

first quoted 20th January 1680, Hodge, (Dict. No. 5. p. 2034.) We unanimously found the cautioner not freed by the death of the principal defender *pendente processu*, except the President, who thought him free. 2dly, We found he was liable notwithstanding the heir was a foreigner.—27th January Adhered.

No. 2. 1751, Feb. 13. CHALMERS *against* GORE.

GORE being fined in the Court of Admiralty for certain goods and merchandises said to be embezzled by him, while purser of His Majesty's ship Winchelsea, out of a merchant ship that had been taken at sea and sent in to Leith in winter 1745-6, on suspicion of either favouring the Rebels or of running goods, and which ship was by the Captain of the Winchelsea committed to his charge, but afterwards liberated by the Board of Customs, and which goods were said to have been embezzled by him while the ship was under his charge;—he found caution *judicio sisti*, and in January last sisted himself, and his bail-bond was given up and he committed to prison, at which time the Judge had found him guilty of embezzlement; and all that remained was to liquidate the extent,—when he applied to be set at liberty on juratory caution,—which the Judge granted,—and he gave in an inventory of his effects in England which were a mere trifle;—and the merchants presented a bill of suspension of the Judge's warrant of liberation. I thought whatever might be the case, if this had been in the beginning of a suit where it was quite doubtful whether there was any ground of action, yet now that he was found guilty, though the damages were not yet liquidated, I could consider it in no better light than a suspension and liberation of a decret, which by the rules of this Court 8th November 1682 ought not to be passed on juratory caution. But the President thought, that juratory caution *judicio sisti* ought not in any case to be admitted, and there seems good reason for his opinion. A foreigner arrested here till he find caution *judicio sisti* though he had effects in foreign parts, and should consign a disposition, what security would that be to the creditor?—And therefore we passed the bill.

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CAUTIO JURATORIA.

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No. 1. 1734, July 26. A. *against* B.

THE Lords passed a suspension and liberation upon juratory caution, notwithstanding the act of sederunt to the contrary. The President said it has been in disuse for 30 years.

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CAUTIONER.

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No. 1. 1734, Feb. 15. CHALMERS *against* MONTGOMERY.

THE Lords found the cautioner could only adjudge for what he had paid.—28th February Adhered.