

rate, the bond being forfeited at strict law, the cautioners could only be restored by afterwards producing the debtor precisely in the same circumstances.

THE LORDS (21st June 1797) unanimously 'adhered' to the judgment of the Lord Ordinary; and, by a great majority, refused a second petition, on advising it with answers.

Lord Ordinary, *Justice Clerk Braxfield.*

Act. *Geo. Fergusson, Monypenny.*

Alt. *Solicitor-General Blair, A. Campbell junior.*

Clerk, *Colquhoun.*

*D. Douglas.*

*Fac. Col. No 45. p. 104.*

No 18.

1797. December 1. ALEXANDER MYLES against ALEXANDER LYALL.

ALEXANDER MYLES brought an action for freight, in the Court of Admiralty, against Bisset and Sons.

Alexander Lyall became cautioner for the defenders, 'de judicio sisti et judicatum solvi, in the process at the instance of Alexander Myles against them.'

The Admiral gave judgment in favour of the pursuer, only for part of the sum claimed by him; but, in a reduction of the decree brought before the Court of Session, his whole claim was sustained. By this time Bisset and Sons had become bankrupt, and Myles insisted against Lyall for the whole sum contained in the decree of reduction.

Lyall, on the other hand, contended, that his obligation applied only to the judgment of the Admiral, and could not be extended to that pronounced in the reduction, a new process, with which he had no concern.

The arguments used by him, in support of this proposition, were not materially different from those which will be found in the case, 2d March 1762, Robertson, &c. against Ogilvie, reported in the Select Decisions and Faculty Collection, No 12. p. 2047.

THE LORD ORDINARY repelled the defences. Two reclaiming petitions were refused without answers.

Lord Ordinary, *Justice Clerk Braxfield.*

For the Petitioner, *John Clerk.* Clerk, *Sinclair.*

*D. Douglas.*

*Fac. Col. No 46. p. 107.*

No 19.

A cautioner *judicio sisti et judicatum solvi*, in an action before the Court of Admiralty, is liable to fulfil the decree of the Court of Session, upon a reduction of the judgment of the Admiralty.

See Kirkhead against Nairn, Durie, p. 343. *voce* FORUM COMPETENS.

See MEDITATIO FUGÆ.

See PRISONER.

See APPENDIX.