

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 disposing 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 pluvie 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.

*QUERITUR*,—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.*