which was looked on as a new decision, but judged necessary to cause men in public offices look better to the discharge of their duty, that the lieges do not suffer by their carelessness and sloth, to give it no worse name. No 47.

Fountainhall, v. 2. p. 601.

1725. *July* 27.

ARCHIBALD ROBERTSON, Merchant in Edinburgh, *against* Messrs GIBSON and HALL, two of the Principal Clerks of Session.

No 48.

UPON occasion of a complaint's being exhibited to the Lords by Mr Robertson, setting forth, That he had given in a bond, which had been assigned to him, to be registered in the Clerk's Office, and that he could not, for the space of some months, obtain an extract of it, though it had been often required; and that arrestment having been used in the debtor's hand within that time, he was in hazard of losing his money; concluding, That the Clerks, on account of this malversation, should be liable for the sum in the bond;

It was found, That the Clerks were obliged to give out extracts of bonds, or other writs, 24 hours after they were given in to be registered; but if the presenter of the bond, or other writ, should intimate to the Clerks that there was *periculum in mora*, in that case, the same ought to be given out without delay.

THE LORDS, upon another application, found the Clerks liable in expenses to the complainer.

Reporter, *Lord Cowper.* For the Complainer, *And. Macdowal.*
Alt. *Ja. Fergusson.* Clerk, *Justice.*

Fol. Dic. v. 4. p. 232. Edgar, p. 202.

1741. *July* 29. SUSANNA RAE, Complainer.

No 49.

A WRITER to the signet having received from the complainer 10s. Sterling, in order to obtain a suspension for her, and accordingly presented the bill, which was past, but neglected to be expede, for this reason given by him in excuse, that the money received was not sufficient for expeding the bill, but

No 49. which he had not notified to the complainer;—the Lords "found him liable in damage and expense, and remitted to the Ordinary on the bills to tax the same;" and he not being in good circumstances, "they fined him only in ten shillings Sterling to the poor."

Fol. Dic. v. 4. p. 232. Kilkerran, (Reparation.) *No 1. p. 484.*

1748. *November* 29. Liddel *against* Ure.

No 50.
A bond by a tutor in law, that he should exercise the office, found not to imply that he should complete his title, and therefore the clerk to the service not found liable for neglecting to take caution, as the cautioner would not have been liable.

Andrew Liddel obtained brieves for serving himself tutor-in-law to his niece Christian, daughter to John Liddel of Easter Clachary, and a verdict was found accordingly, before the regality court of Montrose, which he never retoured to the Chancery, but proceeded, without further title, to administer the pupil's affairs.

Christian Liddel, with concourse of John Donaldson, tenant in Craigannat, her husband, pursued him to account, and obtained decreet against him; and failing to recover, pursued James Ure, who acted as clerk to the service, by commission from the clerk to the regality, for his alleged neglect of taking caution, as no bond of caution appeared; and upon James Ure's death, transferred the process against John Ure of Shirgarton, his brother and representative.

The Lord Ordinary, 8th July 1747, "found the defender liable to the pursuer in the balance of Andrew Liddel's intromissions with her means and effects."

Pleaded in a reclaiming bill, It is not incumbent on the clerk to a service to take caution; it is one of the heads of the brieve, to inquire if the agnate is *potens idonie cavere*, but it does not require that caution be actually found; and therefore it would seem that the caution ought to be found at the Chancery, when the service is retoured, and in consequence of it a nomination taken out; or if this must be done in the court where the service is expede, that the inquest ought to see it done, and be satisfied that he is *potens cavere*, by seeing the caution actually found: But supposing it the duty of the clerk, the pursuer in this case suffered no prejudice; as the cautioner, if taken, would not have been bound, the prosecutor of the brieves having never been tutor, as he never retoured them, but acted without a title.

Answered, The caution is never taken at the Chancery, but in the court where the service is expede; and constant practice has fixed it to be the duty of the clerk to take it, which being done, is the evidence given to the inquest, that the agnate is *potens cavere*; and the stile of the bond is, that he shall exercise the office, which Andrew Liddel having failed in, his cautioners would have been liable; and consequently the clerk who has neglected to take, or has lost the bond of caution.