

1762. February 19.

MILLERS *against* SHORT.

By minute of agreement, John Miller became bound to assign certain sums, mentioned in a list, to Thomas Johnson, who, on the other hand, became bound to grant a bond for three-fourths of the sums conveyed. This agreement was executed, and Thomas Johnson granted a bond accordingly for L. 450 Sterling, with James Short, as cautioner and full debtor. The bond bears date 30th November 1751, and the term of payment is at Martinmas 1759. The cautioner's defence, in a process for payment, was the act 1695, introducing the septennial prescription. *Answered*, That act relates only to bonds for borrowed money; and, at any rate, can never apply to a bond, the term of payment of which is more than seven years after the date. The Court accordingly repelled the defence.

Fol. Dic. v. 4. p. 101. Sel. Dec. No 189. p. 253.

1762. July 29.

JAMES EWART of Mulloch, and ROBERT CUTLER, Merchant in Dumfries,
against RICHARD LOTHIAN of Staffold.

In 1747, John Graham, Robert Ferguson, James Ewart, and Robert Cutler, entered into a co-partnery for carrying on a wine-trade. Each partner advanced L. 150; but, in the course of their trade, they had occasion to contract debts, and borrow money to a considerable extent.

In 1754, the other partners agreed to convey their several shares of the co-partnery to John Graham, upon his paying to each of them L. 150 Sterling, the original stock put in by them, with interest, at the rate of 8 *per cent.* from the time of the advance, and relieving them of all the company debts.

Graham accordingly granted bills to the other partners for their respective shares of the company's stock; and a bond was also granted by him as principal, and Richard Lothian of Staffold as cautioner, for relieving them of the company debts.

By this bond, after reciting the several debts due to the company, and the above agreement entered into by the partners, the said John Graham as principal, and Richard Lothian as cautioner, surety, and full debtor, with and for him, ' Bound and obliged them, conjunctly and severally, their heirs, &c. to ' free, relieve, harmless and skaithless keep, the said Robert Ferguson, James ' Ewart, and Robert Cutler, and each of them, of and from the sums of money ' particularly before written, due and addebted to the said company, to the ' several persons therein designaed, amounting, in whole, to the sum of L. 1236 ' 19s. 3d. Sterling of principal sums, and of and from the several penalties

No 225.

The act 1695, about the prescription of cautionry, is not applicable where the term of payment of the bond is more than seven years after the date.

No 226.

A person becoming cautioner for one partner of a company, to relieve the other partners of the company debts, not entitled to the benefit of the act 1695.