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accepted of within a specified time, but only in the usual manner of such letter of offer, which makes use of the terms, "in course of post," as a phrase common to all letters in general. The appellant therefore having sold, was bound to deliver the quantity of spirits above mentioned to the respondent; and the respondent has sustained damage by the refusal to deliver to the amount of £40, to which sum he has restricted his claim.

After hearing counsel,  
LORD ELDON said,—

"MY LORDS,

"The condition on which the offer was made not having been complied with, Stein was entitled to consider it as at an end; I am decidedly of opinion that it would place the offerer on very unequal terms, were it to be left to the person to whom an offer is made to accept it, after a rise perhaps had taken place in the price of the commodity. It was incumbent in this case, upon Farries to use due diligence in answering Stein's letter, which he had not done; and the apology, attempted on the ground of the former course of dealings, had no place in the question, which depended entirely on the latter making the offer, and the answer to it."

It was therefore

Ordered and adjudged that the interlocutors complained of be, and the same are hereby reversed.

For the Appellant, *W. Adam, Ad. Gillies.*

For the Respondent, *Wm. Grant, M. Nolan.*

(M. 11032 et 11045.)

WILLIAM RIDDICK of Corbieton,	.	.	.	<i>Appellant;</i>
DOUGLAS, HERON and Co., late Bankers in	}	<i>Respondents.</i>		
Ayr, and GEORGE HOME, Esq., their Fac-				
tor and Manager,				

(*Et e contra.*)

House of Lords, 2d April 1800.

BOND — CAUTIONARY OBLIGATION — SEPTENNIAL LIMITATION.—

A decree in absence had been obtained against the representative of the cautioner within the seven years, together with certain correspondence had, with his factor, seeking delay to pay the debt; Held the correspondence sufficient to elide the prescription, though no "legal diligence," in the sense of the statute, had followed on the debt *within* the seven years.

William Kirkpatrick, merchant in Dumfries, obtained a

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loan from the respondents' bank of £3000 in the year 1773 ; and Robert Riddick, the appellant's father, and David Currie of Newland, became cautioners for him, by bond conceived in these terms :—“ That by a preliminary agreement between Alexander Johnson, Hugh Lawson and Co., late bankers in Dumfries, and Douglas, Heron and Co., I, the said William Kirkpatrick, was to have a credit for discounts with the said Douglas, Heron and Co., to the extent of £3000 sterling, to endure for seven years, from and after the 29th October 1771 ; and that by subsequent agreement between the directors, ordinary and extraordinary, of the said Douglas, Heron and Co., and me, the said William Kirkpatrick, at Dumfries, 5th day of November last, it was covenanted and concluded, that the said credit for discounts should cease, and that the same should be *converted into a fixed loan for six years.*” And “ that the said Douglas, Heron and Co., have, conform to their said agreement, upon  
 June 4, 1773. “ the date hereof, advanced in loan to me the above mentioned sum of £3000, whereof I grant receipt,” &c. The bond then obliges the principal debtor and his two sureties in the following terms :—“ Therefore, I, said William Kirkpatrick, “ as principal, and we, the said Robert Riddick and David “ Currie, as *cautioners*, sureties, and full debtors, with and “ for me, bind and oblige ourselves, *principal* and *cautioners* “ foresaid, conjunctly and severally, and our respective “ heirs, executors, and successors, to pay and again deliver “ to the said Douglas, Heron and Co., or to their successors or assignees, or to one of their cashiers, the above- “ mentioned sum of £3000 sterling money, against the 29th “ day of October, in the year 1778, with £600 sterling of “ penalty, and liquidate expenses in case of failure,” &c.

Robert Riddick, the appellant's father, died four years after becoming cautioner in this bond. When it fell due, letters of horning were raised on it, against Kirkpatrick the principal, and Currie, the surviving cautioner, but a charge was only given against the former. Nothing further was done. About three years thereafter, Kirkpatrick became bankrupt. Currie afterwards went abroad, having sold extensive estates in Scotland.

