

and the co-cautioners, apply the infestment for security of other debts due to himself.—*2d February 1687, Daniel Nicolson against Provost Kinloch* :—Also, *eodem die, Marshall against M'Kell, and Creditors of Clackmannan against Newton ; Bruce's Creditors, and Langton's case.*

*Page 59, No. 245.*

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1687. *February 2.* HENRY MEIN *against* JOHN RUTHERFOORD.

CAUTION as law will, found to import caution *judicio sisti et judicatum solvi.*

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1687. *June.* MAXWELL of BEARCROFT *against* JOHN LAWSON.

FOUND that an apprising for debt contained in a bond may be redeemed, as satisfied by intromission, or other debt, as well before the apprising as during the legal ; but it was not pleaded that the apprising was null, as when a part of sums appraised for are satisfied to the appriser before leading ; seeing the same was not applied actually in a compensation.

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1687. *June.* WISHAW *against* ANDREW LUNDY.

IN a competition between the creditors of Sir John Brown, and Andrew Lundy, cautioner for him to John Oliphant, who, upon distress, paid the debt, and took a discharge to the debtor, his heirs and co-cautioners,—and to whom Oliphant assigned an apprising of the debtor's lands, led in his, Oliphant's name, after granting of the discharge ;—it was alleged by the other creditors, That Andrew Lundy is presumed to have made payment of the debt discharged with the debtor's own means, he having been tutor to Sir John Brown's daughter, and intromitter with her estate ; and therefore the apprising, following upon a paid debt, is null. Answered, The discharge narrates Lundy to be a distressed cautioner, and bears to be granted for his relief, as to which it was equivalent to an assignation ; so as Oliphant might, even after the discharge, lead the apprising for Lundy's behoof. The Lords found the answer relevant, and sustained the apprising, even for accumulations. *Vide* No. 298, [Wishaw against Andrew Lundy, January 1684 ;] and No. 308, [Wishaw against the Children of Andrew Lundy, March 1684.]

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