to Innermay *ex capite lecti.* The Lords, notwithstanding their late act of sederunt, explaining what was to be esteemed going to kirk and market, yet could not determine the relevancy of the acts, but only, before answer, allowed either party to adduce what probation they could, anent the condition of his health or sickness at the time he subscribed this disposition now quarrelled, and anent his going to kirk or market, or to the election of commissioners; but did not determine whether they would receive equipollent acts to going to kirk and market, and what acts they would esteem as such, but left that to the probation; for certainly one's riding post to London is more than his going to kirk and market. And allowed them also to prove the manner of his supportation when he performed these acts; but thought there behoved to be a more pregnant qualification of his being supported here, than in other cases, because Rossyth was lame from his youth, and ever used a staff, and after a fall from a horse, used also a stilt. But all was reserved to the advising. *Vol. I. page* 521.

1692. *Nov.* 23. IRVING of Belty and his Daughter *against* ROLLAND of Disblair.

IRVING of Belty and his daughter *against* Rolland of Disblair. The Lords suspended the letters; and found Disblair, her curator, had reason to look to her portion, and that she could not disclaim the process; and though a father be administrator of the law to his daughter while minor, yet when he is debtor to her by a bond of provision, and has married a second wife, he cannot be curator *in re propria*, but she might choose other curators; and that the act of Privy Council, in 1688, did not annul the curatory, but only ordained his daughter to be delivered back to him; which was due by his paternal right, though he was a Papist. And if she refused to concur with the curators in uplifting and discharging the rents, (as she might,) then they might seek to be exonered of their office of curatry; and if the minor thought they had not found sufficient caution, she might either remove them, or cause them find better caution. *Vol. I. page* 521.

1692. *November* 24. SIR WILLIAM BINNY and SIR ROBERT BAIRD *against* JOHNSTON, LECKIE, and CRAWFURD.

SIR WILLIAM BINNY and Sir Robert Baird against Johnston, Leckie, and Crawfurd, merchants in Glasgow, craving to be reponed against a decreet *in foro* obtained by Andrew Alexander, factor, at Rochell, against them. The Lord President thought this was not to be reputed such a decreet *in foro* as was irreducible and unquarrellable; for it was not the proponing dilators or defences against the relevancy of the libel only that made it *in foro*, (for advocates might propone such without advice from their clients,) but defences *in facto* to be proven. The rest of the Lords thought this distinction against the act of regulation in 1672, and that it would open a door to loose any decreet *in foro*, and to hold fast again, as the Lords pleased to call it, a decreet in absence, or on compearance. Therefore,

to shun this arbitrary course, they laid hold on a general letter, wrote by the debtors, seeming to acknowledge the debt; and found the letters orderly proceeded against the two subscribers; and as to Leckie, the third, seeing the letter bore it was also written by his warrant, ordained him to dispone if he gave any such order. *Vol. I. page* 522.

1692. *November* 25. TAYLOR and THOMSON *against* WILLIAM BAIRD.

WILLIAM BAIRD, flesher in Kilmarnock, being pursued by Taylor and Thomson, for improving a discharge as false, and a term being taken for his abiding at the truth of it, he failed to compear; whereupon there is a decreet of certification extracted, and on a bill a warrant was granted to incarcerate him as the forger. When in prison, he gives in a petition, alleging the certification was stolen out against him, and he was always, and yet is ready to abide at it, and desired thereon to be liberated.

The Lords thought he could not be reponed, as to the private interest of the parties, so that he behoved to pay the debt contained in the discharge; but as to the criminal part, and punishment, seeing it was but a presumptive falsehood, and the witnesses were not yet examined, the Lords ordained it to be intimated to the parties and solicitor, to insist against him, with certification if they did not within eight or ten days, they would liberate him upon caution, to answer when called; he always before his liberation abiding at the verity of the said discharge. The President would have had him lying in prison during the whole trial.

Vol. I. page 523.

1692. *November* 29. LIDDELL of Loch, and RIG'S CREDITORS, *against* ALEXANDER GORDON.

LIDDELL of Loch and the other creditors of Rig, late of Carberry, against Alexander Gordon. This being a competition among the creditors, they objected against Gordon's adjudication, that it was null, because he had adjudged for L.200, contained in a bond, whereas there was a discharge posterior to that bond granted by Mr. George Gordon, father to Alexander.

ANSWERED,—The discharge was general, and did not relate to this debt, which was but a cautionry of Rig's, and so could not comprehend it, being neither *tractatum* nor *cogitatum*. 2*do*, *Esto* it were paid, it could not annul his diligence, being led by his curators when minor, and who finding the bond among his papers, could not be answerable to their trust to neglect it.

REPLIED,—The discharge is very comprehensive of all he could ask or claim, and cautionry is a man's proper debt as well as any other; and they are all *correi debendi* to the creditor.

DUPLIED,—It might as well extend to cut off clauses of warrandice, relief, and others, which such general discharges are never found to do; as *Stair* observes, *Tit.* 11, *Liberation from Obligations.*