

that if an Appellor demur in law to an Appeal by Reason of the Insufficiency of the Declaration, or Generally Demur to the Declaration with a Conclusion & petit Jurium de Veritate illas & quod Narratio illa casativa; such Demuror shall not Conclude him from pleading over to the felony, either at the same time with the Demuror, or after it shall be adjudged Against him Hawkins pl. Br. lib. 2 chap. 31 56. It seems that in Criminal cases not Capital, if the Defendant Demur to an Indictment &c. the Court will not give Judgment against him to Answer over, but final Judgment Hawkins ibid. 57.

If the prisoner can have no Advantage by pleading for abatement, which Answer to the Making a Dilatory Defence in Scotland, or if he think not fit to Demur in law, he may plead in Bar, which in the Scots law is to propose a peremptory Defence. The Pleas in Bar are, 1. of Antecedents acquit. 2. of Antecedents Attaint, or Antecedents convict. Both which are Express'd in the Law of Scotland by the term of Resjudicata. 3. of Pardon is a third sort of Plea in Bar. Which having been Express'd in another place vide supra pag. 849. I shall only here take Notice that he who pleads a pardon in Bar Confesseth the fact, and so cannot plead over to the felony, or plead the General issue. But that one who pleads a plea in Bar that Confesseth not the felony, may plead the General issue Hale pl. Br. 249.

Antecedents acquit i.e. that the prisoner was once found not guilty on an Indictment or Appeal free from Error, and well Committed before any Court that hath Jurisdiction of the cause; is a good plea in Bar of any subsequent Indictment or Appeal for the same Crime, Hawkins pl. Br. lib. 2 chap. 35 51. Because a Man should not be brought into Danger of his life for one and the same Offence more than Once. But where ever the Indictment or Appeal whereon a Man is Acquitted, is so far Erroneous (either for want of substance in setting out the Crime, or of Authority in the Judge before whom it was taken) that no good Judgment could have been given upon it Against the Defendant; the Acquittal can be no bar of a subsequent Indictment or Appeal, Coke 3 Inst. 214. Hale pl. Br. 244. 245.

245. Pullon de paco 170 a. Hawkins ibid. 58. Because in Judgment of law, the Defendant was never in jeopardy of his life from the first, and it is not presumed that the Judge would have given a Judgment liable to be reversed. Nor is it sufficient to plead a formal Acquittal except of the same. Individual Offences: for Antecedents acquit of one felony, is no bar to an Indictment of another felony Different from it in substance Hale ibid. 244. Kel. Rep. 30. 52. Hawkins ibid. 55. Because such former sentences of Acquittal do not Render the party dead in law, as an Attainder doth, but he notwithstanding of the Judgment Remains capable of offending afterwards, and of being punished for his offences. Not yet if one is heretofore Acquitted Principal, can it be a bar to an Indictment against him as Accessory after the fact. V. G. one having Committed a felony, and another having thereafter Received him, the latter being acquitted upon an Indictment of felony against both as Principals May not with standing be again Indicted and arraigned as Accessory, without Benefit to plead upon the formal Acquittal; the offences being Different, and Committed at Different times. But one acquitted as Principal, cannot be after Indicted as Accessory before the fact, by Commanding and procuring it to be done: because prima præceptum & factum sunt quasi unum factum, such an Accessory is in some Measure guilty of the fact Hale ibid. Kel. Rep. 25. 26. Bridal Jus Crimenid 147. Tho' it is holden by some, that one who had been acquitted as Principal, may be tried again as Accessory before as well as after. Hawkins ibid. 511. Because a Man cannot be found guilty of an Indictment against him as Principal, upon Evidence which only proves him to have been an Accessory before. Again, Acquittal of a Man as Accessory before or after is no bar to a subsequent prosecution against him as Principal, Hawkins ibid. 512. But now an Acquittal on an Indictment, cannot be pleaded in bar of an Appeal of Death within Year and Day of the felony Committed 3 R. 7 cap. 1 vide supra pag. 75. A.