

trovert a judgment of the whole Court. If the Court should consider itself no more at liberty, then Gulliver's report might apply.

COVINGTON. I know not the origin of the privilege claimed by writers: I would not deprive them of it; but it ought not to be extended, so as to make their accounts real incumbrances on the estate. To maintain the rule of prescription will be beneficial to writers: it will both excite them to demand payment and furnish an excuse for demanding it.

PRESIDENT. The origin of the practice is good, that a writer may have a security for payment in a cause on which he has bestowed pains and expense.

On the 23d December 1780, "The Lords found that the holding of the client's papers does not stop the currency of the triennial prescription;" altering Lord Hailes's interlocutor.

*Act.* — Boswell. *Alt.* G. Ferguson.

1781. —. WILLIAM WELSH *against* MARGARET LUMISDEN.

MESSENGER.

Cautioner of a Messenger only liable for his actings *qua* Messenger.

[*Dictionary*, 8893.]

BRAXFIELD. It is no part of the duty of a messenger to receive money. Money levied in the course of diligence ought to be consigned. The caution is for the faithfulness and attention of the messenger in executing his office, but for no more.

HAILES. It does not appear that there was any pointing, or that the messenger discharged any part of his office at all.

COVINGTON. Messengers are frequently trusted with the receiving of small sums of money when they execute diligence; but this will not have the effect of making their cautioners liable.

PRESIDENT. It would be dangerous to make the cautioner liable. The words of the act of Parliament singly respect diligence and fidelity, the agent approved of all.

KAIMES. Were another judgment to be given, there would be no cautioners, consequently no messengers.

On the 18th January 1781, "The Lords found the cautioners only liable for the messenger's faithful execution of his office, but not for any money allowed to come into his hands;" altering Lord Stonefield's interlocutor.

*Act.* J. Boswell. *Alt.* Alex. Miller.