him is the solicitor-general, an officer derived from the Eng­lish courts, and probably not known in Scotland earlier than the union of the crowns in the beginning of the seventeenth century. There are also four standing deputies to the lord ad­vocate, or “ advocate deputes,” as they are termed, who had their origin by the act 1587, c. 82, which divided the realm into circuits for the administration of criminal justice. The procurators fiscal of the county and burgh courts, who arc the public prosecutors in their respective districts, may also be regarded as deputies of the lord advocate. It is true they do not derive their authority from him ; but they commu­nicate with him in the prosecution of criminals, and in that department have generally the same powers and duties. The following table will shew the great importance of public prosecutor.

*Number of Indictments and criminal Letters issued from the Justiciary court.*

|  |  |  |  |
| --- | --- | --- | --- |
| **Year.** | **For trial in the High Court-** | **For trial on circuit.** | **Of both which there were at the instance of the**  **Lord Advocate.** |
| 1812 | 18 | 56 | 68 |
| 1813 | 24 | 62 | 83 |
| 1814 | 22 | 60 | 76 |
| 1815 | 22 | 108 | 122 |
| 1816 | 30 | 120 | 125 |
| 1817 | 4.3 | 176 | 210 |
|  | 159 | 582 | 684 |

The following statement will also give some idea of the working of the criminal jurisdictions of Scotland. It relates to the year 1836. In that year there were 2922 persons charged with crime in the several counties and burghs of Scotland. Of these 289 were discharged without trial, and 219 from other causes ; and of the remaining 2414, there were tried by the Justiciary, 574, (viz. 173 in the high court, and 404 on circuit); by sheriffs, 1325,(viz.547with jury, and 778 without jury); and5l5 by burgh magistrates, justices of the peace, and others. Of the above 2414 also, 2152 were convicted ; in 194 cases the charges were found not proven ; 30 were declared not guilty ; 36 were outlawed, and two were found insane on arraignment. And finally, of the 2152 convicted, 1647 were sentenced to imprisonment of differ­ent periods, 305 were condemned to transportation for differ­ent periods, 187 were punished by fine, 6 were discharged on sureties, 2 had sentence of death, 1 was executed, and 5 received no sentence.

Next in dignity to the crown counsel is the dean of fa­culty, *facultatis juridicœ decanus;* or rather we should say that between these learned personages there has been a contest waged, the latter claiming precedence of the former. This claim, however, seems to be just a *residuum* of the once greater claims of the whole college of justice, and the dispute but a continuation of the conflict formerly main­tained by the court against all power except its own. The place of dean of faculty has been held by some of the first men of the kingdom ; and in the course of the last two hundred years there have been no less than three instances of elevation from it at once to the presidentcy of the Court of Session, Sir George Lockhart, Sir Hugh Dalrymple, and Mr. Blair. But in all the common elements of rank there cannot be a doubt of its inferiority to that of crown counsel.

According to the original constitution of the Court of Session, the members were associated into a college, with a view to a collegiate or common life ; the judges or lords of Session being “ senators” of the college, and the advocates the *facultas juridica,* or faculty of law, subordinate to whom were the students of law, or “ servitors,” as they were termed, who were attached to particular advocates as their

pupils in the study of the law. The celebrated Sir Thomas Hope was in early life a “ servitor” to Sir Thomas Nicol- son. The term “ servitor” was a college term, well known in the University of Oxford ; but it has gone out of use with us, those formerly so designed being now termed “ advocates’ first clerks.” But to what extent such in­tention was ever carried out, or whether any thing ex­isted here in the nature of the English laws of court or Doctors Commons, does not appear. At present there is nothing of the sort. The original entry money to the Faculty was L.40 Scotch, and so it continued till 1672, the year in which the statute for the regulation of the judi­catories passed, when the sum was raised to 200 merks. In the beginning of last century it had advanced to L.40 ster­ling, and now, after repeated advances, the fees of entry are upwards of 250 guineas besides extras. The number of the Faculty which, forty years ago, was about 260, is at present about 470, averaging of late about twelve in the year ; but a fourth part only are in attendance on the courts.

The distinction of counsel and agents in Scotch practice is of modern origin. The earliest agents properly so called, or practitioners below the bar, were the “ servitors” above mentioned, or advocates’ first clerks in the Court of Session ; and all others were forbidden to act as agents.@@1 By the injunctions of their chief officer, the Secretary of State, in 1594, Writers to the Signet were also prohibited from act­ing as agents; and by a bye law of the body itself in 1676, every member who should take it upon him to act as an agent, was made liable to be prosecuted. They came at length, however, to act likewise as agents, and are now a large and influential body. Sixty years ago they were not more than 100; but about forty years ago they were 280. At present they are upwards of 700 in number, and almost all of them resident in Edinburgh ; and the average entries yearly are the same in proportion as into the Faculty. There is another class of agents, the Solicitors before the supreme courts, enrolled under AS. 9 July 1754, and AS. 1772. They are upwards of a hundred in number, which is somewhat more than the enrolled number of advocates’ first clerks, a body which lias remained much about the same for the last forty years.

With respect to the procurators of the inferior courts, they appear to have generally continued, till recent times, on the same close footing on which the practitioners of all the courts stood previous to the institution of the Court of Session ; nor are they to this day admitted by the supreme court, or marshalled, like the bar, into one body, but are severally admitted, on varying qualifications, by the respec­tive courts throughout the kingdom. They are of course restricted to the particular court so admitting them ; whereas the advocates of the College of Justice form the proper bar of Scotland, and being admitted by the supreme court, may practise in any court of the kingdom. The same principle might be extended with evident advantage ; and the local courts opened up to the talent and practical skill of the agents of the Court of Session. The present arrange­ments are very plainly imperfect, and incapable of maturing a uniform and settled system of jurisprudence in the coun­try. There is not a tenth part of the law business of the country conducted by the counsel and agents of the su­preme court. Unless a different provision is made, both the law and the legal profession of Scotland will inevitably suffer.

In the style of the procurators of Aberdeen, there is a peculiarity which may here be taken notice of and explained. They are styled *advocates,* which name is otherwise appro­priated to the advocates of the College of Justice. The truth is that the appellation of advocate is amongst the ear­liest which we find in our records applied to practitioners

**@@@1 See AS. 13th July 1596, Stat. 1672, c. 16, and AS. '26th February 1678.**