

Witness will come United; and if they should come so officious they might be suspected as Ultraneous. Besides the there was no witnesses produced by the pursuer, the Defend or ought to have witnesses recovered for clearing his Innocence to the Assizes. And seeing Defences are allowed to be Made for persons Accused of Crimes Act 10 Car. II. c. 6 they ought not to want the Means to prove such Defences. The pursuer of the Criminal cause must be served with a Double of the Letters of Exculpation, and list of witnesses Cited by Virtue thereof Act of Reg. 1672 of the Justice Court Act. II A reasonable time before the day of Compare and in case there be any objection Against the Cited 10 days are not necessary, because Letters of Exculpation do not contain any warrant to Cite upon 10 days. Allbeit Letters of Exculpation should be Executed to the same day with the Indictment or Criminal Letters: Yet the Lords grant sometimes a longer time for Executing the Letters of Exculpation, if they see cause; as when any of the Witnesses to be Cited by Virtue thereof are at a great Distance, and Continue the Dist of the trial till then.

When there are no Criminal Letters Raised Against who is obnoxious to a prosecution, but hath a sufficient ground of Exculpation; he may raise a summons and cite the party having Interest to pursue, and the Kings Advocate, concluding that the oaths of witnesses in his Defence may be taken by in Actentis ad futuram rei Memoriam; that the proof of his Exculpation may not perish thro the Death of the witnesses in the Mean time Prohs. Garinda testibus q. 76 n. 113 & 123 Meloria Crim. part 1 Tit. 22 § 7 Tit. 26 § 17.

Sometimes a person Against whom a Criminal summons or Letters are Raised, Conceiving himself rather to have been Injured by the Raifer, than to have Injured him; doth throw the Crime upon him, and for his own Vindication and Reparation Apply, for Letters of Reconvention or Recrimination against him: which are Raised Executed and come in to be called in the same Manner as the principal Letters.

Not only are Criminal causes brought before the Court of Justiciary, in the first Instance, by ordinary Actions; but also in the second Instance, by Advocation from some Inferior court, where the Criminals were first tried, or Cited to appear. When Justice Deputes sit in the Court of Justice, any Advocations of Criminal causes from Inferior Judges, were ordinary Raised by the privy Council, and sometimes by the Lords of Session. Letters of Advocation were Raised upon bills, and Executed under the signet of the privy Council, when the bill was past by the Lords of Council, and Under the signet of the Session when past by the Lords of Session. At the day of Compare and the Advocations, if past by the Lords of privy Council, was called and Dismissed before the Justices: but Advocation raised by Warrant of the Lords of Session was ordinarily called before them, who finding the reasons Relevant Remitted the cause to the Justices in order to trial; and if found Irrelevant, remitted the trial to the Court from which it was advocated. However a process before the Justice Court was not fitted by Advocation, but only by order of privy Council discharging further proceedings, or Remitting the Inquiry to another court, or Appointing assessors to the Justices. But since the Court of Justice was reformed by the Regulation 1672 which made it a sovereign Judicature and Discharged the Custom of Appointing assessors to the Judges thereof; the Commissioners of Justiciary have ever Advocated to them several Criminal processes from before Inferior courts;