

No 16. chief, shown by one or more overt acts, may be put under caution not to commit such wrongs in time coming. But to oblige an innocent person to find caution to abstain from doing mischief of any kind, is hard and unjust. It is punishing a man who has done no fault. *2do*, The statutes enjoining caution to be taken from messengers, go all of them upon that plan. The act 46, parl. 1587, enjoins caution to be taken from messengers, 'for the damage and interest of parties grieved by the falsehood, negligence, or informality of any officer.' Here are three delicts condescended on, which regard the pursuer only, viz. falsehood, *i. e.* returning a false execution; the second, negligence; and the third, informality, *i. e.* giving an informal execution. The act 73, of the same parliament, is in the same strain, only more explicit, 'That the sovery shall be answerable for the damage and interest of his falsehood, sloth, or informal doing, in his Highness' service, or other parties; *i. e.* in the service of his Highness, or in the service of other parties. *3tio*, The bond of cautionry in question, being of the same tenor with all other bonds of the kind, is in every article conformable to the foregoing statutes. The three delicts are the same with what are condescended on in the statutes; and the obligation is confined to those who employ the messenger, because no other person is bound to pay him reasonable expenses. *Lastly*, Another remedy is provided by law, where messengers, under pretext of executing their office, oppress any of the lieges, and that is by the act 84, parl. 1587, declaring this crime to be capital.

*Fol. Dic. v. 3. p. 117. Sel. Dec. No 150. p. 205.*

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#### SECT. IV.

#### Cautioner, how far Liable.

1593. *May 25.* GUTHRIE *against* WADDEL.

No 17. AN executor's cautioner was found only bound for what was contained in the inventory, not for concealments.

*Fol. Dic. v. 1. p. 125. Haddington, MS.*

\* \* \* See This case *voce* EXECUTOR.

1628. *July 2.* NASMITH *against* MENZIES.

No 18.  
A cautioner  
in a contract  
of marriage,  
bound to em-

IN a suspension, Nasmith *contra* Menzies, the relict, upon her contract of marriage, having charged the cautioner for employment of 1000 merks upon annualrent to her use in her lifetime; and the party exhibiting the money at the