

Be paid. A. Skipper was allowed Retention of the Merchants Cargo  
 till the Freight was paid 14 Novemb. 1676. Lawrence contra. Ingers.  
 The Debtor in a Bond having become the Creditors Cautioner for a years  
 tacit duty of the Excise; and the principal Debtor having, after the Cautionary  
 Engagement before the term of payment of the tax duty, assigne to him  
 then the Debt due to him by the Cautioner. The Cautioner was found to  
 have Right of Retention of the sums due by him to the principal Debtor  
 till he were Relieved of his Cautionary 14 Feb. 1708. Nathan contra  
 Magistrates of the Excise. General assignation omnium bonorum is a  
 sufficient Right to Obtain Movable in the assignees Custody, with-  
 out necessity of Confirmation, in a Competition with an Executor  
 Decemur who hath a License to purchase, and hath not Confirmation 22  
 Novemb 1711. Dickson contra. Logan; but is not good without Con-  
 firmation to Recover the Subject from a third party by Assignation.  
 As in an action upon the passive titles it is a Relevant Defence if the  
 Goods be in the hands of a third party, that the Escheat is given  
 Declared: But it is sufficient for the Defence or leaving them in his  
 own Custody, to say, that the Escheat is given to the Debtor, in  
 whose safe possession of the Goods supplies the want of the Declaration,  
 as it does in the other the necessity of Confirmation. And the De-  
 fender in an action of furthcoming having Defence Deferentia ten-  
 ventaria, that he has promised to pay the Debt with his Daughter  
 The husband Debtor, upon the said Debtors promise to be sure, it was  
 that of his own Money upon land to be assigned by her. The De-  
 fender was found to have right to retain the Debt, till his Daughter  
 were secured in her life rent 2 Feb. 1714. Pagan contra. David.  
 For tho the Defenders oath could not afford Relief against the pursuer  
 Debtor; it was a good ground of Exception against the pursuer  
 Claiming under his Debtor, and proving his Claim by the oath.  
 Sometimes this Exception of Retention may turn into a Compromis-  
 sion, when that which is due to the Retainer is the Equal the Value  
 of what is demanded. Stair Ch. 1. Tit. 18. 57.

A Person having disposed his Estate to two of his friends under  
 Trust for certain Uses with this Qualification, that what remained thereof  
 after payment of his Debts and Legacies, should be equally divided  
 betwixt his two Brothers; and one of these two Brothers Chancing  
 to die after the Disposer before execution of his will by the Jus-  
 tices, who after wards Ladged the overplus of the free year in the  
 hands of the surviving Brother to be kept and made forth com-  
 by him to such as should be found to have best right. The  
 De-

Depository who was Executor to his Brother last Deceased was found  
 to have no right of Retention of his share of the deposited Money  
 for payment of his Debt, in a Competition with other Creditors who  
 had confirmed the Subject as Executors Executors to the Common  
 Debtor; but all his Creditors were found preferable according to the  
 Degree of Diligence they used in them to affect the same 11 July 1709. Stuart  
 contra. Strain. Because their Debtors share of their Brothers  
 Means was in Bond of the Debtor at his Decease; and the surviving  
 Brother retaining possession thereof a few years could not retain for  
 his own payment without establishing a title by Confirmation of him  
 self Executor Executor.

Tit. 4.  
 of Novation.

Novation (a nova et nova obligatio. l. 1. pr. ff. de Novat.) In Gene-  
 ral is a <sup>resolving the obligation of a</sup> new obligation in the  
 place of an old one. It is distinguished into Novation properly so  
 called, and Substitution.

Sec. 1

Of Novation properly so called.

Novation in a proper sense imports, when by agreement between  
 the Creditor and Debtor, instead of the old obligation,  
 obliges himself or another of another nature to the Creditor saying  
 No Retention of the first l. 1. pr. ff. de Novat. is when a Creditor  
 for the price of Goods Sold, takes a bond of amercement Money for it;  
 Or a Creditor by bond or tithel, takes a bond bearing Annual  
 rent for the sum or a lease of employment for the Debt.  
 By the Civil Law, there is never any Novation pro used, by the  
 bare effect of granting a new obligation, tho it be repaid to the  
 same Person in the former obligation; whether by adding to it  
 or taking from it some security, or by augmenting or diminishing  
 the Debt, or by fixing a longer or shorter term of payment, or by  
 making the Debt Conditional that was pure and simple, or pure  
 and simple that was Conditional; Unless the new obligation bear  
 Expressly to be given with an Intention to Innovate the first. For  
 otherwise both obligations subsist, altho it be not particularly  
 Mentioned, that the first obligation is Rescinded, and the second  
 Granted without an Intention to Innovate l. 2. in fin. ff. de  
 Novat. l. ult. C. de Novat. the Lords have found, that a Creditors  
 Accep=