ruere in totum.—See M'Keinzie's Pleadings, p. 82. *2do*, By this it is known if the witness be past fourteen or eighteen; before which time a witness is not supposed to know the hazard of an oath, or to depone with judgment. The *3d* reason is, to distinguish them from other men bearing the same name or designation. *4to*, If they be deponing *in re antiqua*, the telling their age invalidates or adminiculates their testimony; as they were then of years capable to discern or consider such things, which must always be things falling under one of the five senses.—See my abridgment of Farinacius' tractate *De Testibus.*

In Saxony, Vesembec tells us, they go a greater length, and interrogate the witness anent his wealth and riches; for, if he be poor, he is suspected as more liable to be tempted: yet *vide parag. ult. Instit. de Suspectis Tutoribus.* This is coincident with our vulgar objection against witnesses, viz. that he is not worth the King's unlaw, estimated to L.10 Scots. But we set it at so low a rate, that it renders the declinator altogether unpracticable; for there is scarce any witness brought in but he is clear to affirm he is worth that: his clothes, if rouped, would be of that value. It should be fixed at L.100 Scots, or something like that. Since all that is acquired by money has grown, the price of that should augment also; especially in this age, wherein the faith of witnesses was never more lubric and vacillant, nor ever so much perjury discovered: so that it is a most commendable part in our law to leave as little to the credit and probation of witnesses as can be; for it allows them not in a case above L.100 Scots; and really this way of probation cannot be restricted enough, considering the impudence this generation has arrived at.

Advocates' MS. No. 471, § 1, *folio* 243.

Anent the Viscount of Oxenfuird's Case.

The Lords found long ago, in the Viscount of Oxenfuird's case, *anno* 1664, that money lying beside him at his death, because of the destination of it, *per voluntatem patrisfamilias et domini*, to be the price of land which he had bought on his death-bed to evict his lady's terce, (he had more need to have been thinking on another thing,) was heritable, and no third due furth thereof to the relict, and the other two parts of the executors, but that all fell to the heir. See, in my Compend of the Decreets.

Advocates' MS. No. 471, § 2, *folio* 243.

Viscountess of Oxenfuird *against* her Son.

Where a mother aliments her children, it falls to be controverted *utrum impensas istas animo repetendi fecit, an animo donandi, ex pietate datas fuisse præsumendum est.* Bernardus Schotanus, *in examine juridico*, p. 124, answers, with five distinctions; 1mo, *Vel est protestata se nolle eos impensas donare, vel non est protestata.* 2do, *Vel super iis impensis rationes confecit, vel non.* 3tio, *Vel bona liberorum administravit, sicque eorum pecunias reditusque possederat, vel non.* (See

3d January, 1679, Daes and Lindsay.) 4to, *Mater vel est locuples, vel pauper.* 5to, *Impensæ factæ vel sunt magnæ, vel tantum parvi momenti.* To which I add, 6to, *Liberi vel sunt infantes, vel infantiæ proximi,* with whom she could make no paction; *vel sunt puberes, seu pubertati proximi.* 7*mo,* The children either had means of their own *aliunde,* whereupon they might be sustained, or not.—See Guthrie and M'Karstan's case in 1672, No. 314, *supra.*

Advocates' MS. No. 471, § 3, *folio* 243.

Anent Comprising.

I have heard it affirmed, that a man may now comprise upon a bond without giving a preceding charge of horning; upon this reason, that an execution of poinding and denunciation is a more solemn intimation to the debtor, and bears also a search for moveables, than a single charge; but the bond must be registrate. However, I think it *humanior sententia* to give him time by a charge, conform to the noble method prescribed in *L.* 15. *D. de Re Judicata.* In the Roman law, they had *inducias quadrimenstruas ad solvendum judicatum.*

Advocates' MS. No. 471, § 4, *folio* 244.

Anent Lords of Session.

I have heard of an act of sederunt, at least a consuetude, where a Lord of the Session retires upon a demission; because of the character he once bore, he takes place of all that are admitted afterwards on the Session, though they be actually Senators, and he not. This holds where his *missio* is *honesta vel causaria,* but not if it be *ignominiosa.*—See *Tuldeni Jurisprudentia Extemporalis,* p. 249. See Papon's Arrests, p. 363.; *Codex Fabrianus,* lib. 1. tit. 2. defin. 13. p. 31.; Hope's Collection, tit. Of the Session, fol. 131.; where another place of Faber is cited, viz. lib. 3. tit. 17. *ubi Senatores vel clarissimi.* See *Hippolitus de Marsiliis singul.* 107. See my Observes on the act of Apparel, 1672. *Vide Ægidii Menagii Juris Civilis Amœnitates,* cap. 28.

Advocates' MS. No. 471, § 5, *folio* 244.

Anent Disposition to a Son *in familia.*

Lands disponed to a son *in familia,* or minor, *præsumitur* to be bought and acquired with the father's means, especially if the son be minor; and so the father's creditors may effect the land bought, by a declarator; whereof see the form set down by M'Keinzie, in his Observations on the act of Parliament, 1621, against Bankrupts, p. 174. Hence Antonius Faber, in his famed Codex, p. 413, says, *Pecunia*