In January 1778, an action was raised against the appellant, in order to constitute the personal obligation undertaken by his father against him, and decree in absence upon the passive titles was accordingly obtained against him before the Court of Session, within the seven years in which bonds prescribe against cautioners. Nothing followed on this decree in ab-

sence. But a correspondence was held with the appellant's factor, who sought delay, and promising payment, and £500 was paid to account. It was not until 1790, ten years after the seven years had expired, that legal diligence of any kind was done against the appellant for this debt, when letters of horning were raised, and a charge given to the appellant. He suspended; and, at same time, brought an action of reduction of the decree in absence obtained in 1779. A second action for payment had also been raised by the respondents. These were all ultimately conjoined; and the defence pleaded by the appellant was, 1st. That the bond had incurred the statutory limitation of cautionary obligations. The act 1695, c. 5, declares that "no man binding and engaging for hereafter, for and with another, conjunctly and severally, in any bonds, or contracts for sums of money, shall be bound for the said sums for longer than seven years, the said cautioner shall *eo ipso* free of his caution," with this proviso or exception, "that what legal diligence by inhibition, horning, arrestment, adjudication, or any other way, shall be done within the seven years by creditors against their cautioners for what fell due, shall stand good, and have its course and effect after the expiring of the seven years." 2d. That no legal diligence, in the sense of the act, having been done, either against him or his father, within the seven years, and the decree in absence not being legal diligence, the obligation was prescribed. In answer, it was maintained, 1. That Robert Riddick, the appellant's father, though expressly bound as cautioner, was not entitled to the benefit of the act, because he had not a clause of relief in the bond, nor an intimated bond of relief apart. 2. That legal diligence was done within the seven years, because the decree obtained against the appellant in 1779 ought to be held as legal diligence; and, 3. That, supposing the appellant's obligation fell under the statute, he was barred from pleading it *exceptione doli*; because William M'Dowall, appointed to act as factor by the appellant and his curators, in the conduct of his affairs during his minority, had, within the seven years, solicited delays of payment, and given promises of payment of the debt in question to the respondents' manager, Mr. Home, as was shown by correspondence, and therefore it would now be fraud in him to take the benefit of the statute.

The Lord Ordinary pronounced this interlocutor:—"In July 9, 1791. respect that the said company obtained a decret before the Court against William Riddick within the seven years;

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1800. " finds the letters orderly proceeded in the suspension,  
 " assoilzies them from the reduction at his instance, and in  
 RIDDICK " the ordinary action at their instance against him, decerns  
 v. " for the sums libelled, except as to the expenses, as to  
 DOUGLAS, " which finds expenses due; modifies the same, as hitherto  
 HERON & CO. " incurred, to £12 sterling, and decerns for this sum and  
 " for the full expenses of extract." On reclaiming petition,  
 Nov. 22, 1792. the Court found, " that as by the bond in question, the pe-  
 " titioner'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 creditors, in order  
 " to entitle the cautioner to the benefit of the statute 1695.  
 " But in respect of the correspondence between the pursuer  
 " and the factor for the petitioner's curators, they find, that  
 " the petitioner is barred *exceptione doli* from pleading  
 " the *benefit* of the statute; and *separatim*, in respect of  
 " the decret of constitution 28th January 1779, obtained  
 " within the seven years, they adhere to the interlocutor of  
 " the Lord Ordinary reclaimed against, and refuse the de-  
 Mar. 1, 1793. " sire of the petition." \* On a second reclaiming petition,  
 the Court " find that the decret of constitution 28th Janu-  
 " ary 1779, could only have the effect to make the defender  
 " liable for the principal sum and interest falling due  
 " within the seven years; but in respect of the correspond-  
 " ence between the pursuers and the factor for the defend-

\* Opinions of the Judges:—

LORD PRESIDENT CAMPBELL.—“ This is a question on the septennial limitation of cautionary obligations, and whether it was stopped by decree.—*Vide* the case of Stephen Maxwell v. Reid, 9th February 1786. There seems to be nothing in the two first points pleaded in the answers. But the third point, as to the effect of the letters or correspondence, none of them are very explicit, yet all of them infer an acquiescence on the part of M'Dowall in the justice of the demand, and some of them, within the seven years, seem virtually to homologate the debt. But the question still remains, if the effect of such an acknowledgment could last more than seven years.—*Vide* the decisions in Kilkerran and Dalrymple. The charge of horning was not till December 1790, after another seven years had elapsed. 4th Point.—The effect of the decree in January 1779. A decree constituting the debt against the heir seems to be sufficient diligence. Erskine probably had not that case in view, and he quotes no authority. But he and Bankton are not at one in their opinion; and the question concerning the effect of a simple decree against the cautioner here, within seven years, without any other diligence, has never yet been settled.”—President Campbell's Session Papers, vol. 69.

“ er’s curators, they adhere to that part of their former  
 “ interlocutor reclaimed against, finding the petitioner bar-  
 “ red *exceptione doli* from pleading the benefit of the  
 “ statute, and in so far refuse the desire of the petition.”

