

attend always himself. *Qdo*, They might be near by, or at the back of the dike.

John Straiton seems to say much for his own liberation. See Dury, 28th November 1626, a *Stabler* against *Mowat*, and *Bartolus* and *Mascardus*, there cited. See 16th July 1679, *Binny* and *De Veaux*.

The Lords, upon a report, inclined to find John Straiton not liable, in respect of his *placeat*, unless they would qualify *dolus* or *culpa* on his part. And that thir denunciations are legal, see *L. ultimam in principio, D. nautæ, cauponæ, stabularii*. See *Nicolaus Mozzius de Contractibus, tit. Societas, p. 554*; *Masuerii Practica Forensis, titulo De Probationibus, p. 137, in calce*. See Mr Alexander Birnie's case. *Advocates' MS. No. 691, folio 313.*

1677. December 15. DOCTOR BONNER against SIR PATRICK THREIPLAND.

DOCTOR Bonner pursues Sir Patrick Threipland, late provost of St Johnston, *pro salario*, as having attended him, when he or some of his family were sick. ALLEGED,—He denied the order or employment. ANSWERED,—He produced a letter, written by Sir Patrick to him, desiring him to come, &c. REPLIED,—That will serve for that sickness, but will not be a universal constitution of him to be his physician in subsequent sicknesses; to which he came officiously uncalled, and only to make a visit, and dined.

The Lords sustained the first employment sufficient, unless countermanded; and modified ten dollars for every visit, it being four miles distance.

*Advocates' MS. No. 692, folio 313.*

1677. December. ANENT ADJUDICATION.

WHERE one obtains a decret against his debtor's heirs, as lawfully charged to enter heir in general, and they do not compear nor renounce to be heir; before one can adjudge on the new Act of Parliament, 1672, it will be safest to raise a special charge to enter heir, and execute it, before they raise the summons of adjudication, though that Act of Parliament mentions it not. Likeas, though the said Act mentions not the calling of the superiors, in thir summonses of adjudications, yet it will not be amiss to call them, as is done in the adjudications upon the apparent heir's renunciation. *Advocates' MS. No. 693, folio 313.*

1677. December 18. KINROSSE against CLEILLAND, Merchant.

IN the action, Kinrosse against James Clelland, merchant, one comes to Clelland to take off clothes and other ware: he tells he must have a cautioner: he brings one, who declares, if what was taken off was within 200 merks, he was content to engage to see the merchant paid; if otherwise, then he would not