decreet-arbitral; and find that Garmilton should make a stone pend in the park-dyke, sufficient to let the water go out, not being of that wideness to let in or out beasts. And find that the water-gang, from the park-dyke to Barnes his mill, ought to continue in the old channel; and that the channel wherein it now runs is the old channel; and that the said water-gang, from the ston park, is the march betwixt Barnes' and Garmilton's lands; and that the water running therein can suffer no division; and the diversion made by Garilton ought to be restored, so that the water may run entire in the old channel. And find that Garilton's feal-dyke, at the east end thereof, is built, by the space of a pair of boots, on Barnes his land; and that therefore the same ought to be demolished, by the said space of a pair of boots. And find that both Barnes and Garmilton may, at their pleasure, cast the foresaid aqueduct and water-gang; and that, in their casting, they ought to do no prejudice, either of them, to other's lands, or to the feal-dyke built by Garmilton, except in so far as the same is ordained to be demolished; and that the mud and earth, to be cast out by either party, when they dight the aqueduct, ought to be casten, the one half thereof on Barnes his side of the aqueduct, and the other half on Garmilton's side: and decerned accordingly.

On the 6th of June 1678, Garmilton having given in a bill to the Lords, complaining of this decreet, (for it was not then extracted,) and craving the Lords would readvise the probation; and answers being made to it,—The Lords refused the bill, and adhered to their interlocutor.

Advocates' MS. No. 719, *folio* 318.

[See the subsequent part of the Report of this Case, Dictionary, page 10,476.]

1678. *February.* ANENT INHIBITIONS.

ONE serves inhibition on a personal bond,—himself is afterwards inhibited by one of his creditors,—he, notwithstanding, uplifts the money, and discharges the bond. *Quæritur* if his creditor who inhibited him can reduce the discharge *ex capite inhibitionis.* Some think he cannot; because such a bond is not made heritable by the inhibition *quoad* the succession, so as to make that bond fall to an heir: others affirm he can; because, at least, it is heritable *quoad* the security. *Vide supra, num.* 281, [*Eleis* against *Wishaw, 5th December* 1671.]

ANENT ADJUDICATIONS.

II.—*Quæritur* if one may adjudge in the new form, according to the Act of Parliament in 1672, lands already apprised, whereof the legal is not yet expired; or, if they must, of necessity, apprise them by that act; and whether the said act makes it *necessitatis* or *voluntatis* to the creditor.

ANENT *JUS RELICTI.*

III.—Where a man dies having no estate but bonds bearing annualrent, out of thir his relict can have no third, because they are heritable *quoad relictam,*

by Act 1641: neither can she have a terce, because they are not heritable in themselves. *Quid juris?* Shall she have no provision at all? Has our law no remedy? Is it here mank? May she not get an aliment decerned to her, effeiring to the estate?

Anent the Annualrent of Bonds.

IV.—In a bond, the term of the payment of the annualrent is one, the term of the payment of the principal is another; all such sums before the term of payment are moveable, where either parties, whether debtor or creditor, deceases before the said term. *Quid juris?* Whether will it be understood to be moveable before the elapsing of the term of payment of the annualrent, or the term of the principal sum? *De hoc dubitant Doctores.*

Anent Cautioners.

V.—The Lords have found, where a cautioner pays the debt, the creditor is not bound to assign him, but only to discharge. Let him age upon his clause of relief, as accords. Yet it is *civilius (humanius)* to assign him. *An correus totum solvens adversus cæteros actionem habeat citra cessionem,*—see Vinnius *ad* § 1, *Institut. de Duobus Reis Stipulandi, num.* 4*to.*

Anent a Debtor Cutting his Woods.

VI.—A debtor cuts his woods and planting to a considerable value; the comprisers, or other real creditors, would hinder him: *Quæritur* how it can be done. An inhibition reaches not, because they are *mobilia;* yet they are *pars soli* before separation, and not like to corns, which are arrestable even upon the ground, because their use is to be reaped and separated once a-year. A summons or declarator may be raised, or a bill of inhibition given in, not to pass of course, but by special notice of the haill Lords; or a petition, representing the matter of fact to the Lords.

Anent Advocations by Members of Session.

VII.—It may be questioned if the Act of the Parliament 1555, anent advocating causes of members of the Session from inferior courts, can be extended beyond its rubric, which is only of actions of removing, since Everhardus in his *loci legales* shows us it is a good argument *a rubro ad nigrum;* and that Act speaks of no other; though I see no reason of disparity why it shall be denied in others more than in this; and custom since has explained it *quoad* all: though it may be said that custom here is not enough, being only usurped against the lieges by them who are judges in their own cause. See more of this *supra,* [No. 161.] *versus finem.* *Advocates' MS. No.* 721, *folio* 318.

1678. *February* 6. Mr Roderick Mackenzie *against* John Watson.

The case of Mr Roderick Mackenzie, advocate, and John Watson, was this