

## S E C T. III.

A Creditor receiving payment from a Cautioner, must assign every separate security for the debt. By passing from his separate security he liberates the Cautioner.

No 35.

1628. *July 4.* HAMILTON *against* BISHOP of GALLOWAY'S RELICT.

A CAUTIONER in a contract of marriage, being pursued by the relict, her claim was found compensated and extinguished by the sums and goods she had confirmed in her husband's testament; and that although diverse of them were evicted from her by sentences at the instance of his creditors; in regard she was entitled to have pleaded a preference to the creditors upon her contract of marriage, and neglected to do it.

*Fol. Dic. v. 1. p. 226. Durie.*

\* \* See This case, No 19. p. 2087.

No 36.

1665. *January 10.* LESLIE *against* GRAY.

A creditor getting payment from a cautioner, was not only obliged to assign him for his relief against the principal, but likewise was decerned to convey to him a separate security which he had obtained *ex post facto* for the same debt.

*Fol. Dic. v. 1. p. 227. Stair.*

\* \* See This case, No 37. p. 2111.

No 37.

1677. *June 24.* MR WILLIAM ROBERTSON *against* CAMPBELL of Kilpount.

There was a clause in a wadset, that if the wadsetter should take possession, both principal and cautioner should be free of annualrent during his possession. The wadsetter, after being several years in possession, voluntarily quitted it,

MR Archibald Campbell being pursued at Robertson's instance, as cautioner in a contract of wadset for the Master of Gray for 50,000 merks, in case of requisition; in which wadset there was a clause, That if he should continue in possession of the lands, that the principal and cautioner should be free of annualrent;—the said Mr William having desisted to possess, and suffered the Laird of Philorth to enter to the possession, who had required a right of reversion, did pursue for the principal sum due by the requisition, and for five years annualrent that he had been out of possession.—It was *alleged*, That the pursuer having continued in possession after the requisition, and thereafter desisted without any decret gotten against him at Philorth's instance, he could not pursue for payment.—It was *replied*, That by the foresaid clause of wadset, it was in the pursuer's option to possess or not possess as he pleased, so that