

of the office of bailie of the Regality of Spainside, which being obtained periculo potentis, doth not justify a right of Regality, unless the title of the doctor appears from some also produced. Most part of the pannel dwell not within such a Regality, and of continentian cause dividit non debet actio. Nor can his Majesty's Advocate (who insists in behalf of the publick Interest) be put to pursue before any other court than the Justiciary. 3^d of the pannel braved to be Repleged had appeared upon Citation and found caution. Albeit it was pleaded for the Repleged, that his Author's right having formerly been sustained by the Justices, it needed not to be Repleged. 2^d of the Continentian cause or the Kings Advocate's being pursued cannot be prejudicial to the Bailie of Regality. 3^d of the Repleging were taken away by prevention, Regalities would have no farther privileges than any other court. Competent who may exclude the Justices by prevention.

5 July 1672 Gordon of Achynachy & others. Criminal dwelling within any of the isles of Scotland, Except Orkney & Zetland, and a part of the isle of Arran are upon Application made in the Name of the Duke of Argyle (who is hereditary Justice General in those parts) committed to be tried by his Grace and ~~the~~ his Deputies in their Justiciary Courts. 25 July 1709 Justices of peace & Constables of the shire of Buteshire supra pag.

When no person claims to Replege the pannel, or offer to Replege is rejected by the lords, the prosecutor or plain man of the Court requires the pannel to make answer to his Indictment. If he pleads not guilty a private party being pursuer, is bound (if required by him) to swear the libel, that is, to give his Oath of Calumny upon the Verity of the Ditty. But the Kings Advocate who pursues Ratione officij is not obliged to give such an Oath. Gail observ. lib. 1. c. 3. Nor yet to propose if an Officer give partial Counsel 3 August 1598. L. Advocate contra Ray of Dalgety or to discover his informer 20 Aprile 1599. L. Advocate contra Comm.

& others. 17 March 1681 James Muirhead of Brodicholm & others because other ways, men would be discouraged to Inform and rather suffer Crimes to go unpunished. But it seems unreasonable to allow his Majesty's Advocate this privilege of concealing his Informers Names: for malicious persons may at that rate be encouraged to inform at Random, and bring Innocent men in question for Crimes they had no occasion to; and may even be produced as witnesses against them for ought they know, or may pass upon their Affairs contrary to law, Act 50 Parl. 3. c. 1. However the Kings Advocate is bound to give his Oath of Calumny when required, if any of the Officers or Witnesses were his Informers. Melville observ. on d. Act 50.

The Advocate or Advocates for the pannel make answer to the Indictment or libel, and plead his defence or grounds of Exculpation. If the pannel deny that he got a list of the Officers and Witnesses with the Indictment or Criminal letters, and the Execution returned by the Mayor or High Constable, and the Execution returned by the Mayor or High Constable, bear that a list was given him; faith is given to the Prosecutor, unless the pannel touch the contrary, by producing a Copy he received, on which no such list is set down. And for that end the list of the Witnesses and Officers must be upon the same paper with the Double of the libel. It is not sufficient, that a list of the Names of Officers and Witnesses were given, unless that list mention also their Designations: Because Names without Designations will not furnish the pannel a sufficient knowledge of what to Object against them, which is the reason of giving them up in list to him. That the pannel was Alibi, or in another place, than where the Crime is tried at the time, or that he was already tried for it, and acquitted before another Competent Court. *vide supra pag.* There are also Common Defences against all Crimes. 1st Libel. Murder the Exculpation might be inculpata tutelae and the best defence would be to produce Alibi at the bar the person said to be killed, as hath been done. Annus Robertus Rex. judicial. 1. c. 4. And St. Athanasius Answered to the Murder of Trophonius Phari.