

proven (or proven) that he the said Lord in respect thereof by the Mouth of the Maor (or Dompster) of court, as well as the said A. B. and ordain him to be set at liberty for doorn and adjudge the said A. B. to be which is pronounced for doorn Sentences are either absolatory or Condemnatory.

A sentence Absolatory, is that whereby the pannel is acquitted and dismissed from the Bar, which is signed only by the Pleaier J. P. D. that is in presence of minorum. And the Clerk reads it in presence of the pannel to a Maor who pronounceth it. When upon the pannel takes his triall out, and, if he had found surety for his appearance, protests for Relief of his Cautioners, which protestation the Lord admits, and ordain the bail bond to be given up. By the Civil law, where a Criminal pursuit is found to have been Maliciously raised, the pursuer is punished as a Calumniator. And albeit in procuratoris Crimi non presumitur Calumniatio, yet if he was proved to have vexed any body Calumniouly, or Concussed them, his punishment was to be burnt Alive l. 9 C. ubi causa fideles. Ubi omni Major l. 10 de Delictis, ubi Major debet esse favoritas: And according to the Doctors, Procurator Crimi affectatus persequens Crimonem, est Extraordinario puniendus. By the law of Scotland if persons Unjustly pursued be acquitted of the Crimes they are upon them, and within the Number of 10, the pursuer, tho' there was probabilitas causa litigandi, should be Unlawful in ten pounds, and if the pannels acquitted be more than ten in 20 pounds: And in case of such pursuits at the Kings Advocates Justice, his Informer is to be liable to these penalties. Which are to be divided betwixt the Sovereign and the pannels, and the pursuer to be committed till he pay Act 78 Parl. C. 6. If a pursuit is found to have been Calumnious and Malicious, the pannels will also Modify a sum for costs to the Justice Court Act 57 Parl. II. C. 6. August 1709. Bonston & Walbank. And may further punish the pursuer as they see Reason 15 January 1683 James Gordon is allowed And albeit the Kings Advocates, by the Authority of his Office

office is exempt from presumptive Calumny in Criminal prosecutions: yet if he vex any person with a Gross Calumny in process, knowing it to be such, the private good of his office would not exempt him from a Consequit Arbitrary punishment, and Reparation of Damages to the party injured, Proff. Garin de Accusatione qu. 16. 20. 21. 22. For true Calumny is occupied in no person l. 2 C. de heredi qui Accus. non poss. l. 9 C. de Calumniatoribus.

A sentence Condemnatory, is that whereby the pannel is adjudged to Underly the pains of law, whether death or an Arbitrary punishment, or fine. Such a sentence is signed by all the Judges present, even by those who voted Against it. Then the Clerk reads the sentence in presence of the pannel, to the Dompster, if it inflict capital punishment, or to a Maor of court, if only a fine or Arbitrary punishment, or to a Maor which Dompster or Maor, respectively repeats and pronounceth it, with the Addition of these words and this I give for doorn. Hence a Condemnatory Criminal sentence is in the law of Scotland termed a doorn. In Saxony, when the Judge pronounceth a Condemnatory sentence, he breaks his rod and commits the Execution to the hangman; signifying thereby, that de hoc Actum est, uti de baculo Saxorum. Crim part 3 qu. 136 n. 36 & 97. When a pecuniary Punishment is inflicted, the pannel is either committed to prison till he pay his fine, or ordained to pay it within 6 Days. After Pronouncing a Condemnatory sentence Inflicting a Capital or Corporal Punishment, the pannel is commanded to prison, and immediately a Copy of the sentence containing an order to the Magisistrates of Edinburgh to see it put to due Execution in all points, as they will be Answerable at their highest Court, is also subscribed by the Lord before they go off the Bench. Which order given to the Magistrates, if the sentence be Capital, is called the dead Warrant, for Tenors of the Court of Justice pronounced after trial and Evidence given, and Not reviewed upon he claiming bills at supra pag. 693 The Lord having (2 January 1713) pronounced sentence Against Mr Alexander Robertson