

## SCOTLAND.

## APPEAL FROM THE COURT OF SESSION.

WEBSTER and another—*Appellants*.  
CHRISTIE, Esq.—*Respondent*.

SUSPENSION against a charge upon a bond, on the ground of fraud by the charger in obtaining it. The alleged fraud consisted of unfounded representations of circumstances generally, without any direct reference to the bond, which was admitted not to have been *elicited* by the Respondent. Judgment that the bond was valid, and this decision affirmed upon appeal.

May 28, 1813.

CAUTIONRY.

THE Respondent, in 1795, became bound jointly with Sir D. Carnegie to the British Linen Company for the faithful conduct of his nephew, Robert Christie, who was the Company's Agent at Montrose. In 1796, the Respondent having become uneasy at the extent of his obligation, proposed to his nephew to limit his discounts to the annual sum of 18,000*l.*; and otherwise, he stated, that he would withdraw his security. The nephew, to prevent this, prevailed upon the Appellants to become bound in another bond, to relieve the Respondent from his liability to a certain amount. In 1804, Robert Christie, the nephew, became bankrupt, and the Respondent called upon the Appellants to relieve him in terms of their obligation, which they refused. A charge followed, and the Appellants presented their bill of suspension. Their defence amounted to this, "*that they had been induced by fraud to subscribe the obligation in*

Bond by Respondent for faithful conduct of his nephew.

Bond by Appellants to relieve Respondent.

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“*relief.*” The uncle, they alleged, by *collusion* with the nephew, concealed the real situation of his affairs from the Appellants at the time of granting the bond in question, and represented them as prosperous when he knew the reverse; and had acted *fraudulently* by inducing the Suspenders to become bound to relieve him of a future and contingent debt, while he was conscious of a large and enormous debt being then incurred, and no means of payment existing. The Respondent answered, that he never heard of the bond in question till it was presented to him executed by the parties. The Appellants had offered to refer certain points to the Respondent’s oath, which, in the opinion of the Lord Ordinary, depended upon a previous fact not explicitly set forth; and he therefore appointed the Suspenders to say, in express terms, whether they would refer to the oath of the Respondent *that he did elicit that bond.* The Suspenders then admitted, “*that they never meant to say that there was any degree of personal influence with either of them to elicit the bond of relief.*” The Lord Ordinary and Court of Session pronounced in favour of the validity of the bond.

Judgment.

The Appellants appealed from this decision; but the appeal was immediately dismissed, and the interlocutors complained of affirmed.

Agent for Appellant, BERRY.

Agent for Respondent, CHALMER.