

whose purses were cut, or whose goods were Robbed, or the
prisoners who were let out of prison. 6th In Intricate cases
Advocates should not libel art and part simply, but specify
quo Modo and part; Or where no proof can be had of a
secretly Committed, but only presumptions, it is proper
to set forth ^{the} presumptions in the libel, that the Just
ices may Determine the Relevancy, and no thing remain
to the Assize, but the proof of facts from which art and
part, or such presumptions arise. 12 April 1637 *Sturrow*
with 19 March 1690 *Mr John Montgomery* 28th August,
Comonstoun of New town 6 Feb. 1718 *Stuart Abercromby*
23 Feb. 1719 *Briefs Borders*. 7th It is Debated by the lawyers
if a Conclusion be Necessary in a Criminal libel. And
the Generallity of them Incline to think that it is not
because not insert in the formula of the Civil law. 3
It is agreed. And the in Civil cases the pursuer may err
more or less. yet in Criminal libels the penalty is
either Determined by law, which the Judge must follow, or it
is Arbitrary to be Determined by him without respec
posed to what is sought l. 154 It is enacted consult. *Gurp*
l. It is priv. Delict. l. 15 pr. It is Municipal. *Ghuda*
libel was not found to be Informal, for not bearing the
ordinary Conclusus words, that the fact libelled being
found proved by the Verdict of an Assize. *Albert* it
was pleaded for the pannel, that the Assize who are
only Judges of the proof are distinct from the lords who
Determine the Relevancy, ought to be Mentioned in the
libel which should bear before what Judges the case is to
be tried. In respect it was Answered, that these words were
only superfluous style, and the ord. Judicialis
Words not to be libelled 14 December 1714 *Major Mon*
and his servants. But yet with all every libel contain
a Conclusion either particular, or General. & Partic
lar Conclusion runs thus V. G. that the party on

to be punished with Death, and Confiscation of Movables:
or with an Arbitrary punishment. A General Conclusion
is, that he ought to be punished in his person or goods or
other ways with the pains of law, or as the law Directs:
which is understood with respect to the Crime for which
he stands Accused, and leaves the full extent of the Law
to be Applied by the Judges. & of An Alternative Libel
V. G. that A. beat wounded and bruised B. of which wounds
and bruises he died; at least wounded and bruised him, that
he ought to suffer Death for the slaughter, and for the wound
ing and bruising an Arbitrary punishment; was sustained
as not incompatible 2 November; 685 Urquhart & Webster
that guilty persons may not escape the punishment due to
their Crimes. Because, it may be Uncertain what the proof
will amount to; and the pannel had no prejudice by the Jurors
finding according to what is proved.

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A Messenger or Mace must serve and Execute Letters of
Ligence raised upon an Indictment 15 free days before the
trial; by giving to the prisoner a full copy of the Indictment,
with a list of the Names and Designations of the Affixors
and Witnesses to be produced Against him Act of Regul.
of the Justice Court 1672 Act. 3 Will Upon the same paper, and
subjoining thereto a signed Charge or Citation given to the
prisoner by Virtue of the Ligence, to compare before the
Juries of Justiciary on the day appointed for the trial.
He gives also a signed copy of Citation to each Affixor and
Witness to appear there. Of which Charge and Citations
he returns Executions subscribed by him and the Witnesses
Act 4 sess. 2 Parl. 17. A Messenger or Mace doth also serve
and Execute Criminal letters Against the person accused 15 free
days before the trial, by Delivering to him, if personally
Apprehended, or, if not, to his wife or servant, or affixing
on the principal gate of his dwelling house if he any has,
and thereafter on the Market Cross of the head burgh
of the shire, Stewartry or Regality where he resides,
a full Double of the letters Act 33 Parl. 62. M. Janet. act
85 Parl. 11 J. 6. Act 264 Parl. 15 J. 6 containing annexed
there