

charter in 1638; anent arbitrations; anent the clerk of the bills his being liable for the cautioners he receives; anent the King's advocate's pursuing improbations alone; anent inverting pious donations; anent the true crisis of a process; and an infinite number of other observations that are to be seen in that book; to which I refer, it being sufficient to have hinted at a few of them.

Advocates' MS. No. 643, folio 301.

1677. *November 1.* ACTS OF SEDERUNT.

THE Lords fell upon some acts of Sederunt,—*1mo*, Discharging all solicitations to be made to the Lords of Session by the parties, their advocates, &c. ; see two old acts against it, one in July 1596, another in July 1657.* *2do*, That where the charger or pursuer is not ready to insist for that week, he shall be heard upon his application to the Ordinary; but if he do not crave a hearing during the time that the Ordinary who called it is in the Outer-House, then it must be enrolled of new in the end, and posterior to all the causes in the book of enrolment; else defenders shall be defrauded of all the benefit and certainty designed them by the regulations, and be put week after week to attend the pursuer's malicious delay and uncertain motions. *Vide supra, January 1677, No. 529, the same thing done.* The third was prohibiting the clock to be kept back at 12 hours, at any's desire whatsoever.

Advocates' MS. No. 644, folio 302.

1677. *November 3.* ANENT MINORS INCURRING PASSIVE TITLES.

A MINOR is convened upon the passive titles, to pay a debt owing by his father, and in the relevancy and probation it is condescended on, that his tutor intromitted with the maills and duties of the minor's father's lands, and applied them to the minor's behoof; which must infer *gestionem pro herede* upon the minor.

ALLEGED,—*Non relevat*; for tutors and other administrators *meliozem possunt facere pupilli conditionem sed non deteriozem*, and it were hard that their deeds should bind an odious passive title upon an apparent heir, not being his own deed, though it be converted to his utility; since *id intelligere non presumitur*, unless he were infeft in those lands; and the most he can be made liable in, is allenarly *in quantum minor locupletior factus est*, or to restore what he so intromitted with.

ANSWERED,—That a pupil or minor acting with his tutor or curator's advice, that so redintegrates his person, and supplies the defect and imbecility the law presumes in him, that *minorem representat majorem*; else creditors might be disappointed of their payment where the apparent heir was minor. Neither would this anyway evacuate the privilege of minority; for though the tutor's intromission was

* *Carfania impudentissima mulier causam prætoris edicto de postulando dedit, L. 1. paragrapho 4. de Postulando.* Some named Tolquhon, and his brother Thomas Forbes, as they who gave principal occasion to the making this act against solicitations.