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After the prisoner hath pleaded, and put himself upon God and his Peers, the Kings Council go through with their Evidence against the Prisoner. Who is allowed to have Council in cases where a Commoner is indulged that Benefit, and to have a Copy of the Judgment and to produce witnesses upon oath to prove his Defense as a Commoner.

When the prisoner hath made his Defense, and the Kings Council have been fully heard, the Lord high Stewart (who is the sole Judge that determines Matters of Law and pronounces the Judgement, and

770 whom all speeches in the trial are Directed) sums up the whole in a speech to the Lords, who are only tryers and like a Jury of peers Lord Dalamere Gry. 5. 13. But they are not sworn, but charged super fidelitatem & Ligan tunc Domino Regi dobitis, to try the prisoner Indifferently according to their evidences. Nor can the prisoner challenge any of them Cokes 3 Just. 27. Kel. Resp. 54. 56. Hawkins pl. Cr. lib. 2 chap. 43 § 4. Tho never so professed and open an enemy to him, because law presumes that they, being all present Judging upon their honours, cannot be guilty of Iniquity or partiality. And the Lord before whom the Judgment is found may be peers in the trial.

Altho the Lord high Stewart may adjourn his Commission from one day to another ut supra, yet it was a point of Nice Debate in the trial of the Lord Dalamere, whether after the prisoner is upon his trial and the Evidence given for the King, and the Lords are charged with the prisoner; the Lord high Stewart could in Law adjourn the trial till the next day; or if the peers who are the tryers might separate for a time, which is the consequence of an adjournment to another day, concerning which the Judges, when their advice was asked, said the Matter was wholly new to them and of great consequence, and they could not take upon them to determine it. The Lord high Stewart finding that the Judges could give no Resolution, chose as the safest course, not to adjourn the court and the trial proceeded. Because, tho, had the trial been before the Lords in Parliament, it might have been so adjourned: yet in this trial out of Parliament, where his grace is the sole Judge, and the Peers only a kind of Jury, the court seemed to be of the same Nature (tho of a higher Degree) with the ordinary courts of Justice, where Capital Crimes are tried, Lord Dalamere Gry. 50 & seqq. Hawkins pl. Cr. lib. 2 chap. 4 § 22.

After the Evidence and arguments are summed up by the Lord high Stewart, the prisoner is withdrawn from the Bar to some private place under the Custody of the Keeper of the Prison, and the Lords go together to some place