

to the Clerk of court, with the Executions thereof against the Defendant, the Assisors and Witnesses that the prisoner or Defendant and his doors may see them and prepare objects if they any have against them. Who may also, for that same purpose, call for and see in the Clerk's hand, any writs or letters in the libel as lying there. The Clerk for the prisoner or Defendant give in his letters of Exculpation or Reprimand with the Executions, thereof, if he had any that the party may see and sift them in the Clerk's hand. The Clerk at the same time, makes up and gives to every Lord, a roll of the Criminal causes to be called on the Monday there after. Seeing, that the Dicks of this court be sometimes too cumbersome. The Lords of Justice do not always begin to try Criminals on the very day of comparison, and frequently the trial is put off, and the Dick continued or the Court adjourned to some other day; and sometimes the Dick is deferred, the Effect whereof is, that the party Accused cannot be brought to trial, till a New Indictment or Criminal letter be served against him: I shall first show how, upon what occasions, and in what cases the Dick of court is continued or deferred; and the punishment of persons by Reason of which Continuation Dicks are necessarily continued. 2^d I shall set forth the order of proceeding in trials. 3^d Appeals in Criminal Causes. 4th Actions of Error.

I.
Now, upon what occasions, and in what cases the Dick of trials is continued, or deferred, and the punishment of those, by Reason of whose continuance Dicks are continued.

Upon the day appointed for the trial, if there be not a quorum of the Judges Met, or if there be other Reason why they cannot proceed to trials that day, one of them, if present, may adjourn the court or continue the Dick of comparison till another certain day: about four days be a Quorum for Judging.

When there is a quorum of the Lord's Met, the Clerk

Makes the first count of the Indictment present. And the Justice General, or in his Absence the Justice Clerk, or, in Absence of both, the Lord chosen to preside for the time orders the first cause in the Roll given up to him by the Clerk, to be called. If the pursuer of Criminal letters be present, and the Defendant absent, the former and his surety take Instruments upon their Reporting the Letters, the Defendants surety is the third Act 166 Parl. 13 J. 6 And he himself is declared fugitive ordained to be put to the horn, and all his Moveable goods and gear to be sequestered and brought in to his Majesty's use, for his Contempt and Disobedience, upon this Act Letters of Denunciation may be raised against the fugitive or outlaw, which being executed at the Market Cross of Edinburgh (head burgh of the Jurisdiction where the Justice could sit) Act 140 Parl. 8 Act 126 Parl. 12 J. 6 and Registered with the Executions thereof within 10 days thereafter in the book of Adjournals, caption may follow. For the Justice cannot proceed to try persons absent by leading proof against them: because the civil law allows not Absentem Damare vel punire l. i pr. It is required absentem Damare. Upon a Common bill to the Lord of Session, with the Letters of Denunciation and Execution thereof Registered in the Books of Adjournals produced; letters of Intercommuning are granted, Discharging the Lieges to Intercommune with the fugitive, which must be executed at the Market Cross of the Shire where he dwells, and Registered there, or in the General Register to put the Lieges in Mala Fide d. Act 126 Parl. 12 J. 6. And where a Messenger was deposed in the Execution of a Caption raised upon the Registered Warrant, or where it was known that the Criminal would resist the ordinary course of law, the privy council of Scotland used to grant a Commission or letters of fire, and good Manners to the party a 9th 58. 1st March 1617 George Gordon of Goight 20 November 1618 Thomas Maitland his servant.

If the Defendant appear and the pursuer be absent the Clerk calls the Act for Reporting the Criminal letters, and the cautioner thereon is unlawful, for not perform and Act 166 Parl. 13 J. 6 the cautioner for the Defendant takes Instruments upon his being duly present.