

MONBODDO. I never could buy land but with the view of improving it, and I should think it hard were I to get nothing on eviction but the price which I paid.

PRESIDENT. The principle in law is, that, in an action of damages for indemnification, the real loss must be the rule.

On the 7th February 1777, "The Lords found that the defenders are liable to the pursuers in payment of the value of the estate of Edinbellie, purchased by Mr Drummond from Mr Livingston, sold by Drummond to Lord Napier, and now evicted from Lord Napier, as the same stood at the time of eviction, with interest thereof from the time when Lord Napier ceded the possession thereof to Mr Livingston, and in time coming while payment;" adhering to Lord Elliock's interlocutor and to their own interlocutor of 6th August 1776.

Act. D. Rae. Alt. H. Dundas.

1777. February 11. TRUSTEES of THOMAS BOYD against The EARL of HOME.

ACCESSORIUM SEQUITUR PRINCIPALE—PRESCRIPTION.

Diligence used upon a Bond corroborated, found not to save from prescription the relative bond of corroboration.

[*Fac. Coll. VII. 377*; *Dic. Appen. I*; *Acces. Seq. Prin. No. I.*]

COVINGTON. This is not a bond of corroboration, properly so called, but a bond accumulating the debt, principal and interest; and it is a *novum debitum* which may prescribe independent of the original bond. I have a doubt on the other ground, namely, the judgment of the commissioners of inquiry.

MONBODDO. It would look strange if we were to give a judgment contrary to that given by the commissioners. I have always thought that a bond of corroboration is different from an original bond, for the interest is accumulated.

BRAXFIELD. It is a certain proposition, that when a number of different persons are bound in payment of one debt, a document taken against any obligant preserves the bond from prescription against the rest; for prescription is founded on a presumption of payment *juris et de jure*, and a document taken excludes that presumption. If a bond of corroboration were a *novum debitum*, I could understand the distinction suggested; but in truth a bond of corroboration always refers to the original debt. If payment is not made of the original bond, it is impossible that the bond of corroboration can be paid. A document taken against a principal debtor is good against the cautioner; and it matters not whether the caution is in the same bond or in a different one.

PRESIDENT. I admit that diligence done against one cautioner would keep the bond alive against another; but I take the cause as it is before us: here is a *gravior obligatio* than the original one, for the interest is accumulated into a principal sum. Whenever an obligation is entered into, separated from the

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.