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.*

The Lords found it no nullity, but at most, that it would only restrict the adjudication. And having considered the discharge, they thought, that if this cautionry had been intended to be discharged, they would have specially mentioned it, and given an assignation to the bond for the cautioner's better recovery of his relief; and, therefore, found this discharge did not extend to, nor comprehend that cautionry, as not being then *actum*, or under view.

Then the other creditors objected against Ramsay's and Lewing's debts, being tochers in their contracts matrimonial with Rig of Carberry's two daughters, amounting to 3000 merks; that their father, Rig of Carberry, being then *obæratus*, and having nothing but 35,000 merks in Sir Adam Blair's hands, who bought the lands, this will scarce pay his other debts; and it is juster his children lose than his extraneous creditors.

ANSWERED,—This would militate against a bond of provision granted by parents to their children. But here being a tocher, given in a contract of marriage, it is onerous both as to the children and the wife's jointure; and he not being then under diligence, he was not incapacitated, but might give suitable provisions to his bairns, not being extravagant; and his son-in-law seeing no incumbrance upon him might contract, and become as onerous creditors as an other.

REPLIED,—That there was no diversity between the case of bonds of provisions and tochers; and in the case of the creditors and children of *Douglass* of Monsuall, and many others, the Lords always required that it should be proven the father had then a visible opulent fortune, able to pay both his debts and bairn's provisions.

DUPLIED,—That Rig of Carberry had so; but *ex eventu*, by the liferentrix, her long life, the sum came to be exceedingly diminished, and unable to pay them all, which eventual loss was not considered in that case of Monsuall's.

The Lords found a contract of marriage in a better case than a bond of provision, and that there being no diligence, they were creditors as well as the rest, the portions being moderate. *Vol. I. page 523.*

1692. *November* 29. CUBISON *against* JOHN BELL.

ON a petition given in by Cubison against John Bell, that he could not be removed on the warning before Whitsunday, because the master had accepted the Martinmas rent thereafter; and he deponing, that it was with this express quality, that he did not pass from his warning; the Lords thought somewhat was to be indulged to the rusticity of tenants, where they had any probable ground of mistake, that it should supersede execution of the removing till Whitsunday next. But it being represented that the master was under tack to another, and was charged to enter him to that room; the Lords appointed trial to be taken of his damages, and if both the tenants could be accommodated where they were till next term, rather than put them to flit in the midst of winter.

 Vol. I. page 524.