

S E C T. II.

In what cases a Cautioner may remain Bound, where the Principal gets Free.

No 4.

1612. *December.* ——— *against* CRIGHTON.

A BOND was found simply null, because not subscribed by the principal, although subscribed by the cautioner.

Fol. Dic. v. 1. p. 124. Haddington, MS.

* * * *See This case voce* WRIT.

No 5.

A cautioner was bound, although the principal was not, the debt being an account subscribed by a married woman, without her husband. The cautioner could have no relief from the husband.

1623. *November 28.* SHAW *against* MAXWELL.

IN an action betwixt Shaw and Maxwell, for payment of a sum contained in an account of merchant furnishing, which was subscribed by the woman to whom the furnishings were made, and by a cautioner for her:—THE LORDS sustained this action against the cautioner, albeit the woman, who was the principal, had an husband at the time of the furnishing, and at the time of subscribing of the account by her, who had not subscribed the same; and the cautioner was found to stand effectually obliged, albeit the principal was not so bound, the account not being subscribed by her husband; and albeit the cautioner could not pursue the principal for his relief, for the same reason. *See* HUSBAND and WIFE.

Act. ———. Alt. *Belibes.* Clerk, *Gibson.*

Fol. Dic. v. 1. p. 124. Durie, p. 83.

No 6.

A cautioner was found liable, who had bound himself in an act of curatory, though the act of curatory was informal; but the party meant to be curator had intromitted.

1627. *November 20.* ROLLOCK, FINLAY'S Relict *against* CORSBIES.

IN an action moved by Jean Rollock, as executrix to umquhile Patrick Finlay, her husband, against Corsbies, as executors to umquhile Corsbie their father, who was cautioner for Walter Finlay, curator to the said umquhile Patrick, *de fidei administratione*, for payment to her of 400 merks received by the said Walter, curator foresaid, for his said pupil: THE LORDS sustained this process and action against the executors of the cautioner, albeit it was *alleged*, that in this case of cautionry for curators, the LORDS are not in use to sustain process against the cautioner, until the curators' selves be fully discust, both in their persons, goods, and lands, and till that be fully done, the cautioner cannot be convened; which allegiance was repelled, and the process sustained against the cautioner's executors; but the LORDS declared, that they would give