should go out or not; but referred the consideration of the case to the Ordinary upon the Bills. The Lords thought he might suspend when he was charged. Others said, Why should he be at the expense and trouble of a cautioner when he is already assoilyied: And, in such case, it should be pursued *via ordinaria*. *Auri sacra fames quid non mortalia pectora cogis?*

1699. *February* 28. WILLIAM GORDON of BALCOLMY *against* MARK LEIRMONT and SIR G. N.

[See the subsequent part of the Report of this Case, Dictionary, page 3096.]

MR William Gordon of Balcolmy gives in a bill against Mr Mark Leirmont and Sir G. N. late of B. to stop the roup of these lands, in respect the apparent heirs were not cited, and he offered to improve the executions as false; and complained, That the said Sir G. had officiously intruded himself on that estate, and bought in debts, not being a creditor before, and had made singular bargains with them. He ANSWERED,---The apparent heirs had defrauded the poor creditors these many years, and had given them nothing; and he was as free as any of the sons of Adam to purchase these lands in a fair roup; and the creditors had applied to him; and many of them had transacted with him cheerfully.

The Lords inclined to allow the apparent heirs yet to be legally cited to the first of June, and Mr William to improve the first execution, as accords.

Vol. II. Page 49.

1699. *June* 3. WILLIAM JACK, Minister at Kelso, *against* ROBERTSON, the Kirk-Treasurer.

MR William Jack, minister at Kelso, pursues one Robertson, who had been kirk-treasurer for many years there, for delivery of the poor's money, and bonds and other securities he had for the same: and the whole being referred to his oath, he declared he had given up the bonds; but as to the other money due to the poor, arising from collections, fines, &c. he had expended it by warrants from the ministers and elders at the time; and that he had no count-book of charge and discharge, but only some scrolls and notes he had made for his own private memory.

ALLEGED,—The quality of this oath was extrinsic; and it could not exoner him that he said he had given it all out by order, unless he produced these warrants; otherwise the poor's money might be easily squandered, if his assertion were enough.

ANSWERED,—They having no other way to constitute and prove a charge against him but his own oath, they cannot divide it, but must take it entirely as it stands; and they seek no written warrants for debursing to the poor, but

only the minister and kirk-session's verbal orders; which, as to every minute particular, were impossible for him to prove.

The Lords thought,---Though there was not a special order for every one of his debursements in writ, yet they should at least keep a book wherein should be inserted all that they receive for the use of the poor, and the way and manner how it is given out again; but, in regard it was informed this exact method was not kept in many churches, therefore the Lords allowed a conjunct probation what had been the custom and practice of Kelso on this point; and to produce any memorials and documents either party could, for clearing either the charge or discharge, whereby it would appear if his administration had been such as his oath ought to exoner him, yea or not. It was thought, If the quality adjected related to the terms or conditions on which he had accepted the office, that might be pled as intrinsic; but when he deponed, upon his own discharge, That he had expended all without giving any instruction, this was not so favourable. *Vol. II. Page* 49.

1699. *June* 8. JANET INGLIS, Relict of ANDREW CHARTERIS, *against* The EARL of MURRAY.

JANET Inglis, relict of Andrew Charteris, pursuing the Earl of Murray for some annualrents, he founded on her discharge for £480 Scots. ALLEGED,—That, she being to receive 1200 merks from the Earl, Bannockburn, his writer, would not give it till she also subscribed that £480 receipt, though she got nothing for it; and she, being in great need, was forced to yield to this unreasonable demand, or else she would have got nothing. ANSWERED,—If this were concussion, all the eases and abatements that are given in Scotland might be quarrelled.

The Lords found, This might draw in question many transactions; and, seeing neither force nor threats were adhibited, but only the refusing voluntary payment, they found this no sufficient qualification of concussion; and therefore sustained the discharge. *Vol. II. Page* 51.

1699. *July* 14. DAVID OGILVIE of PELTY *against* LORD BALMERINO and the MASTER of BALMERINO.

DAVID Ogilvie of Pelty pursuing maills and duties of the lands of Cowbyres, whereunto he had right by disposition from the deceased Lord Cowpar; the Lord and Master of Balmerino, as heirs to the said Lord, compear, and repeat a reduction of the disposition, on this head, That it was never a delivered evident, but a mere trust, or unwarrantably got up after the Lord Cowpar's death. And the allegeance being referred to his oath, he, on the first examination, depones, That he had served my Lord many years without any fee; and, being his Lady's cousin, believes this was given him in remuneration, being but 100 merks *per annum;* and that he got it, after my Lord's death, from a vassal of