

1742. *February 3.* SPENCE *against* CAVES.

No. 12.

CAUTIONER not bound in the original bond, but some time after giving an obligation that the principal debtor shall pay the money, or otherways he shall pay it, he always getting an assignation; found not entitled to the benefit of the act 1695, anent cautioners. (See DICT. No. 221. p. 11020.)

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1742. *June 29.* MIDDLETON *against* BURNET.

No. 13.

A BOND by two, where one acknowledged him to have borrowed and received the money, and therefore he, and with him another, (not with and for him,) became bound conjunctly and severally to pay; the co-obligant not found entitled to the benefit of the act 1695. (See DICT. No. 220. p. 11018.)

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1743. *November 23.* HUNTER *against* HAMILTON.

No. 14.

CAUTIONER in a suspension not liberated, though the bond suspended was by mistake recited in the bond of caution, as of a date several years before the true date of it. *Vide inter eosdem, voce* PERSONAL OBJECTION.

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1744. *February 21, 29.* SINCLAIR of Scotscahill *against* M'KAY.

No. 15.

CAUTIONER in a suspension not liberated, though the bill, the ground of the charge, was in the bond of caution said to be, a bill drawn by in Holland, (whose name I have forgot,) on M'Kay, payable to Baillie for L.32. 10s., whereas the bill charged on was drawn by Baillie upon M'Kay, and payable to Baillie himself for L.33. 10s., value in the bill drawn by the said merchant in Holland.

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1745. *July 10.* Sir ROBERT POLLOCK *against* Mrs. LOCKHART.

No. 16.

SIR Robert and James Pollocks joined in a bond of corroboration of a former bond of L.1000 Scots, by the then deceased Thomas Pollock as principal, and Sir Robert as cautioner, and another small debt due by Thomas Relief among cautioners.

No. 16.

Pollock alone of L.150 Scots, upon the narrative that the creditor had at their desire superseded payment to the term underwritten, therefore binding them conjunctly and severally. James Pollock paid the debt, and his relict and executrix sued Sir Robert for re-payment of the L.1000; (for the note for the L.150 was lost;) and the Lords found him bound to relieve James Pollock of the whole L.1000, and that he was not to be considered as a co-cautioner with him; and they distinguished this case from that of Murray of Broughton and Orchardton in 1722, where the new cautioner acceded in a corroboration with the principal debtor; and from the case Lockhart against Lord Semple, (No. 9.) where the new cautioner acceded in a corroboration by himself alone, and had a bond of relief from the principal debtor; whereas here the new cautioner acceded in a corroboration with the first cautioner, whom therefore they considered as principal in the corroboration; though certainly he could not be so as to the debt of L.150; and it had influence that his cautionry was near expiring, and therefore his first bond registered, when the corroboration was granted. *Vide* No. 23. *infra*. (See DICT. No. 58. p. 2125.)

1747. June 5.

Mr ROBERT BLACKWOOD of Pittreavie *against* JAMES HALIBURTON.

No. 17.  
Declarator of expiration of cautionry.

THE principal debtor giving his brother-in-law money to pay a bond by him and cautioner, but taking his brother-in-law's bill for the money, who took assignation to the bond, to keep up the debt against the cautioner; which bill was afterwards pledged to the Bank, and thereafter renewed from time to time by both, and at last paid by the brother-in-law after the death of the other; the cautioner pursued declarator of extinction of the bond wherein he was bound, as paid with the money of the principal debtor; and we sustained the declarator, and declared it extinguished *quoad* the cautioner. (See DICT. No. 27. p. 10015.)

No. 18.

1749. June 2. BARBARA ANGUS *against* DR COULT.

A BOND of corroboration, with caution, reciting the principal bond and sum fully, but omitting by oversight to repeat the principal sum in the obliging clause, and containing the usual penalty corresponding to one-fifth of the principal sum and annualrent, was notwithstanding that omission found binding on the cautioner for the principal sum: Altered, and the cautioner found not bound. (See DICT. No. 324. p. 17040.)