

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.*

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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.*

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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.*

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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