

No 16.
oblige the
King's Advoca-
cate to con-
cur in a pro-
secution.

to bring a criminal indictment before this Court against Colonel John Scot and others, as guilty of bribery and corruption at the Michaelmas elections of Dingwall 1758, though he was required so to do by Sir John Gordon, the complainer; and praying that the Court would interpose their authority to oblige his Majesty's Advocate to prosecute the said cause." And in support of the complaint, it was *urged*, that any private informer of a crime, giving sufficient evidence, and offering to pay the expense of the prosecution, has a right to demand of the King's Advocate, that he should prosecute that crime for his Majesty's interest; and to demand the interposition of the Court, in case of refusal.

Answered for the King's Advocate, That there is nothing more fixed in our law, than that the prosecution of all crimes *ad vindictam publicam* belongs to the King and to his Advocate acting by his authority. Hence it is, that he may insist in such actions, or desert them as he sees cause, without any controul on the part of the Court. Contradictory to this known privilege, the direct tendency of the present complaint is, to transfer the *vindicta publica* from the King to every private informer who is willing to defray the expense of the prosecution, generally more out of resentment than zeal for the public.

"The Court refused to interpose."

Fol. Dic. v. 3. p. 369. Sel. Dec. No 247. p. 319.

1795. June 15.

SIR WILLIAM JARDINE, with CONCOURSE OF HIS MAJESTY'S ADVOCATE, *against*
MAGDALENE BARBERIE DE LA MOTTE.

No 17.
The crime of
attempting
to suborn
witnesses to
commit per-
jury, cannot
be prosecut-
ed at the in-
stance of the
party who
would have
been hurt,
had the at-
tempt been
carried into
effect; but at
the instance
of the King's
Advocate.

IN 1787, Sir William Jardine obtained a decree of divorce against his wife, Mrs Magdalene Barberie de la Motte.

Mrs De la Motte afterwards raised a criminal prosecution against Sir William for subornation of perjury, alleging that he had bribed some of the material witnesses to swear falsely against her in the process of divorce.

Sir William, on the other hand, some time before the date of Mrs De la Motte's indictment, had, with the concurrence of the Lord Advocate, instituted a prosecution against her, charging her with the same crime, on account of her having, as he alleged, used menaces towards these witnesses, and given them promises of reward, with the view of getting them to swear, that they had formerly, in consequence of being bribed by him, given false evidence against her, while in fact they had on that occasion only told the truth.

Mrs De la Motte afterwards deserted the diet at her instance, *pro loco et tempore*, and in defence against the relevancy of the indictment brought by Sir William,

Pleaded, Supposing it were true, that the pannel had tampered with the witnesses, yet, as they have never been brought forward to swear a second time, it is impossible she can be guilty of subornation of perjury, Hawkin's Pleas of the Crown, vol. 1. p. 172., Blackstone, b. 4. c. 10. § 16. The charge against her amounts at most only to an attempt to commit that crime, by which attempt Sir William Jardine has not been injured, either in his person, property, or reputation. This prosecution, therefore, is only competent at the instance of the public prosecutor; popular actions being extremely dangerous, and indeed unknown in our law, except in a few instances, where they are allowed by special statute, Spirit of the Laws, b. 6. t. 8.; Kames Hist. Law Tracts, p. 60.; Maclaurin's Criminal Cases, No 75, February 1767, Robb against Halladay; No. 79. November 1767, Mackintosh, &c. against Dempster; Hawkin's Pleas of the Crown, p. 181, 182.

Answered, Although the pannel has not been able to carry her intentions into full effect, the law will hold the pursuer to have suffered in his character, by her malicious attempts to hold out that he obtained the divorce by subornation of perjury, See Maclaurin, No 95, Haggart against Hogg; 2d July 1786, Penrose Cuming against Leslie. He has certainly a more immediate interest to prosecute than any other individual in the community; and unless it were competent to him, crimes of this sort would pass unpunished, for it is impossible the public prosecutor can watch over all the mal-practices committed in the course of law-suits between individuals.

The Court, after advising informations, and additional informations on the relevancy, "found, That the charge contained in the libel did not amount to the crime of subornation of perjury, but an attempt to commit such a crime: Found, That the private prosecutor has no interest or title to bring this prosecution against the pannel, upon the facts so charged, the said prosecution being only with concurrence, and not at all at the instance of his Majesty's Advocate; and, therefore, dismissed the said criminal libel, and the pannel from the bar.

Act. Lord Advocate Dundas, Dean of Faculty Erskine, Solicitor General Blair, Geo. Ferguson.

Act. Cullen, Macleod Bannatyne, Rae.

R. D.

Fac. Col. (APPENDIX) No 3. p. 2.

1796. February 10. HEW DARBY against JAMES LOVE.

HEW DARBY, trustee on the sequestrated estate of James Love, and himself claiming as a creditor, presented a petition and complaint, in which he accused Love of fraudulent bankruptcy, and craved that he might be punished accordingly; 1621, c. 18.; 1696, c. 5.; 33d Geo III. c. 74. § 27, 28.

No 18.

The trustee for the creditors of a bankrupt is not entitled to bring a charge of