

No 209. 1726. *July.* STEWART *against* CAMPBELL.

A CAUTIONER in a contract of marriage, (where the husband was bound to have a certain sum in readiness, and to lay it out on good security for his wife's liferent use, and to the heirs of the marriage in fee), claiming the benefit of the act 1695, cap. 5 ; the LORDS found, that the cautioner here being bound *ad factum præstandum*, and not to pay a certain sum of money, his case did not fall within the description of the act. See APPENDIX.

Fol. Dic. v. 2. p. 115.

No 210. 1736. *December 3.* ROBERTSON *against* M^CINLAY.

M^CINLAY having become bound as cautioner, in a bond of presentation, to present the person of Archibald Hamilton against a day certain, otherwise to pay the debt ;

THE LORDS found he was not entitled to the benefit of the prescription introduced by the act 1695.

G. Home, No 39. p. 72.

S E C T. II.

Who entitled to the benefit of the act 1695.—Can the benefit of it be renounced.

No 211. 1708. *January 21.*
JOHN BALLANTINE, Merchant and late Provost of Ayr *against*
ROBERT MUIR, present Provost thereof.

IN the cause at the instance of John Ballantine against Robert Muir, for payment of 2000 merks, in a bond granted to John Ballantine by the said Robert Muir and other three persons as co-principals bound conjunctly and severally, and obliged to relieve each other *pro rata* ; Robert Muir was found liable for the whole sum, though no diligence had been done upon the bond within seven years of the date ; in respect he was not a cautioner in the terms of the act of Parliament 1695 ; which correctory law extends not to bonds bearing clauses of