

No 41.
tion, demand-
ed from the
executors se-
curity in re-
lief, because
they were
vergentes.
Before an-
swer the exe-
cutors were
appointed to
account.

brother being then obliged for his relief; the said Adam pursues them to warrant him of his said cautionry, and to that effect to find caution, because *vergebant ad inopiam*, and they had wasted the goods confirmed, to be decerned to find caution to him for his better security. The defenders *alleged*, That this pursuit was a novelty, to seek warrandice where the pursuer was not able to show any distress; and the desire of finding caution was a greater novelty, whereto they could not be restricted of the law.—THE LORDS, albeit they inclined to sustain this pursuit, as just and equitable, yet they ordained the parties first to count and reckon upon the goods contained in the testament, whereby it might be first known what became thereof, if they were extant, or to what good or necessary use the samen were employed; and thereafter they would consider of the answer to be given anent the sustaining of this pursuit.

Clerk, *Hay*.

Fol. Dic. v. 1. p. 126. Durie, p. 259.

No 42.

Registration
of a bond was
found suffi-
cient distress,
upon which a
cautioner
might seek
his relief a-
gainst a prin-
cipal suspect-
ed to be *ver-*
gens.

1628. *March 26.*

VAUS against LAW.

IN an action of relief Vaus *contra* Law, for relieving of the said Vaus, who was cautioner for Law, to pay a sum of money to the creditor; the LORDS sustained the action and charge of relief at the cautioner's instance, against his principal, for whom he was obliged, and who was bound to relieve him; where the principal bond was registrate against the cautioner, and the term of payment was by-past before the seeking of the said relief; albeit the principal *alleged*, that the cautioner could not seek relief but where he was distrest, either by charge of horning, or by making payment to the creditor, neither whereof he could allege. Likeas he instructed, that the creditor had superseded the payment of the sum while a term yet to come, whereby he could not be distrest: Which allegiance was repelled, and the charge for relieving of the cautioner sustained, seeing the bond was registrate, and the term by-past, as said is; and also the condition of the principal was feared and suspected, as likely to become *non solvendo*, viz. Mr James Law's father.

Act. *Gibson*.

Alt. *Nairn*.

Clerk, *Gibson*.

Fol. Dic. v. 1. p. 127. Durie, p. 372.

* * * The same case observed by Auchinleck.

May 16.—THE registration of a bond is sufficient distress, whereupon a cautioner may seek his relief against the principal.

Auchinleck, MS. p. 25.

* * * The like, Stevenson against Fraser, Colvil, MS. *voce* REGISTRATION.