

(DUE TO CAUTIONERS, &c.)

bond, having paid the sum; in the which bond, the principal is obliged to relieve the cautioner of all cost, skaith, and damage, to be incurred by him through his cautionry; the bond being of the nature of a moveable sum, and bearing no annual:—THE LORDS found, that the cautioner might seek his relief, and charge, for payment to him of the annualrent of the principal, for all terms since he made payment thereof to the creditor, albeit he had not sought his relief, and payment thereof many years, and albeit it was a great space after the payment of the principal sum, without any charges of horning, or pointing, or other distresses; seeing the LORDS found, that he being obliged, and the bond registrate, and thereafter payment made, that was a sufficient distress, without any more, to produce this action for relief of the annuals against the party obliged.

Act. Belsbes.

Alt. Nisbet.

Clerk, Hay.

Durie, p. 62.

No 55.
registration
of the bond,
sufficient dis-
tress to en-
title the cau-
tioner to
claim annual-
rent of the
sums paid out
by him for
the principal
debitor.

1627. January 16.

CRANSTON against CRICHTON.

CRANSTON of Moreston pursued the Laird of Frendraught for the principal sum of 500 merks, paid by him as cautioner for the defender's grandfather, 1611, and for the annualrents thereof ever since.—*Alleged*, He ought to be affoizied from the annualrents, because the principal debtor was only bound to relieve the cautioner of the principal sum; and the bond bore not annualrent. And, for the Lords statute 1610, it is only in favours of such creditors as are compelled and forced to pay; but voluntary payment, made by a cautioner undistressed, will not be a good ground to crave annualrent by virtue of that statute; but so it is, that the pursuer paid uncompelled or distressed.—*Replied*, That the day of payment being past, and the bond registered, it was a sufficient distress for an honest man, and he needed not abide a charge of horning; *nam dies interpellat pro homine*.—THE LORDS repelled the allegiance, and found that annualrent was due after payment made by the cautioner.

Fol. Dic. v. 1. p. 43. Spottiswood (USURY), p. 353.

No 56.
The same
found.

1627. January 24.

L. WAUCHTON against L. INNERWEEK.

IN an action of the L. Wauchton's against the L. Innerweek younger, for repayment of some sums paid by the pursuer, as cautioner for the defender, with the ordinary annualrent therefor, since the time of his payment thereof, according to the act of Session, anno 1590:—THE LORDS sustained this action, for the annualrents acclaimed, albeit the pursuer was not compelled by charges of

No 57.
The same
found.