

## DIVISION II.

## Discussion of Principal Debtors and Cautioners.

## SECT. I.

## Cautioners for Factors, Collectors, Executors, Suspenders.

1630. February 23. RITCHIE against PATERSON.

No 33.

FACTORS, who at their admission by the Convention of Burghs find cautioners to make count, reckoning, and payment to all merchants that employ them, their cautioners cannot be pursued for their deeds till first the factor himself be discuss'd, which may be done either before the conservator, if he be a factor in Flanders, or yet before the Lords of Session; and a declaring of their debts is a sufficient discussing of the factor.

*Fol. Dic. v. 1. p. 248. Auchinleck, MS. p. 79.*

1677. November 13. SANDHILANDS against DIVVY.

No 34.

THE Magistrates of Aberdeen pursued the said Divvy as heir to a cautioner for a collector of a stent, for count, reckoning, and payment.—*Alleged*, The principal was not called.—THE LORDS found the allegiance relevant, since cautioners for others' acts of administration, as tutors and curators, had *beneficium ordinis et discussionis*, though the principal was known to be bankrupt.

*Fol. Dic. v. 1. p. 248. Fountainball, MS.*

1702. February 27. HOUSTON against SHAW.

No 35.

THE LORDS found a cautioner in a suspension only *subsidiarie* liable, although the principal was already so far discuss'd that a decret of suspension was extracted against him.

*Fol. Dic. v. 1. p. 249. Fountainball.*

\* \* \* See This case, No 18. p. 487.