

to shun this arbitrary course, they laid hold on a general letter, wrote by the debtors, seeming to acknowledge the debt; and found the letters orderly proceeded against the two subscribers; and as to Leckie, the third, seeing the letter bore it was also written by his warrant, ordained him to dispone if he gave any such order.

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1692. *November 25.* TAYLOR and THOMSON *against* WILLIAM BAIRD.

WILLIAM BAIRD, flesher in Kilmarnock, being pursued by Taylor and Thomson, for improving a discharge as false, and a term being taken for his abiding at the truth of it, he failed to compear; whereupon there is a decreet of certification extracted, and on a bill a warrant was granted to incarcerate him as the forger. When in prison, he gives in a petition, alleging the certification was stolen out against him, and he was always, and yet is ready to abide at it, and desired thereon to be liberated.

The Lords thought he could not be reponed, as to the private interest of the parties, so that he behoved to pay the debt contained in the discharge; but as to the criminal part, and punishment, seeing it was but a presumptive falsehood, and the witnesses were not yet examined, the Lords ordained it to be intimated to the parties and solicitor, to insist against him, with certification if they did not within eight or ten days, they would liberate him upon caution, to answer when called; he always before his liberation abiding at the verity of the said discharge. The President would have had him lying in prison during the whole trial.

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1692. *November 29.* LIDDELL of Loch, and RIG'S CREDITORS, *against* ALEXANDER GORDON.

LIDDELL of Loch and the other creditors of Rig, late of Carberry, against Alexander Gordon. This being a competition among the creditors, they objected against Gordon's adjudication, that it was null, because he had adjudged for L.200, contained in a bond, whereas there was a discharge posterior to that bond granted by Mr. George Gordon, father to Alexander.

ANSWERED,—The discharge was general, and did not relate to this debt, which was but a cautionry of Rig's, and so could not comprehend it, being neither *tractatum* nor *cogitatum*. *2do*, *Esto* it were paid, it could not annul his diligence, being led by his curators when minor, and who finding the bond among his papers, could not be answerable to their trust to neglect it.

REPLIED,—The discharge is very comprehensive of all he could ask or claim, and cautionry is a man's proper debt as well as any other; and they are all *correi debendi* to the creditor.

DUPLIED,—It might as well extend to cut off clauses of warrandice, relief, and others, which such general discharges are never found to do; as *Stair* observes, *Tit. 11, Liberation from Obligations.*