

- No 2. That they should not use execution against the said Arnots, who were *correi debendi*, which being *pactum de non petendo*, is equivalent to a discharge of their parts of the debt, and consequently makes the comprising null and extinct, at least as to the two parts : It was *answered*, That the reason of reduction is not relevant, because all three being bound conjunctly and severally, it was lawful for Gourlay to use execution against any one, or all, at his pleasure ; and in the assignation, he might also provide, That the assignees should not use execution against two of them, but the third only, which noways did exoner the third *Correus*, unless the assignation had granted the receipt, of the other two, of their parts, and had discharged them thereof ; and that provision of not using execution against the two, could not impede the third, who was distressed, to seek his relief against them, notwithstanding of the said provision, unless they had paid and been clearly discharged.

THE LORDS found the answer relevant.

*Fol. Dic. v. 2. p. 18. Gilmour, No 145. p. 104.*

1680. July 10. LEITCH *against* HEDDERWICK.

No 3.

A *pactum de non petendo*, made to a principal, frees not the cautioner.

*Fol. Dic. v. 2. p. 18. Stair.*

\* \* \* This case is No 10. p. 2077. *voce* CAUTIONER.

1685. February. WOOLMET *against* FLEEMING and CUNNINGHAM of Barns.

No 4.

Found in conformity with M'Math *against* Monteith, No 2. p. 9449.

CUNNINGHAM of Barns being cautioner in a suspension for John Wilkie and others, wherein a decret was obtained, but again suspended by Wilkie and Barns ; in which suspension, Hog and Bigger of Wolmet were cautioners ; the creditor in the bond assigned the same against the principal and cautioners therein, and against the cautioners in the second suspension, but not against Barns, the cautioner in the first suspension, whom he discharged. The assignee having pursued Hog, who *alleged*, That he being cautioner for Barns, who was a suspender, and principal *quoad* him, and Barns being discharged, he must be free also ;

*Answered* for the pursuer ; The discharge given to Barns was without an onerous cause, and but *pactum de non petendo*, which cannot profit the defender.

THE LORDS found the answer relevant.

*Fol. Dic. v. 2. p. 18. Harcarse, (CAUTIONERS.) No 244. p. 58.*

See APPENDIX.