

No 38.

A creditor in a bond was found not obliged to assign it to the cautioner of the debtor, for his relief.

1666. July 10. DAME MARGARET HUME *against* CRAWFORD of Kerse.

DAME MARGARET HUME having charged the Laird of Kerse, who was cautioner for the Earl of Lowdown, for her liferent that she had out of the estate of Lowdown; he suspends, and *alleges*, that the charger ought to assign him, seeing the bond wants a clause of relief, whereby he will have difficulty to have relief of the other cautioner's bond.

THE LORDS found that they could not compel the charger to assign, but in so far as of her own consent she would. See DEBTOR and CREDITOR.

Stair, v. I. p. 393.

No 39.

1735. January 24. GARDEN of TROUP *against* DR GREGORY.

A CREDITOR of a tenant having arrested the farms in a third party's hand, a cautioner for the tack-duty appeared and pleaded preference upon the right of hypothec. *Answered*, The cautioner cannot plead upon the hypothec, not being assigned thereto by the master. *Replied*, The master is *ex bona fide contractus* bound to lend his name to the cautioner for security of the rent, and the cautioner has an interest to plead in the master's name and in his right for preference, that the subject of the master's payment be protected from the tenant's creditors.—THE LORDS found, that the cautioner not having paid the rent, nor got an assignation thereof from the master, had no right to the hypothec, and therefore preferred the arrester *in hoc statu*.

Fol. Dic. v. I. p. 126.

* * * See This case *voce* HYPOTHEC.

See Anderson *against* Provan, Gilmour, p. 95. *voce* HYPOTHEC.

See No 1. p. 1381.

See APPENDIX.