

they inquired for his funds in Britain, they found he had none there; and there appeared on record some arrestments and hornings against him, subsequent to the furnishing. Upon this they brought a suit against Adam on the furnishing, and against James on the above letter; in which decret went in absence against Adam.

No 36.

But James's *defence* was, That though Adam had no effects in Britain, it was incumbent on Messrs Elams to pursue Adam in America; and until they showed, that they could not recover payment from him there, they could not come upon James.

Answered, Where a creditor has a cautioner for his debt in Britain, there is no necessity for him to discuss the principal debtor, except in Britain.

'THE LORDS found James Fisher liable for the debt.'

Act. *J. Dalrymple*.

Alt. *Alex. Hay, Montgomery*.

J. Dalrymple.

Fol. Dic. v. 3. p. 117. Fac. Col. No 64 p. 110.

See Dunbar against E. of Dundee, Gilmour, p. 115. p. voce DISCUSSION.

See DISCUSSION.

See LEGAL DILIGENCE.

S E C T. VI.

Cautioners right to Assignation of the Debt.

1665. *January 10.* NORMAND LESLY *against* GILBERT GRAY.

NORMAND LESLY charges Gilbert Gray, Provost in Aberdeen, to pay 2000 merks, for which he was cautioner for William Gray. He suspends, and *alleges*, that the charger had gotten an assignation from the said William Gray, to a bond granted by the Earl of Errol to him; and therefore craved, that the charger might be decerned to transfer that assignation to him, being given for the security of the same sum. It was *answered*, that the charger was only obliged to give a discharge to his cautioner, and not an assignation of the bond itself, and much less of any security *ex post facto* he had gotten therefor.

THE LORDS declared, they would not give the charger process, till he assigned the bond, and all security gotten therefor, to the cautioner.

Stair, v. 1. p. 247.

No 37.

A cautioner found not liable to pay, unless the creditor would assign to him the debt and all security he had from the principal debtor.