

I heard Sir George Lockhart brisk to the King's Advocate, who was defending what the Lords had done in this case.

*Advocates' MS. No. 438, folio 231.*

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1674. *January.* Captain JOHN HOME of Plendergaist *against* HOME of Linthill.

UPON a bill given in by Captain John Home of Plendergaist *against* Home of Linthill, the Lords ordained Linthill summarily to depone anent the receipt of 2000 merks from one Home lately dead, without giving any receipt or discharge of it. Which was inveighed at, as what rendered all summonses needless, where I am to prove a thing by the party's oath; for that privileged way of tabling matters was hitherto only known and practised against agents or members of the session: yet with the Emperor Antonius, *Licet non facile aliquid est mutandum de solemnibus, tam enubi æquitas poscit subveniendum est*, l. 7. D. *de In Integrum Restitutionibus*. But at this time the humours of people were so disposed to cavil, by an over-boiling passion and thirst after a redress of grievances, (the story whereof, see *alibi*,) that scarce anything could escape censure.

*Advocates' MS. No. 439, folio 231.*

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1674. *February.* MAYNE *against* HAMILTON of Baderston.

IN the suspension, Hamilton of Baderston *against* Mayne, one of the reasons being, that the sum charged for was arrested in his hand at the instance of a third party,—which was not offered to be proven by the messenger's copy, as it ought to be, but by the charger's oath of knowledge that the said sum was arrested in his hands by, &c.—it was contended, it was not so probable, but only *scripto*; no more than such judicial and legal instruments could be proven by witnesses: *argum. legis*, act 95, Parliament 1579, where the tenor of letters of horning, and their executions, are ordained allenary, for the future, to be proven by writ.

*Advocates' MS. No. 440, folio 231.*

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1674. *February.* The DUKE and DUCHESS of HAMILTON *against* GAWIN LOUDON.

IN an action pursued by the Duke and Duchess of Hamilton *against* Mr Gawin Loudon, as representing his father, who was one of the chamberlains of that estate, and had not made faithful count and reckoning; it was objected against the Duke's