

Whence observ. on d. Act 26. Justices of peace are allowed to sit on benches, and have the same privilege in Court as Justices of peace enjoy in England & A. cap. 16 & 5. The Court is fenced in these words, I Defend and forbid in our Sovereign Lord's Name and in Name and behalf of H. C. his Majesty's Justices (or Justice if there be but one) here present, that no person or persons trouble or molest this Court of Justiciary, nor spread one for another without Liberty Allowed and given under the pain of Law. Then the Commissions of the Advocate and Clerk Deputies are produced and read.

The Roll of Delinquents is called Every Parliament day, and they will not be declared fugitives if they appear but on the last day: because they are cited to appear any of the days on which the Judges sit in such a place Act 39 Parl. 3 J. 3. Whence observ. on Act 31 Parl. 11 J. 6. Albeit in the Court of Justiciary at Edinburgh where persons are cited promptory to one day, they will be out-laws if they fail to appear on such a precise day. Offenders called and appearing the first day, are put to find security to present themselves at all the Days of Court. The penalty of an assize for absence, is by the Statute 40 pound Act 31 Parl. J. 6. but by Custom assizes are cited to appear under the pain of 100 Marks. Sickness is a Relevant Excuse for not attending at the Justice-air, and is provable by two honest Men, or the parish Minister depending upon it Act 115 Parl. 9 J. 1. No Judge of Regality can replevy persons from the Justice-air, but only concur therein in judging them Act 29 Parl. 11 J. 6. words. and farther the said honorable Stewart.

All Debate before the Circuit Courts is Viva Voce which the Clerk doth Minut: for there are no Informations, after the pleading is over, given in to the Judge or Judges 3 September 1708.

If the pannel Confess and Come in Will, the Justices may draw him out of the Roll, and Declare their Will by charging him to pay a Composition or fine, according to the quality of the Crime and person. For In bringing wheresof the Justices at the end of the Justice-air Direct their precept called preceptum Extractum Stineris Justiciarij, wheresof the form is set down, Act Justic. cap. 33. If any person is Pleached by a Jury, the Justices direct their testimonial called littera testimonialis de homine Munn dato per Assisam, wheresof the form is set down ibid. cap. 34.

The Lords are to Continue holding courts at all the places Destined for their Circuit Courts, for the space of six days from their Down sitting; if the Business of their Respective Courts require so long time to Dispatch

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