No 227. against Forbes, 16th February 1710, No 212. p. 11011.; Rutherford against Scot, 8th February 1715, No 213. p. 11012.; Blair against Dempster, 20th January 1747, No 222. p. 11025.

"The Lords found, that the action was not cut off by the septennial prescription."

Act. *Dav. Grame.* Alt. *John Douglas.* Clerk, *Pringle.*

Fol. Dic. v. 4. p. 101. Fac. Col. No 22. p. 37.

1784. *December 7.* Isabel Howison *against* John Howison.

No 228.
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.

Three persons granted a joint bill to the father of Isabel Howison; in reference to which, and bearing the same date with the bill, John Howison addressed to him the following obligatory letter: 'Sir, Whereas James, John, and 'William Young have, of this date, granted to you a conjunct bill for the sum 'of L. 100, payable one day after date; therefore, for your farther security, I 'hereby promise, that the said sum of L. 100, and interest due thereon, shall be 'paid to you, or order, when demanded.'

Long after the expiration of the period of the sexennial prescription of bills, Isabel Howison raised an action against the co-acceptors, and likewise against John Howison, the other obligant. Decreet in absence was obtained against the acceptors. But the other defender

Pleaded, first, The bill itself being prescribed, the collateral obligation, as accessory to it, has become likewise void.

Secondly, As a cautioner, this defender is liberated by the septennial limitation established by the statute of 1695. It is clear, that this benefit belongs to every obligant as cautioner in a bond, though it contains no stipulation of relief, and though no separate bond of relief has been intimated to the creditor; 11th December 1729, Ross *contra* Craigie, No 217. p. 11014. Now, as in this matter there can be no charm connected with any peculiar phrase, it is sufficient if the obligation be so conceived as to point out clearly the character of cautioner, whether that particular appellation occur in it or not. Such is the obligation in question, expressly bearing to be granted in farther security of another obligation by different persons, executed at the same time; by which last circumstance it is distinguished from a corroborative deed.

Answered, The exception of prescription in regard to the bill is obviated by the decreet of the Court. Nor can a party who is not expressly bound as cautioner, in so many words, plead the benefit of the septennial limitation, unless he can claim under some other of the statutory requisites.

The Lord Ordinary pronounced this judgment: "In respect of the decree against the debtors in the bill, and that the sexennial prescription does not ap-

ply to this bill, Repels the defence founded on the sexennial prescription of bills: But with respect to the defence founded on the septennial prescription, finds, That the bill in question being granted for value received in cash, that value must be presumed to have been received by the three acceptors; and therefore the defender, who grants the letter in question, must be understood to be the cautioner; and as the letter bears that he is bound in security, it is the same thing as if, in terms of the act he had been bound expressly as a cautioner; in which case, no bond or obligation of relief would have been necessary; therefore, upon this ground, alters the interlocutor, and finds the defender not liable for the debt."

No 228.

The Court, however, "found, That John Howison's case did not fall under the act 1695; but adhered to the Lord Ordinary's interlocutor with respect to the sexennial prescription."

Lord Ordinary, *Monboddo.* Act. *Honyman.* Alt. *Macleod.* Clerk, *Colquhoun.*

S. *Fol. Dic. v. 4. p. 101. Fac. Col. No 181. p. 285.*

1785. *February 16.* CREDITORS of PARK *against* PATRICK MAXWELL.

No 229.
The benefit of the act 1695 extends not to co principals, though there be mutual stipulations of relief.

ARTHUR PARK and WILLIAM ROWAND granted bond thus: 'We grant us to 'be justly addebted and owing, equally betwixt us, the sum of L. 67, &c.; 'which sum we bind and oblige us, conjunctly and severally, to pay, &c. 'And we oblige us to bear just and equal burden with each other in the 'premises, and to free, relieve, disburden, and skaithless keep one another, '*hinc inde*, thereanent, *pro rata parte*,' &c. No diligence was done upon this bond within seven years from its date. Afterwards, however, an adjudication having been led for the whole debt against the subjects of Park, his other creditors

Objected; Park being, as to one half of the sum, a cautioner, having in his favour a clause of relief in the bond, was, on the lapse of seven years, 'eo *ipso* 'free of his caution,' by virtue of the statute 1695; and so far the adjudication is null. For there is not any distinction to be made between those co-obligants whose interests and cautionary engagements are reciprocal, and such as interpose themselves as cautioners only; January 1728, Muir *contra* Ferguson, No 216. p. 11014.

Answered; The statute is in favour of those cautioners only who have a total relief; not of co-principals who have a mutual relief; whether it arises *ex lege*, or from stipulation; and therefore, two persons having granted bond, with a clause of mutual relief, one of them having been charged for the whole by the creditor, was found not to have the benefit of the statute; 22d January 1708, Ballantine *contra* Muir, No 211. p. 11010.