

1752. *January 24.* ROBERT DALRYMPLE *against* BAILIE LYON.

No. 53.

BILL bearing annualrent from the date found null. See No. 38.

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1753. *November 27.* JAMES CAMPBELL *against* DAVID GIBSON.

No. 54.

A BILL accepted by one as principal and another as cautioner being suspended by the cautioner, for that a cautionary obligation could not be created in the form of a bill; the suspender on oath acknowledged that he wrote the bill; that he agreed to become cautioner, and therefore wrote it in that form; that the charger objected to the word cautioner, and that he the suspender answered, that he would be bound in no other way. First Lord Kilkerran, and then the whole Court repelled the reason of suspension, and Drummorie, (who was in the chair) doubted if being bound as a cautioner was a nullity.

A cautionary obligation constituted by a bill supported by the Court.

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1754. *February 20.* ANDREW LOOKUP *against* CREDITORS of CROMBIE.

No. 55.

A BILL in the 1722 for L.6 sterling, and one in the 1724 for about three guineas, being claimed in the 1752 or 1753; in a competition of creditors, Lord Strichen found them presumed paid; but on a reclaiming bill we varied the interlocutor, and found that no action lyes on them, as we found in the 1746, in the case Moncrieff of Tippermalloch *against* Sir Thomas Moncrieff, No. 52, *supra*. (See DICT. No. 193. p. 1635.)

See Leith *against* Elphinston, January 16, 1734, *voce* WRIT.

See Gillon *against* Fairfoul, July 3, 1735, and Neilson *against* Bruce, January 25, 1740, *voce* PACTUM ILLICITUM.

See Leith *against* Gordon, July 24, 1740, *voce* COMPENSATION and *voce* WITNESS.

See NOTES.