

If the person charged with Criminal letters, find firstly  
and Made Intimation of his having done so to the Exceutor  
thereof within the Days of the Charge, the Exceutor must  
the Affixors. In old time Messengers by collusion with the  
raiser of Criminal letters, used to bite Multitudes of Affixors  
to particular Shires, and Extorted great Compositions from  
such of them as were Rich, to get their Names Deleted in  
the Roll, Leaving none to Appear upon the Affix, but poor  
men who had no Money to bribe them with. Which abuse  
gave Occasion to Lawd Cael 76 Parl. 6 Act 28 Parl. 11. J. 3. b.  
stricting the Number of persons to be Bited as Affixors  
to 45 unless a special warrant were granted to cite more.  
But thereafter it being thought Dangerous to give the pur-  
suer so Much Advantage over the Defensor, as to Allow  
the former to pick out an Inquest, the list of persons  
pass upon Affixors expressing their Names and Designa-  
tions, was appointed to be signed by a quorum of the Lord  
of Justiciary, act of Regulation 1672 concerning the Justice  
court Art. 3. That the Gaing in the shires of Lothian and  
Citizens of Edinburgh may bear an equal burden in  
passing upon Affixors, and all Inconveniences by listing  
Affixors at Random may be prevented; full and Exact  
signed lists upon Oath are to be given in to the Lord of  
Justiciary once every two Years by the Magistrates of Ed-  
inburgh both Burrough and suburbs thereof, of the Names  
and Designations of the whole Inhabitants within their  
Respective bounds; by the Sheriff clerks of the shires of Ed-  
inburgh Haddington & Linlithgow, such lists of all Barons  
or freeholders within these shires; and their Respective  
Bachelors of the Bosh, lists of all heritors within the said  
shires. Out of which lists Rolls of Affixors are to be Ma-  
de up by the Clerk of Justiciary, at the sight of one of the  
Lords of Justiciary. And for the ease of the said Barons  
and heritors of the shires of Lothian and Citizens of  
Edinburgh and suburbs thereof, the Clerk of Justiciary

is allowed, at the sight of one of the said Lords, to list such Barons  
and heritors of other shires and Burghs of other burghs,  
as happen to be upon the place, to pass upon Affixors at the  
time 30 November 1690. The Exceutor of Criminal letters  
must after Intimation to him of surety found by the person  
charged, not only bite the Affixors Named by a quorum of  
the Judges; but also must bite the witnesses given up to him  
in a Roll subscribed by the raiser of the Letters, to Appear  
on the Day of trial. The Justices are in use to grant warrant  
to Apprehend and secure persons suspected of Crimes till  
they find surety. But they refuse to Authorize the seizing  
of such as are Bited to be witnesses; lest men should be dis-  
couraged from Appearing to bear witness. McLenzie Crim. part  
2. pt. 26 § 19. Sir George McLenzie (then) says, that our custom  
allows the biting of ten witnesses only upon each Matter of fact  
and Article of the Libel, to prevent Confusion. But yet the  
Lords do not use to Restrict the parties to Any Certain Num-  
ber of witnesses.

Quaritur if persons cited upon 60 days may Compare  
sooner with others their Accused who are cited upon six days?  
Ratio Dubitandi, because, on the one hand it might be urged,  
that the Defensor may Renounce the Benefit of the long  
Diel of Appearance, as Introduced in their favour; and it  
may be pretended on the other hand, that the pursuer has chosen  
his own diel, who perhaps cannot get his proof sooner  
ready, and may find it his interest to Divide the offenders

Quaritur if a person banished cited to Appear as Defensor  
in a Criminal process before the Court of Justiciary at a par-  
ticular Day Expressed in the summons, may before that Day  
come to Edinburgh? Ratio Dubitandi, because the reason of  
a Criminal process against an Exile, is no formal taking  
off or Discharge of his Banishment: seeing the Kings Plea  
Vocate cannot Discharge Banishment at his pleasure;  
and the Exile is bound not to Appear before trial and  
such