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Against the interlocutors of 9th July 1791 and 22d Nov. 1792, and 1st March 1793, the present appeal was brought,—the respondents on their part bringing a cross appeal, as to the finding in the interlocutor of 22d November 1792, declaring that as the appellant’s father in the bond in question was bound expressly as cautioner, there was no necessity for a clause or bond of relief, to entitle the cautioner to the benefit of the statute; and to the interlocutor of 1st March 1793, finding that the decree of constitution could only have the effect of making the defender liable for the principal sum and interest falling due within the seven years.

*Pleaded for the Appellant.*—The act 1695, c. 5, is a statutory discharge to the cautioner upon the expiration of the seven years, just as complete and effectual as if the creditors had given him a voluntary discharge and acquittance, by a writing under their hands, unless the case can be brought within the proviso of legal diligence. Upon a recital in the preamble of the act, of the evils of suretyship, and men’s facility to enter such cautionary engagements, the statute enacts, That no cautioner, in any bond for sums of money, “ shall be bound for the said sums for longer than  
 “ seven years after the date of the bond, but that from and  
 “ after the said seven years, the said cautioner shall be *eo ipso*  
 “ free of his caution.” And it adds only one exception, being that of legal diligence done within seven years. This is not a mere prescription, but an absolute and *ipso jure* liberation of the cautioner after the seven years, the statute declaring the cautioner *eo ipso* free, as if no obligation had ever existed. The question then comes to be, has there been any legal diligence done in the sense of the statute, in order to bring the case within the exception? In considering this question, the ordinary rules applicable to the interruption of prescription cannot here apply, because it is a limitation which operates an absolute extinction of the obligation; and, therefore, though the cautioner should, within the seven years, have granted a declaration that he stands bound for the debt; or, although an action be brought, and even decret obtained, still that will not be diligence in the sense of the statute, so as to stop the effect of the statutory limitation.

So the law has been laid down by Erskine, B. iii., tit. 7, § Edgar, p. 39.  
 24. In the case of *Norrie v. Porterfield*, 17th February Mor. 11013.

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1724, subscribing a note at the bottom of the bond within the seven years did not exclude the cautioner from pleading the statutory limitation. And, in Carrick *v.* Carse, a cautioner, having through ignorance of the law, paid the debt, after the seven years, was found entitled to claim repayment. Neither the decree therefore obtained in absence against the appellant within the seven years, nor the letters and correspondence had with his factor, while in minority and under curatory, are legal diligence in the sense of the statute; nor can they come under the words, “*or any other way,*” because the words following a particular enumeration of diligence, must be interpreted as meaning diligence of some other kind of the nature of diligence, which is a technical term known in the law of Scotland, and signifies a mode of execution by which the estate of the debtor is attached. But an action and decree in absence is not legal diligence, far less the correspondence of a third party. A decree in absence is in many cases of no effect in law. It is not legal diligence, for this is a term synonymous with execution. And if a decree is not so, neither can the correspondence of a third party, in any rational view, be construed to mean “legal diligence.” And in regard to the *exceptio doli*, there is not the least vestige for supporting such a plea in bar of the statute. And, finally, in regard to the cross appeal, it has been decided over and over again, that those who are bound expressly as cautioners have the benefit of the act, although there be no clause or bond of relief, which latter are only necessary where the party is bound as co-principal and full debtor.

*Pleaded for the Respondent.*—The act 1695 is inapplicable to this case, which is that of a corroborative obligation, and not a security for money instantly advanced. The appellant, besides, is not a cautioner within the meaning and sense of the act, because the bond contains neither a clause of relief, nor is there a separate bond of relief intimated to the creditor. And even supposing it otherwise, the appellant would still be barred from availing himself of the benefit of the statute, because, by the correspondence founded on, he is barred *exceptione doli* from taking the benefit thereof. He is further barred by the decree in absence obtained against him within the seven years; for though a decree in absence is in general subject to review, yet, until set aside, it is effectual in law, and must either come under the term, legal diligence, or the words, “in any other way.”

After hearing counsel,

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LORD ELDON said,—

“ My Lords,

“ The question at issue, by this appeal, arose upon the following circumstances:—In 1772, Mr. Kirkpatrick, a merchant in Dumfries, was indebted, upon a balance of accounts, to Messrs. Douglas, Heron and Co., in the sum of £3000. For this sum, he executed a bond to them in 1773, in which the appellant’s father and a Mr. Currie were his cautioners. The term of payment was more than five years after the date of the bond. By an act of the Scots parliament in 1695, this bond expired as to the cautioners, and became a nullity as to them, in June 1780, if certain transactions which were had upon it in the Courts, and certain transactions between the parties, do not take it out of the statute.

