

1636. November 16. WILLIAM STUART *against* PATRICK GED.

IT is the custom almost in all inferior courts, that the defender find caution when he is first drawn to judgment, to answer as law will ; which is nothing else but *satisfactio judicio sisti* ; of which obligation the cautioner is relieved, if the cause be advocated from that judicatory to the Lords of Session. But the custom before the Admiral is, to make the defender find caution, not only *judicio sisti*, but likewise *judicatum solvi* ; which, if he do not, they will cast him in prison until the pursuer be secured that way. This is done apparently for this reason, because they use more summary process before the Admiral than in any court else,—the matters that come before them being ordinarily amongst seafaring men and strangers, who cannot attend long without great prejudice to their affairs.

There was an action of this kind pursued before the Admiral at the instance of William Stuart, son to Sir William Stuart of Garntully, against Patrick Ged, a skipper in Burntisland, to whom the said William had delivered a trunk with some clothes in London, to be brought home, for delivery of his trunk, and that which was within it. In this action, according to the custom, the defender, Patrick Ged, found Archibald Hutcheson cautioner for him, *judicio sisti et judicatum solvi*. This cause being thereafter advocated to the Lords, the cautioner desired it might be declared that he was free of his cautionary, in respect the action was transferred from the Admiral Court (where he was bound,) to another judgment. Answered, That were against all reason to put the pursuer in a worse case than he was before the Admiral, especially seeing the advocacy was procured by the defender to his prejudice. Neither could the cautioner be free in any case, except the cause had been advocated from the Admiral, as not being competent judge ; in which case only, the cautioner should be freed, and no otherwise. The Lords found this answer relevant, and declared that the cautioner stood still bound *de judicato solvi*.

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1636. December 2. CORSAR *against* DURY.

ONE Corsar pursued one Dury for a debt, as he that had behaved himself as heir to his father, by intromission with the mails of certain lands, whereof his father died in possession. Alleged, Any intromission he had was not as heir to his father, but to his grandfather, who died last vested and seised in these lands. Replied, He could not clothe himself with his grandfather's right, because he was denuded in favours of the defender's father, by contract, whereby he was bound to infest his son (the defender's father,) in the same lands. Duplied, Notwithstanding thereof, the real right remained with the grandfather, so that the defender could never come to the lands but by his grandfather. Triplied, He had right to the mails, as apparent heir to his father, who had right thereunto by virtue of the same contract, and would have been preferred to the grandfather in the same : likeas, if he were heir to his grandfather, he would be obliged to fulfil the contract made to his father ; and a creditor that had comprised the right of the foresaid contract would be preferred to him in