# CASES

## DECIDED IN THE HOUSE OF LORDS,

ON APPEAL FROM THE

# COURTS OF SCOTLAND.

## 1840.

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[21*st July* 1840.]

ROBERT WILSON, Appellant.[1] (No. 7.)

[*Lord Advocate* (*Rutherfurd*) — *Pemberton.*]

JAMES TAIT and others, Moffat's Trustees, Respondents.

[*Attorney General* (*Campbell*) — *James Anderson.*]

*Prescription* (*Septennial*) — *Stat.* 1695, *c.* 5. — A sum of money was lent upon a bond and disposition in security, and by a letter of the same date another party, after stating that such bond had been granted in security of the money lent, "guaranteed" to the parties advancing the money "the payment of the sum contained in the bond, "whenever the same shall be demanded in terms of the "stipulations of the said bond, and that in addition to "the personal and heritable security contained in the said "bond," he being entitled to an assignation at his own expense when required: the bond and disposition in security made no mention of the letter, and contained no clause of relief. The party granting the letter having pleaded the septennial prescription in defence to an action

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[1] 15 D., B., & M., 221; Fac. Coll., 8th Dec. 1836.

for the money lent by the creditors in the said bond, — Held (affirming the judgment of the Court of Session), that he was not entitled to the benefit of the act.

*Caution — Guarantee.* — The term "guarantee" is not equivalent to "caution." (Per L. C. p. 150.)

1st Division.

Lord Ordinary Fullerton.

Statement.

ON 20th October 1826 the trustees and managers of the Brighton Street Relief Chapel in Portobello granted a bond and disposition of the chapel in security of 2,000*l.*, in favour of William Moffat, apothecary, Edinburgh, in liferent, and Miss Moffat, afterwards Mrs. Tait, in fee. The appellant, Mr. Robert Wilson, writer in Edinburgh, the law agent of the chapel trustees, granted, on the same day, the following obligatory letter, addressed to Moffat: "Sir,—The trustees and managers of the "Brighton Street Relief Chapel having granted a bond "and disposition in security for 2,000*l.* sterling to you "in liferent, and Miss Moffat and her heirs and as-"signees in fee, dated this day, over the church and "other ground feued by them in Brighton Street, I "hereby guarantee to you and the said Miss Moffat, and "her foresaids, payment of the foresaid sum of 2,000*l.* "sterling, interest, penalties, and expenses, contained "in the said bond and disposition in security, whenever "the same shall be demanded, in terms of the stipu-"lations of the said bond and disposition in security, "and that in addition to the personal and heritable "security contained in the said deed, I being entitled "to an assignation at my expense when required. In "witness whereof," &c. It appeared from the written evidence in process that the lenders would not proceed with the loan without such letter from the appellant.

Moffat having afterwards agreed to restrict the security to a portion only of the subjects covered by it, Wil-

son, on 20th December 1831, addressed a letter to Mrs. Tait and him, in which, after narrating the bond and disposition, he described his own obligatory letter as "a collateral obligation in your and Mrs. Tait's favour "for payment of the whole sums contained in said "bond," &c.; and consented that the restriction of the security should not prejudice their right "to enforce "the foresaid collateral obligation against me."

In 1834, Moffat being dead, his trustees and Mrs. Tait, as in right of the bond and relative obligatory letter, raised an action against Wilson for payment of the sum in the bond and interest.

The appellant pleaded in defence, that the letter was merely cautionary, and had been avoided by the septennial prescription; and separately, that he was released from his obligation by the respondents improperly neglecting to take steps against some of the principal obligants, from whom the greater part of the loan might have been recovered.

The Lord Ordinary (17th March 1836) pronounced the following interlocutor, with a note annexed:—"The "Lord Ordinary having heard parties procurators, and "considered the closed record and process, repels the "defences, and decerns against the defender, in terms "of the conclusions of the libel; finds the defender "liable in expenses, and allows an account thereof to "be given in, and to be taxed by the auditor.

"*Note.*—It has been repeatedly decided, that obliga-"tions of the nature of that sought to be made good in "the present action do not fall under the act 1695, "c. 5. The very specialty mainly rested on here, viz. "that the obligation is of the same date as the original "obligation to which it refers, and which it is intended

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" to corroborate, occurred in the case of Howison v. " Howison, 8th Dec. 1784 [1], and was disregarded.

