

the pannel indicted for a rape committed on a Young woman about 8 or 9 a clock at night offered only to prove that they were in several companies in other places of the town when the fact was committed from Midday to Night 22 Feb. 1699. Captain Charles Douglas &c. And when one Accused of Intermixing with traitors at a certain place, offered to prove, that the whole day he was at his own house a mile distant from it 26 March 1694 Campbell of Cadzow. Where Defences made by a pannel upon Matters of fact, by way of Exculpation, are reported as Contrary to the truth. Such Matters are allowed to be proved in an Action of Detraction at his Instance, Against the pursuer of the Principal process 18 Feb. 1712 see also Landlaw of Modest and others contra McPherson & others. Because of the Privilege of proof ~~given~~ given to pursuers for Excluding Defences Contrary to the Libels, were so far extended, to Exclude formal libels, our Criminal law would be evaded by the Most guilty Criminals getting the facts of the first process, wherein they might Circumstantially libel facts Directly Contrary to the truth, and so escape without any farther loss than furnishing their sham proof.

In short the Advocates for the pursuer offer all the arguments they can, to Aggravate the Crime, and Confirm the Relevancy of the Libels. And those for the pannel deny the Crime, or Endeavour to Extoniate it, and impugn the Relevancy; Staving Reasons why the libel ought not to go to the knowledge of an Inquest. Which pleads the Affire (albeit not Judges of the Relevancy ought to hear as well as the pannel Act 40 Parl. ii. c. 6. Because the proof may be Much Influenced by it, and the Justices sometimes permit particular Defences Against the Relevancy, to their Discretion McLenzie Crim. per 22 Feb. 1752 infra.

By the old law of Scotland, no Man except his pleader, was obliged to Answer to an Accusation for

more than one Crime in one day at the suit of one pursuer Quoniam Attach. cap. 65. But this is not observed in our present Practice; 8 April 1686 Grizel some vol.

It was once the Custom for Advocates in the Court of Justiciary to Dictate their Defences, Replies, Duplies, triplices, quadruplies &c. to the Clerk who recorded the same from their Mouth, and read them to the Judges at Advising; partly, that those might not be found and charmed with the passionate and well acted Eloquence of the Lawyers, but also to see what they were to do; partly, that the Advocates might consider more carefully what they asserted in so important cases. But this Method of writing the debate & compare is laid aside: And the Relevancy is now disputed by the Advocates on both sides *vis a voce*.

After the pleading of the Relevancy on both sides *vis a voce* is ended, the Judges ordain the Kings Advocate or other advocates for the pursuer, to give to the Clerk within 48 hours, his Information of the case and pleading in writ, subscribed by him, to be soon and Answered by the pannel Advocates in other 48 hours, by another Information signed by the drawer thereof: and then for time the Diet till another day, or such an hour for Advising Act 4 Feb. 5 Parl. R. W. In which case the parties must bring their Bail for Appearance, and the Affixors and Witnesses are ordered to attend under a certain pain, which is sometimes more and sometimes less. For all but affixors or witnesses absent from the Beginning are Unlawed only in 100 Marks conform to the Act of parliament: Yet where a Diet is continued, they are ordained to attend each one sometimes Under the pain of law in General, sometimes under the pain of 200 Marks, sometimes Under the pain of 300 Marks, some times under the pain of 500, and some times under the pain of 1000 Marks. For when the Diet is continued, the penalty of Affixors, Doubles, and