

courts, and been in constant use of discussing the Reasons of Advocation in the ordinary form. They being supposed to understand best the subtleties of the Criminal law, upon which such Reasons of Advocation do frequently dip, it is but reasonable to allow them to Judge of their own Competency, as well as the Lords of Justice Judge of theirs. Especially considering, that Letters of Advocation bear, that the Reasons are to be seen and Considered by the Justices.

In order to obtain Advocation from an Inferior court to the court of Justiciary a bill is presented to and passed by one of the Lords, upon some Reason of Incompetency of the Inferior Judge, or Suspicion of prejudice from him by partiality, or Iniquity committed by him, as in civil cases. When upon the Raisers of the Advocation Enacts himself and finds Caution in the Books of the Journal for his Appearance before the court of Justiciary, to study the law, under the pains in the Act of Parliament which are the same as for Appearance by Virtue of Criminal Letters Act 1668 Par. 13 J. 6; and Letters of Advocation subscribed by the Clerk, and signed under the signet of Court. Which Letters must be served and Executed by a Mace or Messenger not only against the pursuer of the Criminal Action, but also against the Judge from whom it is sought to be removed that he may defend his Jurisdiction, by giving a full copy of the Letters to both that they may come ready to answer: seeing that the Advocation is not given out to be seen, more than any other Criminal summons. The Diet of Comparance in such Advocations is peremptory, as in Criminal pursuits. If at calling of the Letters of Advocation in the Justice court on the day of Comparance, the cause be Advocated, the pursuer then of must find caution de Novo to prosecute before the Justices or else they will desert the Diet. Because neither he nor his former cautioner is bound to insist before any other court than where they Enacted themselves, and the Cause is removed from thence. The Raisers of the Advocation

is also bound to Render his surety to appear before the Lord of Justiciary in obedience to a Charge to be given him, by Virtue of the Letters to be raised against him to study the law, or go to prison. He must intimate his Advocation to the pursuer of the Principal cause that he may come ready to insist at the day to which it is raised; and to the Kings Advocates who pursue Vindictam Publicam in the Justices court. If the procurator Fiscal was pursuer before the court Advocates from Inverness is Prim. part. 2 pt. 1754: vers. if the cause be Advocated by the Lord of Justiciary do. Petron Remit caused Advocates to them, Stuart Answer to Discl. Doubt 1754. Advocation by the Justices. But where an Inferior Judge from whom a cause was Advocated, Consented that a Justice might be appointed to Concur with him to Judge in the trial if required, and obliged himself before pronouncing or Executing any sentence to report the whole trial and proof to the Court of Justiciary, to be reviewed and Considered by the Lord, and to receive their opinion thereupon: The Lord, without more ado, Remitted the trial to the Judge aforesaid, and ordained him to proceed therein betwixt and a certain day, and to make report thereof to them betwixt and another day; and ordained the Defendor to find caution to appear before him to abide a trial at the Diet to be appointed for that effect, under the pain of 100 pound. 29 November 1693 John Robert & William James found. Sometimes trials Advocated from Inferior courts have been Remitted with this quality, that the Execution of any sentence pronounced betwixt and a certain day, should be superseded and Delayed for the space of so many days. 14 November 1699 Mr Robert Carmichael.

Part 2.
The form and Method of ordinary trials in the Court of Justiciary.
On Saturday before the trial the pursuer gives in to