

Caption signed by the Clerk are issued out under the sign of the ~~Great~~ Court upon a Warrant from the Lord's Bench by bill and Directed to the Sheriff to apprehend them. Who, if he disobey may be proceeded against himself by letters of Diligence as in civil cases, *McKenzie Crim. 2 Gt. 26 51*. If some of the Witnesses cited by the pursuer be absent the Lord may, at his Desire, continue the diet to another day, even the two Witnesses in the pursuer's list be present *McKenzie ibid. 519*. Because albeit two Witnesses may prove a libel, more are often necessary in respect of Circumstances to be proved; and there may be objections against one or both. In which case the absent witness may be brought in before and the next diet by letters of caption issued as aforesaid.

No procepts ~~from~~ the King for Continuation of the courts ought to be admitted by the Justices, who should proceed not with standing of such procepts Act 79 Parl. II. which law took rise from the Kings being much importuned by persons that Desired not to be tried before the Justice Aids, except at particular Diets, whereby they ordinarily escaped all punishments according to the Rule, as Malid meribud orientur bone leges. Yet both the King and his privy Council in Scotland used to command the Justices to continue their Diets. However in the opinion of Sir George McKenzie observe on Act 79 the Justices should at least Inform his Majesty what is to be said on both sides, before they continue diets in process at the instance of private parties; the King and the party having Different Interests, and the party being allowed by law to pursue without the King. And the Claim of Right 1689 Declares that the sending of letters to the Courts of Justice or Dairing Judges to stop and Desist from Determining causes, or the obtaining them how to proceed in causes before them, is Contrary to law. Yet the Justices

Justice for Reason Moving him, ordained a trial to be continued against the Will of the pannels, who offered themselves to the knowledge of an Assize present at the Bar, and protested for Remedy of law Against such Continuation 24 January 1627 Thomas & William Hunter.

If the libel or Executions against the Witnesses or assizers be Informal or if none be cited, the Diet will be Deforced 4 January 1678 Month of Garribhor & others. For the Lords of Justice do not allow as in civil cases, to alter or Amend a Criminal libel at the Bar 27 April 1641 Janet Corfare Because no term is allowed to the pannel to prove his Answer to the libel, and he is not supposed able to Parify his Defences Instantly. It hath been Contraverted whether the pursuer of a qualified libel can pass from the quality? It is Answered, that it cannot be pass from if it Amount to another separate Crime, seeing in Criminal but not heet Vagari. V. G. If the pursuer libel upon the law (Act 51 Parl. II) J. Whoroby Murder under trust is treason, and subsume that the pannel is guilty of Murder by having killed his father; and the pursuer when the case is to be tried Declares that he Justifies against the pannel simply as a Murderer, because he is not sure to prove that the Murdered person was his father; he would not be Allowed to Reform or Restrict his libel; in respect Murder and Treason are Different Crimes, and the pannel was obliged only to prepare Defences against Treason the Crime libelled *McKenzie Crim. part 2 Gt. 21 53*. The Murder Under trust not being Now treason by law this is not a proper Instance. But if the pursuer cannot be allowed to Justify for simple Homicide *McKenzie Crim. part 1 Gt. 17 510* Because these are Different Crimes. Again a libel for homicide not sustained to suffer the pain of that atrocious Crime, was not Restricted to a Riot and Arbitrary punishment, but the Diet was Deforced simpliciter. In regard the pursuer had not libelled or pleaded, that in case the libel did not Amount to the