

This day, (4th March 1777,) upon advising a reclaiming petition and answers, the Lords adhered. They thought the cautioners barred from competing with the Bank, *personali objectione*, in terms of their bond.

1773. July . BRITISH LINEN COMPANY *against* NISBET, &c.

EBENEZER Hill having been appointed cashier to the British Linen Company ; Nisbet, and Others, became cautioners for him *de fidei*, " That he should obey the Directors of the Company, and produce to Mr Goldie, the manager, every week, or daily if required, distinct states of the cash under his charge,—and that he should account for all sums which he should receive, and pay all damage by him occasioned, under the penalty of L.100 sterling, attour performance. That an account from the Company's general cash-book should constitute the charge, and that no suspension thereof should pass but on consignment only. In all this, the cautioners became bound, conjunctly and severally ; but it was declared that they should be no further liable by the bond than to the extent of L.500."

This, of giving in a state of the cash weekly or daily, if required, had been enjoined by several resolutions and minutes of the Company, concerning the duty and office of cashier ; and it was alleged by the cautioners, that, at the time when they granted the bond for Mr Hill, this was one of the arguments used by Mr Goldie, to convince them that Mr Hill's cash was to be examined so often, there could be no great risk in their being thus bound for him ; and it was added, in the papers, that this examination of the cash in the hands of their cashier or treasurer, weekly, was the practice in all the established Banks.

Hill embezzled the cash of the Bank, and thereupon the cautioners were charged for their L.500. They suspended ; and pleaded, *inter alia*, in defence, the non-observance of this regulation, concerning the state of the cash ; which they said was a regulation calculated for their safety, in which therefore they had an interest,—and upon the faith of the observance whereof they had signed the bond ; and they quoted a decision marked by Fount. 30th November 1697, *Sir James Dick against Nisbet and his Cautioners*, which, as they alleged, gave a sanction to this doctrine.

It was answered,—That the clause in the bond, and in the resolutions of the company referred to, were calculated purely for the security of the Company. That the cautioners had no claim upon it ; and as to this being agreed upon, and made use of as an inducement for them to engage in the bond,—this was totally denied. And, in corroboration of this, a decision was quoted, later than that of Sir James Dick, *viz.* 18th June 1706, *Sir George Hamilton against Sir James Calder*, where a defence of this kind, pleaded for cautioners, was repelled. There were other points pleaded ; but, upon the whole, " The Lords repelled the reasons of suspension, and found the letters orderly proceeded," (2d February 1773.

The cautioners reclaimed, praying the Lords to suspend the letters, or, at

least, before answer, to ordain Mr Goldie to confess or deny, whether he did not solicit the cautioners to become bound for Hill, and assure them that they would run no material risk, as he was to settle with him weekly.

In answer, this last was solemnly denied, as it was from the beginning; and though a proof had been allowed of what they condescended on, yet this was no part of it,—so was calculated to obtain delay. And, upon the whole, “The Lords adhered; but found no expenses due,” (July 1773.)

CESSIO BONORUM.

1776. August 2. ARMSTRONG against HIS CREDITORS.

IT has been doubted, how far a person imprisoned on a warrant for not finding caution *judicio sisti*, in an action for debt, is entitled to a *cessio*. The point first occurred, 9th July 1768, *Adam*, when the Lords refused the *cessio*. This was on a warrant by the Admiral. It occurred again, February 1773, *Robertson*. The Lords ordered memorials; but none were given in. It occurred again, 5th March 1774, in the case of one *Watson*: the Lords, upon advising a memorial from the pursuer, *ex parte*, granted it. But this day, 2d August 1776, the point occurred again, *Armstrong* against *His Creditors*;—*Armstrong* was imprisoned on a warrant of the Sheriff of Dumfries. The Lords ordered memorials; and, upon advising, pronounced this interlocutor:—“The Lords, having advised the memorials in this cause, *hinc inde*, find, That the pursuer, being imprisoned, not in common course of execution, for payment of a civil debt, but on a warrant by the Sheriff of Dumfries for not finding caution *judicio sisti*, is not entitled to the benefit of this process: therefore assoilyie the defenders, and decern.”

Same held to be law,—*Purie* against *His Creditors*, December 1777; same, 20th February 1779, *M'Kechnie* against *His Creditors*.

1776. August 9. M'ARTHUR against HIS CREDITORS.

M'ARTHUR was imprisoned in the tolbooth of Edinburgh, on a warrant from the Sheriff, for not finding caution *judicio sisti*: afterwards, he was arrested in jail by a creditor, for a debt in common form. The Lords found him entitled to the benefit of the *cessio*, except as to personal liberty, until he purged the Sheriff's warrant: they pronounced decret accordingly.

Same, 19th January 1780, *Dominico Corri* against *His Creditors*.