

1677. *January.* ANENT DEPREDACTIONS BY HIGHLANDERS.

WHERE depredations are made by the Highlanders, (for whom the clans are caution,) if intimation be duly made at such and such places by a notary, and instruments, then Major Grant and the heads of the clans are bound to refund the damage; and his pension forth of the treasury, for keeping these countries peaceable. may be arrested for the same, though commonly pensions are not arrestable.

Advocates' MS. No. 528, § 8, folio 272.

1677. *January.* ANENT THE CALLING OF THE ROLL.

THE Lords at this time by their act renewed that part of the act of Parliament, and regulations about the calling of the roll, and what is not brought to an act or decret to-day, that it may be marked and called to-morrow; and in case the pursuer insist not the second time, then to delete it; and not to be heard again, till it be of new enrolled, and come in behind all that is before it in the book of enrolment. By which rule, if observed, they sweep clean before them. But it was made for the weak Lords; because many pursuers shunned to insist before them. *Vide* this renewed 1st November, 1677, No. 644.

Advocates' MS. No. 529, folio 272.

1677. *January.* ANENT THE ADVOCATES' ROOM.

SIR ANDREW BIRNY, and some of the conformist advocates, having made an act to seclude noblemen, and all other persons whatsoever, from entering into the Advocates' room and walk, much umbrage and discontent was taken thereat; as I have marked in my session occurrents, 2d January, 1677. The reason of this act was because they drew up only with the late entered Advocates, and discountenanced the conformist ones; for which cause, the President, &c. caused make the said act for excluding them. The Earls of Dalhousie, Home, &c. with the Lord Forrester, came one day and required leave to enter; and the keeper refusing, they took instruments in the hands of two notaries they had brought with them. Whereon they gave in a complaint to the Secret Council, founded on their peerage, and that they had ever been in possession of it, and that their business might suffer else.

The Secret Council after some heat referred it to the session, who called the parties next day. Sir G. M'Keinzie alleged they were so crowded with throngs, that it was the lieges' interest not to come in and disturb those who were met there only to do their business, and that he had seen the Earl of Crawford kept at the door; and that during Sir G. Lockhart's own government, there was an act for seclusion of all but Advocates made. Sir G. ANSWERED, there was no such act in the books, nor could be shewn. M'K. REPLIED, it was a part of his arbitrary tyranny, if it was not recorded. This and some other harsh expressions Mr George Bannerman

resenting, attended Sir G. M^cK. at twelve o'clock that day, and gave him a challenge. Whereof the President and some other Lords being informed, they put them both under arrest; and next day citing them before them, caused them find caution to keep the peace under the pain of 10,000 merks, and proffered them a bond to be subscribed for that effect. Which Mr G. B. refusing, was ordered to prison, but was only attended by a macer till six o'clock at night; at which time he engaged.

The Lords fell upon sundry models of the outer-house, to please the Lords and others: but it was to no purpose.

Advocates' MS. No. 530, folio 272.

1677. *January.* ANENT THE PRIVILEGES OF ADVOCATES.

BAILIE CHARTERIS about this time imprisoned Mr Thomas Baird in the Tolbooth of Edinburgh, whereupon a great complaint was made by the Advocates. See the story of it, and about the privileges of Advocates, and anent the town officers pointing a silver dish from George Stewart, Advocate, for not paying annuity, &c., in my manuscript containing the occurrences emerging in the session, page 4 *et seq.*

Advocates' MS. No. 531, folio 272.

1677. *January 17.* The COUNTESS DOWAGER of ERROL, *contra* The EARL of ERROL.

THE Lords having this day advised the point mentioned *supra*, in July, 1676, No. 492, § 5, whether, *in debito annuo*, the election should be made once for all, or *quotannis*; and the Lords found the Earl ought to choose either money or victual; and which of the alternatives he elected, it behoved to stand for the rule in all time coming, since it were very hard for the liferentrix that the fiar should give her money, when the victual sold at a high rate, and victual again when it was cheap. And assigned to him the 15th of February, betwixt and which the Earl should declare his option by a declaration under his hand to the clerk, to be inserted in the decret; else they decerned for victual, the Countess electing that. The Earl elected victual.*

2do, In the other process betwixt them, whereby it was admitted to her probation that the mains of Essilmont paid victual, the Lords this day advising the depositions, found in respect of their unclearness, some deponing money, and some victual, the probation resolved in an equality, and therefore (as in *causis dubiis*) divided it into half money and half victual. See the information of it beside me.

The 3d process was the cognition anent the condition of the Tower of Essilmont,

* *Vide L. 5. in princ. ibique Gothofredum in notis, D. De Legatis, 1mo; L. 20, D. De optione legata.*