

1662. *December.*PATRICK and JOSEPH DOUGLAS *against* LINDSAY of WORMYSTOUN.

No 23.

PATRICK and Joseph Douglasses pursues Catherine Lindsay, their mother, as executrix to their father, for count and payment of their share of the executry, and also the said Lindsay of Wormystoun, as her cautioner found in the testament, who *alleged* no process against him as cautioner, till the executrix herself were first discussed, not only by count and sentence, but also by apprising of her estate, pointing of her moveables, and if nothing can be condescended upon to point and apprise, at least by registrate horning against her person, this being but a subsidiary action as to the cautioner.

THE LORDS repelled the allegiance, and sustained the account against both, superseding all execution against the cautioner till the executrix were discussed, as aforesaid, which is both to the advantage of the cautioner, who may concur with the executor, who is only able to make the account, and it is also to the advantage of the pursuers, that the cautioner resume not the allegiances omitted by the executor, and so make new process and new probation, as oft falls out.

Fol. Dic. v. 1. p. 537. Stair, v. 1. p. 147.

1174. *June 17.*STRACHAN *against* FORBES.

No 24.

A CAUTIONER in a suspension, after the letters are found orderly proceeded, may be charged summarily upon the bond of caution, without discussing the principal debtor.

* * * This case is No 37. p. 3583.

1737. *July 1.*LADIES MARGARET, and DOROTHEA PRIMROSES *against* The COMMISSARY CLERKS of EDINBURGH.

No 25.

THE nearest of kin of a defunct were allowed to insist against the executor confirmed, and his cautioner, to account for the moveables, and against the Clerk of the Commissary Court, for admitting insufficient caution, all in one process, suspending always execution until discussion of those primarily liable.—
See APPENDIX.