" 2d. It does not appear to the Lord Ordinary that " the obligation is properly cautionary, and of such a " kind as to warrant the defender's demand, that the " obligants in the original bond shall be previously dis- " cussed. As between these obligants and the defender, " the latter may substantially be a cautioner; but he is " not bound merely as such by the missive libelled. " By that document he binds himself to guarantee the " 'payment of the foresaid sum,' and 'whenever the " 'same shall be demanded,' and 'that in addition to " 'the personal and heritable security contained in the " 'said deed.' This is not a cautionary, but a collateral " and corroborative, obligation, contracted directly to " the pursuer's author, which places the defender in the " situation of a co-obligant with those bound in the " original bond. In support of this, as the understood. " nature of the defender's liability, it may be observed, " that in the defender's deed of the 20th of December " 1831, agreeing to the restriction of the heritable se- " curity, he expressly describes the missive libelled as " importing not a cautionary, but a collateral, obli- " gation.

" 3d. It does not appear to the Lord Ordinary that " the circumstances which took place, respecting the " attempted sale of the heritable property, afford the " defender the slightest ground for getting rid of his " liability."

The appellant having reclaimed to the Lords of the First Division, the following judgment was pronounced

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[1] Mor. 11030.

by their Lordships:—" The Lords having advised this " reclaiming note, and heard counsel for the parties, " recall the interlocutor reclaimed against, in so far as " it decerns for the full sum of interest on the principal " debt, and finds the defender liable in expenses: Quoad " ultra adhere to the said interlocutor, and refuse the " desire of the reclaiming note, and decern in terms of " the libel, under deduction of ten pounds from each " year's interest of the principal sum during the town's " occupation of the Brighton Street Chapel, in virtue " of the lease referred to in Mr. Meikle's letter of " 24th August 1835, and find no expenses due to the " pursuers by the defender." The opinions of the Judges are subjoined.[1]

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Judgment of Court, 8th Dec. 1836.

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[1] *Lord Bálgray.*—" I think it clear that the act does not apply to " a cause of this description. The letter written by Wilson himself, on " 20th December 1831, expressly describes the letter in question as ' a " ' collateral obligation.' He was a professional man, and that shows " his own understanding of the nature of his obligation all along. I " look upon it as a collateral and corroborative obligation, to which the " statute does not reach.

*Lord President.*—" I take the same view, and I am also influenced in " doing so by the terms of the letter which has been just referred to. " The obligatory letter of 20th October 1826, was plainly granted after " the date of the bond, as it bears in græmio to be given in respect of " the bond having been granted; and although it were but a few minutes " which elapsed between the granting of the bond and the granting of " the defender's obligatory letter, that is enough to exclude the operation " of the statute. It may create a case of great hardship to parties, and " in this instance I think it has done so; but, in point of principle, it is " quite immaterial how long or how short is the interval between exe- " cuting the principal obligation and the collateral obligation. If parties " will execute their contracts according to such a form as to be without " the reach of the statute, they cannot afterwards ask the benefit of the " statute from the Court.

*Lord Gillies.*—" This is a very narrow case indeed, but I am not pre- " pared to alter the interlocutor. If the obligatory letter which refers " to the bond had itself been referred to in græmio of the bond, I think " the statute must have applied to the case. On the other hand, if the " obligatory letter had been dated but one day after the bond, it is clear " that the statute could not have reached it. Between these narrow

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Appellant's Argument.

Mr. Wilson appealed.

*Appellant.*—The creditor in the bond was aware that the appellant was only a surety, as the letter founded

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" limits the point comes to be, whether the obligatory letter, dated on " the same day with the bond and referring to it, and being beyond " doubt pars ejusdem negotii, is within the reach of the statute, or not. " In the case of Howison, the cautioner's obligation was granted on the " same day with that of the principal, and I think it clear enough that " the collateral obligation in that case was treated just as a cautionary " obligation, and nothing else; and also as being pars ejusdem negotii. " That is, therefore, a direct precedent on this important feature in the " present case; and I observe, from the tenor of the defender's letter, that " it narrates the bond and disposition to have been already granted, and " states this as the cause why the defender executes the obligatory letter; " so that the principal obligation was, in point of fact, first executed. It " is true, that at least a whole day did not intervene between them, but " some interval there must have been; and the lapse of a day or part of " a day is often decisive either in such a question as this or in other " questions in human affairs. In less than one day the battle of Phar- " salia was fought and won, and Pompey, who in the morning was lord " of a large portion of the globe, was before night a fugitive and a wan- " derer on the face of the earth. In the present instance, I think the " interlocutor of the Lord Ordinary should be affirmed.

