

original obligation, the law will presume against it after forty years. The bond of corroboration may have been discharged.

KAIMES. The radical foundation of the negative prescription is the security of the lieges. That unexpected distress may be prevented, the diligence must be intimated to the debtor, in order to put him on his guard. Hence letters of horning, and the registration of a bond, do not interpel the debtor, and, consequently, interrupt not prescription.

COVINGTON. Were the foundation of negative prescription a presumed payment, the contrary might be proved by oath of party, which, however, is not admitted: the law presumes a discharge.

GARDENSTON. This is a just debt. I cannot conceive how a bond of corroboration can be a new debt,—it is a relative security. The accumulation of interest is a reasonable accession to the original security.

On the 11th February 1777, “The Lords sustained the objection of the negative prescription against the bond of corroboration;” altering Lord Auchinleck’s interlocutor.

Act. J. Morthland. *Alt. D.* Rae.

Diss. Alva, Gardenston, Stonefield, Ankerville, Braxfield.

1777. February 21. WILLIAM SINCLAIR *against* GEORGE SUTHERLAND.

TUTOR AND CURATOR.

[*Supp. V.* 634.]

COVINGTON. This particular case is not provided for by the testator. The lady survives, but she is married. This, in effect, is, *quoad* the tutory, the same thing as if she were dead.

GARDENSTON. Something not dissimilar was determined in the case of *Scot of Benholme*: a nomination of tutors by a father ought to have the most liberal interpretation.

MONBODDO. There is no distinction in common sense between a single tutor surviving and a single tutor accepting.

On the 21st February 1777, “The Lords found that the nomination of George Sutherland as tutor still subsists.”

Act. Charles Hay. *Alt. D.* Armstrong. *Reporter,* Monboddo.