

within Britain.

Chap. 2.

Of ordinary Criminal courts.

Ordinary courts where Crimes are tried in Scotland are the Justices court or court of Justiciary, the Circuit courts, the court of Justiciary of the Admiralty, the courts of Sheriffs, Stewards, Bailiffs of Royalty and Regality, Justices of peace, and Barons. The Nature and Constitution of all which courts I shall Consider as they

Tit. 1.

of the Justices court or Court of Justices.

The Justices court or Court of Justiciary (so called because habet potestatem Justitiam i. of Bringing Men to Justice or Doing Justice to them) in old time was the only foreign court in Scotland, and was competent to Judge of Breves of Recognition, of Mortmain, Novodiscessio (i.e. Ejection and Spuilzie) Purpoisures and joint for Debt, Reg. Majest. lib. 1 cap. 5 lib. 2 cap. 74. lib. 3 cap. 25. Quon. Attach. cap. 52 & 53. And the Now the Lord of Justice and Sheriffs have a Summative Jurisdiction in the Matter of Bleaving Contraborted Marches, the Justices continued even after Erection of the session to Judge in parambulations & other Crimes. part 2. Tit. 15. 52. part 2. Chap. because ad arma Curritur in finibus Regni. But now the Cognizance of Crimes only belong to it. The Justices court had a Summative Jurisdiction in the Admiralty, and might try all Crimes committed at sea & December 1610. Reg. Jam. Peter Lovel & others 2 Feb. 1610. John Davidson & John Lowd. 3 November 1629. John Brown & others. Reg. Jam. part 2. Tit. 9. 55. But now the Admiralty

the sole Jurisdiction in all Maritime Criminal cases in the first Instance act 16 Parl. 3 Pl. 2.

The Court of Justiciary is the sovereign Judge of all Crimes in Scotland; and many of the higher Nature can be tried no where else. such as 1. the four pleas of the Crown viz. wilful fire-raising, Ravishing of Women, Murder and Robbery, ought to be tried there and not by any inferior Court. Leg. Malcolm 2 cap. 13. Quon. Attach. cap. 76. Stat. Alex. 2 cap. 14. Item ad Verb. signif. Verb. Murthorum, without an Express Commission from the King. The Justices of that court are authorized and Impowered to Enquire of hear and Determine in cases of high treason and Misprision thereof in Scotland, in the same Manner as the court of Kings Bench or Justices of Oyer and Terminer may do by the laws of England. And the high treason and Misprision thereof may not only be tried in the Justices Courts, but also in the Circuit courts, and before Royal Commissioners of Oyer and Terminer under the great seal of great Britain, and other Courts having power to Judge in these cases: Yet the Lord Chancellor or Lord keeper of the great seal of great Britain, may, upon Request of the Kings Advocate General, Award his Majesty's writ of Certiorari under the said great seal Directing to any Justices of Oyer and Terminer, or the Justices of the Circuit courts, or other courts having power to Judge in cases of high treason or Misprision thereof in Scotland, commanding them to Certify Judgments of such Crimes brought before them into the Justices court, which court may proceed upon hear and Determine the same, as the Court of Kings Bench in England may do upon Judgments removed or Certified into the said Court. 7. H. cap. 21. 53. The Justices court may also hear and Determine treasons and Misprisions of treason committed by any Native of Scotland upon the high sea, or in any place out of great Britain 7. H. cap. 21. 55. 2. The Crimes of railing upon or cursing God, or any of the persons of the blessed Trinity Act 21 Parl. 1. Pl. 1. Pl. 2. The