

The under Clerk of the Court of Chancery was assigned from the Exercise of his office during the Lords to be assigned, because he raised Criminal Letters on a Bill, whereon no such concurrence was made by 8 Novbr 1708.

prosecutors in their respective offices who used to be exempted from passing upon Affidavits, that they might attend upon his Majesty's service, and therefore have, that not only such of them as were already cited to pass upon Affidavits, might be exempted, but also that the Clerk of Chancery might be discharged to insert their Names in any Roll of Affidavits hereafter During their Continuance in their respective offices: The Desire of the said Petition was refused, 21 June 1715. Mr. Sir John Selham, Syme, Burton, Smith, and Gorro after supplican Letters of Diligence on the said bill above said are raised under the seal of Court, and subscribed by the Clerk.

In order to procure Criminal letters or summons, a bill bearing the same is signed by the King's Advocate or Deputy, or other Lawyer for the pursuer who drew it: and the Lord Advocates Concurrence Marked on the back thereof, if he be not the sole pursuer, and do not sign the Bill, but his signing the bill is a sufficient Concurrence. Which bill with a list of 45 Affidavits subscribed by a quorum of the Lords (Act of Regut. of the Justices Court 1672, art. 3) is presented to and pass by any one of the Lords.

The Civil law for preventing Unjust Criminal pursuits, Appoints that the pursuer of atrocious crimes (except in Antecategoris, that is, Accusations and Gross Accusations, or where one pursues the suam vel suorum Injuriam, or pursue the de officio and so cannot be thought Calumnious) so subscribat libello, subscribe the libel and find Caution or surety to justify l. 3 l. 7 s. de Accus. junct. l. 30 c. ad l. Jul. de Hult. l. 12 c. de his qui Accus. non poss. And

be committed to prison with the party accused l. ult. s. de Accusat. there to Expect the same punishment he is signed for the person accused if he failed in his proof or were guilty of Calumny. But this practice of obliging private Accusers to subscribe the libel and putting them in Custody till the trial is over, is every where in Disuse, Prosp. Garin. de Accusatione qui s. 6 n. 3 de Variis questionibus qn. 99 n. 6. Gro. on wagen ad Rubr. c. de his qui Accus. non poss. Because such strict proceedings on the part of the Accuser, gave Encouragement to Offenders, and did hinder their prosecution. The law offered and Ordains the pursuer of a Criminal process to Enact him self and find Caution according to the Character and Condition of the Defendant. McKenzie observes on act 166 Parl. 13 J. 6. not that he shall Justify as the Civil law Requires, but only to Report the Criminal letters subscribed and Executed against the day of Comparison, under the pain of 2000 pound if the Defendant is a peer, 1000 pound if a great Baron, 1000 Merks if a freeholder, (or a burgess holding land Burgage) 500 Merks if a forner, 200 Merks if an Undenied Gentleman (or Burgess) and 100 Merks if a Yeoman Act 166 Parl. 13 J. 6. which is called Sicker firsty act 35 Parl. 4 J. 5. McKenzie Crim. part 2 tit. 19 s. 4 & observ. on d. Act 166. Caution with us is exacted even from those qui prosequuntur suam vel suorum Injuriam, and in Reconventions: because other ways Contentious men could easily Palliate their Malice with such pro words. The Cautioner Enacts himself in the Joynal booke by subscribing the Act of Joynal when present, or by sending a bond of Caution to be recorded in those booke when absent. But the King's Advocate, tho he be sole pursuer, is not bound to find surety: because he is in so suspicious Calumnia qui Accusat ex officio. Yet he ordinarily puts his Informer to find surety, and Refuses to pursue if the Informer Decline to comply. And where a private pursuer makes oath in court, that he is not able to find surety to Report the letters, the Lord Disposes with it, and ordain the Clerk to raise the letters, upon his Enacting himself