

the charger and his apprentice, that having gotten the apprentice fee, and not learned him the trade, he had suffered him to escape, never making intimation to the suspender, that he might have brought him back to his service, while now that he is out of the country, and not knowing where.—The charger *answered*, That there was nothing to oblige him to make such intimation, neither could a sufficient presumption of collusion be sustained.

THE LORDS found the letters orderly proceeded, either while the cautioner caused the apprentice re-enter, and serve out his time, or otherways paid L. 50 for damage and interest, to which they modified the charge.

Stair, v. 1. p. 191.

1671. December 6. ALEXANDER *against* GORDON of Tillichoudie.

THERE being a wadset of certain lands granted by one Seaton, to William Gray in Aberdeen, and a bond of corroboration by Mr James Chein; there was another bond granted by Gordon of Tillichoudie, whereby he obliges him to pay the principal sum and annualrent, if three terms of the annualrent run together unpaid, with this provision, that Gray dispone to him the right of wadset, and assign him to Chein's bond. The Earl of Haddington being donatar to the bastardy, and *ultimus hæres* of Gray, assigns to ——— Alexander all these bonds, who thereupon pursues Tillichoudie, as representing his father, for payment, who alleged absolvitor, because the bond was conditional; and the condition could not now be fulfilled *cum effectu*, in respect that Gray, the wadsetter, by the space of 18 or 19 years, did never intimate the want of his annualrent, neither did he declare the clause irritant in the wadset, but by his fraud or supine negligence, was neither infest himself holden of the superior, as he might, by the procuratory of resignation of the wadset, neither yet took possession; so that the wadset lands are carried away by apprysing, and Mr James Chein, who granted the bond of corroboration, is bankrupt.—It was *answered*, That the wadsetter was not obliged to do any diligence, nor yet to intimate the same to Tillichoudie, whose part it was to try the condition of the affair in which he was obliged; neither is the condition of the bond, that the wadsetter should make intimation, much less declare the irritancy; nor is there any thing singular in this case, more than if a cautioner, after a long time, were pursued to pay, should allege, that *medio tempore* the principal debtor were become insolvent; and that if the creditor had either pursued him in time, he might have recovered his debt, or if he had pursued the cautioner in time, he would have recovered relief, which case hath frequently occurred, but was never sustained.

THE LORDS found, That the wadsetter was obliged to do no diligence, nor to make intimation or declare the irritancy; and that his negligence could not exclude him, or the pursuer, unless he had colluded by fraud to prefer other creditors.

No 19.
though the master suffered the apprentice to go out of the country without informing the cautioner.

No 21.
A cautioner in a bond of corroboration, being bound to pay a sum contained in a wadset, if three terms annualrent should run together unpaid, was found not liberated, although the creditor did no diligence to recover payment for many years, by which time the principal debtor had become insolvent.