

\* \* \* There had been much variance in opinion, relative to the competency of appealing to the Parliament of Scotland from the Court of Session; in consequence of which the king had directed a letter, dated 19th May 1674, to the Court, declaring his disapprobation of such appeals. By that letter, certain advocates, who had abbetted appeals, were required to disavow them. They having refused to do so, some of them were, by sentences of the Lords, 24th June and 24th November 1674, 'debarred from their function.' Forty other advocates deserted the house on this account. They were cited to return, and having failed to do so, were, by sentence of the Lords, 3d July 1674, likewise debarred from exercising the office of advocate.—The King, by a letter of the 14th July 1674, approved of what the Lords had done; and, by another letter of 12th December 1674, his Majesty did declare, *in verbo principis*, 'That such of the said advocates as should not, betwixt and the 28th January 1675, make application to the Lords for re-entry, to be presented to his Majesty, in manner formerly prescribed, should never be re-admitted to that function thereafter; requiring the Lords forthwith to cause print and publish his royal pleasure thereon, by way of proclamation.' This proclamation gave occasion to the following case, reported by Lord Dirleton. The other proceedings in the matter are recorded in the Acts of Sederunt, p. 120. edit. 1790.

1675. *January 26.* JOINT PETITION of the ADVOCATES.

A JOINT petition was presented by the advocates that had withdrawn; whereby they did not expressly desire, that they should be re-admitted, but did hold forth that they were free of, and hated the very thought of sedition; and, that the Lords who did best know the reason of their withdrawing, would vindicate them to his Majesty; and that they were willing to serve with that freedom which their predecessors had formerly, and which, they conceived, was no more than was necessary for those of their station, in order to the interest of the people; that they acknowledged and were willing to submit to the just power of the Lords, as their predecessors had enjoyed the same, and desired that the petition should be transmitted to his Majesty as satisfactory. Some of the Lords thought, that the petition was altogether dissatisfactory, and should be thrown over the bar, being, as to the manner, in a joint and factious way; and, as to the matter, no ways satisfactory, insinuating a qualification of the Lords power, and their submission; and that the Lords pretended to a power which their predecessors had not, and that was not just.

Others of the Lords were of opinion, That whatever mistakes there might be as to the manner, It was hard upon that account to reject it: And that if the time was not so pressing (that which was appointed for addresses being to elapse the very next day) it might have been helped as to the manner, by giving intimation to the advocates, that it would not satisfy; but there being no time for that, and the certification being so high and heavy, viz. utter and perpetual

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incapacity ; it might be justly said, as it is reported, a judge in England had said in the case of a person accused of theft, whom he inclined to favour by reason of the meanness of the value of the thing that was stolen, being a watch of brass only, and the matter of the watch being beneath that value which the law of England requires for punishing thieves capitally ; and it being *alleged*, that the fashion with the matter did exceed the value foresaid, It is said, that he *answered*, That he would take no man's life for the fashion ; and it were hard, for the fashion and *modus*, and the way of address, to take from so many persons their livelihood, and from their country their service, that was so necessary to them. And that the advocates fault being a joint-withdrawing, they might conceive that the expiation of the same should be by a joint address ; and yet the petition was not joint as to all the advocates concerned, many having given in, and being to give in, several petitions : And as to the matter it was *represented*, That though the petition is general, yet the generals therein contained do imply the particulars that would be satisfactory, seeing the Lords did not pretend to any power, but that which was just, and no violation was intended of their liberties, neither was any innovation introduced or obtruded upon them or their carriage in their station. Upon all which, it was *thought*, That the petition should be transmitted simply, to the effect it might import interruption of the prescription and certification ; any acts of interruption even *quales quales* being sufficient : And the more short that the prescription be, and the higher the certification and prejudice of prescription, as in this case ; the interruption being the more favourable.

THE LORDS notwithstanding found, That the petition not being satisfactory, could not be transmitted to any effect. And yet did declare, that albeit the proclamation was conceived in these terms, viz. that if the advocates should not give satisfaction betwixt and the 28th day ; if they should apply upon the 28th day, their application should be thought to be within the time contained in the act : And that in stile of law, these words, *betwixt and a certain term*, does not exclude the day of the term.

They *declared* also, That the petition being dissatisfactory upon that account amongst others, viz. that they did not offer satisfaction, nor desire to be re-admitted ; that petitions being given in severally, and bearing that they desired to re-enter, and were willing to give satisfaction conform to the King's letter and proclamation, should be received and transmitted as satisfactory.

*Dirleton, No 226. p. 106.*

No 11.

Whether an advocate is bound to answer summarily in matters which regard not his office.

1675. July 3.

MR HENRY MORISON.

UPON a bill against Mr Henry Morison ; it was desired, that in respect he was an advocate and member of the house, he should summarily deliver certain goods entrusted to him by the complainer : And it was *alleged* for him, That the complainer ought to intent an action *in communi forma* ; and, the interest that he