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“ The appellant’s father having died ; after his death the bond was registered in 1778, and a horning raised against Kirkpatrick and Currie, on which a charge was given to Kirkpatrick. The appellant being then a minor, the respondents, in 1779, took a decree against him for payment of the bond, on what is termed the passive titles, but no horning was raised upon it. This decree found that the appellant represented his father, and that the bond was due.

In 1779, a new action was brought against the appellant on the original bond, without taking notice of the former decree, and concluding against the appellant for payment of the bond, deducting a partial payment made therein, which was a material circumstance. The appellant, in defence, pleaded that the bond was cut off by the act 1695. In reply, the respondents founded on the decree 1779, contending that this was legal diligence, and brought the bond under the exception of the act. The appellant then brought a reduction of the decree of 1779 ; and the respondents, in 1790, gave him a charge of horning on that decree, which the appellant brought under review by suspension. These three actions were conjoined. By a subsequent process, the parties were furnished with the letters of correspondence, which I shall afterwards allude to more particularly.

“ The points which arose between the parties, and which the respondents insisted upon were, 1. That this was not a bond within the meaning and intent of the act 1695, not being for money advanced at the time. 2. That the appellant could not claim the benefit of the act, because he had no claim of relief, or separate bond of relief. 3. That the decree of 1779 was legal diligence to take the bond out of the statute, and to enforce payment of it, with seven years interest, or with interest till payment. 4. That the appellant was barred *exceptione doli* from pleading the statute ; and, in support of this, they referred to the letters and correspondence between the parties, and, on this ground, they insisted that interest was due till payment of the bond.

“ On the first point, it was answered, that the bond was clearly

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within the statute, being for payment of money, which was all that the act required. With regard to the claim, or separate bond of relief, it was contended that these were unnecessary, because it appeared on the face of this bond that Riddick was a cautioner, which was equivalent to the clause or bond of relief mentioned in the act. The appellant insisted that a decree was not legal diligence in terms of the act, and even if it were, he has since argued, that by some error in the proceedings no such decree existed, it being a mere nullity. He contended too, that there was no ground for the *exceptione doli*, and that he had not lost the benefit of the act.

Ross v. Crai-  
gie, Dict. vol.  
II. p. 116.  
(Mor.11014.)

“ With respect to the first point, though it is not my intention to give an opinion on some points of the cause, yet I conceive I do not go too far when I say, that, in my opinion, the act does not require the money to be immediately advanced, and that this objection is ill founded. And as in 1729 a decision was pronounced, finding that there was no necessity for a clause of relief, or separate bond of relief, if it appeared on the face of the bond that a person was a cautioner, you will not think I go too far, when I say that it is now too late to go against that decision.

“ With regard to the objection, that the decree was a nullity, it is not my wish to enter into this; it was not brought before the Court of Session, but first started before your Lordships. If it were necessary here to enter upon it, it is not too late to do so. On the point, whether a decree be legal diligence or not, if it were necessary to enter into it, we should undoubtedly have paid great respect to an unanimous decision of the Court on a point of practice, yet, when I look at the statute, and at the authorities which are adduced by the appellant on the subject of confining legal diligence to the *executorials* of the law, I should have found difficulty in reconciling these authorities, and the conviction of my judgment upon them, with the decision of the Court.

“ But, if my view of what rules the case be well founded, it is not necessary to enter into that matter. I doubt, whether what I deem to be the ruling point in this cause, be well expressed by the words *exceptio doli*. If the appellant had given the respondents hopes of payment, to prevent their doing diligence, with a view of afterwards pleading the statute, that would undoubtedly have been *dolus*; but the parties acted with good faith, distinctly meaning to pay the bond, which they had over and over again promised to do, and which promised the appellant, when he came of age, fully confirmed, and intended to perform.

“ (His Lordship here stated the interlocutors appealed from.)— The interlocutor of the Lord Ordinary was founded entirely on the decree being legal diligence. The first interlocutor of the Court stated a new principle, the *exceptio doli*. The second interlocutor of the Court against the appellant, I suppose to mean this—if you take under the statute, you get your principal and seven years' interest;



but if it is on the correspondence, it is out of the statute, and you shall take the interest till the principal is paid.

