

*Blackethouse* was held by all the great lawyers of that generation to have been well judged. There is a case in *Stair, Livingstone against Forrester*, 1674, decided in the same way; and there is no decision to the contrary.

On the 13th February 1781, "The Lords found that the adjudication, with infestment, is preferable to the prior minute of sale;" altering Lord Monboddo's interlocutor.

For the adjudger,—E. M'Cormick, T. M'Laurin. *Act.* D. Rae, G. Ferguson.

*Diss.* Monboddo.

1781. February 14. ROBERT EWING *against* WILLIAM M'KINLAY.

CAUTIONER.

Act 1695 does not apply to Caution in Suspensions.

[*Fac. Coll. VIII. 63; Dict. 2154.*]

BRAXFIELD. The Act 1695 makes the seven years to run from the date of the obligation; but this will not apply to the case of cautioners in suspensions, for a cause may frequently remain undetermined for more than seven years.

PRESIDENT. The Act 1695 respects not prescription at all; it imports a liberation after a certain time. How can a man be liberated who is not bound in any thing specific until the issue of the cause? A conditional obligation falls not under the sense of the statute.

KENNET. We cannot extend a correctory law to cases not mentioned in the law.

On the 14th February 1781, "The Lords repelled the objection on the Act 1695, but found that there is no regular attestation which can bind the defender;" varying the interlocutor of Lord Westhall.

On the 7th March 1781, Adhered.

*Act.* E. M'Cormick.

*N. B.*—As to the form of attesting, the clerk of the Bills was called to report, which he did candidly.