

of Credit, who Deposed Judicially that such Confessions were made to them, and some presumptions arising from his having been excommunicated and denounced fugitive by the Justice Court for the said Crime after he had taken guilt upon him by flying or dropping out of the way, and changing his Name, and from this Circumstance, that a Ship whereon he was endeavouring to escape as a passenger, after she had passed two Miles from the shore, under full sail with a fair wind, suddenly stopped and would not go forward 31 July 83 Aug. 1641 William Gray. Extrajudicial Confession with other presumptions have also been sustained in other cases to make persons guilty of Murder 23 Feb. 1719 John Brief & Nicol Gordon 13 July 1719 Nicolas Corbo. Upon the whole, the Use of Extrajudicial Confession be much disputed by Lawyers, seems to be the safest course not to regard it, unless it be heard to before the Assize; what ever influence it may have upon their Conscience, when backed with presumptions of guilt. But where a pannel retracts his Extrajudicial Confession, some punishment is due to him for his perjury and abusing the truth, Mackenzie Crim. part 2. Tit. 24.

§ 3 pr.

Judicial Confession is sustained as sufficient Evidence against a pannel. But then it hath been Contraverted, what is that which makes a Judicial Confession? No doubt Confession in face of Judgement before the Assize, is Judicial. And upon such Confessions, persons have been found guilty and condemned to die for Murder 22 November 1637 Anna Jamison 21 December 1638 William Scot & Doon 1720 Nicol Muffel for witchcraft 19 July 1675 James Inglis & Horrie 13 September 1678 Douglas, Lewis, Small, Elliot & others for incest 28 May 1646 Jean Knox, for adultery & Doon Margaret Thomson, for a Rape 20 Feb. 1639 Robert Spady. According to the opinion of the Doctors of the Civil Law, where two persons are charged with the crime of Unlawful Honory, committed together, as incest

adultery &c. one of the parties cannot be Doomed to the ordinary punishment upon his Confession, Unless the other Confess also Arg. l. 155 ff de quist. l. 1524 ff de senatuc. filan. Because the joint Confession of both parties being specially Required to supply the want of Evidence Concerning the Corpus Delicti in such a clandestine Crime; the single Confession of one of them cannot suffice without other Concurring Judicial and presumptions Crim. part 2. qu. 60 n. 7 & seq. qu. 72 n. 51. 52. Thus a Woman was hanged upon her own Confession of Incest committed by her with a Man formerly married to her sister and the Concurring Depositions of Witnesses: and the Man was banished upon the Woman's single Confession 12 March 1705 James Dryddel & Barbara Jannahill. Whether a Confession Emittes in presence of a Judge competent out of Court, or in court when no Assizes are sworn or present, should be sustained as good proof if not ad heard to before the Assize, hath been much disputed. The Reason urged why it should not be sustained is, because the Emittes Confession is the Main of the Evidence; seeing law doth consider the Way and Manner of Emittes the Confession, Measures the Degree of Constancy and fear Appearing in the pannel, and Weighs the Motives Inducing him to Confess; which Circumstances cannot be known by the Jury, unless the Confession had been either made originally or renewed and ad heard to before them. Thus Sir James Stewart (Answer to Birkbe's Doubts &c. Tit. Confession of Criminals) is of opinion, that such Confession not emittes before the Jury, may be retracted before them. But yet Juries in Scotland have frequently been condemned on Confessions of this Nature Mackenzie Crim. part 2. Tit. 24 § 3 infin. Because other ways there could hardly be any Discovery of heinous Crimes. Can it be truly committed without witnesses: being it can not