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“ The appellant has brought his appeal against these interlocutors ; and the respondents have brought their cross appeal against those parts of the interlocutors which find that the cautioners in the bond in question came within the operation of the statute, and that the decree 1779 could only have the effect to make the defender liable for the principal, and interest within the seven years.

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“ On these propositions I do not object to give an opinion, that I think the Court were right upon these points ; but if the cause is to be decided, as I think it ought to be, upon the correspondence, it is taken out of the operation of the statute altogether. I put the question for determination thus,—Supposing no decree had been taken, or that a decree was not legal diligence, Whether or not, under the circumstances of the case, and the correspondence that was had, the appellant, though a cautioner, and after the lapse of the seven years, was still bound to pay the principal, with interest down to the time of payment ?

“ Your Lordship will recollect that by the acts of Parliament in Scotland, applying the forty years’ prescription to bonds, a bond was made of *no force* after the lapse of forty years. I conceive that a bond of caution came originally under these acts; but by the act 1695 it was put under a new regulation, and the act declared that after a lapse of seven years, the cautioners should be *eo ipso* free,—which was, in other words, declaring that the bond was of *no force*. To this act was added an exception, which seemed necessary, to avoid a mischief which would have been as great as that which the act proposed to remedy, viz. that if certain kinds of diligence were done within the seven years, that diligence should have its course after the seven years were expired. But the statute does not determine what the conduct of parties should be subsequent to the seven years, and it is wrong to say that no act of the cautioner could keep alive the bond, except legal diligence was done upon it.

“ I confess I was surprised when I read, in this case, that the act not only respects cautioners, but also the public. I allude to the case, where it was held that a person was not allowed to decline the benefit of the statute. If this was founded in public justice, no bond of corroboration could stand, as being out of the statute ; and if it be matter of public policy, it is singular that a cautioner paying the bond has a remedy against the co-cautioner for forty years. In this country he would only have the same remedy which the creditor had against himself.

Norrie v.  
Porterfield,  
Feb. 19, 1724.  
Edgar, p. 39,  
(Mor. 11013.)

“ Notwithstanding what is laid down by Erskine and Forbes, yet if the case of Wallace and Campbell be a good decision, it is impossible to say that a promise of payment does not take it out of the statute. In that case, after the lapse of seven years, a cautioner paid a debt, and the question arose, whether this was a voluntary payment or not? The Court said, that if the cautioner promised to pay with-

Kilkerran, p.  
423, 1749.  
(Mor. 11026.)

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Mor. 2931,  
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in the seven years, the statute would not apply, and that there was no reason to say that a cautioner might not be bound by a promise, as well as by a bond of corroboration. And, in this case, the Court decided against the cautioner, not because there was, but because there might have been such a promise.

“ In the case of Carrick *v.* Carse, the question was totally different, not whether a debt could be kept alive against a cautioner by his promise, but whether or not a party, after the lapse of the seven years, still thinking himself bound by the statute, had a right to get back the payment he had made in ignorance of the law.

“ The present case bears no resemblance to that of Carrick *v.* Carse. When payment of the debt was demanded here from those acting for the minor, they were anxious to deliver their pupil's estate from the diligence which was threatened. They with solicitude entreat a delay, while they could not but know that they were addressing themselves to a creditor, who must understand them as craving indulgence for their pupil's benefit.

“ Having stated this ground of difference between the two cases, I may enquire, whether or not there has been any fraud in the present case. In my opinion, it is not a correct mode of stating the ground of decision, to place it on the head of fraud. After a series of promises, which, I doubt not, were meant to be kept, it still was not absolute fraud to found upon the statute. The rule of law is not to be found in fraud, but in the promises repeatedly made by the factor, and which Riddick approved of and acceded to, when he came of age. These, in my view of the case, bound him, though the decree were not legal diligence. After the decree, too, £500 were paid, and another considerable sum.

“ After the expiration of the seven years, Mr. Home's letters consist wholly in threats, and on the other side there are no promises of payment, but, before the lapse of the seven years, it is impossible to deny that payment was not refused. It is stated that ruin to the pupil must be the consequence of rigorous measures; Mr. Home is requested to deal with Kirkpatrick, and a promise is made to club a payment of £1000 with Currie. The solicitations for delay are repeated in many letters, when each party must have understood that the one was asking, and the other granting an indulgence.

“ In answer to this, the appellant contends, that asking an indulgence is not sufficient. But in this, in my opinion, he is wrong; it was a promise to pay under such a statute, an express undertaking, that if the other party would forbear doing diligence, they should not be the worse for it.

