

King or some other superior by Charter 9 May 1671. *Donogh of Spott*. But tho a Baron Apparent has been a Baron in the Construction of Law, as to the falling of the Casualties of his Marriage or Escheat to the Superior, which happens as *Natow fendi*; yet he cannot pretend to the privilege of having only Barons or landed Men upon his Office 19 July 1675 *M. Lintoff contra Grazor*. Because privileges are strictly interpreted. Nor is this privilege extended to heritors of lands not erected into a Barony, tho' so therein, *Milnesius Enm. part 2 tit. 23 57*. And a Baron may pass from such privilege, and renounce it judicially, 20 June 1715 *Mr William Sutherland of Rodcomon*. 1 Feb. 1717 *Mr John Auchterlony & others*. Again a Baron may be put to the knowledge of a Common ~~Law~~ Inquest, for a Crime whereof the punishment is neither life nor limb but only Arbitrary 16 November 1674 *Erskin of Pittodrie & others*. *Vide Supra pag.* If one or more of the 15 Jurors be cast by the pannel, the doom of such Assize or Assizes must be supplied by one or more of those cited in the Grand List, who therefore must all attend till this is admitted and sworn without objection.

If no objection be made Against the Assizers, or the Exception taken be repelled, the Clerk swears them holding up their right hands thus: Ye five swear, that ye shall all truth tell, and no truth conceal, in so far as ye are to pass upon this Assize as ye shall answer to God at the Great Day *Reg. Majest. lib. 1 cap. 12 § 12*. *Also that* *Parl. 12. § 1* required Assizers to swear that they neither have taken nor shall take Mord or bid of any party. But this part of the oath is never tendered to Assizers & as the pannel be jealous of them, and desire them to be void of partiality.

The Jury being lawfully sworn, the evidence against the pannel is produced before the Assize in presence of the pannel in face of judgement act 90 *Parl. 11 § 6* that he may have opportunity to object Against the same. In the trial of a Crime two things required to be proved

1st the Corpus Delicti. 2^d that the pannel committed the Crime. The Corpus Delicti, i. e. that such a Crime was committed l. 1824 *ff de senatude. Julian. l. 5 § 2 ff ne quis cum qui Injur. voc. l. 23 § fin ff ad L. Aquil. l. 1 § 27 ff de question. l. 24 ff de Gestam. Milit. Dutoron. 17. 4* which must be proved or Manifest before Any person is charged with the guilt of it, tho he should take it upon him by a precipitate Confession. Because *Nemo est Dominus Memborum suorum*. Because *Nemo est Dominus Memborum suorum*. *l. 13 pr. ff ad L. Aquil. l. 6 ff de Appol. Jul. Clar. sen. lib. 5 § fin. quest. 55 n. 10* *Carpzov. Crim. part 1 quest 16 n. 1. 2. 3.* *part 2 quest. 81 n. 1. 2.* *Part 3 qu. 108 n. 4 & seqq.* Tho Many have confessed their guilt of Crimes, whereof they have afterwards been found Innocent: Some rather ex toto vita, than from any Consciousness of guilt; and others from a trouble of Mind or Distemper of the Brain or from Despair. In order to know how the Body or object of a Crime is to be proved, we must distinguish Crimes that have permanent and lasting Effects obvious to the Eye, from those whereof the Effects are transient and Vanishing and leave no Vestige. In Crimes whose Effects usually continue and are durable as Murder theft firing raising, Coining false Money &c. If the Marks viz. the Dead Body or false coin or Rubbish of the house remain, the same must appear from clear Inspection or other Undoubted Evidence, and not by the Lingering Confession of the party Accused *Jul. Clar. ibid. n. 11. Carpzov. Crim. part 1 qu. 16 n. 58 seqq. Part 2 qu. 81 n. 3. 4. part 3 qu. 108 n. 2. 6. 30. qu. 148 n. 97. 98* But if no Vestige of the fact be Extant as when a fight of a person killed can not be had for that the Body had been cast into the sea, or burnt to ashes, or Devoured by Dogs or swine, or secretly Buried; it seems to be a sufficient Indication of the Crime that the person charged with it Confesses, tho he killed and threw into the sea a known man who can not be found, if the Confession be fortified with the Presumptions of Common sense, or blood found in the place where