his mother and him, causes him at a time grant a bond obliging himself, under the pain of 1000 merks, to remove from the countess her service at Martinmas last. He being charged upon this bond to pay the penalties, the poor man deals to get a suspension; and the Ordinary hearing the parties upon the bill, Wieland craved the charge might be suspended, because he would not dip upon the way of extorting the bond from him, but offered present obedience and implement thereof.

To which it was ANSWERED, He had incurred the penalty, and could not offer obedience now; seeing he had staid in the house ten days after the term at which he obliged himself to remove, and yet haunted the house to the charger's prejudice.

REPLIED, Ten days was *modica mora*, wherein *non est prejudicium;* that such obligements are not to be taken *judaice* but κατα επιεικειαν; that his going to the house since deserved no censure, being a part of that freedom competent to all the lieges of going where they please, especially seeing he serves no more there.

The Ordinary inclined to find the charge calumnious. Yet the Lords in presence found he should pay the penalty of the bond, if he had contravened the tenor of it.

Advocates' MS. No. 280, *folio* 117.

1671. *December* 5. MR. JOHN ELEIS, elder, *against* WISHAW.

THIS day I understood of a practique found some space ago by the Lords, betwixt Mr. John Eleis, elder, and Wishaw, about an inhibition, the style whereof expressly bears that the party inhibited grant no renunciation of rights to his debtors. Notwithstanding whereof the Lords found, where a person inhibited had a wadset-right in a man's hands, the wadset giver might pay the money, and take a renunciation from his creditor, who stands inhibited at the instance of his creditor again, notwithstanding the inhibition, which reaches not to that case, since the way to affect that wadset is only a comprising. Siclike it is only *stilus curiæ*, where the inhibition bears that he dispose upon none of his moveable goods and gear; whereas an inhibition is only for heritage. *Quæritur*, If inhibition will reach against a bond bearing annualrent payable to heirs and assignees, (secluding executors,) for such bonds by act of Parliament in 1661, are declared to be heritable; if they be, then I think the inhibition will not extend to them, unless it be published at the market-cross of the head burgh of the shire where the debtors by the said bond live. *Quæritur*, If a man inhibited may assign an heritable sum for payment of a debt contracted by him *ante inhibitionem*, or if the said assignation will fall *ex capite inhibitionis*. It seems he may, because a man inhibited may pay a debt, though it be heritable. *Ergo*, he likewise may assign for payment, especially where it depends upon a cause *ab ante*. Though it may be answered, the reason why such payment comes not to be questioned, is because of its latency, by which it comes not to the inhibiter's knowledge. Yet if the debtor be bankrupt, then, by the 18th act of Parliament in 1621, he cannot gratify his

creditors by preferring one to another, and so prejudge the anterior diligence of any. When a man is to be esteemed bankrupt, whether *quando debita excedunt bona*, or when he has a *bonorum*, or when he lies registrate at the horn year and day, or when he is registrate though year and day be but *in cursu, in medium relinquo.* The Lords have oft now found that an inhibition reaches *non solum bona immobilia presentia* belonging to the debtor at the time of the serving the inhibition, but likewise *omnia futura et acquirenda*, all heritages he conquishes thereafter during his lifetime. *Vide* Hadington, *23d Feb.* 1623, *Seaton* against *Moriston.* It may be said a man inhibited cannot assign nor discharge a reversion; *ergo*, neither renounce a wadset. I answer, the difference is very wide; the assigning or discharging a reversion is a voluntary deed, whereunto he cannot be compelled; whereas the taking his money and renouncing his right, is a deed which he is either actually compelled to do, or at least may be by virtue of the obligement given by him for reversion.

This case is now determined by the printed act of Sederunt, 19*th February* 1680. *Vide supra No.* 191, [30*th June* 1671.]

Advocates' MS. No. 281, *folio* 118.

1671. *December* 5. SIR WILLIAM BENNET of Grubet *against* MOIR of Otterburne.

IN the reduction pursued at the instance of Sir William Bennet of Grubet against Moir of Otterburne, of the said Otterburne his right to the lands of Greinlaw; it was ALLEGED for the defender, That he brooked Greinlaw as part and pertinent of his lands of Otterburne, within which it lay naturally and locally.

To this it was ANSWERED, That the Youngs of Otterburne, authors to this defender, were only kindly tenants for this roum to Sir John Ker of Litleden, whose right the Earl of Louthian having acquired, he disponed the same to this pursuer's father; and for proving this, the disposition made by the Youngs to Mr. William Moir of Greinlaw clearly evinces, for they dispone only their kindness of the said roum. *2do*, It is offered to be proven that the Youngs did service to Litleden for the said roum as kindly tenants, by riding and otherwise, and that they were poinded for not riding when required.

REPLIED, Their disponing the kindliness of the roum *non relevat*, seeing an heritor may discharge and renounce his kindness. *2do*, Their service of riding, and their being poinded for not riding, *non relevat*, unless they say it was for thir lands; whereas the defender offers him *positive* to prove that they were tenants to Litledean in other lands, and it was for that they rode and were poinded.

The Lords ordained both of them, before answer, to lead witnesses upon their several allegeances. And a commission being granted for that effect, the deposi-