*Lord Machenzie.*—" This is certainly a case which is narrow in the " extreme, and even more so, I apprehend, than has just been stated by " my Lord Gillies. Besides the clear evidence that the obligatory letter " was pars ejusdem negotii with the granting of the bond, to which bond " the letter refers, it will be observed, that by the averments of the pur- " suers themselves they positively say on the record that they declined to " lend the money until it was agreed by Wilson to grant the obligatory " letter in question. That is clearly a letter of express 'guarantee' or " caution, which of course I consider to be equivalent terms; and it is " evident, on looking to the circumstances and to this statement on the " record, that the granting of this cautionary letter was part of the " original contract. As I hold it certain, therefore, that the granting of " this letter was from the first part and parcel of the contract for this " loan of money, and as the letter bears the same date with the bond, " the question comes to be whether it is not equally within the intention " and the enactment of the statute? It may be that the letter in point " of time was signed at a later period of the day than the bond; but in " the whole circumstances, and considering the statement of the pursuers " themselves, I cannot see how this should affect the decision. It re- " mains equally true, that the letter was just a part of the original con- " tract for the loan; the bond and the letter were parts of one and the " same contract. The question therefore comes to be narrowed to this

on stipulates for an assignment of the bond in the event of the cautioner being compelled to pay. Such a stipulation implies, that if payment should be made by the appellant, the debt would not be thereby extinguished, but would only be transferred to a party entitled to relief, as being cautioner for the principal borrowers and debtors. The granting of the cautionary obligation by the appellant formed a part of the contract in virtue of which the loan was made, whereby

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" fine point, whether the statute, which would undoubtedly have reached " Wilson's share in this contract, supposing it to have been embodied in " one and the same deed with the principal bond, is prevented from " reaching it by the circumstance that the contract is expressed in two " deeds, in place of one. The letter refers to the bond, and if a counter " reference in the bond back to the letter be essential, it is difficult to " see how this is not supplied to all intents by the statements of the " pursuers themselves on record, who are in right of the bond. No " words, which could have been inserted in the bond, could more clearly " have made it refer to the letter, than it is proved by that statement to " have had reference to the letter when executed, and when the loan was " finally assented to and completed. I feel very great difficulty in dis- " posing of this question in a satisfactory manner. In the case of " Howison, the cautionary obligation was not expressly of a cautionary " nature, however clearly it may have been understood by all parties to " be so; and that circumstance is a specialty which to a certain degree " renders that case weaker than the present in claiming the protection of " the statute. Still that obligation was of the same date with the prin- " cipal obligation, and was clearly pars ejusdem negotii; and I rather " think it must be regarded as a precedent to this extent, that parties " may evade the statute by merely adopting two separate writings, in " place of inserting the principal and the cautionary obligation in one. " But I feel the point to be so very narrow, in holding that one and the " same contract falls under the statute if executed in one deed, but does " not fall under it if executed by means of two deeds, that, but for the " precedent of Howison, I should have doubted very much whether a " remedial statute should be so restricted in its application. And were " it not for the opinions already expressed to-day, it would be more satis- " factory to my mind to have had more time for consideration before " deciding this case.

*Lord Gillies.*—" The averments of the pursuer, now referred to " by my Lord Mackenzie, are so far from being founded on by the " defender, that he meets them with a qualified denial." (Rep. in 15 D. B. & M.)

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Appellant's Argument.

the case is brought within the statute even in terminis. There is only one expression in the statute that may seem ambiguous, viz., that the cautioner ought to have "either a clause of relief in the bond, or a bond of "relief apart intimated personally to the creditor." The meaning of this merely is, that the creditor must be informed or made aware of the true situation of the cautioner; viz. that he is a cautioner, and not a principal in the borrowing. Accordingly, in the case of Ross v. Craigie[1], "two persons being bound conjunctly "and severally in a bond, the one as principal, the "other as cautioner, the cautioner was found to have "the benefit of the septennial prescription, though "there was neither a clause of relief in the bond, nor "a bond of relief intimated to the creditor at receiving "of the bond, which was thought unnecessary, though "mentioned in the act, the defender being bound "expressly as cautioner." And thereafter, in the case of Douglas, Heron, and Co. against Riddock[2], the Court, while it held, "that the sole object of this clause of the "statute was to inform the creditor of the situation of "the obligants, concurred in finding, 'That as, by the "'bond in question, the petitioner's (defender's) father "'was bound expressly as cautioner, there was no "'necessity for a clause of relief in the bond, or a "'separate bond of relief intimated to the creditor, "'in order to entitle the creditor to the benefit of "'the statute 1695.'" In Scott v. Yuille[3], in the House of Lords, it has recently been found that it is not necessary there should be a clause of relief.

