

be put in issue relevant for him to prove. And his witness if no objection or no relevant objection be made against them are called in one by one from a private room examined, their oaths taken down in writing and subscribed by the witness and Judge, or by the Judge for the witness if he cannot write, and their whole depositions after were recorded by the Clerk in the Book of Depositions, as is done with respect to Evidence produced by the pursuer.

After the proof is entered upon or begun, the cause cannot be adjourned, nor the trial continued to another Diet till all be concluded: but the parties must stand with their Evidence in order to a present determination, for preventing the usual Practice of summoning witnesses, which sometimes put the pursuer under a necessity to sit all night in the Court. Expenses of witnesses at the rate of 8 shillings to each footman and 16 shillings to each horseman for every days attendance and travel, as in Civil Actions, will, if not voluntarily paid, be ordered upon a petition to the Court, to be paid by the Kings solicitor, or private parties who cite them. And where any witnesses are cited by both parties, each of them pays the half. But where the pursuer of a criminal cause, upon his application, gets the Diet of the process against him to be continued till the day of his appearance in his Counter process, that the trial in both may go on together; he is ordered to pay the expenses of the first pursuers witnesses, from the first day appointed for the trial in his process, to the day to which it was prorogated 26 January 1711 Gordon of Dalfoley supplicant.

Immediacy, when the proof is closed, the debate on both sides harangue the Affairs under

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Designation of good Men (or Gentlemen) of Ingenuity. Which Speeches have been sometimes read by the prolocutors 2 August 1633 John Majorum but are mostly delivered ex tempore. The Kings Advocate or solicitor, or other Advocate for the pursuer begins, whose business is to resume the plea with the Jurors and pass thereon, to apply his proof, and set forth the pregnancy thereof; and to impugn or weaken the Evidence, if any be, produced for the pannel. Such a Discomf before the Revolution used to be concluded with a protest for an Affix of Error against the Ingenuity of the Accused: Which was marked by the Clerk, to warn them of their hazards, and render them more inexcusable if they transgressed. But no such protest hath ever been made since that time. The pannels Advocate, who is privileged to be the last speaker (except in the case of treason and Rebellion) recapitulates the Defences, labours to take off the Weight, and show the lameness of the pursuers proof as much as possible for the pannels Exculpation, and sets forth and illustrates the Import of any Evidence produced for him.

Some of the Rules observed in revising the Right of the Testimonies of Witnesses have been set forth in the first Volume pag. 1180. I shall here only take Notice, that the usual Objections Against Depositions of Witnesses, are Contrariety singularity, and the want of a sufficient causa sciencie. If witnesses Deposing Contrary things do not prove, if the Contrariety be in substantial Prosp. Garin. de Testibus q. 65 n. 16. But some Differences in Extrinsecal Circumstances, doth not derogate from their Credit. Verba enim sunt Inquire mandantur testes Concordantur; et aliam Concordantur. Aliquando a Judio, per Interpretationem suppletivam Prosp. Garin. ibid. n. 20. 37 & seqq. As Contrariety is a mighty Defect in Depositions. So an