✱ N. 2. The Lord Dirleton tells us that the decision 8 July 1676 Crawford contra Gordon finding that Backbonds granted by Apparents do affect singular successors to the Apparents after Infeftment hath followed thereupon during the Legal, but not after the Legal is expired, was displeasing to divers of the Lords particularly to A. J. C. N. B. S. Tinto argued against it upon the following Grounds. 1° If his singular be simple and pure without any quality in corpore juris, any extrinsick deed or quality may bind the Granter and his Heirs but not the singular successor, who neither can nor is obliged to know or take notice of any Quality not in the Right. 2° The Quality of a Right is an Accident of it and Accidents is effect inferr so that in Law where the same is not in corpore Juris, it doth not affect the Right as to singular successors. 3° upon the considerations aforesaid Resignations and Bonds for granting Resignations do not mis-lead against a singular successor unless they be in Forma Juris or Registred. And tho' there be an express statute to that purpose, yet it doth not follow a Contrario that where there is no Statute Backbonds should affect; seeing the said Statute is only declaratory of the common Law as to Resignations than made under the parliaments drew without derogation to the Common Law in other cases. 4° Backbonds are upon the matter Reber-=cations and oblige only to retrocess the Lenent and cannot operate more than a formal Retrocession were made in his favour, which could not work against a singular successor unless it were Intimated. 5° It would be an irreparable Injury to people who buy in a Right pure without any Quality are in bonâ fide to purchase it upon presumpt. of a Valid extrinsick Backbond their Right might be questioned as to the existence of prejudice to those commonly in use to grant assignations upon Backbonds in order to apprise or adjudge, if such Backbond should not affect the Assignees, and that the Assignees instead that is of no weight, seeing they trust the Assignees, and this their own fault if they misplace their Trust in an undeserving person; Besides they have a Remedy by Intimating the Backbonds that are upon the matter Assigna-=tions, whereas a singular successor is quite Remediless. 6° That such Backbonds should affect Apparitions not only before but after Infeftment during the Legal, and therefore should defeat quality the same; seems to be inconsistent with and against the principles of Law. Dirleton decis. 374.

✱ (3) and allege Jewelly of the Lord Rights of singular successors by the Backbonds

✱ (4) ob. in Regard they Angus nothing of the matter being a Tutorship to Rector Hamilton was not instructed to Rector Hamilton being Jud. Ac. before the Court of Justiciary the Lord Gordon Killing a neither Author therefore in the same Tumult which

✱ (5) ob. in Regard the Lord Ruthven being a Judge in an Inferior Court of Justiciary

✱ (6) ob. in Regard the Lord Ruthven being a Judge in an Inferior Court of Justiciary

✱ (7) ob. in Regard the Lord Ruthven being a Judge in an Inferior Court of Justiciary

✱ (8) ob. in Regard the Lord Ruthven being a Judge in an Inferior Court of Justiciary

✱ (9) ob. in Regard the Lord Ruthven being a Judge in an Inferior Court of Justiciary

✱ (10) ob. in Regard the Lord Ruthven being a Judge in an Inferior Court of Justiciary

✱ N. 1. ✱ But tho' in Inferior Actions the words of words questioned as false ought to appear to abide by the Juring yet a commission was granted to take first a person's Declaration that he did abide by, in Respect he was of great Age. Dirleton decis. 403.

2. ✱ ~~Tho' the Lord Dirleton to take the Juring for payment of money debt and abide after Recession~~ Bond was granted by one after he was at the Horn, the notarial of bearing that it was granted for wrongs truly furnished to him before the Rebellion, ~~[illegible]~~ was found not to prove against the King formale. It was only the Rebels Assertion. But the Allegation was found relevant to be proved ~~only~~ by the Rebels Count Books, Books of Entry, and not simply by witnesses, without such adminicles in mind, 20 December 1676 Borth contra Pollal observed by Dirleton.

