

A few days delay, partly, that the Criminal may have
 some time to set his affairs in order and to prepare himself
 for death *Carpov. ibid. n. 35* partly, that he may be induced
 to Discover his Accomplices, or to Confess his Crimes. And
 in some cases they allow a longer Respite as the punishment
 of a woman with Child is Delayed not only till she
 bring forth, but also six weeks thereafter *Carpov. ibid.*
n. 29. Ghosafind the Emperour being Grieved at his be-
 ing Rashly Mafacred a Multitude of persons in his
 Anger for their raising a slight tumult in Ghosafonia
 to Make honourable Amends for this crime, he Establi-
 at least Inforced the observance of a law, by which all
 Criminals are to have thirty days Respite betwixt pro-
 nouncing the sentence and Execution thereof *l. 20 c. 22*
penis. The time of Executing Criminal sentences of the
 Justice Court in Scotland was formerly all together
 in Arbitrio of the Judges, who might have Dispatched
 the Execution presently, or Delayed it some little time
 According to their Discretion. But now, that no person
 Convicted of any Crime Importing a Capital or other Cor-
 poral punishment may be moved by the overhasty Exe-
 cution of sentence, without allowing time for applica-
 -on to the sovereign for a pardon; nor Judgement or sen-
 -tence of any Civil Magistrate or Court of Judicature for
 -porting a Capital punishment or Dis-Membering, if given
 or pronounced in Edinburgh or any other part of Scotland
 to the south ward of the frith or River of Forth, can
 be put to Execution within less than 30 days, and if
 given or pronounced in any place to the Northward of
 the said frith or River of Forth can be put to Execu-
 tion within less than 40 days from and after the date
 of such Judgement or sentence *ii G. i. cap. 25 s. 1.* Nor can any
 such Judgement or sentence Importing any Corporal
 punishment less than death or Dis-Membering, if given
 or pronounced in any part of Scotland to the south

The power of the Court of Session to delay the execution of a sentence of death, or of a corporal punishment, is not a discretionary power, but a power which is given by law, and is not to be exercised at the discretion of the Court.

ward of the said River of Forth, be put to Execution till
 after Elapsing of 8 days, and if given or pronounced in
 any other place to the northward of the said River, be
 put to Execution till after Elapsing of 12 days from and
 after the date of such Judgement or sentence *3 G. 2 cap.*
32 s. 1. But it is lawful to Magistrates and courts of
 Judicature to commit to Goal and detain in Custody in
 order to trial, or in order to the Execution of sentence
 as formerly *ii G. i. cap. 25 s. 1.*

The privy Council of Scotland when in being, used to
 Reprieve and delay the Execution of persons Condemned
 to die Mitigate and alter Capital punishments by Com-
 muting or turning them into Banishment. And now only
 the King grants such reprieves or delays of the Execu-
 tion of Capital punishment, and Mitigated Commutes
 or other punishments. But the Lords of Justiciary
 cannot prorogue Dists Appointed even by themselves
 for Execution of Criminals *McKenzie Crim. part 2. tit.*
31 s. 9 because they are functi by Giving Judgement. How
 ever 3 June 1731 The Lord Glenhall & Royston in a late
 Circuit at Perth having previously sentenced a person
 convicted of a Capital Crime to die within 33 days after
 date of the sentence contrary to the law Discharging
 sentenced Importing Capital punishment pronounced
 in any place of Scotland to the Northward of the River
 of Forth to be Executed till after Elapsing of 40 days
 from and after the date of such sentence: The Lords in
 a Court of Justiciary holden at Edinburgh this day
 did prorogue and delay the Execution of the fore-
 sentenced of death pronounced by the two Lords afo-
 said in the Circuit Court at Perth in May before,
 and ordained the same to be put to Execution on the
 day of 1. 7. Again the Lords of Justiciary cannot
 (the the sentence of a Condemned person did not
 appear before Execution) Rescind or Revoc their
 own