v. Watson, 21st November 1836 (1 Swinton 344), and 2 Fraser 683. The Court to-day adhered.

The LORD PRESIDENT said—This application was presented to the Sheriff on the allegation that the apprentice had deserted his service. The Sheriff appointed the petition to be served on him, and ordained him to enter appearance within four days after service, under certification in case of failure of being held as confessed, and the prayer of the petition being granted. He did not enter appearance, and the Sheriff, in his absence and without proof, held him as confessed, and granted the prayer of the petition. The first ground of suspension is that there was truly no indenture, the document not having been signed by the apprentice's brother. I don't think that objection is sufficient to set aside the obligation which was undertaken by this young man, and which he was legally capable of undertaking. The masters may be in consequence *minus* a cautioner; but I see no other consequence of the want of the brother's subscription. But there is another objcction of a more important kind. It is said that the sentence is illegal because it imprisons the suspender until he finds caution, which he cannot do, and because it was passed in his absence and not in his presence, when he might have had an opportunity of explaining to the Sheriff the cause of his absence from his work. Now, this application is a common law one, and not under the statute. It is presented for the purpose of obtaining implement of a contract which the apprentice had entered into, and which he was capable of entering into. I am therefore of opinion that this was a civil process, and that it was competent for the Sheriff to pronounce his first deliverance under the certification expressed in it. It appears that the apprentice was aware of the service of the complaint and of the certification, for although there was not personal service upon him, he states in his suspension his reasons for not appearing to answer. The next question is whether the Sheriff was entitled in his absence to ordain him to be imprisoned. It follows, from what I have said, that he was. Then comes the sentence itself. It is not a warrant to imprison him until he finds caution to fulfil all the conditions of the indenture, but only until he finds caution to return to his service and remain in it. It is not sufficient that he should return, because his having already deserted renders it probable that his return may just be the preliminary to another act of desertion. In the cases which were cited it is nowhere maintained that imprisonment until an apprentice finds caution to return and remain in his service is incompetent. I therefore think that the sentence complained of was competent and legal, and ought not to be suspended.

The other Judges concurred.

Lord DEAS observed that the only novelty or difficulty in this case arose from the fact that the apprentice was cited and proceeded against in his absence, instead of being apprehended in the first instance. The sentence passed might appear startling, but it could not be pronounced illegal without overturning the law, which has been settled by a series of decisions extending over a century. In regard to the question as to whether it was proper to cite or apprehend a deserting apprentice, his Lordship thought that it depended on the circumstances of each case which course should be followed. In most of the recent cases the deserter had been apprehended, and it would be perilous, after what has been done, to say that it was incompetedt to do so. In some cases, such as where there was a combination among the workmen, or where they were in hiding, apprehension was absolutely necessary. Any other course would be useless or impossible. On the other hand, there is nothing to show that what has been done in this case is incompetent. Each case must be dealt with as it occurs. In this case, it is substantially admitted that there was desertion, and the same warrant would have been granted although the apprentice had appeared or been taken before he Sheriff.

All the Judges concurred in saying that if the complainer was willing to return to his service, the Sheriff would be justified in accepting the smallest possible caution, if he was satisfied that the apprentice was not in a position to find caution to any greater amount.

SECOND DIVISION.

SCOTT *v.* MITCHELL.

Cautioner—Relief—Liberation. A having bound himself to relieve B of any loss he might sustain by reason of his becoming security for *an advance* of £150 by a bank to C, and B having become security for *a credit account* allowed by the bank to C, through which he sustained loss, *held* that he had no claim of relief against A.

Counsel for Advocator (Defender)—Mr Gordon and Mr Clark. Agent—Mr David Crawford, S.S.C.

Counsel for Respondent (Pursuer)—Mr Gifford and Mr Balfour. Agent—Mr George Cotton, S.S.C.

