

CAUTIO JUDICIO SISTI, ET JUDICATUM

SOLVI.

1631. July 1.

Row against MEIKLEJOHN.

No 1.

IF any party be charged by Bailies of a Burgh to find caution as law will, and find the said caution, and thereafter obtain the cause advocated to the Lords, the advocacy frees the cause. (*frees the Cautioner.*)

Fol. Dic. v. 1. p. 121. Auchinleck, MS. p. 9.

1633. November 26.

Lindsay against FAIRFOULL.

No 2.

ONE Lindsay procurator-fiscal, and Scot his informer, having obtained decret before the Stewart of the regality of St Andrews, against Fairfoull cautioner for one Reid to enter him, being cited for a blood, committed upon the said Scot, and the decret being given against the said cautioner upon the same day, at which, by his act, he is obliged to enter him; and the decret decerning the said cautioner, either to enter the party foresaid, or else to pay forty pounds, which was the pain of the act; and also decerning the principal party to pay L. 50 *in pœnam contumaciae*. The principal and cautioner being charged to pay these two sums *respective* to the procurator-fiscal, and to the party hurt, who had both obtained the said sentence; and the said principal and cautioner suspending, THE LORDS suspended the decret and charges thereon for both the sums, because the same Judge, by an act of his court, 22 days after the foresaid sentence, had declared the cautioner to be free of that penalty, in respect he had entered then in judgment the said party, whom he was cautioner to enter: Neither was it respected by the LORDS, That the entry was so long after the sentence, and after that day on which he was obliged to enter him, seeing the decret bore only *either to enter him, or to pay the sum*, and bore not purely to pay the sum, because he had failed to enter him, and so by this entry he obeyed the sentence; neither was it respected, where the party *alleged*, that the entry was elusory, seeing it was not made when this cause was agitate before the Judge; but was done on another court-day, this party not knowing there.

A cautioner, *judicio sisti*, is freed by producing judicially the defender at any time, and protesting to be free, for thereupon the Judge ought again to incarcerate the defender until he find new caution.