to try the Appellee Immediately.

Evidence given for or Against the Defendant in an Indictment, is no Evidence in An Appeal 1 Jud. 325.

If in an Appeal of Murder the Defendant is found guilty of the Murder and had Judgement to be hanged, the King cannot pardon it.

If the Appellee be duely acquitted of the Crime Charged upon him, the Appellant shall be Committed to prison for a Year, pay Damages to the Appellee, and a fine to the King 13 Edw. 1 cap. 12.

The other proceedings in a trial upon An Appeal, are much the same, as in trial by Indictment.

Sect. 2.

Of Appeals prosecuted by offenders Or Approvers.

An Appeal by an offender is, when one Indicted of felony confesses the Indictment, and in order to Obtain his own pardon Accuseth and Impeacheth his Accomplices. Such a one is called An Approver or prover (in latin probator) because he must at his peril prove his Appeal in every point, by battel, or by the country, i.e. by Verdict of a Jury at the Choice of the Appellee. Which if he fail to do, he is to be hanged; and if he convict all his Appellees the King ex Merito Justitiæ pardons him as to his life. The King gives him a penny a day as his Wages from the time of the Appeal, to the time of the Conviction, for Delivering the County of Malefactors, Stamf. pl. Cor. 142 b. & seqq. Pulton de pace 177 b. & seqq. Hale pl. Cr. 192 & seqq. Hawkins pl. Cr. lib. 2 chap. 24. But if an Approver become a felon Again after his pardon, he who procured the pardon for such Approver, shall forfeit 100 pound sterling to the Kings use 5 H. 4 cap. 2.

But it being in the discretion of the Court to suffer one to be an Approver [redacted]. But there is in cases of Burglary, and Robbing on the high way what [redacted] to amount to the same: It being ordained, that where such a criminal out of prison discovers [redacted] concern'd in the Crime he shall have his pardon &c 5 Anna cap. 31. §4. 4 & 5 W & M. cap. 8 §7. [redacted] Learning touching Approvers and Approvement is orderly open'd and set forth by Sir Matthew Hale, Hist. placit. Cor. vol. 2. page 227 et seqq.

Tit.

(A) or to admit him to appeal or give him any Respit from Judgment or Execution upon his confession: This course of admitting hath been long disused, and the truth is more much of hath come to good men by false accusations of desperate villains, than benefit to the publick by the discovery and conviction of Real offenders, Hale Hist. placit. Cor. vol. 2 pag. 226.

Tit. 3.

The order of Judicial proceedings against Criminal commoners before the court of Justiciary.

This Court hears and Determines the Crimes of high treason and Misprision thereof, whether committed in Scotland or by any Native of Scotland on the high sea, or in any place out of great Britain in the same Manner as the court of Kings Bench, or Justices of Oyer and terminer may do by the law of England 1 A. cap. 21 §3 & 5. Concerning which vide supra Tit. 1.

The ordinary practice of the court of Justiciary with Respect to all other Crimes, Consists partly in things preliminary to trials; partly, in the form and Method of trials.

Sect. 1.

The preliminaries to ordinary Trials before the Justice Court, or Court of Justiciary.

These are 1°/ how Criminals may be Apprehended and Committed to prison. 2°/ Who may carry on a Criminal prosecution. 3°/ The Bailing of Criminals: and how they may get themselves brought to a speedy trial, or Dismissed. 4°/ The transporting Criminals from one prison to Another; and the fund appointed for Defraying the Charges of Apprehending, subsisting and prosecuting them. 5°/ The raising serving or Executing of Indictments, Criminal letters, letters of Exculpation, letters of Recrimination, and letters of advocation.

1.

How Criminals may be Apprehended and Imprisoned.

Sheriffs, Stewarts, Baillies of Royalty and Regality, Justices of peace and Constables, upon Intimation to them, that any person is slain or Dismembred Act 90 Parl. 6 J. 1 junct. [redacted] Parl. 3 J. 4 or that goods are stollen or Robbed Act 21 Parl. 1 J. 6. Act 6 Parl. 1 sess. 2 Ch. 2 within their Jurisdiction, or that Rebels are there Act 124 Parl. 12 J. 6 are obliged to Raise the hue and Cry (in latin Hutesium & Cla