

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 ?*

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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.

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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