1784. *December* 7. ISOBEL HOWISON and THOMAS BELL *against* JOHN HOWISON.

PRESCRIPTION.

A person granted a letter, promising that a sum, due by other parties, for which they granted acceptance, should be paid. Found not to have the benefit of the septennial limitation, nor of the sexennial prescription.

[*Fac. Coll. IX.* 285; *Dict.* 11,030.]

BRAXFIELD. It will not follow that every one who is in effect nothing more than a cautioner, has the benefit of the act. A man who is bound conjunctly and severally, and afterwards gets a bond of relief, and intimates it to the creditors, will not thereby get free as a cautioner. Mr Howison does not fall under any of the predicaments of the act. The creditor has an additional security; but how does it appear from the letter that Mr Howison was not the principal debtor?

ESKGROVE. I cannot think that every person who grants an additional security is entitled to the benefit of the act. A bill is accepted by three persons, without any distinction which is principal and which cautioner; then a separate obligation is granted, independent of the other, in the event of the money not being paid. This is not a cautionary obligation under the Act 1695; and that act, as it deviates from the common law, ought not to be extended to cases from which it does not provide.

JUSTICE-CLERK. No person can claim the benefit of the Act 1695, unless he fall within the terms of it. Mr Howison does not. I may have some suspicion in my own mind, and even some evidence that Howison was a cautioner: but that is not sufficient; he might have been principal as well as cautioner.

MONBODDO. The definition of the Roman law, as to a cautioner, is, that he is one *qui accedit alienæ obligationi majoris securitatis causa.* This is exactly the case of Howison: he does not become bound to pay, but to see the creditor paid; that is, by the three debtors.

PRESIDENT. I cannot find any thing in the obligation that makes Howison other than a principal debtor. I do not see that he had relief against the others. The Act 1695 is a correctory law, and it does not extend to every one who is in truth a cautioner.

On the 7th December 1784, "The Lords repelled the defence on the Act 1695;" altering the interlocutor of Lord Monboddo.

Diss. Stonefield, Monboddo, Swinton.

Non liquet, Henderland.

BRAXFIELD. As to sexennial prescription, this obligation does not fall under it. It is a holograph obligation, good for twenty years.

ESKGROVE. The Act 1772 respects *promissory-notes;* and not an obligation like this, which is not of the nature of a promissory-note.

PRESIDENT. The using of the word *promise* is no evidence that a *promissory-note* was here intended.

On the 7th December 1784, "The Lords found that the letter from Howison does not fall under the sexennial prescription of the statute 12th Geo. III."

1784. *July* 13. GEORGE ALEXANDER GORDON *against* JANET GORDON and MARGARET GRANT.

PRESCRIPTION—TAILYIE.

How far interrupted by the minority of substitute heirs.

[*Fac. Coll. IX.* 293; *Dict.* 10,968.]

PRESIDENT. It was found, in the case of *Makerston*, that no minority could interrupt. But that case went not to the House of Lords: it was settled by my decreet-arbitral; and a large sum was awarded to the heir. I think that the minority of the next heir ought to be deducted.

On the 13th July 1784, "The Lords found that the years of the minority of the next heir ought to be deducted from the prescription."

Act. W. Honeyman. *Alt.* R. Blair.

Reporters, Alva and Henderland.

December 21. MONBODDO. Every heir of entail has an interest, and, of consequence, a right to oblige the heir in possession to make up his titles on the entail. The question is, Whether his minority is to be deducted from the time allowed for his compelling the heir so to do? This entail is not old: it was not a latent deed; and the first institute in it is the person who began to possess contrary to the entail; and consequently, in all those particulars, it is a more favourable case than that of Makerston. If this heir-male has not the privilege of minority, no substitute in an entail can ever have the privilege. The statute 1617 is very express. It was said that there was a distinction between the negative and the positive prescription, though it was admitted that the decisions of this Court had made no such distinction: there was no negative prescription