

proportions of it is the Interest of the Common Wealth, that  
 all Disorders be Cur'd or prevented; Consequently, it is ju-  
 dicial to the same to call such Informations or Tendencies  
 go free without any punishment, tho' as in the Civil Law  
 there are Actions de Felonia in General Actions in factum, Ac-  
 tions in the case, for want of a more special Name, and  
 there are Actions de Felonia arising from the Reason of the Law,  
 as well as direct arising from the words of it, as in Crimina  
 libidine sine Felonia arising from the purity of Crapula  
 tanquam Crimine in suo Genere informing Guilt in some De-  
 grees. The saying ill Reports in order to stir the hearts  
 of people to Faction, is Expressly punishable Act 60 Parl. 6  
 M. and every thing tending to Sedition and Division among  
 the people is liable to punishment Act 9 Parl. 20 J. 6. If  
 these Expressions are punishable, far less should Tendencies  
 which are Expressly said, escape unpunished. The leaving  
 such Tendencies in Arbitrio Judicis, doth not render a  
 Judge a whit more Arbitrary, than both he and the In-  
 quest are in Judging what is Act and part; for a libel up-  
 on Act and part in General is left lawed by our Law, al-  
 tho' the extent of Act and part is by no particular Sta-  
 tute Determined in respect it could not be so Determined.

Not only such as actually Commit a Crime, but also  
 those who open el Consilio by whose Counsellors Advice  
 Direction or Assistance &c. it was Committed, called in our  
 Law Act and part, or accomplices or Accessories, are in  
 the guilt of the Act and part of which term the  
 first mention in our Law is in Act 15 Parl. 5 J. 2. Likewise  
 upon Act 8 is Inferred 17 from dect previous to  
 the Crime, as by Council and persuasion, or Command, or  
 by Lying, Initing, or bounding out, 20 By dect Concomitant  
 as Countenancing and assisting, aiding and abetting or  
 Countenting. 31 By subsequent dect of Approbation or Re-  
 lating, 32 receiving, 33 maintaining.

We have Scripture Instances of Accessories before the  
 fact, as by Justification in the wives of Job and Rehab, Job 2  
 9. Kings 21. 27. By Council in Gen. 40. 13. 14. 15. 16. 21. and Michahs Mother 2 Chron. 22. 3. In the  
 solving how far one that tells to another to Commit a

A Crime, is guilty as Act and part of that Crime, there are of the  
 Doctor who distinguish with small things Nicely between one who  
 would have Committed the Crime, tho' he had not done so, and  
 him that would not have Attempted any such thing,  
 but he not been prompted by advice to do so, that in the last  
 case Advisor and Actor are Equally guilty, and that in the for-  
 mer case the Advisor is more Favorable than the Actor. Prosp.  
 Farin. de Consultationibus Quæst. 129 p. 107 & seq. Clar. Pont. de  
 lib. 5 § fin. de act. 89. But this sentiment appears to Clash  
 with the principles of the Criminal Law, whereby the Advisor  
 to a Crime is not less guilty, than the Actor, and the Advisor  
 the Committer; as an Assistant deserves the same punishment  
 with the principal Actor, tho' the Crime would have been  
 Committed without his assistance, seeing in Malificis Volun-  
 tate non estis spectatur, at Malificis propositum Ius in  
 quiete de Design and not the Event is Considered in Crimes.  
 And its impossible to frame a Rational Conjecture, far less  
 to know exactly, one advised to Commit a Crime, would not  
 have been guilty of such an Act, had he not been pushed  
 to it by advice. I therefore conclude more solidly, that in the case  
 of atrocious Crimes, Advisor and Actor are equally guilty,  
 and that in lesser Crimes, the former should be more mildly  
 dealt with, than the latter.  
 But by the Law of Scotland Advice and Counsel to Commit a  
 Crime are qualifications of Act and part. Sir George Mac-  
 kenzie (Crim. part 1, tit. 35 § 3) in trying the guilt of the  
 Advisor, would have a Judge Consider 10<sup>o</sup> If the Advice proceeded  
 from pre-conceived Malice in Theory or out of pure Resent-  
 ment of Injury done to the Committer of the Crime; 11<sup>o</sup> If  
 being it a greater offence for one to do his own Malice by  
 Advising another to do an ill thing, than to spend such the  
 vice in a friends quarrel. 2<sup>o</sup> If the Advisor was Minor  
 or Drunk; for the such persons might be punished for Com-  
 mitting Murder, if we had to punish them for Advice.  
 3<sup>o</sup> The vice is still to be interpreted in any Sense the word  
 will bear most favourable to the Advisor. 4<sup>o</sup> The Advisor  
 should not be held guilty if he after ward hetracted his  
 Opinion, and sets his End avours to Disward and Divert  
 the Actor from executing his wicked Design. Thus the  
 English Lawyers say, where A. doth Command or Counsel  
 B. to Commit Felony, and Repenting before Commission there