

of them, are sworn, and the Rest of the 45 Dismissed, & ordinary assizes (Answering to the petty Jury in England) after hearing the Pleading, and Evidence given in the trial against and for the Pannel, are shut up in a Chamber by their selves, to Consider the proof laid before them, without freedom to see or speak to any person till they Return their Verdict of it, i.e. Return to the court what they find proved or not proved, upon which the Judges pass the sentence prescribed by the Law. Which things are Explained More fully Infrapage.

Assizes in the opinion of Sir George Mackenzie (Crim. part 2 pt. 23/54 n. 9) have been introduced in Britain either in a Barbarous age, when they and the Judges were equally Ignorant; or the Judges, to ease the selves of a Burden, have Unmercifully thrown it upon assizers. Whatever is the origin of Assizers it is of an Ancient date. Not only Criminal causes, but ~~even~~ Matters of Claim and property were of old tried by assizers. In Scotland upon the Civil brief of Right Reg. Mag. cap. 12. And it hath been of a long time a Maxim in our Law, that every man should be Judged by his Peers. Magn. Charta cap. 29 that is, by his equals, or those of a higher rank *ibid.*

Sect. 5.

The Maors, & Dampsters;
The Maors of this court (who are three at present) hold their places for life by Commission from the Justice General. Each of them wears a black gown, and carries an iron rod or Mace as the Badge of his Authority. Their chief business is to Execute Warrants of Imprisonment, Judgments, Criminal letters, and Letters of Exculpation; to cite assizers and witnesses; to bring pannels from prison to the Bar, and carry them back again; to judge

and attend upon Jurors while they are drawing up their Verdict; to pronounce all sentences not Capital; and to wait on the Judges during all Diets of Court. These Maors are free of all Burdens and services, from which Members of the College of Justice are Exempted. *See supra pag.* If a Maor or other officer Executor of Criminal letters presume to charge Complainers not specially Express'd in the letters or to summon (without Special Warrant) More persons upon an assize than 45 given him up in list signed by a quorum of the Justices, or not to annex them and the witnesses to be produced against the party accused, to the Copy of the letters given to him; the Executor shall be tyed to the pain of 500 Marks, and the officer is liable to Deprivation, and farther punishment at the Kings will act 46. Parl. 6. J. 6. junct. act of Regul. of the Justices court 1672 art. 38. 11.

The Dampster (i.e. Doomster) is he who pronounces with Capital sentences against offenders, with the addition of these words, and this I give for doom. A Dampster in Edinburgh is furnished to the court of Justiciary by the Magistrates, from whom he derives his Commission with a certain fee 14 Novem. ber 1692.

Cap. 2.

of the Circuit courts.
For the More Effectual Dispatch of Criminal Actions, and that Justice may be brought home to their doors who are not in a Condition to prosecute at Edinburgh injuries done to them at home; and also for the General ease and Exemption of the Judges from trooping out of the Borders of Scotland on all Occasions to pass upon Jurors, or to bear witness in trials at Edinburgh.