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[1] 11th Dec. 1729, Mor. 11014. [2] 20th Nov. 1792, Mor. 11032.
[3] 27th Nov. 1827, Fac. Col. House of Lords, 5 W. & S. 443.

Although the appellant is bound in the obligation as guarantee, he is in fact a cautioner, as there can be no doubt that the word guarantee is used in the exact meaning of and as equivalent to cautioner; and herein lies the distinction between the present and the single case of Howison[1], founded on by the respondents. The specialty in that case was, that there was no express obligation as cautioner. Now, the act 1695, c. 5. requires this to be expressly stated, and does not leave it to be gathered from the nature of the transaction. The obligation in that case was merely a collateral obligation for farther security; and therefore, though it was of the same date with the principal, the Court rightly held that it did not come under the act 1695, c. 5. No doubt, the obligation is not undertaken in the same writing as that which it was intended to corroborate; but that is not required by the statute, which enacts, that "No man binding and engaging for "hereafter for and with another, conjunctly and seve-"rally, in any bond or contracts for sums of money, "shall be bound for the said sums for longer than "seven years after the date of the bond." Though it must be admitted, from the latter part of this sentence, which makes the seven years run from the date of the principal bond, that an obligation corroborative thereof, executed the day following the date of the bond, would not come under the statute; yet there has been no decision, that, if executed on the same day, it would not come under its protection, because it was not in the same writing. The words of the statute also in-

[1] Mor. 11030.

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clude contracts for sums of money as well as bonds; and it is hard to say, where a party becomes bound for and with another in a contract for money, the stipulations of which are carried into effect on one and the same day, that he should be excluded from the benefit of the statute because not bound in the same deed, when it cannot be denied that these two deeds are parts of one and the same contract, and parties may bind themselves by two bonds in the same transaction. Now, this security, given on account of the previous communing, is executed of even date with the bond and with the advance of the money. It is thus part and parcel of the original contract; and it must therefore be held to come under the terms of the statute, which does not require that partes ejusdem negotii shall be embraced in the same bond. Even if there had been the interval of a day, or longer, still if both documents were delivered to the creditor on the same day the statute ought to apply; the benefit of the statute ought not to be lost because the transaction is completed by two bonds instead of one. If it appear on the face of the transaction that the party is surety with another in the same transaction, then the act does apply.[1] The case of Caves v. Spence[2] related to a subsequent obligation, and not part of the same transaction. The case of Gordon v. Tyrie[3] related to an obligation five years after the transaction. The words "guarantee," "cautioner," and "surety" are synonimous. The statute refers to the case of cautioners, a term derived from the civil law, and which includes every sort of security.

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[1] Ersk. b. iii. tit. 3. s. 61.
[2] 3d Dec. 1742, Mor. 11021.
[3] 16th Nov. 1748, Mor. 11025.

Cautum intelligitur sive personis sive rebus cautum est.[1] The neglect of the creditor to adopt every means of recovering the debt went to relieve the appellant of his obligation.

Appellant's Argument.

Respondents Argument.

*Respondents.*—In the obligation undertaken by the appellant, he is bound as obligant in the same transaction, and not expressly as cautioner, as required by the act 1695; it is established, that a party cannot plead that he comes by implication under that statute; the case Blair v. Dempster[2] decided that the act 1695 must be strictly interpreted, it being a correctory statute[3]; and it is settled that a party must be bound for and with another in the same bond, in order to come under it.[4] In the case of Howison, in which there was this specialty, that the corroborative obligation was of the same date as the principal, there was no question as to whether the obligant was bound as cautioner, for that was evident on the face of the obligation; but the point decided was, that the obligant, even though bound by a missive of the same date as the principal bond, did not come under the protection of the statute, which requires that he should be bound in the same writing. Applying this test of the meaning of the term cautioner, there is no ground to hold the appellant a cautioner. Guarantee is

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[1] Dig. lib. 50. tit. 16. de verb. sig. b. 188.; Heinnecc. ad Pand. lib. 2. tit. 8. s. 299.

