

ordinary and Ordinary." This was noticed by the Lords as an alteration and inversion of the style observed ever since the institution of the College of Justice ; and so much the more that it happened in a writer ; and the reason why our law and custom has ranked the Extraordinaries (though commonly taken from the nobility,) after the Ordinaries, is, because the Ordinary Lords only make the body of the Court of Judicatory ; so that nine of them can proceed without any of the Extraordinary. But, though the Chancellor and all the four Extraordinary were present, with eight Ordinary Lords, they can do nothing, though thirteen in number ; because they go not to the making up of the quorum. Nor are they essential to the Court ; but *accidens a subjecto separabile*, and at first designed to breed up some of the Peers in the knowledge of our municipal laws ; and so, being only an accessory in this case, the rank due to them by their birth or patents, of creation, is not here considered.

Mr William, finding his mistake, and borrowing up his bill and cancelling it, gave in a new one, reformed conform to the perpetual style used in these cases.

*Vol. II. Page 48.*

1699. *February 28.* DR ROBERT TROTTER *against* JAMES BAR.

MR Robert Trotter, doctor of medicine, obtains decret against James Bar, herald-pursuivant, for payment of the debt due to the said Doctor by Cockburn of Ladykirk ; because the said James had taken him with caption, and delivered him to another messenger, who suffered him to escape ; and there was presumption of his taking money, and connivance : But, the Doctor insisting for his expenses, the Lords thought the action penal, and refused to decern the messenger in any.

*Vol. II. Page 49.*

1699. *February 28.* ADAM DRUMMOND of MEGINSH *against* The CLERK of the BILLS.

ADAM Drummond of Meginsh gave in a bill, complaining, That, though he was assigned by Sir T. S. of B. to a bond of 2000 merks, granted to him by Sir J. M. of D. and was seeking a horning on the registrate bond, yet the Clerk of the Bills had refused it, in regard Sir J. M. the debtor, had obtained a decret of reduction of the said bond ; which he produced by way of instrument.

The case was :—Sir T. S. being in straits, prevailed with the said Sir J. to give him a bond to support his credit ; and, to secure him, he gave him a bond for the equivalent sum, to afford a ground of compensation ; and, being put at by Gairntully, he assigns this bond to him, who transfers it to Meginsh ; but, before intimation, Sir J. finding himself over-reached, obtains a reduction of the bond.

The Lords thought the Clerk of the Bills was not judge whether horning

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 assolyied : 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