

As in the sovereign Jurisdiction the King hath a Advocate called Lord Advocate, who Defend his Majesties rights and Honours in all suits for breaches of the peace and other Crimes: so in Inferior courts, the King hath a procurator in whose name crimes are prosecuted, called Procurator Fiscal the procurator Fiscal for the publick Interest, either with, or without the Concurrence of the private party Injured. The Judges proceed in trials, much the same way as the Lords of Justice do in their Circuits. Crimes are ordinarily tried before them by an Assize. But sometimes they condemn upon the Pannels Confession without a jury, if a person having been pursued before the Sheriff at the suit of the party Injured with the Concurrence of the Procurator Fiscal of the court and assizes; that Decree of Absolution was sustained at the Judicata to absolve from an Indictment for the said Crime before the Court of Justice, any at the suit of the party pretending to be Injured and his Majesty's Advocate 11 July 1682 Margrat Warr. Year, when an offender is fairly punished by an Inferior Judge at the suit of a Procurator Fiscal without Collusion; the sentence of such Judge is sustained at the Judicata quoad vindictam publicam, tho' the party Injured did not Concur, but not as to Reparation of the Injury done to the private party 18 January 1725 Mr John Douglass of Broughton. Nor was the sentence of a Sheriff fining an offender, where the trial was carried on collusively by the Procurator Fiscal, without producing any Evidence of guilt except the pannels Confession, sustained at the Judicata in a prosecution at the suit of the party Injured with the Concurrence of the Kings Advocate 14 November 1723 Alexander James Younger of Dundee. And a Decree for a fine at the suit of the Procurator Fiscal for his Majesty's Interest doth not hinder the party Injured to sue for an absolution or Reparation of the Damage sustained by him 5 July 1662 Alexander Gordon 4 January 1677 George Hardie & George Kelsa vide supra pag. 744.

When they hear of any Unlawfull Convocation coming to the court, they should Charge them to come in a sober Manner, and if they Refuse to Dissipate at the Desire of the Judge, he is to Continue the court, and to pursue them in order to punishment by a Years Imprisonment act 104 Parl. 14 J. 3 it being Dangerous to allow any Judge to fall on Summary and kill such as Disobey his orders.

Tho' the Judges aforesaid cannot in the Vacation of the court of session hear and Determine Civil causes without a Dispensation from the Lord of session 23 July 1713 Henry man contra Elephant & her husband; Yet they try Criminals then or at any time without a Dispensation, ubi periculum est in Mora. For Interest they publish that Crimes be punished without Delay act 113 sess. 5 Parl. 1. W. Civil causes are Advocated from them to the Lords of session, and Criminal causes are Advocated to the Court of Justice.

Tit. 5.

Of Justices of peace and their courts. Justices of peace are so many Godly wise and Virtuous Gentlemen of good quality Mayor and Report, as the sovereign pleases to Name, for keeping of the peace of the shire where they live. They are called Justices of peace, because the doing of Justice to preserve the publick peace is Expected from them; and also Commissioners of the peace, for that their Authority flows from the Kings Commission. Their office (which their very Designation Implies) is some thing like that of the Jurarchs among the Romans. But as the former's Interest in the country is a sure pledge of fidelity in the Discharge of their trust, than could have been Expected from the latter, who were only a sort of Military Magistrates subordinated to the praefect provinciarum for keeping the provinces quiet. Tho' their Station is now honourable, in so far as like the Roman Consuls they can punish Immorality. We had no formal office of Justice of peace in Scotland till