Lord of Session may be Examined and must be tried by the Ordinary Lords of that court. Such trial was formerly made per functorius, and in Effect a Mock: For some of the Lords appointed to Examine those Named by the King, after asking them trivial questions, made report, that they found them qualified as that it was Notorily known that they were all Lawyers the ignorant book of law and Practick Dissolution Decr: 1830 But now a formal trial is prescribed Act of Sederi 31 July 1674. When it to report some cases taken to Advisandum by the Lords Ordinary in the Outer House (with whom the Parties are to days for that End) and to defend the debate in a cause depending before the Collegiate body: And upon every point quarrelled, or defined after the pleading, to give his opinion before the Rest of the Lords declare Clearly where as in other cases, the Lord Reporter rules last. When the Lords Determine by their vote Whether the Probationer is qualified or to be an Ordinary Lord of Session: and if they find him qualified, they do forthwith admit him, and he takes his place on the Bench. The Author of a pamphlet Intitled, the Late proceedings and votes in the parliament printed Anno 1689 states, that one Sir William Ballendine named and recommended to be an ordinary Lord of Session by King James the second was upon Examination by the Lords of Session refused and rejected as a person not qualified according to Statute.

But now the Ordinary Lords of Session be or seemed to have still ground to object to the pious Leaves given by Sections; they are with all Convenient speed to be laid at the Feet of the King: and if his Majesty be pleased afterwards Signify under the hand Manual his Royal Will and pleasure, that the person nominated by him be admitted into the place of an ordinary Lord of Session: the Lords are forthwith to admit him. The Sovereign after such Examining, he cause not to admit him, it is Lawful for his Majesty to name some other person in manner aforesaid, still subject to the like examination and final Determination in 6 Geo. 1 Cap. 19 §1. The Qualifications Requisite for Capacitating persons to be named ordinary Lords of Session, may be altered by the Parliament of Great Britain Article 19 of the Union.

One of the ordinary Lords is Constant President, who Declares to the Advocates the points of law or fact they



are to plead upon, directs them in their debate, and signs all Interlocutors in name of the whole Lords. The President was formerly allowed to be chosen by the Lords themselves act 93 Parl. 6 J. 6 But now he is named by the King, as the other Lords are. The Eldest Lord was once Constant Vice President in absence of the ordinary President. Act 93. But now the Lords do pro re Nata, Elect any one of their number to preside in the President's absence.

The Extraordinary Lords were Received upon the Kings letters without Examination or trial. And they are Marked in the Sederunt books after all the ordinary Lords. But now when ever the place of the four present Extraordinary Lords or any of them, or the place of one or more shall become Vacant, no Creation or Nomination is to be made by his Majesty to supply such Vacancies and many such Creation or Nomination be made, the same is Void 10 G. 1 Cap. 19 §2.

The Lords of Session are Vested with a double office, Viz. one ordinary, and another Extraordinary.

Their Ordinary office is Exercised always at the Request of parties, according to the Nature of the Actions or Pleadings in such a case non Juris Dicti officium sed Regalia, which the Doctors Dence term Officium Mere mixtum. Their Extraordinary office called officium Nobile is exercised some times at the suit of parties, and sometimes of their own accord, in new and singular cases, for qualifying strict law and form with Equity. Which Distinction of the officium ordinarium & Nobile Doctors rise from the Roman law, where the Prator called appointed Judicum Pedaneum, a Petty Judge in Office, to a certain form which could not transgress, and he Reserved causes of greater Consequence to be tried by himself, whose business was to Interpret, Supply, and Correct the Law by Equity, and to Mitigate the Rigour of summum Jus, which is often Summa Injuria. The officium Nobile whereby the Lord of Session are distinguished from Inferior Judges, is allowed by the Institution of the Judges, and is very Necessary in many cases, both as to the Matter and form of Justice, which could not be Comprehended Expressly under known laws. Seeing we have not, as there is in England a Court of Equity distinct from that of strict law, where the harsh decrees of the Court of Common Pleas according to the Rigour of law are Reviewed and adjusted to Equity in the Court of Chancery. Which officium Nobile abundantly Supplies the want of a separate Court of Equity, without any Additional Expence to the Country: And could no where more safely