of the Difference of pen or ink age or Infirmity, Prosp. Farr
de falsilet. & Simulat qu. 133 n. 118 McKenzie Crim. part 2
Tit. 25 §3. The Marquis of Argyle was Indeed in the Year
1661 convicted of treason upon Letters Directed by him to Ge
ral Monk, not proved to be Holography, but only to have
been subscribed by the Marquis comparation Literarum
But this would be a hard precedent in other cases, McKen
Ibid. The Law Requiring all proof to be produced before the
Assize in presence of the pannel in face of Judgement Act
Parl. ii J. 6 Doth not under Confessions of pannels subscri
by them 3 December 1669 Finlay McGibbon alias McNab
by Notaries and witnesses for them before a Competent
Judicature out of the presence of the Assize, or other Ju
under their hands subscribed out of court, to be found
on for Evidence if produced and Read in Judgement bef
the pannel and Assize. In Regard the forsaid law was
Made, not to Discharge any Manner of proof formerly
good and Competent, but only to Regulate the Way and
Manner of using it, by forbidding a Wicked custom of for
cating boasting and Menacing the Assize, and Carrying in
clandestinely to them after they were Inclosed, Bills wi
nesses and other proof that had not been openly found
on before the pannel in face of court, whereby he had n
opportunity to object against the same, the Never so fa
Writ produced by the pursuer for proving his Libel,
take off the pannels Defence, will be Received in presen
of the assize, the a Double thereof was not Delivered
to the pannel with a list of the witnesses the time o
the citation 3 August 1691 Janet Gordon & her Children

It hath been Much Controverted if Crimes may
be Inferred from presumptions? The Reasons for
Negative are 1/ presumption is but a Maybe, which may n
be, whereas all Criminal proof should be sure and
fallible l. ult. C. de probat. and Conclusio Legis Dole

Dolibiorum partow. It is better that 1000 guilty escape,
than than one Innocent suffer l. 5 pr. ff de panis. It is true,
persons have been Condemned to die for witchcraft upon
presumptions: but that being a very Special Crime Con
sisting in facts invisible, what is sustained therein ought
not to be Extended to other crimes done by Overt Acts
falling under the senses. And the the presumption that a
Woman who Concealed her being with Child during the
whole time of her pregnancy, and called not for help in the
Birth, hath Murdered that Child if found dead or Appearing
be strong and pregnant; Yet a Statute was thought Necessary
to Make such presumption infer the pain of death Act 21
sess. 2 Parl. W. & M. 2° If presumption were sustained as proof
of Crimes, Judges would be Arbitrary: seeing law cannot De
termine the Number and Weight of presumptions, as it
doth of other proof. On the other hand it hath been pleaded
that presumptions are sufficient to infer a Crime. Because
if Crimina possunt vel idoneis testibus, vel aperti sunt
Documentis, vel Judicii indubitati probari l. ult. C. de
probat. the rei Criminis Argumentis convicitur, testibus
Suspectis, vel voce propria Confessus, non est Audendus
Appellare l. 2 C. quorum Appell. non Recip. If Witnesses
are believed only, because it is presumed they Will not
Damn themselves by false Witnessing: why may not faith
be given to other presumptions? 3° The Depositions of
witnesses are often Bottomed upon presumptions, as when
they swear Concerning Dolus Malus, Ebriety, or any other
thing Depending upon Acts of the Mind. Yea Evidence
Arising from facts or the Nature of the thing, which
cannot Vary and is always the same, is surer, than that
of Witnesses, who may be Mistaken or Imposed upon.
upon the whole, the Doctors (Ant. Gab. Cod. pt. de panis
Prosp. Farin. de Reo Confess. & Convict. qu. 86 n. 92. 113,
Conclude, that presumptions are sufficient to found an