

1687. July. BROOMHALL *against* GEORGE GOVAN and MR. JOHN FRANK.

No. 23.

THE cautioner in a bond suspended decerned against with the principal in the decret of suspension, found liable to relieve the cautioner in the suspension (who had paid the debt, and was assigned thereto) *in toto*, though the principal debtor only subscribed the bond of caution, containing the clause of relief.

Harcarse, (CAUTIONERS) No. 247. p. 59.

1694. January 10.

WALTER PORTERFIELD *against* SIR PATRICK SCOTT of Ancrum.

No. 24.

SIR PATRICK SCOTT being charged on a bond granted by him to James Scott of Bristo, and assigned by him to the said Walter, he suspended, on this reason, that he stood cautioner in sundry debts for the said James, and had his bond of relief, and so behaved to have retention. Answered, He was not distressed, and had a distinct security for relief of these sums. The Lords, remembering they had granted retention to my Lord Sinclair against Sir James Cockburn's creditors on this ground, they sustained Sir Patrick Scott's reason of suspension, and allowed him to retain for his own relief, he always assigning the charger to all the collatera securities he had for these debts.

Fountainhall, v. 1. p. 590.

1701. February 27. ALISON and BLACK *against* MR. JAMES HART.

No. 25.

THOMAS CESSFORD, the said Mr. James, and another, having granted bond to one Handyside for 1,000 merks, and the creditor afterwards craving farther security, Cessford did prevail with Black to bind with him in a bond of corroboration. Cessford being broke, Handyside distresses Black, and causes him pay the whole, and takes an assignation in one Alison's name to the first bond, and thereon causes charge Mr. James Hart; who suspends on this reason, that William Black, the charger's cedent, standing bound in a bond of corroboration as co-principal with Cessford, who was indeed the principal debtor, Black is as much co-principal as if he had been in the first original bond, and so must deduct his own part, and can only insist against Mr. Hart for his proportion *pro rata*, his security being only *accumulando jura jure*. Answered for Black, That though I be bound conjunctly and severally, yet, *ex natura rei*, I am only a cautioner, and the very bond carries, that Cessford, the co-principal, had received the money before, and so I only *accessi ejus obligationi*, which is the definition of a cautioner; and law looks more to

Cautioner in a
bond of cor-
roboration.