

1677. *February 3.* ISOBEL BARNES *against* CLAUD HAMILTON.

IN a suspension, Claud Hamilton of Parkhead *contra* Isobel Barnes, the Lords found, (as they had done oft before,) that a debtor will get the cedent's oath, in case either he make it appear by the assignee's oath, or otherwise, that the assignation is to the cedent's behoof; or if to his own behoof, if it be without onerous causes; but he need not say adequate to the worth of what is assigned.

Advocates' MS. No. 540, folio 275.

1677. *February 3.* PATRICK LAUDER *against* HOG.

IN an action, Patrick Lauder *contra* Hog, the Lords found a sum lent out by a wife clad with a husband, (though the obligation ran to repay it to herself,) belongs to the husband, or his heirs and executors, unless she could say that she had a provision separate and sejoined by paction from her husband, (like a *peculium*,) not belonging to him; as the Lady Colinton had, and the Lady Dumfermling with Calander. Of which see in other papers.

Advocates' MS. No. 541, folio 275.

1677. *February 8.* DAVID COILZIAR *against* CALENDER.

ONE Calender being cautioner in bond for 100 merks to David Coilziar, and being charged, SUSPENDS,—That he is liberated, because David having lent the principal more money since, he hath taken a bond for all, and so innovated the security, and past from him. ANSWERED,—No novation is presumed in law unless it be expressed: that this was not accepted in satisfaction, but was only a collateral and corroborative security. See fully in the Information.

The Lords found, upon Newton's report to them, it was not a novation or liberation of the cautioner; and therefore found the letters orderly proceeded.

Advocates' MS. No. 543, folio 275.

1677. *February 15.* ANENT THE ADVOCATES, OATHS, &c.

THE Lords of Session, in regard of abuses committed by the advocates' men, ordained the advocates themselves hereafter to subscribe all the outgivings and returns of processes.

They say, the Lords have also declared, that no oath hereafter, though never so clear and simple, and free of any qualities, shall be advised but upon inrolling; whereas formerly, under pretence of a plain and distinct [oath,] the clerks would have

got sundry very intricate unclear oaths advised, *affirmative*, proven, or *negative*, not proven, with close doors, without calling the parties or their procurators, the next Saturday after they had deponed.

Nota.—The Lords not only sat in the afternoons oft to advise concluded causes, but also sequestrated the Tuesday forenoons to bring them forward, and to despatch such causes.

Advocates' MS. No. 547, folio 275.

1677. *February 23.* SARAH ROOME *against* —————

IN Sarah Roome's case, the Lords preferred a creditor to a provision made in a contract-matrimonial in favours of a child of a second marriage, albeit there was an inhibition served upon the said obligation, and the creditor's debt was contracted after the said inhibition; because they found the obligation was only a naked destination, and the inhibition could only reach, prevent, and cut off posterior deeds in favours of another third wife, or of other children, and not of extraneous creditors; else such obligations would enervate all commerce, and would hinder a father from contracting onerous debts. However, this decision evacuates provisions matrimonial sadly. *Vide supra, June, 1676, Catharine Mitchell and Littlejohns; and December, 1676, No. 524, inter eosdem.*

Advocates' MS. No. 549, folio 277.

1677. *February.* LORD NEWBYTH *against* JAMES STEWART

JAMES STEWART having a wadset on the lands of Foord, my Lord Newbyth, who had purchased them lands by a declarator, contended they were paid by intermission; and if anything was owing in the count and reckoning, offered to give it in; since he had a very lucrative wadset, and much beyond the annualrent of his money. ALLEGED,—He was not bound to count for the superplus, because his right was a proper wadset, nowise liable to count and reckoning, by the 62d act of the Parliament 1661.

Advocates' MS. No. 550, § 2, folio 277.

1677. *February.* THE MARCHIONESS of DOUGLAS, Petitioner, and
ISOBEL HADDOWAY, Petitioner.

THE Lady Marquis of Douglas obtained at Secret Council modified to her 2000 merks, for aliment till the first of June, since she did not cohabit with her lord, in respect of some differences betwixt them.

About the same time, one Isobel Haddoway gave in a bill to the Lords of Session against Maccubi, merchant in Edinburgh, her husband, complaining that he