

sentences was given only against his assistants in the
 forement 12 August 1695 James Edmonston of Gordon & his
 brother. Where a person after he was convicted of Capital
 Crimes by Verdict of an Assize, made his escape out of
 prison, Judgment was given against him to Undergo the
 ordinary punishment of such Crimes, when he should be ap-
 prehended, at such a time and place and in such Manner,
 as the King should think fit to appoint 23 December
 1681 Archbald Earl of Argyle. Which accordingly, after
 he was seized, was ordained to be inflicted upon him 29
 June 1685. And a person adjudged to die when ever he should
 be apprehended, was upon his being apprehended, imme-
 diately adjudged by the Lords of Justiciary to be beheaded
 21 August 1683 Alexander Gordon Younger of Earlston.
 Another, who, after he had received sentence of death,
 made his escape out of prison, being apprehended again,
 the Lords authorized and commanded the Magistrates
 of Edinburgh to put that sentence to Execution at such
 an hour of a certain day 5 March 1684 Mr John Dick.
 It was the boasted privilege of the Anagaites, to hear
 all causes in the Night, that they might have best occasion
 to regard the parties. But the Doctors are generally more
 or less against sentences pronounced in the Night time,
 some hold all such Night sentences to be Null; others agree
 that Custom only hath authorized them; a third sort
 allow Superior, but not Supreme Judges to proceed in the
 Night; others again hold that freedom to Delegates,
 but not to ordinary Judges; and there are others who
 allow of hearing and Determining causes in the Night,
 when the Judge was so busy, as he could not do it in
 the day time. Sir George Mackenzie (Cum. part. 2 pt. 31
 54) thinks, that albeit regularly a Judge should pronounce
 Criminals in open day, yet he may do it under cloud
 of Night, where the case requires haste, as often
 happens in Mutinies and Conspiracies; or where there is ground
 to expect that Enquiries will be used to recover the

Criminal by force, or where the Crime is so Abominable,
 that it is not fit people should know of it, in which case
 the sentence and Execution is Expedient at this right. Such
 a Method the Justices twice observed in King James 6
 time, by his Majesty's special order.

It is Contentiously Debated among the Doctors, if a
 Judge ought to make his Criminal sentence bear the cause
 thereof Jul. Clar. sentent. lib. 5 ult. qu. 93 n. 2. And some
 think that the cause needs not to be expressed in the
 sentence, unless when the ordinary punishment is Mitiga-
 ted: in which case it sufficeth according to them, that the
 sentence mention in General, that the Judge did so for Just
 Causes and Considerations moving him, without specifying
 the causes, Corp. par. 3 qu. 142 n. 5. 3 & seq. In
 Scotland a Criminal sentence Mentioned all ways in the
 Manner of proof, which in civil Actions is termed the
 Because of a Decree. But the Debate is not proferted, in
 Criminal, as it is in Civil sentences; tho' the former
 often contain the whole summons, which the latter
 doth not.

When sentence is to be given in the court of Justiciary,
 the Clerk reads the Verdict of the Assize out of the
 adjournal Book, which the Clerk may Refuse to the
 Rest of the Lords, and asks their opinion of it, and what
 Judgment should be given; which is Determined by the
 majority of Votes, and Recorded by the Clerk. In the case
 of a special Verdict Returned by the Jury, finding only
 facts or things proven, whereof the Relevancy had not been
 Determined in the Lords Justices, the Justices
 Reason among them selves, and Vote what punishment
 should be inflicted on the pannel according to what is
 proven. The Judgment or sentence is worded thus:
 The Lords Justices General, Justice Clerk, and Commis-
 sioners of Justiciary, having Considered the Verdict
 of Assize returned the 10. of Dec. 1733 Years for Cor-
 against J. B. Pannel whereby it is found proven