

Chap. 5.
Of the Privy Council.

The Privy Council or Council of State in Scotland was distinct from the Kings Daily Council in place of whom and the old fashion the College of Justice or the session presided. They were called the privy council or secret Council, from the oath sworn at their admission, Viz. that they should give deal and true Counsel in all things tending to the honour and security of the Kings person and the common affairs of the Realm and digges thereof, and keep the same secret and the revealed. Many of the fiercest Nobility having rebelled against King James the third, and assumed Prince James his son for their General, the Prince, after his father was slain in battle at Bannockburn, then King James 4 Under Minority, called a parliament anno 1469, who ^{made} privy council to his Majesty to continue till the then parliament, without whose advice and consent the King was to grant no gifts, nor to his profit of his treasure silver vessel, ornaments, jewels, and other ornaments belonging to his person, which Council was made accountable to the Parliament Act 12 Parle 2 J. 4 and is the first privy council we find mentioned in the Acts of Parliament Star Just. lib. 4 fol. 17. But thereafter the privy Council was established by a special Commission from the King under the Great Seal according to the Institution of King James the fifth, consisting of the Officers of State who were Members thereof ratione officij, and as many other worthy persons of different Capacities, and the Sovereign pleased to Name, who could remove any of them or add to them by a letter.

In this high court the Lord Chancellor when present presides, and in his absence a president appointed by the King who had a yearly pension of 1000 l. took place next to the Chancellor ~~was~~ before all the Nobility. When both the Chancellor

and ordinary president were absent, the Court chiefed their own process for that time. The privy council had their own signet and seal, under which letters subscribed by the Clerk did pass by Warrant on a bill signed by one of the Council, and therefore bore, or deliberatione Dominorum minorum secreti consilij and executed upon six free days by giving a full Copy, that the Defendant might come prepared to answer, because the writs of privy council were peremptory and not with continuation of days. May be peremptory were they, that a person cited to a day on which the court did not sit, appearing then and taking Instruments at the Council Chamber, was not thereafter bound to attend. The pursuer in a process might appear by his procurator; but the Defendant behoved either to be present or excused by a certificate of his sickness or just occasion to travel, unless some privy councillor was pleased to answer for him. In which cases his Defences were heard as if he had been present. One or two of many Defendants cited upon a libel concluding no corporal punishment, might have been allowed to answer for the Resting on finding caution and exacting themselves to pay what should be demanded against those Undertaken for. But caution to answer for persons against whom the Complaint concluded a corporal punishment, was not allowed: quia Novca caput pignus, and the more est Dominus membrorum suorum, so as to be in a Capacity to Mortgage his body for another. They did not sustain process against absent, but granted only Certification, declaring them fugitives; whereupon Denunciation and Caption followed, and a stop was put to the principal cause till the fugitives were taken and brought to the Bar Star Just. lib. 4 fol. 3531. Answers to libels were given in writ. but after reading of both