

the sums contained in the bond ; and also found, that no action could lie against the Earl of Galloway upon the bond in question." No 16.

Act. Ro. Craigie.

Alt. Elliot.

Clerk, Pringle.

B.

Fac. Col. No 9. p. 13.

1784. December 16.

JANET MASON against JOHN HENDERSON.

No 17.

Bonds at *respondentia*, may be confirmed by collateral security.

THE son of John Henderson, an Officer in one of the ships belonging to the East India Company, obtained from Alexander Robertson a loan of L. 100, upon his bond at *respondentia*. Within 30 days after the return of the vessel, he was to pay L. 122, and L. 1 : 2 for every month thereafter. As an additional security, John Henderson likewise became bound, in the same event, to make payment of the monies advanced.

The ship referred to completed the voyage ; but the borrower remained in India : And Janet Mason, the executrix of the original creditor, pursued John Henderson for the debt.

*Pleaded in defence*, By statute 19th George II. c. 37. it was enacted, ' That all monies lent on bottomry, or at *respondentia*, on vessels to or from the East Indies, shall be expressly lent *only* upon the ship, or upon the merchandise.' The stipulation elicited from the defender, therefore, by which the creditor obtained a collateral and personal security, was altogether illegal and void.

*Answered*, The extraordinary interest stipulated in contracts of bottomry, and *respondentia* bonds, was only permitted at common law, because compensated by the unusual risk run by the lender. But the addition of collateral securities, entitling the creditor to demand payment, whether the adventure prove successful or not, would totally change the nature of the bargain, and render it a cover for usury and oppressive dealings. And to such agreements alone the statute of the late King was meant to extend.

But it never could be intended to annul obligations such as the present, where nothing is exigible, either from the debtor or his surety, until the arrival of the ship. Here the creditor's purpose is not to secure himself against the hazards of the adventure, but against the insolvency of his debtor, which, after the voyage had been successfully performed, might have disappointed him of his payment. Nothing, accordingly, is more frequent in practice, than stipulations of this sort. Without them, indeed, in case of the borrower's not returning along with the ship, the creditor's claim would be entirely frustrated.

THE LORD ORDINARY over-ruled the defences ; to which judgment the LORDS adhered, after advising a reclaiming petition for John Henderson, with answers for Janet Mason.

Lord Ordinary, Gardenston.

Act. Whyte.

Alt. Mark Pringle.

Clerk, Home.

C.

Fol. Dic. v. 4. p. 33. Fac. Col. No 185. p. 290.