[2] 20th Jan. 1747, Mor. 11025.

[3] Dwarris, passim; Ersk. b. iii. tit. 7. s. 22.

[4] Scott v. Rutherford, 9th Feb. 1715, Mor. 11012; Gordon v. Tyrie, ut sup.; Caves v. Spence, ut sup.; and see Kam. Rem. Dec. 54; Hogg v. Holden, 9th July 1765, Mor. 11029.

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distinguishable from cautioner.[1] Being entitled to an assignation by his letter does not show he was cautioner; because co-obligants are always entitled to an assignation.[2] But even if the appellant be a cautioner, he is not so in the sense of the act 1695; for that act does not embrace all cautioners, and does not apply to those who are not bound expressly as cautioners, and who have not a bond or clause of relief. Here the stipulation for an assignation is not equivalent to a clause of relief, which must be granted by the same deed in which the principal is a party, but a stipulation merely for what he is entitled to at common law. Before the act 1695 a cautioner was bound for forty years along with his principal; and the construction is that, unless the cautioner comes up to the letter of the statute, he is not relieved. The terms of the letter of obligation show that the appellant meant himself as an additional obligant. The statute does not reach corroborative securities granted afterwards.

Judgment deferred.

Ld. Chancellor's Speech.

LORD CHANCELLOR.—My Lords, In considering the question in this case whether the defender, the appellant, is protected by the septennial prescription under the statute of 1695., c. 5., it must be recollected that a surety or cautioner may, and very often is, as between himself and the party to be secured, a principal debtor; he undertaking, not in default of the principal debtor, but in the first instance, and at all events, and without reference to the capacity of the party principally concerned, to pay the sum secured to the creditor.

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[1] 1 Bell's Com. 370.

[2] Blackwood, Mor. 3367.

In contracts of this description the liability of such a contracting party is not affected by the creditor knowing that the debt is not the debt of such party, the creditor not having done any thing which may operate as his discharge. Keeping this distinction in mind, the construction of the statute of 1695 seems to be relieved from much of the obscurity which has been supposed to belong to it. It provides a septennial prescription, first, for those who bind and engage for or with another, in any bonds or contracts as express cautioners; secondly, for those who, though cautioners as between the parties contracting to pay, are principals so far as regards the creditor; but in this case the statute does not apply unless there is a clause of relief in the bond itself, which would give the creditor notice of the character in which the party was binding himself, or in a separate bond of relief, of which the creditor has personal intimation at the time of receiving the bond.

If there had not been any decision upon this statute, it does not appear that there should be included within its operation a separate and independent contract, by which a person should bind himself to pay as principal a sum of money also contracted to be paid by another, although such person should not have any thing to do with the original debt, and although the party taking the benefit of the contract should know that such was the fact. The person so binding himself would not be in any respect an express cautioner, nor would he be a co-principal with a clause of relief in the bond itself, or with a bond of relief apart. It may indeed be said, that although he does not answer either of these descriptions, yet, in substance, his situation is that of a co-principal, with his character of cautioner, as

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between himself and the principal debtor, known to the creditor. The obvious answer to that would be, that such a state of things is not provided for by the statute, and that upon principle and authority the statute is to be construed strictly, and its provisions not extended beyond the cases specified.

What then are the facts of this case? The money sought to be recovered by the pursuers, the respondents, was lent upon the security of certain property, and the bond of certain other persons, in which there was no mention of the appellant. By a letter dated on the same day as the other instrument, but stating that the other parties had granted a bond and disposition in security for the money, the appellant guarantees to the parties advancing the money the "payment of the sum con-" tained in the bond and disposition in security, when-" ever the same shall be demanded in terms of the said " bond and disposition in security, and that in addition " to the personal and heritable security contained in " the said bond," he being entitled to an assignation at his expense when required.. One of the learned Judges, Lord Mackenzie, observes upon the term "guarantee," and says it is equivalent to "caution."[1] But the term "guarantee," as used in the appellant's letter, clearly does not express an undertaking that others shall perform what they had contracted to do, but amounts to a distinct contract to pay the sum due, and that on demand; and it was not disputed at the bar that the appellant, if liable at all, would be liable in the first instance, and could not insist upon a previous discussion of the other parties.

