

the Inquest, called an ordinary assize, to distinguish it from the Grand or Extraordinary Assize. This ordinary Assize Consists of 15 and sometimes of fewer, so be the Number is Unfixed. So 29 June 1614 John Ronald was tried and Convicted as the End part of Disembowling William Ronald for Taylor, by an Assize of 13 Men. And there is the same Reason for an odd in an Assize, as for an odd man in an Arbitration; that Affairs may be brought to a speedy issue, and not suffer to hang, in suspense by equality of Voices. This assize of fifteen may be taken out of the list of 45 given up to the pannel the several persons contained in that list are Dead since the giving; which Casually will not be sustained to stop trial, if there be still a sufficient Number Remaining to pass upon the ordinary Assize Agreeing whom we can have no just Exception: seeing the pursuer could not keep Men Alive, 30 June 1707 Joseph Watson. was it sustained to stay a trial, that 39 only of the 45 given out in list as Assizes to the pannel, were Pited. Respect the law Discharges only to Pite More than 4 Assizes Act 76 Parl. 6 Act 38 Parl. 11. 6 and Both appoint that the pursuer may Pite so many within that Number as that he may have 15 Against whom the pannel can have no Objection. The Power to Pite More than fifteen is a privilege granted to the pursuer, that he may not be disappointed of an Unexceptionable ordinary Inquest and both not Concern the pannel, who is secured by liberty to Decline all in the list upon just grounds, and by the being fifteen whom he cannot Challenge. And the Lords may at their Discretion, excuse and pass persons out of the list, so be there are fifteen good behind to pass upon the Inquest. Altho it was placed that it being the Will of the Lotters to Pite Assizes conform to a list of 45 signed by the Lords; and they

928.
to be given in by the pursuer in a Roll: 45 ought to be called, whether it be the pannels Interest to have them Pited or not. For if once the Number be brought Under 45 it doth not alter the case whether 44 or only fifteen are Pited: since Majors & Minors Non variant Opinion. And the Lords Excusing assizes upon just cause after they are Pited, is no Reason why a smaller Number than those given up in list should be Pited 16 June 1701 Ensign Hardie. The fifteen assizes are called to the Bar by five, and turn their faces to the pannel, whom the Chairman asks, if they hath any thing to Object against these persons why they ought not to pass upon his Assize. Because assizes first obtain a Complex Capacity of Judges, in so far as they determine upon the proof produced; and of Witnesses, in so far as, according to the received opinion, they may condemn upon their own knowledge without further Evidence: Any Exception that ^{against} a Judge or Witness, will be received for setting i.e. Declining an Assize. This an Assize was set for not being 25 Years of Age. Whereas by Statute 26 Ed. 2. 56 which is the Age required in a Judge Act 132 Parl. 1. 2 J. 6. That whose Justice a Man is indicted, or who informs Against him, or gives Advice to raise the libel ^{cannot pass as assizes. But the Informers & Advisors may pass, if they have not so interested themselves} ^{31 Aug. 1598} one who hath Declined to persons, that the pannel was, unless Judgment guilty, cannot be an Assize: and that he said so was ^{proved by the Oath 20 Decemb. 1684} John Lord Balmerine. Nor can officers in the shire where any person is indicted be upon his assize ad 30 Parl. 3. J. 1. Perhaps from a suspicion arising from the Interest they may have, by his Conviction, in a share of his Escheat. Which therefore should not be extended to incapacitate those officers who can expect no such advantage, as Commissioners &c. Whereas officers on cl. Act 30. A Baron holding land of the King, may, in his trial for a Capital Crime, set his whole Assize, if it doth not consist mostly of such Barons, and the best landed Gentlemen, holding either of the King