

Charger, in so far as the latter shall be found orderly, proceed a sufficient Disposition or assignment to any estate or effects belonging to him the suspender. But when the suspender is in prison, no Surety or Caution can be received in a Suspension and Charge to set at liberty Act of Decr. 8 Novemb. 1682 and in such a case, the suspender must find Caution not only for the Charger's security, but also for the Escheat goods belonging to him before the Relaxation, which is now become a mere formality, for there being no way in that state to know the value of these escheat goods, Caution for any inconsiderable sum is accepted Slaw l.b. 4 p. 52 527.

Of the Cautioner being approved of by the Clerk of the Bench he signs and delivers to the Clerk a bond obliging himself and his successors that the suspender shall give due obedience to the Charge, and pay the expences of the plea that shall be returned, in case the Lord at Discharging the suspender find that he ought so to do. But in regard, it frequently happens that others besides the Charger compete at Discharging for preference; that these if preferred may be able to give a summary Charge on the Bond of Cautionary, it must be conceived Alternatively Viz. to pay or to perform respectively to the Charger, or to such to whom payment or performance shall be Decerned to be made by the Decret to follow on the said Suspension, Act of Decr. 23 Novemb. 1717. If the Bond be not taken for the whole sum that shall be Decerned by the Lords, the Charger is intitled to Claim Damages from the Clerk, this the Clerk of the Bench having Expended a Bill of Suspension of a Charge upon a Bond at the instance of three suspenders, and taken Caution only for two of them, was found liable to the Charger for the third part of the sum suspended, the Charger assigning him to that third part of the Bond 17 Novemb. 1690 Ogilvie contra Riddel. One against whom a Bill of Suspension was offered having required the Clerk of the Bench under form of Jurament to take a sufficient Cautioner, the Clerk for accepting a bond of Cautionary bearing to be subscribed by a person long before dead, was found liable to pay the debt in respect he did not intimate to the Charger or his Agent the name

Name of the Cautioner offered 2 Decemb. 1680 Affirm contra Riddel. Upon Receipt of the Bond of Cautionary which lies in the office and the Charger gets an Extract of when he has occasion for it the Clerk would upon the Bill of Suspension signed in bargain 15 Novemb. 1681 flat summons ut patet in the 13 day of December next to come, with Continuation of days, and to suspend and discharge with infra in the mean time the 22 day of the same Month. Because it is become Cautioner for the Compaigner to the effect with which the Clerk to his ownance is signed by the ordinary and Clerk.

When a Bill is past upon Compaignation, the Money paid for it is delivered to the Clerk of the Bench for which he gets one Shilling in the paid half paid instantly by the Compaigner, and half at the delivery by the Upclerk. But when great sums are Compaignes, parties up to Compaign with the Clerk for less Compaignation Money. And a bill of the sum charged for the Compaignation. Yet the Clerk must take a bond of Cautionary for what Expences shall be Decerned by the Lords at Discharging the suspenders.

When upon a last Bill, the Cautioner is received or Compaignation made in the terms of the ordinary Act in vertune, letters of Suspension in suspending the Charge till a certain day, are expedit at the signet. And after the delivery of a Copy thereof to the Charger by a messenger or any other person at the Sheriff in that party all personal Diligence and pointing of Moveables, must stop till the Suspension be Discharged by an extract Decret of Suspension 18 January 1681 Creditors of Margoribanks contra Chapland. But the Charger may pending the Suspension do all manner of Real Diligence by Repudiation Intuition or the like. He may also arrest and pursue a person for the debt suspended 25 January 1682 Kirkling contra Kirkland. 11 June 1675 Scot contra Murray allowed by Discharge, because a Suspension only is to Execution, and Arrestment is no Execution but only a Diligence and Remedy for preserving the Debtors estate that after Discharging the Suspension the Creditors may have execution against it. Such Arrestment, though upon a Decret may be looted upon Caution, Slaw But yet the Lords found that Arrestment Vies upon a Decret that stood suspended, could not be looted, because it is not meant to be a Decret, till it be taken away by a Decret in favour