

S E C T. VII.

Relief of Cautioners.

1625. July 28. TENANTS of HAYNING *against* SCOT.

IN a double poinding, at the instance of some tenants of the lands of Hayning, against Laurence Scot, advocate, and Sutie; wherein Sutie being cautioner for Scot of Hayning, and being charged to pay to the creditor, to whom he was cautioner; and for his relief having recovered sentence against these suspenders, for payment of the duties of the lands possessed by them, as addebted by them to Scot of Hayning, for whom the said Sutie was cautioner; and, on the other part, Laurence Scot claiming the same duties, as pertaining to him, who was infest in the same lands, by comprising from Hayning, and upon this comprising publicly infest by the superior, before the term of payment of that year, which was controverted; whereby he *alleged*, the tenants were his tenants, and so should only be astricted in payment to him:—THE LORDS found the charge given to Sutie by Hayning's creditors, to whom Sutie was cautioner for Hayning, as said is, was a sufficient distress, whereupon Sutie might, for his relief, seek payment, and recover sentence against the suspenders, Hayning's tenants; albeit the time of that sentence he had not paid off the sums for the which he was bound; for it was found sufficient to obtain relief, and seek this payment for his relief, and so recover sentence therefor, that he was charged, before the sentence obtained against the suspenders, albeit he had not paid the sum for which he was cautioner, since that sentence obtained by him; and that there was no necessity that payment should have preceded the sentence: Likeas the Lords preferred Sutie to Laurence Scot, notwithstanding of his public infestment, in respect of the sentence foresaid, recovered against the tenants.

J. C. Fide-jussor potest agere contra principalem antequam solvat, si condemnatus fuerit ad solvendum, & Bald. & hæc dicitur interpretativa solutio, Vid. Bartol. Concil 159.

Act. ———.

Alt. *Laurence Scot per se.*Clerk, *Hay.**Fol. Dic. v. 1. p. 127. Durie, p. 182.*1627. January 19. THOMSON *against* HERRIOT.

ADAM THOMSON being bound as cautioner at the confirmation of the testament of Lewis Muir and Margaret Herriot, relict of the said Lewis, and her

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No 40.

A charge of horning was found sufficient distress, for a cautioner to seek his relief, altho' nothing further was done thereupon; nor had the cautioner paid the debt.

No 41.

A cautioner in a confirma-