

to his Majesty for being his Deputy during his absence at London; the Solicitor before he qualified by taking the oath in capacity of Advocate Deputy, protested, that his Acceptance of using such a Deputation should not be construed as a Acknowledgement, that he by virtue of his office as Solicitor had not a sufficient power in Absence of the Advocate to pursue all Actions Criminal, or Defend in any suit, so far as his Majesties Interest is Concerned; but should be without prejudice to him of pursuing or Defending in any such Actions by Virtue of the power Committed to him as Solicitor as he saw cause 24 June 1717. But the Lord Advocate uses Not to pursue for treason, without a Special warrant Under the Kings hand, or from the privy Council of Scotland when in being which warrant is produced in Justice by the Clerk. Crimes and offences are pursued for at the Instance of particular persons Injured either with the Concurrence of the Kings Advocate for his Majesties Interest, that Nothing may be done Collectively between a private pursuer and the party Accused or without the Lord Advocates Concurrence if he Refuse to Join in the prosecution. Sir George Mackenzie in one place (obser. on act 76 Parl. 11 J. 6) Indicated, that private parties may pursue Crimes, without the Concurrence of the Kings Advocate. But in another place (Crim. part 1, pt. 2 § 1 infim.) he seems to think, that a private party cannot pursue without such Concurrence: in respect his Majesties Advocate can not Refuse to exercise his Ministry in conjunction with the Injured person Complaining, and is punishable if he should. It was indeed pleaded in the trial of a Rape, at the suit of the husband of the Ravished woman, where the Kings Lawyers Refuse to Concur; that the private pursuer could Indict only in so far as he had Interest for Reparation of his loss and Damage, and Not as Vindictam publicam for the punishment due to the Crime, which his Majesties Lawyers only could do for the Crown's Interest, as the King could pardon it. But this plea was overruled, and process sustained: because albeit the King could

could put a stop to such a trial by Imprisoning or pardoning the Criminal as to the punishment; yet his Majesties Advocate could not do it, by withholding or withdrawing his Concurrence; but the party aggrieved might not withstanding go on with the trial, that Crimes may not be Unpunished 4 April 1723 Barrithord. contra Colonel Barranters.

It is the Interest of the Common Wealth, no Criminal Mankind Impunity, that every one be allowed to Accuse for Crimes Nearly touching the Welfare of the State, such as treason for Sedition &c. But that it might not be in the power of every body to Vex such as they bear Malice to, with a pretended Criminal pursuit; the Roman Law in private Delictis admitted none as Accusandum nisi qui suam aut suorum Injuriam Insequerentur. Which Injuria suorum is by Prosper Justinianus (de Accus. qu. 12 n. 5) extended to Injurias done to Any in the fourth Degree of Kindred to the Accuser; and by the Law of Scotland to Injuries done to Any of his kind folk within the prohibited Degrees Mackenzie Crim. part 2 pt. 1 § 52. Glend. process was sustained at the Instance of a Gentleman for an Injury done to his Lady, a Countess who disclaimed the suit by a Declaration Under her hand, which she could not do without his Consent 29 November 1637 Mr Alexander Dumber & his son. A Master hath Interest to pursue for the slaughter of his servant or to pursue 29 November 1637 Mr Alexander Dumber & his son. But a Minor cannot pursue Criminally, Unless he be Author or in the prosecution by his tutors or Curators l. 4 ff. de Accusationibus Reg. Majest. lib. 4 cap. 2 or by a Curator ad litem assigned to him by the Court 24 July 1600 Doctor Bannatyne. Because such might perhaps either easily in the heat of youth vex Innocent persons Unjustly; or might Injure themselves or the Common Wealth, by suffering those their Mismanagement of the pursuit, a person truly guilty to be Cleared by a Verdict, who could not be brought again to a trial, and the Minor could not be redressed against the Absolutorious Sentence. Glend. a process against one