

“ THE LORDS found, that Richard Lothian, the suspender, had not the benefit of the septennial prescription ; and, therefore, found the letters orderly proceeded.”

No 226.

For the Chargers, *Advocatus.*For the Suspender, *Ja. Ferguson.**A. W.**Fol. Dic. v. 4. p. 100. Fac. Col. No. 94. p. 211.*

1765. July 9.

HOGG and COMPANY *against* HOLDEN.

Hogg and Company, merchants in London, being creditors in certain sums to Richard Holden, Abraham Holden, his brother, wrote to them as follows :  
 ‘ (13th January 1753.) I am very much obliged to you for this, as well as former favours done my brother. For this L. 50 you have given your acceptance, at six months date, I will see you paid, though he should not return ; and, if you think a further acknowledgment or security requisite, shall have it. I had a letter from him of the 24th last, wherein he informs me, that he had an opportunity to carry out goods to a pretty large value, and had applied to you, who was so good as to send him your acceptance for L. 50, at six months date, and proposed to send you his will and power till he returned ; however, though he should not send it, I will see you paid.’

In 1764, Hogg and Company brought an action against Robert Holden, son and heir of Abraham, for payment of this sum.

The defender *pleaded* the septennial prescription, upon the act 1695, c. 5.

*Answered* for the pursuers ; The act gives the benefit of that short prescription to such only ‘ as are expressly bound for another as cautioners, or who have a clause of relief in the bond, or a bond of relief apart, intimated personally to the creditor at his receiving the bond.’ As none of these is the case here, Abraham Holden was not a cautioner in terms of that statute ; and, therefore, the defender cannot plead the benefit of it.

*Replied* ; The defender’s father was strictly and properly a cautioner for Richard. The letter founded on contains nothing that can import a *novatio* of the debt, or a freedom of the principal debtor from payment ; on the contrary, Abraham binds himself only in case Richard should fail to pay. The case appears extremely similar to one collected by Lord Harcarse, June 1661, Home against Lockhart, No 1. p. 2072. ; and another by Fountainhall, 20th January 1693, No 2. p. 2072. ; in both which, persons bound much in the same terms with Abraham Holden, were found to be cautioners not *expromissors*.

*Duplied* ; It is unnecessary to enquire whether Abraham Holden was properly a cautioner or not. It is certain, he was not a cautioner in terms of the statute, which, being correctory, may not be extended beyond the words ; More

No 227.

A party granted a letter, promising to see the debt of another paid. Found, that the septennial prescription did not apply.

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. Grane.

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 1605. 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 decret 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-