This is an action for relief of a guarantee granted by the pursuer to the Clydesdale Bank for £150, which it is contended the defender (Mitchell) by a letter became bound to relieve him of, and the defence is that the document on which the pursuer founds is not one which entitles him to that relief. The original guarantee is contained in a letter granted by the pursuer to the bank, dated 22d June 1853, requesting the bank to give James Wood, watchmaker in Glasgow, a credit account to the extent of £150; and binds the subscriber to pay any balance that may arise due to the bank under the guarantee to that extent. The letter addressed by the defender to the pursuer was dated 15th June 1853, and is in these terms:—"As you have become security to Clydesdale Bank for £150 on account of Mr James Wood, for the purpose of assisting him in his business, I hereby guarantee you against any loss by your so doing." At the date of this letter the pursuer had not interposed his security to the bank for Wood, but had arranged, or was in the course of arranging, to do so. On 22d June, seven days after the date of the defender's letter, the pursuer addressed to Mr Readman, manager of the Clydesdale Bank, the following letter:—"Sir,—I request you will allow Mr James Wood, watchmaker, West Nile Street, Glasgow, a credit account with your bank to the extent of £150, and I bind and oblige myself to see you repaid the balance due, with interest thereon." After receipt of this letter, a credit account was opened in the bank books in Wood's name on 28th June 1853, on which Account Wood continued to operate by drawing and lodging monies to 12th June 1861. At the latter date there was a balance due to the bank of £151 odds. Wood being unable to pay this balance, the bank obtained decree against the pursuer for £150 in virtue of his cautionary obligation. The pursuer then brought his action of relief against the defender, who pleaded—(1.) The guarantee having reference to a specific existing debt, for which the pursuer, as was represented, had at its date "become security" to the bank, and no such debt being then really existing, and no such security having been then granted by the pursuer, the guarantee was inoperative and not binding, and cannot now be enforced. (2.) The defender's guarantee, even although it was otherwise binding, must be strictly interpreted, and cannot be construed to extend to transactions subsequently entered into, to which it has no reference. (3.) The obligation granted by the pursuer to the bank being of a date subsequent to the date of the guarantee subscribed by the defender, and the pursuer's obligation being for a credit account with the bank, which was not contemplated by the defender's guarantee, the guarantee does not apply to the obligation of which the pursuer seeks to be relieved. Before answer, the Sheriff-Substitute (Bell) allowed the defender a proof of his averments, to which interlocutor the Sheriff

adhered. The defender led no proof, and the Sheriff-Substitute held him confessed as unable to instruct any of his averments, beyond the extent to which they were admitted or proved *scripto.* But on the merits, the Sheriff-Substitute assoilzied the defender under the following findings:—

"Finds that the circumstance of the pursuer's cautionary obligation to the bank being posterior in date to the defender's cautionary obligation to him, might not have excluded the claim of relief, had it been apparent not only that the one was granted with a view to the other, but also that the obligation granted by the pursuer to the bank was no broader or wider than the prior obligation granted by the defender: Finds, however, that all the defender undertakes in his letter of guarantee is, that he will not allow the pursuer to suffer loss by his becoming security to the bank for £150, to be advanced to Wood to assist him in his business: Finds that the guarantee which the pursuer subsequently gave to the bank is not in the same terms, but much broader, in respect it commences with a request that the bank will allow Wood 'a credit account to the extent of £150,' and ends with an undertaking to see the bank repaid whatever balance may arise on said account: Finds that the bank transacted with Wood for a series of years on the footing of such credit account, and Wood more than once during that period withdrew and repaid, and again withdrew the whole sum at his credit, leaving finally the above balance against him, all as instructed by the proof and productions in the process at the bank's instance against the pursuer, produced herein: Finds that it is not averred by the pursuer in the closed record that the defender knew, or was made aware of, the precise terms of the pursuer's letter to the bank, or of Wood's operations on the cash credit account: Finds that cautionary obligations are to be interpreted strictly, and that whatever liability the pursuer chose to incur to the bank on Wood's account, he cannot extend the defender's liability to himself beyond the terms of said defender's letter: Finds that there is nothing in said letter to lead to the belief that the defender contemplated a credit account, or undertook more than to stand between the pursuer and the bank for a first and single advance of £150 to Wood: Finds that such advance having been made and repaid by Wood, the defender's obligation of relief was at an end, and it is an error to suppose that he went the length of guaranteeing the pursuer of any loss arising from the larger and wider guarantee subsequently granted by the pursuer to the bank without the defender's knowledge or assent. Therefore, sustains the defences, and assoilzies the defender from the conclusions of the action."

