Boyes she could not thereafter recur upon the cautioner. 2dly, They all agreed that having conveyed her right of warrandice (which was secured by inhibition preferable to Mr Boyes's debt) to Mr Boyes, and thereby deprived the creditor of that security for his relief, neither she nor Boyes in her right could recur upon the cautioner.

No. 8. 1738, June 13. Rowand *against* Lang.

This case on the act 1695 anent cautioners was fully reasoned. The President gave us a very new and pretty singular opinion of it, viz. that the obligation for what falls due in the seven years is perpetual without any diligence, but that the cautioner was not liable for what fell due after that time. But none of us joined with him in that opinion, and indeed the reverse has been very fully received. But the point chiefly argued was, Whether diligence had the same effect as an interruption has with regard to prescription, so as to perpetuate the cautioner's obligation for what fell due in that time, even though that diligence could not be followed out any further? As where a charge for payment upon a precept of poinding or charge of horning is used against a cautioner who afterwards dies before any thing has followed upon it, whether that perpetuates his obligation against his successors? or 2dly, If diligence within seven years has no further effect than as to what can be recovered by that diligence? The Lords were divided in their opinion. The last seems most agreeable to the words of the act, were it not that some diligences are there mentioned that are only prohibitory, and properly cannot affect any subject, such as inhibition. The first was *in terminis* agreeable to the decision Muirie against Hunter in 1718. I thought there was no occasion for determining that point here, because the charge upon the precept of poinding might yet be followed out by poinding, notwithstanding year and day is expired, since the cautioner is alive, as in the case Dun against Provost Gardiner Stewart in 1724. 2dly, That the very horning now suspended was a following out that charge, which by the act of Parliament ought to precede any horning on the Magistrates' decreet or precept; and when the horning was looked into, it narrated both the precept and charge, and proceeded upon it. Therefore it carried (I think) unanimously to repel the reason of suspension as far as concerned the principal, penalty, and annualrents, that fell due in the seven years. But Royston and some others expressed the reason of their vote, in respect that the horning was a following out of the charge upon the precept. On the other hand, several declared that their opinion would have been the same though there were no such specialty;—so that point was not now decided.

No. 9. 1738, Dec. 19. Mr Lockhart *against* Lord Semple.

The Lords found Mr Lockhart of Carnwath could sue Lord Semple for the half agreeable to the decision in the case of Broughton against Orchardton, which last was affirmed by the House of Lords *ex parte* but after reading the whole debate in this Court.

No. 10. 1741, July 22. Sir Robert Munro *against* Bain of Tulloch.

A bond of presentation by a principal and cautioner, that the principal shall both present himself and pay the debt, and that under a penalty,—the question was, Whether

this bond fell under the prescription of the act 1695? We agreed that a bond of presentation to present or pay in common form does not fall under that act; 2dly, that a corroboration by a principal and cautioner falls under the act, though it be not for money instantly borrowed but for an old debt;—and as we looked upon the obligement to present as inept and superfluous, since whether that was performed or not, the cautioner remained bound, unless the debt was also paid, therefore found it fell under the said act 1695. *Renit.* Kilkerran, and Dun reporter.

No. 11. 1741, July 30. TRUSTEES of KINCAID'S CREDITORS *against* FARQUHAR.

ON a voluntary roup by these trustees, the purchaser having given a bond, with James Farquhar cautioner for the price, and to perform the other articles of roup, the Lords found that the bond falls not within the act 1695 anent cautioners.

No. 12. 1742, Feb. 3. SPENCE *against* CAVES.

BANNERMAN granted bond in 1710 for L.600, and Spence gave an obligation, bearing, that at his desire the money was lent, and obliging him that Bannerman should pay the money, or otherwise that he should pay it upon an assignation. The Lords found that Spence had not the benefit of the act 1695 anent cautioners. The Court was divided. Arniston in the chair was against this interlocutor, as I was. 14th January Adhered.—(3d December.)

No. 13. 1742, June 29. MIDDLETON *against* BURNET.

A BOND by two persons, the one acknowledges him to have borrowed and received the money, and therefore he and with him the other bind them conjunctly and severally to pay that money, (but not with and for him.) The other person found not a cautioner in the sense of the act 1695 to have the benefit of that act.

No. 14. 1743, Nov. 23. HUNTER *against* HAMILTON.

See Note of No. 15. *voce* PROCESS.

No. 15. 1744, Feb. 21, 29. SINCLAIR of Scotscathill *against* M'KAY.

THE Lords refused this bill of suspension, which to me appeared infinitely stronger even than the case of Hunter 23d November last, for here both suspension and bond of caution referred to a bill that actually once had a being, but was different from that charged on, and yet they found the cautioner bound,—*renit.* ———, Royston, Justice-Clerk, *et me.*—29th Adhered.

No. 16. 1745, July 10. SIR ROBERT POLLOCK *against* MRS LOCKHART.

THOMAS POLLOCK as principal and Sir Robert Pollock as cautioner, granted bond for L.1000. Thomas died within the seven years. After his death Sir Robert Pollock, and