But if he was absoilzied thro' his friends tampering wi
the pursuer, he cannot be called in Question a second time
for the same Crime, since he was Innocent of the Follie
proceeding, tho' advantageous to him. Sir George also Ci
thinks, that albeit the first pursuit was at the Justice
of some party injured, the Kings Advocate cannot aga in
pursue upon pretend of Res inter Alios Acta, which wo
be keep people in a Constant Suspence.

My opinion is, that a person against whom an in
sufficient Indictment is brought, or one Acquitted before
an incompetent Judge being Acquitted and the diet
against him Desorted, for want of Authority in
the Judge or because of Informality in the proceedings
such Acquittal will not hinder him to be Indicted de
Novo for the same Crime Hale pl. C. 144 Pullon
de pace 169. b. 170. a.
Because the Law had not its End, and the Indicted was not
Discharged upon the account of his Innocence, nor wa
over in Danger from such a Trial. This a person being Acquitted before the
Magistrate of a Burgh from an Indictment for assaulting the Town Guard and Killing a Soldier
during a Tumult, who was not sustained to hinder him before the Court of Justiciary for hearthing the said Guard
& Killing another Soldier Wounding the same in the same Tumult, which were Discharged April 1 April 1691 Captain
Lorrie.

But one sufficiently or Relevantly Indicted be
fore any court that hath Jurisdiction of the cause being
Acquitted upon the Verdict of a Jury finding the libel or
Indictment not proven, cannot be liable to Answer to a
New Indictment for the same offence at the same pe
riod Justiniano, ex Lex Lex wont against Eccleman
Levinz. i Rep. 7. 124 Hower Rep. 336. Sid. 49. 5 Mod. Rep.
349 Keble, Rep. 5 68. 2 Rep. 40 b. 404. 3 Rep. 398 Because
a Man should Not be put in Jeopardy of his life twice for
one and the same Crime. Thus a person having been pur
sued before the Sheriff at the suit of the party injured
with a Concurrence of the Procurator Fiscal of the Court
and absolvied; that decreet of Absolution was sustained
as Res Judicata to Absoilzie from an Indictment for

for the said Crime before the Court of Justiciary at the suit
of the party pretending to be injured and his Majesties Advocate
July 1682 Margaret Weir. Yea Where an offender 18 Partly punished
by an Inferior Judge at the suit of the Procurator Fiscal with
out Collusion, the Sentence of such Judge is sustained as Res
Judicata quoad Vindictam Publicam, tho' the party injured
not Consider, but not as to Reparation of the Injury done to the
private party 18 January 1705 Mr John Douglass of Burghlour
one which had been tried and Acquit for slaughter in a Court
of Regality at the Procurator Fiscal's Instance without the
Concurrence of the Nearest of Kin of the person Killed being an
wered Cleared for the same Crime in the Justice Court at the
suit of the Nearest of Kin and the Kings Advocate it was plead
ed for the pannel, that no process could be sustained against
him in Respect of this being already absolved by an Assize
before the Regality, for Verifying whereof he produced the Roll
of Court. It was Replyed, that no procurator Fiscal could
pursue for slaughter without the Concurrence of the Nearest
of Kin of the person slain, who must appear and assist him
or be summoned for that Effect: seeing otherways a procu
rator Fiscal might by Collusion with the criminal, pro
cure him to be Acquitted by producing a White assize. It
was Replyed. The Procurator Fiscal may pursue the the
Nearest of Kin Refuse to Concur with him. Because 1°/ The
Act 140 Parl. 13 J. I ordains Meirs and Forjeants to Arrest at
the Sheriffs Bidding all trespassors, and the Sheriff to follow
the Trespassors in the Kings Name if no party follower
be. 2°/ As the Kings Advocate may pursue Crimes with
out an Informer, and tho' the parties be Fiscal Act 76 Parl.
11 J. 6. So May the Procurator Fiscal in an Inferior Court
having Criminal Jurisdiction. It was Replyed, that
the Act 140 Parl. 13 J. I gives no power to any Procurator
Fiscal, and Extends not to Judgement but only to Arrest
ing. This point was not Determined, but the Nearest
of Kin having Desisted from the pursuit simpliciter,
the Justice Desorted the Diet 8 July 1636 22 Feb. 1637
John Moore one Cleaving after he had pursued Ano
ther for a Riot before the Justices of Peace, and got
Witnesses Examined for proving thereof, prite