The Sheriff, on appeal, altered this interlocutor, and allowed the pursuer a proof "of all his allegations on record of the circumstances which led to the defender's granting him the letter of relief of 15th June 1853, and the real intention of parties for that engagement being entered into." The Sheriff-Substitute held the import of the proof led under this interlocutor to be that it was distinctly explained by Wood, both to the pursuer and defender, that he wanted a specific sum of £150 to enable him to increase his stock-in-trade; that the bank would advance that sum on the pursuer's guarantee, and that all that was asked of the defender was to stand between the pursuer and any loss arising from Wood's inability to repay the advances to the bank; that the pursuer himself apparently so understood the transaction, as he deponed that the guarantee he first sent to the bank was "for a specific sum of £150;" and that it was only after the bank objected to the form of that guarantee that he granted the letter requesting the bank to allow Wood "a credit account to the extent of £150;" and that the defender deponed that his distinct understanding was "that the pursuer's obligation was to cover one single transaction for £150 for a temporary purpose, and that Wood never hinted to him that the pursuer's obligation to the bank was for a credit account." The Sheriff-Substitute accordingly assoilzied the defender of new. The Sheriff Principal altered this interlocutor, holding that the pursuer had sufficiently instructed that the defender, when he granted to the pursuer the letter of relief libelled on, was aware that Wood was to get a credit from the bank to the amount of £150, under a guarantee by the pursuer to the bank to that extent, and that it was the understanding of all parties at the time that if the pursuer became security for Wood to the bank, the defender was to guarantee the pursuer against any loss he might sustain under his obligation to the bank, and that the defender understood that he was binding himself accordingly, under the letter of relief granted by him. To-day the Court returned to the judgment of the Sheriff-Substitute on the grounds expressed in his interlocutor.

HIGH COURT OF JUSTICIARY.

Thursday, March 8.

(Lord Justice-Clerk and Lords Cowan and Neaves presiding.)

MALCOLM *v.* CAMERON; MALCOLM *v.* PATERSON.

Suspension—Embezzlement Act—17 *Geo. III., c.* 56—*Relevancy.* Objection to the relevancy of a complaint to Justices, under 17 George III., c. 56, which repelled.

Counsel for Advocator—Mr Fraser and Mr J. G. Smith. Agent—Mr Henry Forsyth, W.S.

Counsel for Respondents—Mr Clark and Mr Black. Agents—Messrs Curror & Cowper, S.S.C.

These were two bills of advocation and suspension at the instance of the Superintendent of Police of Kirriemuir against two weavers in Kirriemuir. The suspender had presented complaints against the respondents, which two of her Majesty's Justices of the Peace for Forfarshire had dismissed as irrelevant. The Court to-day unanimously recalled the judgment and repelled the objection which the Justices had sustained.

The complaints charged the respondents with a contravention of the statute 17 George III., cap. 56, commonly known as the Embezzlement Act. By section 10 of that statute it is enacted that it may and shall be lawful for any two justices of the peace of any county, upon complaint made to them upon oath by one credible person that there is cause to suspect that any purloined or embezzled materials, whether mixed or unmixed, wrought or unwrought, are concealed in any dwelling-house, outhouse, yard, garden, or other place or places, by virtue of a warrant under their hands and seals, to cause every such dwelling-house, outhouse, yard, garden, or place to be searched in the day-time; and if any such materials suspected to be purloined or embezzled shall be found therein, to cause the same, and the person or persons in whose house, outhouse, yard, garden, or other place the same shall be found, to be brought before any two justices of the peace for the same county; and if the said person or persons shall not give an account to the satisfaction of such justices how he, she, or they came by the same, then the said person or persons so offending shall be deemed and adjudged guilty of a misdemeanour, and shall be punished in manner hereinafter mentioned, although no proof shall be given to whom such materials belong. And by section 14 it is further enacted, that every person deemed and adjudged guilty of a misdemeanour in having in his or her possession any materials suspected to be purloined or embezzled, and not producing the party or parties being duly entitled to dispose of the same, of whom he or she bought or received the same, nor giving a satisfactory account how he or she came by the same, or of a misdemeanour in having, carrying,