liam Gray, the wadsetter, had not so much as taken infeftment, nor did intimate to Tullichandie that he was not paid of the annualrent, until many years thereafter, that other creditors had obtained themselves infeft upon their comprisings; and so it was his own fault he was not secured; and, through his negligence, any assignation he was to make to the wadset and clause irritant, was altogether ineffectual.

It was REPLIED,—That the wadsetter, having secured himself by this bond of corroboration, which was in place of a sufficient cautioner for his debt, he was not obliged, in law, to be at the expenses to take infeftment, nor to do diligence against the principal debtor; but Tullichandie ought to have looked to his own relief; and the irritant clause, being committed by two terms running in the third, he ought to have inquired if payment had been made, and, in the case of not payment, should have satisfied the debt, and acquired an assignation to the wadset.

The Lords did repel the defence; and found, That William Gray, the wadsetter, was not obliged to do diligence against the debtor, nor to have taken infeftment, whereupon he might have been preferred to all other creditors,—he being in the case of a creditor who had secured himself by sufficient caution, whereupon he may rely so long as he pleases; and so it is not liable, upon that ground, that the cautioner is prejudged by suffering others to do more timeous diligence; unless the defender could allege that William Gray had fraudulently abstained from doing diligence, of purpose to prefer others.

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1671. *December* 10. SIR ROBERT BARCLAY *against* LIDDELL.

IN the forementioned action of warrandice, at Sir Robert's instance, against Liddel, being again insisted in,—it was ALLEGED for Barclay, That not only there was a clause of absolute warrandice in the assignation, but that it had this specialty, *viz.* to warrant the sums thereby transferred; which, not being ordinarily insert in such clauses, must import that the debtor is solvent.

It was ANSWERED, That these words imported no more but that *debitum vere subest.*

The Lords did find, That these words, in specialty, did not import that the debtor was solvent the time of the assignation, but only that the debt was truly resting owing, and that the debtor was not *tutus exceptione.*

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1671. *December* 20. MR ARCHIBALD STEWART *against* WILLIAM WEILLANDS.

WEILLANDS, after many years' service of the Countess of Murray, having given bond to her son, Mr Archibald, to remove from her service at the next term, or to pay 1000 merks, being charged to pay the penalty,—he did SUSPEND upon this reason,—That the bond, being of that nature, was unlawful, and against the liberty