

Judgment or summons be served against him. Sometimes the Diet is Deforted simpliciter, in which case one of the Lords of Justiciary may grant warrants to raise new summons or Letters against the pannel. Sometimes the Diet is Deforted simpliciter with this quality that no new letters or Letters shall be raised except by warrants of the Lord in presence, in which case a bill for raising such letters must be past by a quorum of the Justices at last. Before the habeas Corpus act (act 6 Sept. 1779 Parl. R. W.) when a Diet was Deforted before trial upon the account that the pursuer was absent or not ready to assist, or that the Executions against the witnesses were Informal, or that the pannel had not got a list of the witnesses and Affixes, or when Deforted during the trial because the Libel was found not relevant; the pannels of pannel, for a crime not capital, was dismissed from the bar. But if the crime charged upon him was Capital, he was carried back to prison and continued there till a new Judgment was given him all. Feb. 1681 Parl. R. W. But now prisoners even for Capital crimes may be set at liberty Act 6 Sept. 1779 Parl. R. W. If the Libel be found relevant, and the Defence resisted; the Libel is referred to the Knowledge of an Assize. If the Libel be found relevant, and also the Defence found relevant to Elide the Libel; both are referred to an Assize. The Interlocutor upon the relevancy is signed by the Chairman of the Court J. P. D. that in presentia Dominorum the Assize should be against the own opinion in law; as the Justice General did with Declaration and or his hands to that purpose Record in the Books of Adjournal 4 October 1725. When the Interlocutor is read to the pannel by the Clerk.

Where a pannel Confesses his crime, and voluntarily submits to what the Justices shall determine

about him, he may be Condemned to an Arbitrary punishment without passing to the Knowledge of an Assize. We have in our part 2 Cit. 23 53 quia in Confessione Nulla sententia dicitur nisi ut Condemnetur. Criminals are ordinarily banished out of Scotland never to return without leave, under the pain of Death upon their subscribing a Bond to such a punishment in the books of Adjournal 10 July 1608 Galbraith 31 March 1647 McLean 19 January 1650 Job 30 July 1677 Kennedy 28 November 1687 William Mollie 13 November 1636 John More 10 March 1679 Janet Barrie 8 others. But if the crime be Capital, or the pannelaverse from submitting to the Arbitrary punishment; it is safest to put him to the knowledge of an Assize. When this. Again the the regular form of trials is by process and Assize: yet the Justices and other Criminal Judges punish lesser Malefactors summarily fine, strip, or Imprison by decreeing them to be scourged or banished conform to the Civil law l. 6 ff de accus. et Albert Dura

observed that the Lords found that Sheriff and other Judges could not find in bloodwits above 10 pound without an Assize. Yet Sheriffs do now Imprison and fine for all bloodwits and lesser Delicts, upon proof brought before themselves without a Jury, We have in our part 2 Cit. 31 55. Yea a person being accused before the Justices for putting down and destroying growing trees perclaiming to the pursuers, and the pursuers having referred the Libel to the Defendant's oath of Verity; the Justices upon the Defendant's Denial Negatives, absolved him from the crime without committing him to an Assize 15 November 1637 Robert Burnett.

After the pannel hath heard the Interlocutor read to him the process calls for the list of the grand Assize, and picks or Marks 15 thereon to pass upon the