

No 8.

‘ Lammie’s regiment *de judicio sisti et judicatum solvi*, in the action at the instance of Ensign Ralph Dundas and others against him, before the Judge of the High Court of Admiralty.’ The answer was in substance what follows: Even in contracts *strictissimi juris*, the extent of the obligation is to be gathered from the nature of the transaction, rather than from clauses of stile slightly or imperfectly framed, and capable of different meanings. In a suit before the Admiral, it is a privilege of every pursuer to demand caution, not only *judicio sisti*, but *judicatum solvi*; the foundation of which is, that strangers being often called in this Court, the prosecutor, before laying out much expence in a tedious process, ought to have some security, in case of prevailing, that his claim shall be made effectual; and therefore the cautionary obligation must be considered as accessory to the claim, and not strictly to be limited to the persons either of the pursuer or defender. If the bond of cautionry be so construed as to release the cautioner where the defender dies before decree, the same must happen where the pursuer dies before decree: so this cautionary obligation would depend upon many chances; without necessity, and indeed contrary to common utility; as chance bargains are contrary to the genius of law.

Rem. Dec. v. 2. No 47. p. 75.

No 9.

Juratory
caution
judicio sisti
can, in no
situation, be
admitted in
maritime
causes.

1751. February 8. CHALMER and Others against GORE and Others.

In an action before the Admiral, at the instance of William Chalmer and others against Samuel Gore, an Englishman, and others, for a riot committed at open sea, Gore found James Paterson surveyor at Leith, cautioner *judicio sisti*; and the evidence coming strongly out against Gore, whereby Paterson run the hazard of being brought in for a great sum, Paterson found means to persuade Gore to come down to Scotland and present himself, whereupon Paterson got up his bond, and Gore was put in prison.

Gore presented a petition to the Admiral, craving to be let out of prison upon juratory caution *judicio sisti*, which the Admiral granted upon his deponing and consigning a disposition, as is usual in juratory caution.

Of this order of the Admiral, the pursuer presented a bill of suspension, which was passed unanimously.

THE LORDS were of opinion, that juratory caution *judicio sisti* was not at all to be admitted.

Kilkerran, (Cautio Judicio Sisti et Judicatum Solvi.) No 2. p. 116.