

1671 Arnold of Burncoble contra Gordon. Again, a cautioner, in a Bond of corroboracion only Relief as a Cautioner, with the Cautioner in the original Bond: Albeit he claimed a full Relief off that original Cautioner, as being in Effect Cautioner for him 15 December 1720 Murray of Broughton contra the Hon. and Creditors of Orchardtown. If one of several Sureties for the same Debt be insolvent, or his obligation null, or liable to be rescinded, the one of the others might be bound his proportion of the Share of the Surety who is insolvent L. 26 ff de Judoj. or whose obligation does not subsist L. 98 ff de Ed. And where one of them pays the whole Debt, he must in an Action of Relief against the solvent Co-cautioners not deduct his own part of the Debt, as one of the Sureties, but also his proportion of the insolvent Sureties part, Corpore Jurispr. Forane. part 2 const. 17 de p. 20. So one of three cautioners having failed, and another having paid the Debt upon Assignation from the Creditor, is bound for two thirds thereof adjudged the other solvent Cautioners Estates; the Adjudication was brought to the hall 26 July 1705 Lellis contra Crawford, because the insolvent Cautioner was more than was due. But then a distressed Cautioner paying the Debt must communicate to the rest of the Cautioners the Benefit of any Ease got from the Creditor by Transaction 27 July 1672 Brodie contra Kirk. But not such as he got by mere Gratification as a Friend or Friend 8 July 1664 Nisbet contra Leslie; Stat Lib. v. tit. 17 § 13 bors. Cautioners; which 1609 act have no Claim to Share in.

As a Cautioner has Action of Relief against the principal Debtor and the fellow Cautioners so he, if sued by either of them, for debts owing by him to them, may defend himself by Compensation or Retention. This, the Debtor in a Bond having become Cautioner for the Creditor as Factor of the Goods; who pays the Cautionary Engagement before the Term of payment of the Debt, is assigned to another the Debt due to him by the Cautioner. He the Cautioner was found to have Right of Retention of the Debt assigned till he was paid of his Cautionry 14 February 1708 Strachan May; Staty of Edinburgh.

Cautionary Engagements in any Bond or Contract for sums of Money by persons named Cautioners; or having either a Clause of Relief in Bond; or a Bond of Relief in part, intimated personally to the Creditor at his executing of the Bond; continue no longer than seven years from the date Act 5 sess. 5 par. 14. A Creditor in an obligation for Money granted to him by two persons as co-principals having writ and subscribed witnesses to a Bond of Relief by the one to the other; the Acts of the Creditor were found equivalent to a sufficient Intimation of the Relief to him 24 Feb. and 23 June 1714 All Rankin contra Strachan. The a Debtor's verbal Knowledge of an Assignation is not sustained as an Intimation thereof; because Assignations are intimated not simply to notify, but to complete the Right, and determine Compulsions to be met Assignees, or to be met them and Arrestors. As Election is intimated not simply to notify and certify the party, but in order to a further End to draw a certain performance from him. But when simple Notice is designed; and nothing more intended than to let a Creditor know, that one bound as co-principal is but Cautioner, verbal Knowledge or Intimation arising from the Nature of the Affair sufficeth: and is qui coram est certiorari non debet L. 1 § 1 ff de Ac Empli et Gless ibi ad lit. g. y. a persons subscribing a principal Bond for a sum due by himself containing a third parties Assignation in further security, to a subject due to that third party by the principal Debtor; was sustained equivalent to a formal Intimation of the Assignation 20 March 1707 Creditors of Lord Ballindon & Countess of Dalkeith competing. This Immunity due to Cautioners is not carried by a Clause of mutual Relief in a Bond granted by several co-principals bound jointly and severally; which is implied, tho' not expressed; but only, by a Clause obliging one of the Co-creditors to relieve the rest of the whole Debt 21 January 1708 Ballindon contra Moor. Nor is a person obliged by his Letter to procure security to the Creditor in a Bond granted by others, a Cautioner whose obligation lasts only seven years 16 Febry 1719 Moros contra

This Septennial Inducement of Cautionry, is understood only of Cautionry in Bonds of Borrowed Money; and not of Cautionry for Facts or annual prestations 18 January 1709 Balboard contra Watson, or in Contracts of Marriage; or in Clauses of Warrandices or Resignation. nor is a Bond of Corroboracion such a Cautionary obligation as expires after seven years 9 February 1715 Rutherford contra Scot. In which seven years, the part of the Creditors Minority, are not deduced to prescribe the obligation longer 10 December 1712 Strait contra Warr and Douglas. For this is not a prescription of Cautionry. But the Cautioners obligation within the Septennium, is like that of a Husband for his wife's Debt during his Marriage; and as a Husband after dissolution of the conjugial Tie by his wife's death, is no further liable to pay his wife's Debt than in so far as he is a Guarantor by her, or in quantum his Estate her estate or Moveable was affected by Diligence for the same, Staty of Marriages: So a Cautioner after signing of a Bond is only bound by legal Diligence affecting his Estate within that Time for what fell due. But any legal Diligence used against Cautioners within the seven years, stand good and hath its Effect after the seven years Act 5 sess. 5 par. 14. This a Charge of returning upon a Bond granted by a principal and Cautioner within seven years of the date was found good against the Cautioner only for principal and interest that fell due in that Time 7 February 1714 Allgelligie contra Moore. Said Demoucheat at the Horn within the seven years was sustained to make him liable from the date thereof in Time coming, not only for annulment of the principal sum, but also for annulment of those Annulments that fell due within the seven years 29 February 1714 Inver Lojdom. Because the Diligence of Demoucheat makes the sum demoucheat for to bear annulment Act 20 par. 23 § 6.

of Bonds of Corroboracion.

A Bond of corroboracion, is a new Bond to show the former or other obligation granted by the Debtor therein, or any other person, to the original Creditor, or to his Assignee: talibus or Assignee; without prejudice to the former Bond or obligation, or to any Diligence that has followed, or may follow thereupon. A Bond of corroboracion being a new obligation for so, is a sufficient Title to pursue, tho' the principal Bond be lost or amissing, unless it were alleged that the principal Bond is falsified July 1663 Brog contra Brown observed by Gilmore 24 Feb. 1676 Johnston contra Orchardtown observed by Nisbet. For the Maxim non est diluc referenti nisi constat de Reale, holds only where there is a simple reference to a writ; and not where the writ that relates thereto is also disposable; or proceeds to an obligation thereupon vid. infra 1009. One by granting a Bond of corroboracion, may be understood to have renounced and past from objections against the Bond corroborated upon any intrinsic nullities, as the want of witnesses, writers designation or the like: But it is also competent to the Grantor of a Corroboracion, to except that the Debt in the original Bond is not due by being paid or discharged July 1663 Brog contra Brown observed by Gilmore. upon which the Bond of Corroboracion would fall in consequence with the original Bond. Losing ubi principalis causa non subsistit, nec da quæ sequitur locum habent. Thus, it was sustained relevant for one to reduce a Bond granted by his Father bearing borrowed Money, and a Bond of Corroboracion thereof granted by himself; that he offered to prove by the Creditor's Backband in the Hands of a third party, that the original Bond was for no onerous cause, and not to be paid if the Grantor be had himself dutifully to the Recorbor; nor to militate against his Heirs if not pursued in his Lifetime; and the debtor misbehaved, nor was specified: Albeit the son not knowing of the Backband which