

*Judex de officio* takes Information of the Crime, called Inquisition. Which Matter the Doctors of Law treat profusely, dividing it into a General Inquisition, where no particular Informer or Criminal is taken Notice of, and a Special Inquisition about the person guilty. Inquisition should be used by a Judge Competent to hear and Determine the Crime *Prosp. Garin de Inquis. quest. i n. 53 & seqq.*

The Civil Law allows no Inquisition without an Accuser. *l. 632 ff. de Minor. & honor.* Which is not so to be understood, if every trial required an Accuser, but that it was left Usual and only in extraordinary cases, to proceed against Criminals by way of Inquisition. But by the Canon Law (*c. 24 x. de Accus. & Inquis.*) and the practice of Nations (*Prosp. Garin de Inquis. quest. i n. 10. Carp. 200. Crim. part 3 qu. 103 n. 23. 29 & seqq.*) a Judge may *de officio* Inquire into all Crimes and proceed even to Conviction.

The Privy Council of Scotland, when in being, might have Inquired into all Crimes by Examining Witnesses or other ways Informing themselves, without an Accuser. And so may the Justice Court without citing the party, or any other formality; but not where an Accuser offers to justify. Unless there be Reason to fear Collusion: for not the *ordinum* of a *Remedium Extraordinarium*, dum locis ordinariis. And Albeit the Court of Justiciary may take cognition of all publick crimes, that Mainly Concern the peace of the Country, and stop Accusations for such raised before them at the suit of private persons: Yet they be faine to recognise or stop Accusations for private Murders or the like Crimes, whereby private persons are thereby wronged, *McKenzie Crim. part 2 tit. 18 51.* Again there lies only a suit at the Kings Instance ad *Vindictam publicam* for private Crimes Subsidiary, in case the Justices parties collude or by by from prosecuting *vindictam privatam* *Act. 140 Parl. 13 J. 1 Act 76 Parl. 11 J. 6 quo casu liti satio no facit cessare Inquisitionem* *McKenzie ibid. 52.* This previous Inquisition is not Always taken, nor can it be taken

taken after a Criminal pursuit is Commenced 8 January 1672 for *ubi Inquisit. Accusatio Definit Inquisitio* 8 January 1672. It cannot be lawfully used without some previous Discovery of the Crime giving Rise to it. The Doctors say, that *Neque est, ut vel Judicia vel Delator vel Diffamatio Appereant viam Inquisitionis* *Prosp. Garin. ibid. n. 9.* That it may not be in the power of Judges to bring in question at their pleasure, the Reputation of Innocent and good men. Therefore proceeding summarily and Arbitrarily to Inquisition about a Crime, without any tolerable ground of Suspicion, is punishable in our Law *McKenzie ibid. 53.* But his Majesties Advocate frequently Examined parties and Witnesses before Commencing of the process, that he may know if there be ground for it, and how to libel exactly. Which procedure hath been thought Dangerous, and not fit to be Allowed: because, seeing the Role of Officers should be Made up by the Justice Court of Regul. 1672 concerning the Justice Court Art. 3) and not by the Lord Advocate, as being a party too much Interposed; far less should he be allowed to pump witnesses by a pro examination, when that privilege is not granted to Advocates for the party Accused, who in ordinary Criminal pursuits are more favoured than the pursuers, and have the privilege to be the last speakers. A Letter from the King dated at White hall 30 November 1682 Directed to the Lord of Justiciary, and produced in Court 8 January 1683 Desiring them to Examine Witnesses in Crimes before or after Citation when Required by the Privy Council, to the End his Majesties Advocate might know how to conceive his libel, and whom to cite as witnesses; was quarrelled as not only contrary to the Law (*Act 90 Parl. 11 J. 6*) Requiring all proof to be led to the affixed in face of Judgement before the party Accused; but also a Method to engage Witnesses to Ad here when Judicially Examined to Depositions formerly elicited from them by the too great Zeal or Influence of his Majesties for