

they could be better accomodated elsewhere, &c. And this condescence being answered, the Lords allowed a proof before answer.

CAUTION JUDICIO SISTI.

1774. December 15. TELFER *against* MUIR, &c.

A WARRANT of commitment having been obtained against Muir, as *in meditatione fugæ*, he found caution that he should compear and answer to any action brought against him, or, in default thereof, that his cautioners should pay the debt. Action was accordingly brought against Muir for the debt, and against the cautioners, in the event of his not answering thereto. Decreet was obtained against Muir. It was extracted, and a charge given. This being without effect, the pursuer, Telfer, proceeded in the action against the cautioners; but as they were only cautioners *judicio sisti*, and as decreet had not only been pronounced but extracted, without any previous requisition to produce Muir, the cautioners were assoilyed, 15th December 1774.

1776. June 21. SIR JAMES COCKBURN *against* INGLIS.

THE LORDS found, "That cautioners *judicio sisti* are liberated from their suretyship by producing the person of the debtor for whom they are cautioners, at all diets of Court, when required, or by decreet being pronounced in the cause; but if, before pronouncing decreet, application shall be made to the Court, and evidence brought that the debtor is still *in meditatione fugæ*, for the purpose of evading personal execution on the decreet when pronounced; find, that, in such cases, the judge may exact new caution for the debtor's continuing within the kingdom, under a proper penalty, even after decreet shall be pronounced for preventing this evasion of the law; and if the debtor refuse or neglect to find such caution, the Judge may commit him to prison, under such limited time as shall appear necessary."