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 *satisdatio judicio sisti;* of which obligement 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 advocation 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 infeft 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

the same mails. And further, he could not allege but he had meddled with the said mails, as succeeding to his father, because his father had set a tack to the tenants in his time; and the defender had uplifted the tack-duty from them, whereby he acknowledged his father's right. To this last part, Answered, Before a warning, he could get no other duty from the tenants than that they were in use to pay. This got not an answer, because the advocate, (who was for the pursuer,) seeing the Lords incline to the defender's part, passed to another allegeance. But the whole Lords almost seemed to be of this opinion, that, *in gestione pro hærede, est plus animi quam facti,* and that one cannot behave himself as heir *sine animo gerendi;* and that, in this case, the defender might very well declare *quo animo fructus perceperit,* and ascribe his intromission to his grandfather's right; thereby to free himself of the pursuit.

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1637. *March* 15. BROWN *against* LANDS.

MOVEABLES pertaining to a person interdicted, are liable to the payment of his debts, and may be poinded therefore, notwithstanding of the interdiction. Bruce against Forbes, 11th July 1634: for interdictions are not extended to moveables, (no more than inhibitions,) neither free they the person interdicted from personal execution. This was found between Brown and Lands.

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1626. *July* 27. MACKULLOCH *against* MACKULLOCH.

FOUND that the Act Ja. I, Parl. 9, 113, anent the vitiation of brieves, should be extended as well to the execution of the brieve as to the brieve itself. *Vid. Cr. l.* 2, *d.* 14, *usque ad finem, de Brevibus.*

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1628. *March* 20, 22, *and* 25. ——— *against* ———.

No process against any tenants for abstracted multures, if their master, who is heritor, be not summoned, though it be alleged that they were in continual use of bringing their corns to the pursuer's mill as thirled thereto, and of paying the accustomed dues in thirlage past memory of man.—*20th March* 1628.

In the same action, Alleged by the defenders, that the summons was not relevant for the knaveship, bannock, gowpen, &c. because these particulars are only due to the miller and his servants for their attendances, and not to the master; and therefore could not be craved, unless their corns had been grinded there. Replied, That ought to be repelled, in respect of his infeftment bearing him to be infeft in the multures with the sequels; in fortification whereof he offers to prove continual possession of the same. The allegeance was repelled, in respect of the reply.—*22d March* 1628.