

which may be recovered against the absent offender out of his estate, provided the Advocate is authorized ^{and} ~~and~~ ⁱⁿ ~~in~~ ^{an} ~~an~~ ^{Capit. Mandate} ~~Capit. Mandate~~ ^{Prosp. Farin. de Variis questionibus} ~~Prosp. Farin. de Variis questionibus~~ ^{qu. 99 n. 276. 214. 76. 256. Carpov. ibid. n. 64 & seqq.} ~~qu. 99 n. 276. 214. 76. 256. Carpov. ibid. n. 64 & seqq.~~

And they allow Noblemen to appear in Criminal causes by their procurators. But this is not allowed in Scotland. Our law requires the presence of the Defendant in a suit before the Justice court, even where the payment of a fine is all the conclusion in the Criminal letters, as for cutting green wood, stealing bees, &c. Because the obligation in such letters is to compare to God by the Law under pain of Rebellion, without the addition of these words, or to show a reasonable cause which impardon for Civil causes, is a warrant to answer by a procurator. ^{McKenzie Crim. part 2 tit. 20 53.} However a Advocate for a Criminal cannot in absence for his Client enter upon the principal cause or dip into the Merits of it; yet he may plead the Excuse of his absence l. 1 § 1 ff de public. Judic. l. 3 § de Accid. By the simple warrant of his gown without a Mandate if he was employed. Yea even where he was not employed, a Mandate not all together formal, as if subscribed only by one Notary for the party who could not write, would be sustained; seeing Qualitot levis probatis Absentia. ^{Sufficit McKenzie ibid.}

The Civil law doth not allow procurators to pursue in Criminal causes l. 1 § 1 ff de public. Judic. Because the pursuers succeeding being liable to the penatation belived to be present. But Galis or Retaliation being gone in his use, by the law of Scotland and the laws of most Nations absents are admitted to sue by their procurators with the concurrence of the Kings advocates ^{Prosp. Farin. ibid. n. 6. Gronov. de Reg. abrog. ad Rubr. C. de his qui Accid. non poss. And so it was Decided 4 Aug. 1632. Master Grant 13 March 1662.}

John Monteith & John Wright. However the practice of pursuing by procurators, is liable to Inconveniences. For seeing the Defendant may find it necessary to prove by the pursuers oath, that he bribed the Witnesses, or knew the Defendant to have been a liar, or to require him to swear his libel, which is the same as in Civilibus to give his oath of Calimony; and Criminal doct being Peremptory, so as a day cannot be allowed to the pursuer to appear and Depone: it were reasonable he should be present, that the Defendant be not cut off from the benefit of his oath; which if he refuse to give, the Diet would be reported and no process sustained at his Instance. ^{McKenzie Crim. part 2 tit. 20 51.} Wherefore where a Criminal action was raised at the Instance of two private persons and his Majesty's Advocate, the Lords refused to sustain process at the Instance of one of these private persons in respect he was not present to Jurist, 13 June 1720 George Mourie of Culrain & John Mculloch.

The Advocates on both sides, first debate the Relevancy of the libel *in voce*, and thereafter Informations on the pleading, line inds signed by the respective lawyers, are given to the Clerk, and Recorded in the Books of Adjournal. After the proof is closed, the Advocates make speeches to the Jury upon the whole cause. The Advocate for the pursuer begins, and is answered by the Defence Advocate, who is privileged to be the last speaker, except in the case of treason.

sect. 3.

Concerning the Clerk of the Justice court. The Clerk of Court (termed Clericus Justitiarum) is admitted upon a Commission for life from the Lord Justice Clerk, empowering him to officiate as Clerk in the Court of Justiciary at Edinburgh or in