who for that End come to the Session house at three a Clock in the afternoon and attend till five if there be Occasion every Session day except Saturday. In which Capacity they serve for two Weeks, one of them being changed every week. In ordinary cases any one of the ordinaries may swear witnesses. But in cases of great Moment, as Improbations, and proving the Tenor of Writs, their oaths are to be taken before the whole Lords, or both the ordinaries, or before one of them and some other Lord appointed to concur with him.

The Manner of Examining parties, or havers of writs upon Oath.

When a Party E.g. the Defender is to be Examined, and is master of the Act, the Clerk of the process lays the Act before the ordinary. Then the parties and procurators being called by a Macer, if the pursuer do not appear to Interrogate the Defender in the terms of the Act, the Ordinary may do it in his absence. If the Pursuer absent himself, and the Defender is not Master of the Act, but has previously Required the pursuer Under Form of Instrument to furnish him with his Act to depone upon, and protest otherways to be free from that Instance, the Defender Produces his instrument and Craves to be Dismissed, Unless the pursuer furnish him instantly with an Act. Whereupon the ordinary (who cannot know what is to be proven without the Act) Dismisseth the Defender. Which Dismission is wrot on the back of the instrument by the Clerk and signed by the ordinary. The Effect whereof is, that the pursuer cannot upon the former Act Forwardness thereby against the Defender without Citing him de Novo, and paying his Expences: seeing the first Instance perished thro' the pursuers Negligence. But it were Most Dangerous for the Defender to Extract the Act, and depone thereupon and to prosecute a Decreet of absolvitor, whereby he may both recover his Damages, and be secure against further process. If the pursuer or his procurator appear and offer to furnish the Act Required, he is allowed twenty four hours to do it.

A Party is not Bound to give his oath till he who Required it, not only Renounce all further proof, but also Depone that he hath no writ to prove the Allegation. Because of the Great danger of perjury and infamy, which a person incurs if he swear falsely: and some may be so Malicious as to be Content to lose a Small cause by keeping their

their probative writs in order to Convict their Adversaries of perjury after they have sworn. Formerly parties were Examined upon Oath alone either in the terms of the Act, or upon written Interrogatories given in by the adverse parties, who were not allowed nor their Advocates to be present. But now since all testimonies are Published Act 18 Geo. 2 Parl. J. 7. When both pursuer and Defender are present, and the Act upon which the oath is to be taken in the Clerks hand, the party is sworn according to the formula explained in another place (Vide Supra pag. 1033). And if not, as a Witness, examined upon his Plea, or his being Married, or purged of Partial Counsel. Peers depone in common form as to things Referred to their Oaths of Verity 9 feb. 1711 E. Wintons case 7 feb. 1710 Boyson & Hendo for contra D. Athole or as to the having of Writs 19 Decemb. 1711 E. of Montrose contra M'Kulay of Ardincaple. The pursuer at the taking of the Defenders Oath puts Interrogatories to him, either Reduced into Articles in Writ, or Verbally as to Circumstances of fact Mentioned in the Act, or Naturally Arising from it. But it Depends upon the Prudence of the Judge to order the party to be interrogated, if the facts Give such that the Knowledge thereof May be of service to Decide the Question that is to be Determined, or not to order it, if the facts have no Relation to the question in dispute L. 21 ff. de Interrog. He whom the Judge has directed to be Interrogated, is obliged to Answer and to Declare Clearly and Precisely, what he knows of the facts Concerning which he is Interrogated, without feigning or Dissembling, and without Ambiguity or Obscurity L. 1157 ff. de Interrog. But he is not allowed to give in his oath in writ, nor to look upon a paper he hath drawn in Answer to Interrogatories 26 feb. 1679 E. Elphinston contra E. Lothian Act of Sedr. 15 July 1692 left he should be thereby prompted how to Depone, and the Expiscation of truth Disappointed. Yet the Matter of fact in qualified Oaths, used to be given in in writing and a Clause Injoyned, that what is above Related is true. Which is allowed, that the other party may be Ready to Debate against the Competency of the quality. However the ordinary and the other party may, notwithstanding the writen qualified Oath, put any Interrogatory to the Deponent that the ordinary see fitt Hier Lib. 4 Tit. 44 § 12. Great Skill and prudence in ordering the Interrogatories and Expiscations is Required: that partie