under reversion, either by Francis his own oath, or by any other writs and documents he can produce beside them he has already made use of, and which are already debated, discussed, and determined; as also reserving to him his interest upon the inhibitions, and all other his reasons not yet insisted on, as accords of the law.

Which grounds will make the subject of another discourse, for furnishing whereof the following citations may be considered.

1*mo*, That an inhibition cannot be purged by payment, where a comprising is led on the ground of it, and is expired. See the two practicks beside me, Grant *contra* Grant, in 1666; and Lady Lucy Hamilton, in 1670.

2*do*, That an infeftment may be conjoined with a preceding inhibition to exclude an intermediate infeftment, and which hinders not *extrema coire*; see Craigie's Collection, *verbo* Inhibition; out of Durie's Practicks, 3d March, 1626, Law *contra* Lady Balgonie.

3*tio*, Whether, upon payment of an inhibition, the inhibiter or his assignee will be obliged to assign it to the payer, especially where he has other rights still in his person; see Dynus and Antonius Faber; and Jo. Mitchell's case *against* Sir William Bruce, cited in a paper-book beside me.

4*to*, Whether possession must be ascribed to a comprising or to an infeftment of annualrent, (which can never properly attain the natural possession, though it may the civil and legal,) where one man has both rights in his person; see Dury, 27th February, 1630, Paterson *contra* Scarlet, and the cases there, for Handyside's Infeftment of annualrent furth of Linton.

5*to*, *Non licet idem approbare et reprobare*; *L.* 4 *et* 5. *D. de Legatis*, 2; *L.* 38. *D. de Legatis*, 1; *L.* 7. *D. de Bonis Libertorum*; *L.* 16. *D. de Administratione Tutorum*; *L.* 11. *D. de Usuris*. For Francis Kinloch's disposition of the lands of Cracho, of which, since we crave reduction, we cannot found on clauses therein contained; see Sir Robert Sinclair's Information for Abotshall *against* F. Kinloch.

6*to*, Where an apparent heir acquires a right of comprising, &c. upon his predecessor's estate, it is redeemable by act 62, Parliament 1661, from him, upon payment of the sums he gave for it. *Quæritur*, If this can extend to the husband or father-in-law of the apparent heir buying in such rights. *Videtur quod non*, being both a statute, and that *exorbitans a jure communi*, it cannot suffer extension.

See 23*d June*, 1680, *Mr John Maitland* against *the Lord Cardross*. See A. Perezius, *ad Titulum Cod. de Fidejussoribus, Numero* 36. *Vide* Stair's System, Tit. 12. Of Real Rights, § 27, p. 182; and Nithsdale and Buccleuch's case there.

Advocates' MS. No. 488. *folio* 252.

1676. *July.* LORD MORDINGTON, Petitioner.

THE Lord Mordington being incarcerated in the tolbooth of Edinburgh for debt, gives in a petition to the Lords, craving to be set at liberty, in regard his creditors apprisers, and other infefters, had all his estate in their possession, and he was content to dispone the reversion to any the Lords should think fit, to the effect it may

be sold for their payment. The Lords refused the bill, alleging, his lawyers who had drawn it, (Sir G. Lockhart was the penner of it,) knew not the laws nor acts of sederunt; for, by an act made on the 21st of July, 1675, the Lords ordain the creditors who incarcerate or arrest to be cited, and called, and heard, to object against the bill, (and which ought also to be by a bill of suspension, relaxation, and charge, to put at liberty,) which he had not done; and here they would not consent to his liberation upon his disponing of the Scots estate, unless he also made over to them his English interest; which, he conceived, as the Scots law could never reach, so it could never force him to denude of it; and though there were no act of sederunt for it, natural equity persuades that the parties interested be heard. *L.* 8. *D. de Aqua, et Aquæ pluviæ arcendæ.*

Then Mordington caused cite, and require them all by a notary, before witnesses, conform to the said act, and produced the intimation, with his bill. The Lords again reflected on his advocates, and found it not sufficient till he raised a summons of *bonorum*. And yet the method aforesaid might seem equivalent, and to be dispensed with in a nobleman; but he was a Hamiltonian.

Then the President, upon a bill, gave him a deliverance, permitting him to go abroad in the day time with a guard, he always returning before eight o'clock at night; it always being on the magistrates their peril if he made his escape. With which quality it was just as good as no licence; it took back with the one hand what it gave with the other; and the magistrates would not obtemper that warrant, since they could do it without such an order, if they minded to run the hazard.

At last, in February, 1667, the most part of the creditors consenting, Mordington was by the Lords set at liberty, without a formal *cessio bonorum*. Which seemed strange.

Advocates' MS. No. 491, *folio* 257.

1676. *July.* ANENT QUAKERS REFUSING TO SWEAR.

Quæritur,—What is to be done with Quakers and Anabaptists, who are also called Mennonistæ, who refuse to swear? Whether they are to be holden as confessed, if they be parties, or compelled to depone, if they be led as witnesses? Joannes Bouritius, *in Tractu de Officio Judicis, cap. nono, pag.* 18, owns the affirmative, since their humorous peevishness is not to be indulged or encouraged by law, nor the truth therefore to be concealed, else they should be in a better case than the orthodox; he also shews, *ibidem*, the way of swearing Jews, viz. by causing them lay their hand on the Decalogue, and repeating the third command, *Non assumes nomen Domini in vanum.* With us, if these fanatic sectarians be content to declare the truth, as in the presence of God, (which many of them are willing to do,) the Lords accept of that as sufficient and equipollent to an oath; as in the case of Burnet, tutor of Leys.

Advocates' MS. No. 492, § 1, *folio* 257.