on **a** day named, the intervening days being held as *inducite legales.* If, when the cause is called, the defender do not appear, decree in absence may pass against him. If he ap­pear, he is allowed certain days, termed *inducite deliberatoriæ,* to see the original writ and productions, and deter­mine whether and how he shall proceed. He then puts in his defence and plea, admitting or denying the facts alleged, stating any other facts which he offers to prove, and subjoin­ing a summary of the pleas in law on which he means to found. The defences and all subsequent steps of procedure must be drawn by counsel ; and after the defences are given in, every order in the cause must be moved for in court and determined by the judges. If the parties choose they may go to judg­ment on the summons and defences ; but commonly more specific pleadings are ordered, such as a condescendence and answers, or mutual condescendences, which are similar to the *responsive allegations* of the ecclesiastical courts, and both are borrowed from the *articuli et responsiones* of the papal pro­cess. These papers being revised by the parties, the record, ready to be closed, is transmitted to the judge for private con­sideration ; after which, it is put out by him for debate. Parties are then heard in court by their counsel, and the judge may thereupon either give judgment at once, or, as is commonly the case, take the proceedings to chambers again for consideration, and there write out his decision ; or, if any difficulty occur in the determination of the case, he may report the point to the Inner House for their direction or decision ; or again, if the cause involves details or difficul­ties, he may order cases, that is to say, full argumentative pleadings, and then either decide the cause or report it to the Inner House. When the Lord Ordinary gives an in­terlocutor or judgment, it may be carried to the Inner House by reclaiming note, upon which counsel are heard, and the decision of the Lord Ordinary either altered or adhered to, and with or without cost, as the court may determine.

In jury causes, that is to say, causes appropriated for trial by jury, or in which jury trial is to take place, the course of proceeding now pointed out is but partially followed. In such causes a record is made up in the manner described; but as the system of pleading adopted in the Scotch courts does not, as in the common law courts of England, bring out the issue whether of fact or law, issues must be prepared. This is done by an officer of court, and in settling issues there is frequently considerable difficulty. In the proceedings of sheriff and bailie courts, however, there is something like an approach to the English system, an answer or reply to the defence being allowed. But here the analogy ends. There is no rejoinder unless ordered ; and from the multi­tude of pleas pleadable in each paper, a single issue, or in­deed any issue, in the technical sense of the term, is never produced. It is also to be observed, that jury trials in civil causes gradually fell into disuse in the local courts after the institution of the Court of Session, where such mode of trial was unknown till recently introduced by statute ; and it has not been re-established except in the Court of Session. The details of a jury trial, when it does take place, need not be specified here, though they differ in some few particulars from the like proceeding in England.

Of the several methods of defence and proof in criminal cases, the earliest, and at the same time the rudest, was battle, in which the parties litigant put the truth of their averment on the issue of a judicial combat.@@1 This method of trial, so truly barbarous, was termed the judgment of God, though that appellation came more peculiarly to de­signate another method of a different origin, but no less uncertain as a criterion of truth. This was ordeal, which, if not introduced, was at least continued and countenanced by the ecclesiastics. It was of various kinds, but those known

in Scotland were water, fire, and iron;@@2 and accordingly, as the accused was able to bear applications of these, so ac­cordingly was he judged guilty or innocent. Another me­thod of trial used also instead of battle, was that by com­purgators, where the defendant exculpated or purged him­self of the guilt imputed to him, by declaring his innocence on oath, and also producing a number of persons to swear that they believed he swore truly, which they did in gene­ral on their knowledge of his character.@@3 But all these methods of trial have been abolished, or have gradually be­come obsolete, which leads us to notice the course of pro­ceeding now in use in ordinary cases.

The first step is to commit the accused for examination, when, if no case is made out, he is dismissed, otherwise he is committed for trial. From that moment he may sue out and “ run his letters,” a proceeding analogous to the *habeas corpus.* Trial being determined on, the accused is sum­moned to the day fixed, being at the same time served with a duplicate of the indictment or criminal letters, and lists of the assize (jurors) and witnesses on his own behalf. On the day of compearance, he must appear personally, (otherwise he is outlawed,) and stand at the bar or pannel whence he is termed the *pantiel;* but in all cases he is allowed counsel and agent. If, on arraignment, he has no special matter to plead, the libel is read to him, and his confession, if made, is recorded. If any special plea on the relevancy is offered, it is determined by the judges on oral or written argument. Issue being joined, the evidence on both sides is laid before the court and jury, which are now impannelled for that pur­pose. The jury are then addressed by the pannel or his counsel, and the evidence is afterwards summed up by the presiding judge, with adirection in law to the jury; when the jury, after deliberation, return, unanimously, or by a majority, a verdict of guilty, not proven, or not guilty, as the case may be. A verdict of not guilty declares the prisoner’s inno­cence ; a verdict of not proven indicates suspicion, but in­sufficient proof of guilt ; and in the case of a verdict of guilty, but in that only, sentence is pronounced. The na­ture of the sentence depends not only on the crime, but also on the public prosecutor ; for of a long time past that officer has been in use to exercise a power to restrict the pains of law. This important power is commonly exercis­ed with great discretion ; yet undoubtedly it is a danger­ous one to hold, and to it more, perhaps, than to any other cause whatever, is to be ascribed the singularly lax state of the criminal law of Scotland in reference to the punishment for crime.

There seems little doubt but that in early times the king was public prosecutor, as he was also generalissimo and chief justice of the kingdom. His great officer, the justi­ciar, who followed him, as we have seen, in the two latter capacities, followed him likewise in the capacity of public prosecutor ; and what the justiciar did throughout the realm generally, the same did the sheriff in his particular county. Accordingly, we find it enacted in our early law that if any stranger remained in a town longer than a night without finding a pledge or surety for his good behaviour, “ the justiciar or the sheriff shall accuse him;"@@4 and so late as the middle of the fifteenth century it was enacted “ that all mairs and serjeants arrest at the sheriff’s bidding, albeit na party follower be, all trespassers, and that the sheriff fol­low said trespassers in the king’s name, gif na party follower appears,” (1436, c. 140.) In process of time however, as the principles of civil liberty and the elements of our constitution came to be better understood, distinct officers were appoint­ed to the different departments of the State ; and this office of public prosecutor naturally devolved upon the crown coun­sel. The principal of these is the lord advocate, and next to

@@@1 Quon. Att. c. 61, Leg. Burg. c. 24.

@@@\* Stat. Will. c. 7, 15 ; Stat. Alex. II. c. 7∙

**@@@’ Quon. Att. c, 5, §. 7 ; Leg. Burg, c. 24,**

**@@@4 Quon. Ate. c. 63.**