

No 223.

a new cautioner with Ross, if Ross was entitled to the septennial prescription, so was he.

“ THE LORDS repelled the defence ;” not without observing, that it had been to be wished, that the act of Parliament had been so conceived, as to extend to corroborative securities, as the reason of the thing would seem to be the same. But the LORDS thought themselves not at liberty to find that it did extend to corroborations, in respect of the words of the act, declaring the prescription to run from the date of the bond ; and of the variety of cases, wherein it has been adjudged, that the act did not extend to corroborations ; and of the many cases wherein, though the *species facti* was the same as in this, the defence was not so much as pleaded, in respect of the established practice ; as in Sir Robert Pollock’s case, 10th July 1745, No 53. p. 2125. *voce* CAUTIONER.

*Fol. Dic. v. 4. p. 101. Kilkerran, (PRESCRIPTION.) No 16. p. 422.*

1749. July 13.

WALLACE against CAMPBELL.

No 224.

The benefit of the septennial prescription may be renounced. See No 214. p. 11013.

CAMPBELL of Inverasragan having become cautioner for his brother Archibald, merchant in Inverary, to Campbell of Stonefield, in a bond of L. 100 Sterling, he paid the debt after the seven years were run, and thereafter obtained a disposition from his brother to his tack of a house in Inverary, for his relief.

In a competition between Inverasragan and Thomas Wallace, who had adjudged the subject prior to the said disposition in relief, it was *objected* by Wallace, That it was not in Inverasragan’s power to rear up that debt in prejudice of his adjudication, by his neglecting to take the benefit of the exception he had by law to it, by the lapse of the seven years.

THE LORDS “ Repelled the objection, in respect it could not appear but that Inverasragan had promised payment within the seven years.”

Though it has been doubted, whether one bound as cautioner could renounce the benefit of the act of Parliament anent principals and cautioners, in respect of the words of the act of Parliament, ‘ That no man binding cautioner shall ‘ be longer bound than for seven years after the date of the bond ;’ yet, it is now of a long time a settled point, that these words are only to be understood of the obligation he came under by the bond itself ; but that he may, by writ or promise, referring to the said cautionry obligation, become bound simply ; and, accordingly, a bond of corroboration, granted by a cautioner, has, by repeated decisions, been sustained.

Another objection to this bond *vide*, also repelled of this date, *inter eosdem*, *voce* WRIT.

*Fol. Dic. v. 4. p. 102. Kilkerran, (PRESCRIPTION.) No 17. p. 423.*