

Commissioners where they are to be Examined by Commis-  
sioners on the day assigned for proof, with Continuation of  
Days; to give their oaths, or to produce Writts. Which Depon-  
is signed by one of the Inner Temple Clerks, and passed the  
not. Act 10 Sept. 2 Parl. 7. 7. These Precepts are Called Diligence  
because the users thereof are Exempt from any Exams; if  
they do their Endeavours, tho' Ineffectually. They are after  
ward Executorially, for that Acts are thereby put to Exe-  
cution and get the name of Compulsories; because those  
Cited may, if they Refuse be Compelled to come and give  
their Evidence. L. 16. C. 20. 11. 11. Letters of Diligence  
must be Executed before the day assigned in the Act, other-  
ways they are Ineffectual. Diligence Against parties, to shew  
Oath any point is Referred, both only Command them to  
appear at the term with Certification, that if they appear  
not they shall be held as Confessing the points Referred  
to their oaths. But Diligence Against witnesses or Heavens  
of writts, Charge them only to appear and Depone.

The term in the Act being passed, when the Defendants  
Oath is only Required, and nothing to be proved on his part,  
the pursuer if he Desire to have the Act Cited, pays the  
Dues for Calling, and Delivers the Act to the Clerk, that  
it may be Entred in the Roll of his Acts, which must be  
put upon the wall of the sejmour house the night before  
the Act is there in. Called other ways the Calling will be  
stopped till the next Act day. When the Act is Entred, the pur-  
suer Praves that the Defendant may be Held as Compelled,  
and the term Remanded against him for not Deponing.  
Continuation of the term Imports a forcing out of Calling  
off the Roll. Which word is borrowed from the Civil Law,  
wherein Ground Incurre, is the same as Ban cellare, obli-  
vare, abolere, l. 45 ff. de Re Judic. l. 6 C. quomodo & quando Judic.  
l. 22 ff. de Appel. l. 27 ff. de Labor. Caus. l. 73 ff. de Re Judic.  
When at pronouncing the Act day was taken for a party  
to Depone before the Lord, and before the term assigned that  
party becomes Infirm sickly and unable to travel, or some  
Unforeseen accident Hinders him to appear, upon ap-  
plication Representing this duly attested by a Declaration  
upon Oath to Conscience signed by a Thylician and the  
Minister of the Parish, or if the Church be Vacant by  
his Elders, the Lord will at officers grant a Commis-  
sioners where they are to be Examined by Commis-

to the party to Depone at home, and prorogate the term as  
signed in the Act for his Deponing. If the Defendant with  
out being Examined Compare not at calling of the Act, De-  
cret of Circumduction holding him as Compelled will be given.  
But when some times his Devota to Represent the cause of his  
absence, and if the same be Reasonable the ordinary will Decree  
Superseding Ex parte till a certain day; within which time  
if the Defendant appears, his oath will be taken; but if he  
appear not, decret of Circumduction may be Extracted.  
If the Defendant Compare and be Ready to Depone, the ordi-  
nary causes him to make faith, that is just as with his  
right hand uplifted, that he shall Declare the truth; and  
then bids him wait on in the afternoon to give his oath  
before the proper ordinary. Unless he thus made faith,  
the ordinary upon Oath and witnesses cannot lawfully  
take his oath without consent of the other party or his ad-  
vocates: because it is by his making faith in the fore noon,  
that they are Certiorated and warned a fine Acta to be present  
at his Deponing in the after noon. When the Defendant  
offers to Depone, the pursuer is obliged to furnish him with  
an Act to Depone upon. And if he neglect to furnish the  
Defensor with an Act to Depone upon within 48 Hours after  
he is Required under form of Instrumnt to do so, the De-  
fensor may be Dismissed Act 10 Sept. 2 Parl. 7.

If the pursuer Neglect to call the Act, and the Defendant  
Call required him to furnish an Act to Depone upon, he  
the Defendant may after paying the dues for calling, give  
in his Instrumnt to the Tender Clerk, and Compare in the  
fore noon before the ordinary in the outer house, upon which  
the Clerk causes a Maier call both parties to the Bar. And  
the ordinary causes the Defendant to make faith, and bids him  
wait on in the after noon.

There being certain fees due to the Maier for every  
oath, the same must be paid either at the Making faith,  
or at least before the oath be taken. But Commonly the  
Maier have a servant attending at the witnesses Bar,  
who detain the person Making faith till these be paid.  
Where Defendants in Exhibitions Depone Negatively and the  
Defendants in Actions for Making Arrested goods forth com-  
ing Depone either affirmative or Negative, the Clerks and  
Maier's fees must be paid by the pursuer, Act 10 Sept. 2 Parl.