

No 5. failzie, he ought to fulfil the obligation, by and attour the paying of the failzie; but superseded the execution, while the day came.

Clerk, *Hay*.

Fol. Dic. v. 2. p. 53. Durie, p. 510.

1632. June 14. ALEXANDER CLARK *against* CAIRNCROSS, &c.

No 6.

GEORGE LAMBIE of Dunkenny having borrowed from Alexander Clark of Logie 1000 merks, for which there should have been cautioners for him, William Halyburton, and other two, who, because they were not present the time of subscribing of the bond, Dunkenny and Nicol Cairncross with him, and other two, obliged themselves to cause the absent cautioners subscribe the bond betwixt and the 15th of August following, 1629; and, failing thereof, to content and pay to Alexander L. 100. Alexander charged Cairncross, &c. for fulfilling of their bond; who suspended upon this reason, that they could not make the cautioners subscribe, but were content to pay the L. 100 *loco pena*.—THE LORDS found the letters orderly proceeded, for fulfilling of the whole bond, and would not free them for paying of the L. 100 of penalty.

Fol. Dic. v. 2. p. 54. Spottiswood, (CONTRACTS, &c.) p. 69.

* * * Auchinlock reports this case.

ALEXANDER CLARK charges Nicol Cairncross of Balmasharmor, Thomas Anand of Persie, and James Lyal, to fulfil a bond made to him by the Laird of Dunkenny and the foresaid persons, wherein the Laird of Dunkenny obliges him, and the said persons, to cause certain persons subscribe a bond of 1000 merks to the said Alexander Clark, as cautioners for the said George Lambie of Dunkenny, betwixt the date of the bond and Lammas thereafter; and, failing thereof, bound and obliged them to content and pay to the said Alexander Clark the sum of L. 100 at Martinmas thereafter. They suspended; and are content to pay the penalty of L. 100, as the said bond bears; but the LORDS found the letters orderly proceeded, for causing the cautioners subscribe, notwithstanding of the adjacent penalty.

Auchinleck, MS. p. 149.

1634. March 5. MURRAY *against* LORD BLANTYRE.

No 7.
Found in conformity with Aiton against Paterson, No 3. p. 10034.

By a minute of contract subscribed betwixt these parties, the Lord Blantyre sells the lands of Calderhall, &c. to Ronald Murray, for a sum, and the parties