a second contract of marriage, which the competitor Pearson finds himself to be drove under a necessity to say; which, yet say the executors of Macfadzean, no man alive can believe that old Macredie intended; and if it shall appear that old Macredie's notion was, that his daughter's contract of marriage comprehended this, it is sufficient, whatever difficulty there otherways might have been in constructing the contract itself."

[Here Lord KILKERRAN's report ends.]

24th July, 1752.—The Lords "prefer Andrew Macredie as assignee, by Margaret Macredie, his sister, to the whole sum in the bond in question;" and they refused a reclaiming petition without answers, *15th November*, 1752.

1752. *December* 19. JAMES THOMSON and OTHERS *against* STRATON of Laurieston and OTHERS.

THIS case is reported by Lord *Elchies*, (*Jurisdiction*, No. 59.) Lord KILKERRAN'S note of it is as follows:—

"That riots, batteries, and the like acts, in their nature criminal, do in general fall under the cognizance of the Judge Ordinary, albeit committed by officers of the revenue when about the execution of their office, is undoubted. I say, in general this is undoubted, where the act is in its nature criminal, and which no statute can be pled to justify.

"But then, there are other kind of facts which may be pleaded to be justified by a statute, and, therefore, are criminal, and riotous or not, according to the construction of a statute. For example, an officer has a writ of assistance, and upon the authority of it, breaks open the door of an unentered house, and pleads the statute of ( ) to justify his so doing.

"ANSWER.—The statute only authorizes the entry, but not the breaking open doors; for that all that the statute does, in case entry is refused, is to impose a penalty. Now, when this is the case, and, indeed, it is the very case in hand, the question is, To which of the two Courts the determination of this question does belong? and it is far from being a clear one, and before the act of indemnity, my opinion would have been, that it belonged to the Exchequer.

"And all the question is, if that act has made such an alteration, that the Court should now have no jurisdiction?

"*June* 30, 1758.—The Lords sustained the jurisdiction of this Court.

"*December* 19, 1752.—The Lords having heard this petition, with the answers thereto, they supersede advising thereof until the Lords have a conference with the Barons of Exchequer thereon, and recommend to the Lord President to acquaint the Barons of the said conference. (Signed) Ro. Dundas." And by their other interlocutor, dated the 5th of December, 1753, they pronounced the following interlocutor:—"The Lords having again resumed the consideration of this petition, with the answers thereto, they supersede advising thereof, until the Lords have a conference with the Barons of Exchequer thereon, and recommend to the Lord President, for this week, to acquaint the Barons of the said conference. In consequence of which two interlocutors, the Lords, on this day, 11th December,

1753, authorised and appointed the Lord President for the time, Drumore, Elchies, Kilkerran, as a committee of their members, to meet with and have a conference of the Barons on the said petition and answer."

1752. *December* 29. JOSEPH FAIKNEY *against* JOHN CAMPBELL.

THIS case is reported by *Elchies, (Arrestment,* No. 29, and more fully in his *Notes.)* Lord KILKERRAN'S note of it is as follows:—

"This petition reclaims against an interlocutor of Lord Shewalton, preferring an arrester to the indorsee of a promissory-note,—an interlocutor certainly just upon the principles of the law of Scotland. But what the petitioner says is, 1*st*, That this promissory-note was not only granted in England, but was indorsed in England; and, therefore, must be governed by the law of England, whereby promissory-notes transmit by indorsation as bills.

"And whereas one of the *rationes decidendi* in the interlocutor is, that the arrestment was before the indorsation; the petitioner says it is a mistake, in fact, for though the indorsation to the petitioner may have been posterior to the arrestment, yet the indorsation to the petitioner's author was of the date of the note.

"But, 2*do*, says he, the arrestment is inept, for that the arrestment was not in the hands of the granter of the note, but in the hands of persons to whom he had disponed his effects in trust.

"The fact is, Graham is debtor to John Campbell, cashier to the bank; Austin of Kilspindy is debtor to Graham by this promissory-note, and Campbell arrests, not in the hands of Austin, on a dependence against Graham, but in the hands of Austin's trustees, which, says the petitioner, is no better than an arrestment in the hands of a factor.

"A third thing he says is, that the arrester is preferred, not only for his debt, but also for the expense awarded in the process, on the dependence whereof the arrestment was laid."

ARNISTON.—"Perhaps the interlocutor is not laid upon right principles as to Campbell's preference; but the question is, if, supposing the arrestment validly made, the arrester is not preferable, where he would, by our practice, be preferable to an indorser of a bill on which nothing had followed for so long a time. But the objection against the arrestment appeared to be strong, and the Lords did accordingly pretty unanimously sustain the objection."

1753. *February* 28. JAMES, EARL of MORTON *against* The OFFICERS of STATE, and JOHN, MARQUIS of TWEEDALE.

THIS case is reported by *Elchies,* (*Teinds,* No. 35.) and in the *Fac. Coll.* (*Mor.* p. 10672.) Lord KILKERRAN'S note of it is as follows:—