

CAUTIONER.

SECT. I.

When understood Cautioner, when *Expromissor*.

No 1. 1661. *June*. HUME *against* LOCKHART of Lee.

A PERSON who wrote a letter to another's creditor, desiring him to delay Mr Douglas for the price of the horse till Whitsunday next, and he would see to his paying of it to the creditor, found liable as cautioner, and not as *expromissor*; because Douglas was not liberate, and the letter was *personaliter* conceived; but found liable only *subsidiarie*, after discussing of the principal party by horning and caption.

Fol. Dic. v. 1. p. 123. Harcarse, (CAUTIONER.) No 234. p. 56.

1693. *January 20*.

JOHN DOWALL, as Assignee by LAUHLAN LESSLY, *against* SIR JOHN HOME of Blackader.

No 2.
An obligation granted by a third party to a creditor, to cause the debtor pay, or else to pay the debt himself, was found to be fidejussory only; and that any exception competent to the debtor, was competent to him as cautioner.

THE LORDS found, *imo*, That the tenor of Blackader's bond, to cause the tenant pay, or else he should pay it himself, being *fidejussoria et ad factum præstandum*, he was only *expromissor* and cautioner, and that any exception that was competent to the tenant, who was here in place of the principal, was also competent to Blackader: But, *2do*, found that this bond was special as to the rent of the year 1666, extending to L. 2200, and was liquidate by the subsequent year 1667; and so, though the tenant had the benefit of the prescription of five years, introduced by the act of Parl. 1669; yet Blackader could not cloath himself with that defence; because, his bond being special *quoad* that year, he fell within the exception of the said act, and had not the benefit of the prescription; but found as to the rests due before the 1666, he was not liable, because they were general and indefinite: And as to the year 1667, he could not be liable, though it was special, because the term of payment of that year's rent was