

like to be soonest moved to Confess *li. 52. l. 18. pr. § de Quæ-  
tionibus*

By the Civil law, a Criminal Judge only could put  
to the Torture, *Arg. l. 5. § de Testib. Finit. & l. 8. ff. de Quæ-  
stionibus* But in that land that was Composton only to the Privy  
Council or to the Lord of Justiciary.

Torture is used only in Atrocious Crimes *ubi Cor-  
stat de Corpore Delicti & Defect alia probatis*, and where  
there are clear Judicia or presumptions of guilt. The  
presumptions are either Common to all, or appropriated  
to particular Crimes. The Common presumptions for  
= putting a person to Torture, are partly Admits and simple  
probable, partly Immediate and Certain. The Immediate  
and obvious presumptions arise from the quality of the per-  
son, his former life and Reputation; the being found in  
or near the place where the Crime was Committed; Cap-  
tial Enmity with the person Injured, and Expectation of  
gain by his death; the dying apostrophe or Declaration  
Mentioning the cause of the Injury done him; the suspect  
person flying or absconding from trial; Varying and pro-  
varicating in his Answers: which are not each sufficient  
ground per se without other Testimonies to subject any  
person to the Torture. The Certain or Immediate Presump-  
tions are the finding some thing belonging to the suspected  
person in the place where the Crime was Committed;  
Semi-proba probatis by the Testimony of one Neighbour  
tionable witness; Dilatation of an Accomplish'd Murder  
Torture when put to it by the Judge; Extrajudicial  
Confession of a Crime *de cæpiis Corpore Constat*; that  
= being to Commit such a Crime by one who used to pe-  
= form his Murders; and the Likelihood. The Judicia pecu-  
= iar to particular Crimes Vary according to the Dis-  
= cretion of Circumstances, and therefore cannot be all  
Recorded up: But I shall set down a watch of  
the Chief of them. In the case of Murder, he is  
Loaden with a pregnant presumption sufficient  
for Torture, who is apprehended with Clothes of

or Weapons Stained with Blood in the place where the  
Murdered person lies; or whose Garment sword or knife is  
found there; or who got carried off Sleds or Disposed off; or  
kept by him any of the Defendants things: Unless he can  
make it appear, that he lawfully required the same,  
or that the Bloody Knife or sword was stolen from him,  
or had been lent to another; or that these were all things  
on the spot, and that the Murder was deted in a quar-  
rel, whose by his Clothes came to be Spattered with the  
Blood. The Judicium of Murder Committed in a Scuffle,  
bet against him who was present and seen to contend with  
the Deceased, or to reach him a Stroke with a Weapon; who  
was Author of the quarrel, and an Enemy to live Deceased; or  
who came to the place Equipped and Armed in an Unchristian  
Manner; or whose sword dropped with the Strife of the wrong  
or who buried the person Murdered, when other Testimonies of  
guilt Concur. In the case of death by poison, the presumptions  
are gathered from the buying or preparing poison by him  
who bore Mortal hurt to the Deceased, or was to gain by  
his death; or who is found to have bought and prepared, before  
he had Judicially denyed the same, unless he can instruct a  
Just and probable cause for his buying or preparing poison.  
There is also a presumption of Infants Murder against a Wo-  
man Unmarried of Immoral Behaviour, who is found by  
a Selfish Woman to have born a Child; or who after she had  
Contracted her being with Child, Confessed that she had brought  
forth a dead one without Calling for the assistance of Wo-  
= men when she might have had it. But the Bleeding of a Wound  
= in presence of the suspected Murderer, without the Concur-  
= rence of other probable Testimonies, is not onely a Heavy  
Uncertain and Deceiving presumption not founded on Law,  
but also prohibited in the holy Scrips times (Gen. 6. 16. Matthe  
47) as a thing whereby god is tempted. In the cases of Theft  
or Robbery, the Judicia in order to Torture, are possession  
or Disposing of the Stolen or Robbed Goods without a  
Lawful title by one that goes under a bad Report; or  
such a one Spreading largely or Extravagantly beyond  
what he might be supposed to have honestly to beyond  
in or near to the place where the Crime was Committed;