

obliged to take the clerk's accounts quarterly off his hand ; which the cautioner required Sir James to do, and protested to be free for his not counting.

No 25.

THE LORDS repelled the defence, in respect of the reply.

*Fol. Dic. v. 1. p. 125. Forbes, p. 134.*

1708. February 28.

SIR PETER FRASER of Dooris *against* ALEXANDER ABERCROMBIE, his Factor, and ABERCROMBIE of Glassoch, his Cautioner.

SIR PETER FRASER of Dooris pursues Alexander Abercrombie, his factor, and Abercrombie of Glassoch, his cautioner, for count, reckoning, and payment of the rents of his estate. *Alleged* for Glassoch, the cautioner, absolvitor from any intromission had by the factor after the third act of Parl. 1700, declaring papists incapable of any public office, and particularly of being factors or chamberlains, because of the influence they might have to pervert tenants ; and Mr Abercrombie being a Roman catholic, his commission *ipso facto* expired by that act, and consequently my cautionry obligation ceased therewith. *Answered*, Though *ignorantia juris non excusat*, yet I was out of the kingdom at the time of making the act, and for a long time after, so it came not to my knowledge so soon ; yet the cautioner must stand bound (the factor being now broke) for all his intromissions and administrations, not only from the date of the act, and forty days thereafter, but for the last of the forty days after the publication and promulgation of the said act at the cross of Edinburgh ; seeing, both by the Roman law and our acts of Parliament, laws do not bind till then ; and the LORDS found it behoved to be so counted. Then Sir Peter craved, that the cautioner might assign him to his bond of relief he had from the principal, which the Lords refused.

*Fol. Dic. v. 1. p. 126. Fountainhall, v. 2. p. 439.*

1711. January 23.

THE CREDITORS of HAY of Park *against* ALEXANDER FALCONER of Blackhill.

IN the count and reckoning at the instance of Park Hay's Creditors, against Alexander Falconer, as cautioner for Sir Hugh Campbell of Calder their factor ; THE LORDS found the factor and his cautioner liable for the victual only, either according to the fiars, or according to the prices received by the factor, deducting all losses, in the option of the pursuers ; and found the cautioner liable for the annualrent of Sir Hugh's intromissions, as factors are liable by the act of sederunt, 31st July 1690. Albeit it was *alleged* for the defender, That the bond of cautionry bore no annualrent, and a cautioner in a suspension was

No 26.

A cautioner for a factor who was a papist, was free with regard to all the factor's intromissions posterior to the act 3d Parl. 1700, declaring all papists incapable of any public office.

No 27.

The cautioner for a factor upon a sequestrated estate, found liable for annualrent of the factor's intromissions, according to the act of sederunt 1690, although the