

1752. *January 7.* IRVING and COPLAND, competing.

No 239.

THE LORDS found, that where diligence had been done by horning against the cautioner within the seven years, it was sufficient to make the cautioner liable for what fell due within the seven years, although the horning had been allowed to expire, and could not be followed forth.

They did not understand that clause in the statute, which provides, ' That what diligence is done within the seven years by inhibition, horning, &c. shall have its course and effect after the seven years,' as if the Legislature had intended to limit the creditor to follow out that specific diligence: For besides that some of the diligences mentioned in the statute cannot be followed out, such an inhibition, which is incapable of being followed forth by its nature, and where no deed happens to be done by the debtor in contempt of it, becomes absolutely useless, the statute will not admit of such a limited construction. For it is statuted, that the cautioner shall be bound for what fell due within the seven years as before making the act; which in other words imports, that whatever would, before making the act, have interrupted a prescription of the bond, must, since the act, preserve to the creditor what fell due within the seven years. And after the statute has declared, that the cautioner shall be bound for what fell due within the seven years as before the making the act, it is not to be conceived, that the further provision subjoined, which is also in favour of the creditor, that what diligence shall be done within the seven years, shall have its course and effect, for what fell due in that time, could be intended to detract from what had been allowed to the creditor by the immediately preceding general clause.

Accordingly the LORDS found as above, agreeable to several former decisions.

*Kilkerran, (PRESCRIPTION,) No 19. p. 423.*

1779. *March 10.* CLARK *against* STUART.

No 240.

FOUND, that executing a summons within the seven years was sufficient to interrupt this prescription.

*Fol. Dic. v. 4. p. 102.*

1780. *February 1780.* WILLIAM REID, and others, *against* STEPHEN MAXWELL.

MAXWELL, as cautioner of Sheills, granted to Reid and others a bond for borrowed money.

Within seven years of its date the bond was registered, and a charge for payment given upon it to the cautioner. But many years had afterwards

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Where diligence is done within the seven years, a cautioner is not