

(DUE TO CAUTIONERS, &amp;c.)

No 60.

which were repelled in respect thereof. (See PASSIVE TITLE, Vicious Intromission.)

A&amp;. Nicolson &amp; Craig.

Alt. Advocatus &amp; Oliphant.

Clerk, Gibson.

Fol. Dic. v. I. p. 43. Durie, p. 389.

No 61.

A cautioner who, upon distress, pays the debt, has right to annualrent of annualrent, paid by him for the principal debtor, from the time of the payment.

1662. February 7. LOCKERBIE against APPLGIRTH.

JOHNSTON of Lockerbie having obtained decret against Jardine of Applegirth, for a sum paid by the pursuer's author, as cautioner for the defender's father,

THE LORDS found annualrent due by the principal to the cautioner, by an act of Sedernt 1613, and that from the year 1619, until now, in respect the cautioner had paid upon distress, by decret of transference, and a charge of horning thereon.

Fol. Dic. v. I. p. 43. Stair, v. I. p. 93.

1706. June 27.

GILBERT M'ICKEN of Glenwhilly, against ALEXANDER KENNEDY of Glenoure.

No 62.  
Found as above.

IN the charge at the instance of Gilbert M'icken of Glenwhilly, against Alexander Kennedy of Glenoure, the LORDS found, That a distressed cautioner paying annualrents, had right by the clause of relief, to require annualrent of the annualrents from the time of payment. 2do, That acts of usury anterior to the Queen's indemnity were thereby discharged, and the informer could have no share or benefit, upon the account of information given after the proclamation. 3tio, That the writer of a bond being designed notary, the designation was sufficient; for that is not like the general designation of writer, which every body assumes at pleasure; a notary having a public office, that requires a previous trial and admission by the Lords of Session, and an act to be extracted thereon, by a clerk appointed for that effect, who keeps a particular record of the name, diary, and manner of subscription of the person admitted. 4to, That a creditor taking assignation from his debtor, to mails and duties not expressly in satisfaction, and intimating the same to the tenants, is not obliged to impute the rents in his payment, or instruct exact diligence; unless he had debarred either the debtor or his creditors from intromitting. (See WRIT, what Designation sufficient.—See DILIGENCE, Prestably by Assignees.—See INDEMNITY.)

Fol. Dic. v. I. p. 43. Forbes, p. 112.