The Lords reasoned long on the *first* point about the extent of the general discharge, and thought it of dangerous consequence to loose such a security; especially seeing there were words that might take in trusts, though not *nominatim* discharged, such as clags, claims, promises, &c. On the other hand, it seemed strange, if Mr Bannerman designed to be discharged of this trust, why he might not as easily have named it; and that it could not fall under the word *promise*, because he denied, by his oath, he had ever made her any promise: and it was as little comprehended under the word *back-bond;* for that presupposed writ, (in which case there is a proper trust,) and here there was none. Therefore the Lords would not lay down a preparative to loose general discharges. And, on the other hand, suspecting this was not communed, treated, nor acted betwixt the parties at the time; and finding he had advanced her sums of money on the faith of this trust, without any receipt, which he might lose if the discharge were repelled; and that it seemed inconsistent at first to deny there was any trust, and then to allege it was discharged, seeing *non entis nulla sunt accidentia, nullæque qualitates;* therefore they took a middle way, before answer, to try if it was *actum tractatum* or *cogitatum* between the parties, that this trust should be comprehended in that general discharge, and either party to adduce what evidences they could to clear the same; as also that Mr Bannerman instruct, by the said Margaret's oath, or any other way he best can, what sums of money he has advanced to her for burying her first husband, during her viduity, or to out-reik her second marriage, &c. it being reasonable he should not denude till he be reimbursed.

As to the *second* point, The Lords superseded to give answer till the first were tried; in regard they thought, the discharge being prior to the subscribing the contract, (though it followed the next day,) there was no meith to secure the lieges in bargains, if treaties and communings were made a rule, seeing they may depend long; and, therefore, either the *sponsalia*, (which is a contract of marriage,) or else the *denunciatio bannorum*, must intervene, to put parties *in mala fide*; after which *scire et scire deberi equiparantur in jure*; and a party's own knowledge of a purpose and treaty of marriage, without thir legal marks, are not equivalent thereto. But this was not decided.

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1697. *June* 16. BRUCE of BORDIE *against* KEIRY of GOGAR.

IN the count and reckoning between Bruce of Bordie and Keiry of Gogar, before Rankeilor, this point came to be questioned:—Keiry stated the price of the victual intromitted with by him as only received at the Whitsunday after the crop, so as to bear annualrent *ab eo tempore*. Bordie ALLEGED,—It ought to be from the Candlemass, seeing he had the ease of the Candlemas-fiars.

The Lords found, He could not be stated as debtor so as to bear annualrent sooner than Whitsunday after the selling of the victual; especially seeing several sell to a longer term, *intuitu* of a good price.

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