

the law on which trial by battle in England is founded be still in force. Thus Sir George Mackenzie (Crim. part 1. tit. 12. § 2) thinks, that judicial combats by Authority, are not absolutely discharged in Scotland: because the law discharges only singular combats without the Kings charge Act 12. Parl. 16. §. 6.

I proceed now to set forth the present order of judicial proceedings against Criminals and offenders.

All mens lives not being alike precious in the eye of the law, peers and Commoners are mostly proceeded against in Different Manners. I begin with the former.

Chap. 1.

The order of judicial proceedings against Peers who are charged with Crimes.

Having told before what persons are entitled to a trial as Peers vide supra pag. 678. I shall now set down the form and Method of such trial. But seeing Peers are tried as Commoners for all Crimes except high treason and Misprision thereof, or felony, and Misprision thereof, I shall content my self here to Explain, how peers are tried for the excepted Crimes. In order to which I shall first Consider things previous to the trial, that is, the Method of finding Bills of indictment against peers, and then proceed to the trial upon such Indictments.

Tit. 1.

How peers are indicted for high treason or felony, or Misprision of either.

A Peer may be indicted for these Crimes by a Grand Jury of Commoners, the same way as a Commoner. See Code 2. Just. 49. 3. Just. 28. Hawk. Ind. pl. Cr. lib. 2. chap. 515. And for the more effectual trial of any peer of Great Britain for high or Petty treason, Misprision of treason or other felony in Scotland, Commissioners may be sent forth under the great seal of Great Britain constituting Justices to Enquire by the oath of good and lawfull Men of any County of Scotland the names

Names, in the same Manner as Indictments are found and taken before Commissioners of Oyer and terminer of any County in England: which Inquisition shall have the same effect and be proceeded on in the same Method, as any Inquisition found before Commissioners of Oyer and terminer in England whereby any peer is indicted for any such offence. These Justices shall precept to the Sheriff of the County to Return to them at such a day and place as they shall appoint, so many good and lawfull men of the same County as may be sufficient to Enquire of the said offences; and may fine the Sheriff if he neglect to Summon a sufficient Number of Men to Enquire; or to fine any peer summoned who fails to appear; Which fines are to be Levied by process out of the Exchequer. Oaths or Mors being sworn, are sufficient to make an Inquiry and find any Indictment 6. H. 4. cap. 23. § 12.

If a peer against whom an Indictment is found abscond himself, and keep out of the way he may be outlawed by the Coroner 6. H. 6. cap. 1. 8. H. 6. cap. 10. 26. H. 8. cap. 13. 5. Ed. 6. cap. 11. Tho a peer cannot be outlawed in any civil Action: because he cannot be arrested or attached upon any civil account. But if he be in person, he may be tried either out of Parliament, or before the house of Lords in Parliament when it is sitting.

Tit. 2.

The form and Method of trial of peers indicted for high treason or felony, or Misprision of either out of Parliament.

The King by a Commission Under the great seal of Britain constitutes some temporal Lord of Parliament, high Steward of the Kingdom pro hac Vice, to receive and proceed on the Indictment, and requires the peers to attend upon him. A Portionari is awarded out of the Chancery, to certify the Indictment before him, and another writ goes out of the Chancery to the