

## S E C T. VIII.

## Cautioner in a Suspension.

1620. *January 23.* KINNINMOUTH *against* L. CRAIGIEHALL.

AN assignee charging, and the letters suspended upon caution, he having reponed the cedent, and the cedent charging of new, the party obtained suspension without caution, in respect of the first cautioner, who was declared to stand bound to the cedent, being retrocessed:

*Eol. Dic. v. 1. p. 128. Hadington, MS.*

\* \* \* *See This case voce* PROCESS.

No 66.

In a second suspension of the same debt, a new cautioner is not required.

1623. *February 18.* BLAIBURN *against* DRYSDALE.

ONE Blaiburn in Inverkeithing having obtained decret against Drysdale, for poinding of the ground of a tenement of land, for satisfaction of the bygones of an annualrent, which Blaiburn had by infetment out of that tenement; which decret being suspended, and at the purchasing of the suspension, another Drysdale being enacted cautioner for payment of these bygones, conform to that decret, after this suspension was discussed, and the letters found orderly proceeded; the party raises charges upon the act of caution, and charges the cautioner to make payment of the bygones foresaid contained in his decret, for the which the tenement was decerned to be poinded; these charges being suspended by the cautioner, the LORDS found this reason of his suspension relevant, *viz.* that the cautioner could not be personally charged for payment, seeing he could not be obliged as cautioner to do any further than his principal might be compelled, and he could not be charged personally, seeing the decret given against him was only real for poinding of the ground, and not personal to make payment, and consequently the cautioner could not be astricted to any further. This reason was found relevant, and all personal execution and charges of horning against the cautioner were suspended; albeit in his act of cautionry he had obliged himself to make payment, which the LORDS found behoved to have relation to the decret, which bore only real execution, and declared that the cautioner remained obliged, to make that ground poindable, and answerable to the satisfaction of that annualrent contained in the sentence; so that if the party should be frustrate in the execution of his poinding, or comprising, the cautioner was holden and stood obliged for the same, but that he could not be summarily charged by letters of horning.

Clerk, *Hay.*

*Fol. Dic. v. 1. p. 129. Durie, p. 47.*

No 67.

The cautioner cannot be further liable than the suspender; so, tho' a cautioner had become bound to pay bygone annualrents, there being no personal conclusion against the suspender, the cautioner found only liable to warrant the infetment of annualrent.