“ The correspondence still continues after the expiration of the seven years; Riddick settles with his factor for all his dealings, and thanks him for the attention paid to his affairs. In my opinion, his thanks were particularly due to the factor, for his conduct in this transaction. But this is not all, he proceeds to operate his relief

against Kirkpatrick, considering himself liable as far down as 1784 or 1786. In my opinion, it is perfectly sufficient on the respondent's part, if your consciences are satisfied, that the one party understood he was undertaking for a future payment, on condition of the other's granting him an indulgence, and this other had the same ideas on the subject, and it is obvious, that if the conversations which took place at various times between the parties could have been given in evidence, you must have seen promises of payment often repeated.

“ On these grounds, I state that it is not necessary to say, whether the decree be legal diligence or not, to lay anything on the *exceptio doli*, nor to decide on the merits of the cross appeal; but, attending to the case of Wallace and Campbell, the safe ground of decision seems to be, the promises of payment which take this case out of the statute 1695. It is this act alone which narrows the payment of interest to seven years, and as the statute does not apply, of course interest will be due till the principal is paid.

“ I therefore move that the interlocutors be affirmed, leaving out the words “ *exceptione doli*.”

LORD CHANCELLOR LOUGHBOROUGH said,—

“ I shall trouble your Lordships only with a few words, not wishing to abridge what has been so ably stated. I concur with the noble and learned Lord on the two points which he has submitted for decision.

“ I find little difficulty in concurring with the Court, that this bond must be held to be within the statute, and that, in a case upon the statute, the interest must be confined within the seven years.

“ The appellant stated other two points, namely, that the decree was erroneous, and that a decree was not legal diligence in terms of the act. On these points, I confess I feel total doubt and uncertainty; on the one side, we have the unanimous decision of the Court on a point of pure practice;—on the other, we have a very able argument of the appellant, supported by decided cases, by authorities from the law writers, and by instances of similar expressions in other statutes. None of these, however, are necessary to the discussion of the present case; and I trust your Lordships will think it more advisable, in a case of appellate jurisdiction, where there is a point of paramount consideration, not to interpose your authority, either for or against propositions which do not necessarily call for your discussion.”

It was

Ordered and adjudged that it is unnecessary to decide upon the question debated before the Lord Ordinary, and decided by his interlocutor 9th July 1791, and which was affirmed by the Lords of Session, 22d November 1792 and 1st March 1793. And it is further declared, that it is unnecessary to decide upon the parts

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of the interlocutors complained of by the cross appeal, in respect of the transaction which is proved by correspondence between the respondents and the factor of the late appellant and his curators, and which is established to have been approved by the late appellant, whereby he is barred from insisting on the benefit of the act 1695; and, on this ground, it is ordered and adjudged, that the rest of the interlocutors complained of in the original appeal, be affirmed, with the following variations, viz. in the interlocutor of 22d November 1792, after the word (barred) leave out (*exceptione doli*), and in the interlocutor of 1st March 1793, after the word (barred) leave out (*exceptione doli*). And it is further ordered that the said cross-appeal be dismissed this House.

For Appellant, *W. Grant, Matthew Ross.*

For Respondents, *Ro. Dundas, Geo. Ferguson.*

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MESSRS. SAMUEL BIRNIE & Co.,	<i>Appellants ;</i>
MRS. HELEN WEIR, Bleacher at Longloch,	<i>Respondent.</i>

House of Lords, 16th May 1800.

**SALE—IMPLIED WARRANTY—THE GOODS MUST BE FIT FOR THE PURPOSE FOR WHICH THEY ARE BOUGHT.**—In this case, certain potashes were represented as of equal efficacy with the American potash, for bleaching and whitening clothes, and much cheaper. A party bought several casks, on the faith of this representation. In using them, they whitened the clothes equally well, but the goods, after being sent home and unpacked, when exposed to the atmosphere, lost their white colour, and assumed a reddish or bluish colour, according to the humidity of the atmosphere. In an action for the price, conjoined with an action of damages raised by the buyer; held that she was not liable in payment of the price, but entitled to damages, and damages awarded accordingly.

The respondent had for many years carried on the trade of bleaching, and had been in the practice of using the American potash, which was generally used for the purposes of bleaching. Having heard that the British potashes, as manufactured by the appellants Messrs. Birnie and Co., which had been advertised as far cheaper, and equal in quality in producing the same effects with the American pot-