

there were only three subscribing witnesses. ANSWERED,—This was no nullity before the third Act of Parliament 1681; because, there were four witnesses inserted in the body of the writ, which was all then required by our law; subscription being only introduced for fixing the witnesses' memory, as appears by comparing 80th Act 1579 with third Act 1681. They had other two allegiances, but there was no need of determining them.

The *first* was, That the three witnesses were at least good for £100 Scots; but it was urged, the Lords had refused to restrict, in a late case in 1691, between Sir Robert Colt and Aikman.

The *second* was,—The cautioner subscribed for himself; so two witnesses were enough for him. To which it was ANSWERED,—If the principal obligation be null, the fidejussory must fall in consequence as an accessory. REPLIED,—Cautioners are all principals, *et correi debendi*, by our law; and so the cautioner's obligation may subsist without the other; as was lately found in *John Calender's pursuit* against *George Alexander*, brewer in Edinburgh. But, determining the first superseded the need of considering thir two last points.

*Vol. I. Page 660.*

1695. *January 18.* MR RORY MACKENZIE of PRESTONHALL and MACLEOD of APPIN *against* JOHN DRUMMOND and GEORGE WATSON, Merchants.

CROCERIG reported Mr Rory Mackenzie of Prestonhall, and Macleod of Appin, against John Drummond and George Watson, merchants, for £900 Scots of salvage, given by a written contract, for saving some shipwrecked goods from the country-people's plunder, and wherein the Admiral had decerned: Against whose decret this iniquity was objected, That he had made them answer summarily on a petition. ANSWERED,—*1mo.* It is usual to table processes before the Admiral by way of complaint; *2do.* They passed from this declinator, by proponing other defences, and taking out a commission for trying the quality of the goods delivered, and if they were conform to the inventory. REPLIED,—That the defending before a court is no homologation, or passing from a prior defence; being *actus necessarius*, and involuntary.

The Lords repelled the strangers and their factors. *Vol. I. Page 660.*

1695. *January 18.* The EARL of TWEEDDALE, Chancellor, *against* DURY of CRAIGLASCAR.

MERSINGTON reported the Earl of Tweeddale, Chancellor, against Dury of Craighlascair. The question was,—He, being a vassal of the regality of Dumfermline, if he was liable in the sheriff-fiars as the price of his teinds, or in the regality fiars, which are much dearer. The Chancellor founded on a decret he had obtained against Fotheringham of Halhill. ANSWERED,—This vassal, Craighlascair, is in another case; because he has a decret of the Commission for