

* * * The Heir of a person who had subscribed the minutes of a meeting of creditors, as cautioner for the trustee, found not to be liable, the minutes not being probative. Shirra against Douglas, 6th June 1798; Fac. Col. No 79. p. 184., (*voce* WRIT.)

See No 18. p. 487. *See* No 149. p. 803.

See Welsh against M^cVeaghs, 18th January 1781, Fac. Col. No 16. p. 30.
voce MESSENGER.

S E C T. V.

Benefit of Discussion.

1743. *December.* AGNES DICKIE *against* THOMSON and LANG.

No 35.

A cautioner, in loosing arrestment, has not the benefit of discussion.

It was *pleaded* for a cautioner in the loosing of an arrestment, That cautioners, by the law of Scotland, have the benefit of discussion, as well as by the Roman law; and that a cautioner, in loosing of arrestment, is entitled to this privilege by the very conception of his bond; for he only becomes bound for the common debtor, that his goods arrested shall be made furthcoming. On the other hand, it was *urged*, That caution in loosing of arrestment comes in place of the arrestment; and therefore that the cautioner must be liable in the same manner as the arrestee would be upon a decree of furthcoming recovered against him.

' Found, That a cautioner, in loosing an arrestment, has not the benefit of discussion.'

Fol. Dic. v. 3. p. 116. Rem. Dec. v. 2. No 49. p. 77.

1757. *December 7.*

JOHN and ROBERT ELAMS of Leeds, *against* JAMES FISHER.

No 36.

When the principal is abroad, and cautioner in the kingdom, it is not necessary first to discuss the principal.

ADAM FISHER, when at New York, having commissioned a quantity of broad cloths from John and Robert Elams of Leeds; and they having informed his father, James Fisher of Inveraray, thereof; James, in answer to their letter, wrote them, ' That he would stand good for the price, upon twelve months credit from the time of shipping the goods, in case his son failed in his circumstances.'

Upon this letter, Messrs Elams furnished the goods, which arrived at New York.

When the price of the goods fell due, which was in a year, Messrs Elams wrote several letters to Adam Fisher for payment; but had no answer. When