

1793. June 26.

ALEXANDER BRUCE *against* The REPRESENTATIVES of JOHN STEIN.

On the 3d May 1770, the late Lord Kennet and Robert Stein granted to Sir Alexander Ramsay Irving, Baronet, their joint bond for L. 1200.

On the 23d June following, Robert Stein, James his brother, and John his father, became conjunctly and severally liable to relieve Lord Kennet of this obligation, by delivering up to him his bond, or a valid discharge of it at Martinmas 1770, or thereafter when he should desire it. This second bond bore, that the former one had been granted solely on account of Robert Stein, and that Lord Kennet had joined in it only on promise of this bond of relief being granted.

John Stein died in 1771. Upon the bankruptcy of Robert and James Stein, in 1788, Sir Alexander Ramsay's bond was paid by Mr Bruce of Kennet, who brought an action against them, and the other representatives of John Stein. The latter, *inter alia*,

Pleaded; As it appears from the bond to Lord Kennet that John Stein was only cautioner for his son Robert, his obligation falls under the septennial prescription, in the same manner as if it had contained a clause of relief, or as if there had been a separate bond of relief intimated to the creditor; 11th December 1729, Ross against Craigie, No 217. p. 11014.; 20th November 1792, Douglas, Heron, & Company against Riddick, No 230. p. 11032.

Answered; There is no room for distinguishing a bond of relief from any other corroborative security, to which it is *triti juris* that the septennial prescription does not apply.

Replied; The present is very different from a bond of corroboration, which gives an additional security to the creditor, and is granted *ex intervallo*. Here no further security was given to the creditor; and as the bond of relief was stipulated from the beginning, it must be considered as *pars ejusdem negotii* with the granting of the original bond.

The cause was advised on informations.

THE LORDS unanimously "repelled the defence."

Lord Reporter, Craig.
D. D.

Act. Allan Maconochie.

Alt. Rolland.

Clerk, Mitchelson.

Fol. Dic. v. 4. p. 102. Fac. Col. No 66. p. 143.

No 231.

The cautioner in a bond of relief is not entitled to the benefit of the septennial prescription.