[1] Supra, p. 142.

There is no doubt, from the nature of the transaction, that the giving of this letter was part of the contract for the loan. But it is equally certain, that in putting a construction upon these instruments, the bond and disposition in security by the parties borrowing the money must be considered as having preceded the letter of the appellant, for so it is expressly stated in the letter.

Here, then, is a separate undertaking for the sum borrowed, with no clause of relief, but a mere stipulation for an assignation by the creditor upon receiving payment. This is not provided for by the terms of the statute, and there is no room for the administration of any equity under the statute.

But although this appears to be the obvious conclusion from the facts of the case, with reference to the provisions of the statute, it must be seen how far the decided cases are consistent with such conclusions. In Scott v. Rutherford [1] one granting a bond of corroboration, though he had relief, was held not to be a cautioner so as to have the benefit of the act. In Caves v. Spence [2], A. having granted a bond to B. for 50*l*., C. afterwards gave a holograph obligation in these words:—
"Whereas B. did, at my desire, lend to A. 50*l*. con-
"form to his bond, I hereby oblige me and mine that
"A. shall pay the said sum, or else to content and pay
"the same myself to B., he giving me an assignation
"to the said bond;" and it was held that C. had not the benefit of the act. In Gordon v. Tyrie [3], it was held that a cautioner granting a bond of corroboration

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[1] Mor. 11012.
[2] 3d Dec. 1742, Mor. 11021.
[3] 16th Nov. 1748, Mor. 11025.

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could not plead the septennial prescription. In the two last cases the corroborative contract was of a subsequent date; it does not appear whether it was so in Scott v. Rutherford. In the case of Howison [1] three persons had granted a joint bill of the same date; a letter in these terms was written to the person to whom the bill was given: — "Sir, whereas James, John, and "William Young have of this date granted to you a "conjunct bill for the sum of 100*l.* payable one day "after date, therefore for your farther security I hereby "promise that the said sum of 100*l.* and interest due "thereon shall be paid to you or order when de- "manded." It was held that this obligation did not fall within the act.

All these cases, but particularly the last, are directly in point with the present. The Lord Ordinary therefore was justified in saying that it had been repeatedly decided, that obligations of the nature of the present do not fall under the act 1695.

The cases principally relied on by the defender (the appellant) were the cases of Ross v. Craigie [2], Douglas, Heron, and Co. v. Riddock [3], and Scott v. Yuille [4], in this House. But in all these cases the party pleading the statute was a cautioner expressed in the bond; and the only point decided was, that the provision in the statute requiring a clause of relief in the bond, or a bond of relief apart intimated to the creditor, was not necessary in such a case. Those decisions, therefore, are more in favour of the respondents than of the appellant.

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[1] 8th Dec. 1784, Mor. 11030.
[2] 11th Dec. 1729, Mor. 11014.
[3] 20th Nov. 1792, Mor. 11032.
[4] 5 W. & S. 436.

Other cases might be quoted establishing the doctrine contended for by the respondents; and Erskine, in book iii. tit. 4. sec. 23., considers the law to be settled upon several points which appear to govern the present.

The subsequent proceedings, which are relied upon by the appellant as having operated as a release from his obligation, are insufficient for the purpose.

Ld. Chancellor's Speech.

This appeal appears to have no reasonable doubt to support it, and is against an unanimous judgment of the Judges in the First Division of the Court of Session, although not altogether upon the same grounds. I would advise your Lordships to dismiss the appeal, with costs.

The House of Lords ordered and adjudged, That the said petition and appeal be and is hereby dismissed this House, and that the said interlocutors therein complained of be and the same are hereby affirmed: And it is further ordered, That the appellant do pay or cause to be paid to the respondents the costs incurred in respect of the appeal, the amount thereof to be certified by the clerk assistant: And it is also further ordered, That unless the costs, certified as aforesaid, shall be paid to the party entitled to the same within one calendar month from the date of the certificate thereof, the cause shall be and is hereby remitted back to the Court of Session in Scotland, or the Lord Ordinary officiating on the bills during the vacation, to issue such summary process or diligence for the recovery of such costs as shall be lawful and necessary.

JAMES HASTIE — JOHNSTON and FARQUHAR, Solicitors.