

such a day, but at such a day. Nor doth a Mores Citation for a person under caption from being Made prisoner Any time before the Day of Comparance: seeing protections (which are aimed to be granted to persons in such cases) would be of use, if a Citation were allowed to focus from personal Detention. As George Mackenzie (Crim. part 2 tit. 24 § 6) says, that in an Action at the Kings Justice against several banished Gentlemen Anno 1674 the Defendants were allowed to Come to Edinburgh before the day they were Cited to. Because they were commanded to come by Citation; And their Coming before the day was Necessary in order to their Defence. Upon which Account it is, that Men after they are Indicted have the Liberty of a free prisoner, the Old prisoners before

A party Accused of a Crime is presumed Innocent, till the Crime is proved against him. Presat No count Absolutes, quam Innocentem Condemnare: Because an Inexplicable Injury is done by Condemning Innocent persons whereas an Absolved guilty man may, by falling into a second crime, be brought to Condign punishment for both, or if he escape free in this world and Report not, God will punish him eternally. Therefore it is, that as the Common Law allows to pursue Criminally pursued the Benefit of Exculpation, that is to Make their Defence full. Clar. q. 1. Which in the Law of England is called traversing and in Scotland from the French word *traverser*, to thwart or oppose so the Law of Scotland allows the person Accused to raise a bill of Exculpation by warrant of the Deliverance on a bill past by any one of the Lords of Justiciary in the terms following: George by the Grace of God &c. For so much as it is humbly Meant and shewn to Us by our loving &c. that where the said Complainer is Cited to Compare before our Lords Commissioners of Justiciary within the Criminal Court house of Edinburgh the &c. day of &c. in the hour of cause, there to Underly the Law

the Crime of &c. alleged to be Committed by him in Manner &c. Mentioned in the Indictment (or Criminal Letter) raised at the Instance of &c. and the Complainer having several relevant Defences for Eliding the said libel particularly that &c. and several objections against the witnesses to be Made up of by the pursuer, and against the Officers given him in list, of the which Defences and Objections and several others to be proposed by him, he will be obliged by the Prompt response of the Criminal diet, Unless he obtain our War rant for citing witnesses to prove the same. Our Will is herfore and we Charge You shortly and Comand, that in our Name and Authority ye summon Warn and Charge such witnesses who best know the Verity of the promises and of the other Defences and objections to be proposed for the said Complainer, not exceeding the Number of 10 persons, whose Names shall be given in list subscribed by him to Compare before our Justices General Justices Clerk &c. &c. Day of &c. in the hour of cause, there to hear deal and forth fast Witnesing, in so far as they know or shall be Spurred at them About the Complainers Innocency and Exculpation of the Crimes above Mentioned, ill person Under the pain of 100 Marks, and that Ye Deliver to the pursuer a full Double of this our letter with a list of the witnesses subscribed by the Clerk, past Under the Common seal of the Court. The Reason for allowing Defendants in Criminal causes to cite witnesses (which was not done in the Justices Court before the Year 1661) is because the Defendant would otherwise (in respect of the Promptness of Criminal Diet) be under a Necessity to Refer his Defence to the pursuers Witnesses, who perhaps might have seen him commit the fact charged against him, and yet not have been present at the Beginning and the occasion thereof, from which his Exculpation may arise. For it is not to be Expected, that other necessary witnesses