3. ✱ where panels having desired that witnesses might be received for the better Information of their Innocence of the Crime charged upon them: The Kings Advocate answered That no witnesses could be received to inform the Assize, seeing they are both Judges and witnesses, and to bring in their Verdict of the panels guilty or not guilty, according to their Knowledge and Conscience upon which the Justices refused to admit other witnesses to be produced by the panels to the Assize, and ordered the Assize to proceed in the Trial according as their Knowledge and conscience should direct them. 17 December 1623 John Hailly and Thomas Hailly. did. 15 December 1630 John & Gilbert Kennedy ~~[illegible]~~ where the Assize upon their own knowledge found a panel not guilty of murdering of a man's Right Arm, notwithstanding of a Testimonial subscribed by four Surgeons ~~[illegible]~~ declaring the Slaughter of the wounded was mistaken and desired to use his Arm as before he received the hurt. ✱ Again the Kings Advocate having pursued persons upon the notoriety of their Guilt of the Crimes of Forestalling & Regrating, & called against them, the Assize were in that case made both Judges and witnesses thereof & pronounced and declared the panels to be clean & Innocent of the Crimes charged upon them. 24 February 1648 William Boa and others.

4. ✱ The King hath a procurator in whose name Crimes are prosecuted called Procurator Fiscal. the procurator Fiscal.

Fiscal.

None who had Beaten and argit 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 afterwards accused for the same crime in the Justice court at the suit of the nearest of Kin and the Kings Advocate, it was pleaded for the panel, that no process could be sustained against him in respect of his being already absolved by an Assize before the Regality. It was replied that no procurator Fiscal could pursue for slaughter without the con=currence of the nearest of Kin of the person slain, who must either appear and assist him or be sum=moned for that Effect. being otherwise a procurator Fiscal might, by collusion with the Criminal, procure him to be acquitted by producing a white Assize. It was duplied, The procurator Fiscal may pursue tho' the nearest of Kin refuse to concur with him. Because 1° The Act 140 par. 13 J. 1. ordains sheriffs and foryanders to arrest all the Sheriffs bidding all Trespassers, and the Sheriffs to follow his Tres=passers in the Kings name if no party follower be, 2° As the Kings Advocate may pursue Crimes without an Informer and tho' the parties be silent act 76 par. 11 J. 6. So may the procurator Fiscal in an Inferior Court having Criminal Jurisdiction. It was replied, That the act 140 par. 13 James 1. gives no power to any procurator Fiscal and excludes not to Judgment but only to Arrest=ing. This point was not determined, but the nearest of King having past from the pursuit fur=ther the Justices dismissed the dist. 6 July 1636 & 2 February 1637 John Clerk.

✱ A Decreet of an Inferior Court in a criminal pursuit for beating & wounding a certain man obtained at the Instance of the procurator Fiscal without concurrence of the person injured was not sustained as Res judicata 19 March 1683 John Calderder and ~~[illegible]~~ a decreet for a Fine at the suit of a procurator Fiscal for his Majesties Interest doth not hinder the party injured to sue for an Assythment or Reparation of the damage sustained by him. 5 July 1662 Alexander Gordon. 8 January 1677 George Hardie & George Holden. did. where page 85 n. 1.

✱ 2 persons being absolved before the magistrate of a Burgh from an Indictment for assaulting their Town Guard (4)

✱ But a person having been pursued before a Sheriff at the suit of the party injured with the concurrence of the procurator Fiscal of the court and Absolved; that Decreet of Absolution was sustained as Res judicata to absolve from an Indictment for the said crime before the Court of Justiciary at the suit of the party injured and his Majesties Advocate 11 July 1682 Margaret Wilson. and where a woman was banished by the Bailies of a Burgh for Theft at the suit of the pro. Fiscal; that act of Banishment was sustained as Res judicata to free the person being condemned again for the same crime at the Instance of the Lord Advocate before the court of Justiciary 5 April 1686 Grizel Somervil. persons being fined by a Sheriff at the suit of the procurator Fiscal for troubling the Church and raising a fray in the Kirk, was sustained as Res judicata to free them from a pursuit for the same crime before the Lords of Justiciary insofar as concerned banishment & pillorium. Albeit it was pleaded for the pursuer 1° That the procurator Fiscal complained did not mention the fine for bloodshed but only set forth the matter of fact. 2° The punishment inflicted by the Sheriff was no part of the crime. In regard it was Answered 1° That where laws are not especially labelled Judges superior have power no matter by the Sheriffs sentence that the utmost penalty of the Law was not exacted. 2° By the Regard of the Law is established by all courts. 15 November 1703 Mr John Kedler Bar. ~~[illegible]~~