

only the minister and kirk-session's verbal orders ; which, as to every minute particular, were impossible for him to prove.

The Lords thought,---Though there was not a special order for every one of his debursements in writ, yet they should at least keep a book wherein should be inserted all that they receive for the use of the poor, and the way and manner how it is given out again ; but, in regard it was informed this exact method was not kept in many churches, therefore the Lords allowed a conjunct probation what had been the custom and practice of Kelso on this point ; and to produce any memorials and documents either party could, for clearing either the charge or discharge, whereby it would appear if his administration had been such as his oath ought to exoner him, yea or not. It was thought, If the quality adjected related to the terms or conditions on which he had accepted the office, that might be pled as intrinsic ; but when he deponed, upon his own discharge, That he had expended all without giving any instruction, this was not so favourable.

*Vol. II. Page 49.*

---

1699. *June 8.* JANET INGLIS, Relict of ANDREW CHARTERIS, *against* The EARL of MURRAY.

JANET Inglis, relict of Andrew Charteris, pursuing the Earl of Murray for some annualrents, he founded on her discharge for £480 Scots. ALLEGED,—That, she being to receive 1200 merks from the Earl, Bannockburn, his writer, would not give it till she also subscribed that £480 receipt, though she got nothing for it ; and she, being in great need, was forced to yield to this unreasonable demand, or else she would have got nothing. ANSWERED,—If this were concussion, all the eases and abatements that are given in Scotland might be quarrelled.

The Lords found, This might draw in question many transactions ; and, seeing neither force nor threats were adhibited, but only the refusing voluntary payment, they found this no sufficient qualification of concussion ; and therefore sustained the discharge.

*Vol. II. Page 51.*

---

1699. *July 14.* DAVID OGILVIE of PELTY *against* LORD BALMERINO and the MASTER of BALMERINO.

DAVID Ogilvie of Peltly pursuing maills and duties of the lands of Cowbyres, whereunto he had right by disposition from the deceased Lord Cowpar ; the Lord and Master of Balmerino, as heirs to the said Lord, compear, and repeat a reduction of the disposition, on this head, That it was never a delivered evident, but a mere trust, or unwarrantably got up after the Lord Cowpar's death. And the allegiance being referred to his oath, he, on the first examination, depones, That he had served my Lord many years without any fee ; and, being his Lady's cousin, believes this was given him in remuneration, being but 100 merks *per annum* ; and that he got it, after my Lord's death, from a vassal of

his, but was not clear to tell his name. Thereafter, being reëxamined, he acknowledged it was given him by George Ramsay of Gallery ; and, being interrogated what he said to him, declared, That he told him he had got the disposition to deliver to him ; but could not say that he spoke any thing of my Lord Cowpar, or any order from him.

Balmerino *CONTENDED*,—This oath proved his defence, in so far as, *1mo*. He acknowledged he neither got it from Cowpar in his life, nor mentioned any order he had left to deliver it. *2do*. He had industriously concealed the party's name in the first oath, which he reveals in the second ; but then Ramsay was dead : which can admit no other construction but that he refused to name him, lest he had been examined from whom he got it, and how he came by it, as certainly the Lords would have done ; by which the unwarrantable manner of meddling with it, after my Lord Cowpar's death, would have come to light. *3tio*. He confesses Ramsay, at the delivering it up to him, spoke nothing of Cowpar, or any order from him.

*ANSWERED*,—Parties having a writ in their hands have no more to do but to oppose it ; and warrantable delivery is presumed in law till the contrary be proven. And this oath contains nothing but what is fair and honest ; and his concealing the vassal's name was upon no other account but that he might not expose him to his superior Balmerino's resentment and displeasure ; and, if it was an undelivered evident, how came it they did not quarrel it for twenty years together ? and the onerous cause for granting it was very plain.

Some were for reëxamining him ; but the plurality of the Lords found, The oaths did not prove that he warrantably came by the said disposition, or that there was any previous order or warrant from Cowpar to deliver it ; and therefore preferred the Lord Balmerino : and found it an undelivered evident on the presumptions foresaid.

*Vol. II. Page 51.*

1699. *June 20.* PATRICK HALIBURTON *against* JOHN SCOT.

PATRICK Haliburton, Dean of Guild of Edinburgh, being infest in a tenement in Hawick belonging to one Scot, on an adjudication, and pursuing for mails and duties, and removing ; compearance is made for John Scot, son to the debtor, who founds on a disposition he had to that lands prior to the Dean of Guild's adjudication, but whereon he was not infest ; and offered to prove, by receipts produced, that Dean of Guild Haliburton was paid of this debt, either in whole or in part, by intromission with sums belonging to the debtor.

*ANSWERED*,---This was *res hactenus judicata et jurata* ; in so far as, when I was pursuing for an adjudication, Scot the debtor compeared and proponed the same defence of my being paid by intromission ; and it being referred to my oath, I have deponed, that though I got an assignation to some debts, yet I never got any in payment of this, but that it is still resting ; whereupon the adjudication was allowed to proceed, and I assoilyied from that allegiance then, as I must be still ; seeing law and reason signifies that, *postquam juratum est, non amplius quaeritur an debeatur, sed tantum an juratum sit.*