18 July 1666 Reddorwick contra Waugh & Oxford by Dirlaton
M Kenzie Crim. part 2 Tit. 30 §5. A person who had beat a Ma
and his wife within their dwelling house having been fined
the sheriff for the Riot upon a Complaint offered by the Procu
rator Fiscal; that was not sustained as Res Judicata to bi
der his Majesties advocate to pursue before the Justiciary
against the said offender for the Crime of Hamefuchen which
was not libelled, and could not be judged by the sheriff 10 Mar
1690 John Crawford Robert Stoddart and others. A Decre
of an Inferior Judge in a Criminal pursuit for beating an
Wounding a fellow Man obtained at the instance of the procu
tor fiscal without Concurrence of the person injured was not
sustained as Res Judicata 19 March 1663 John Calderwood Mini
a Decreet for a fine at the suit of a Procurator Fiscal for b
Majesties interest, doth not hinder the party injured to pu
for an Assithment or Reparation of the Damage sustain
by him 4 July 1662 Alexander Gordon 5 January 1677 Geo
Hardie & George Robertson. In a Criminal Prosecution fo
a Riot in assaulting and wounding the assistant of a
Messenger in Executing the Kings Letters at the suit of
party injured, with the Concurrence of the Kings Procu
it was pleaded for the Pannel that he was Rechamed
Judicially in so far as he had been already fined in 100
pound for the same Crime by the sheriff Deputes of Ma
ray at the suit of the Procurator Fiscal: And the sentence
of an Inferior Judge must stand till it be Removed i
the proper Manner by a Reduction. It was Answered
1° The trial before the sheriff was carried on Collu
=ly without producing any Evidence of the quilt Except
the pannels Confession qualified as he thought fit
where as the party injured could have proved the fact
other ways. 2° Albeit the Fiscal of an Inferior court
might subsist ob Vindictam publicam where the party in
jured Dissembles or passeth from the Injury: Yet he
cannot Bar the private party against this without for
the Judgement of the Supreme Court, by a partial and
precipital prosecution before an Inferior Judge.
Nor is there any Foundation in Law or Practice for Re
voucing in the Court of Justiciary the sentences of Infe

Inferior Judges. The Lords Repelled the Defence Made for the
Pannal 14 November 1723 Alexander Junior Tenant of Drumkin
=by one of two joint Stock of Depulses being after he had Stolen and wounded a Man to the Death of his
Landlord pursued before his own Colleague at the Instance of his own procurator Fiscal without
the Concurrence of his Master was not sustained as Res Judicata to free him from a process at the first
Fiscal: but he was sentenced to Justiciary for an arbitrary punishment and damages 1. March 1710 Murdam
the party injured before the Justiciary Dec. 1709 Mag. 1709
Incidently, if a Thief hanging up first down from the
Gallows Alive, he was to be no further punished Reg. Majest.
lib. 4 cap. 18 as if he had been found by a Miracle of provi
dence. But now if a person hanged up for Theft, falleth
down Alive the Rope's breaking before he be dead, he may be
hung up again: for the judgement of hanging is not fully
executed till the Criminal be dead Ant. Matthaeus Crim.
lib. 48 Tit. 18 Cap. 5. n. 15 Jo. Voet. Comm. ad Pit. Instit.
infin. Sutton de pace 214 a. Hawkins pl. Cr. lib. 2 cap.
51 §7.

A person Charged with a Crime may be Acquitted
either by the Justices Deserting the Diet upon Account
that the Indictment or Libel is Irrelevant or by sentence
proceeding upon the Verdict of an Assize finding the In
dictment or Libel not proved; or upon the Wisdome a
=nimity of one or more of the Jury in Dissenting before the
Verdict was Concluded.

It is Disputed, whether a person Acquitted, or Absolved, may
be thereafter Accused for the same Crime (called with the Name of Exposition, the Name of Indictment, Accusation
=tion, Libel, Bill, Information, Complaint, Querela, Inquisitio, Quaestio, Quarina
tion, Tittle, Indictment, Information, Complaint, Querela, Inquisitio, Quaestio, Quarina
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