

* N. 1. The granting an order by some Justices of peace to be executed on the Lords day, the next for seizing and apprehending a recusant of the Gospel sent by the professors of the Bishops to preach at a vicar's Church, and to keep him in fire custody, and the putting that order in execution on the Lords day by laying violent hands on the said preacher by the persons to whom the said order was directed, was found to infer an arbitrary punishment 17 January 1709 Corney of Pittarow & Archbishop of Exeter.

* N. 2. one Robing, after he had quitted another before the Justice of peace and got witnesses examined for probing thereof, protoged and taken Juriments in the Hands of the Clerk of the peace upon their delaying the affair, and consent to his prosecuting the Complain'ts wife, and then caused a criminal bill for the same fact before the Court of Justiciary, where an order of course was obtained for transmitting the principal depositions by the Clerk of the peace. After this the Justice of peace gave depositions against the defendant, which was sustained as Res Jurdica by way of defence in the criminal process before the Lords of Justiciary, because there being no Adoration or stay to the procedure of the Justice of peace, they might warrantably pronounce sentence after the Lords order for transmitting the depositions, which mandate to the Clerk was not inconsistent with the Judges proceeding via ordinaria in his mean time upon what they found lying in Record, but to Adversely depositions and pronouncements: For the Justice of peace might do so, and also the Clerk might against the time appointed transmit the depositions to the Court of Justiciary. And seeing the Justice of peace did not sign any Interlocutor deferring the Dist. before the Court of Justiciary, why is only the simple objection of the Clerk as a Notary, could not instruct that they deferred the Dist. and were content of the process applying for redress also where, 16 December 1708 for William Maxwell of Morvorth and others.

* Persons of the joint shireff-deputes, being, after he had beaten and wounded a man to the effusion of his blood, pursued before his own Collegis at the Instance of their prior Fiscal, without the concurrence of the person injured, held as contempt and fined in 50 pound Scots to be paid to the prior Fiscal; that dist. was not sustained as Res Jurdica, but him in a prison at the suit of the party injured before the Court of Justiciary from an arbitrary punishment and damages, 1 March 1710 William Ferguson of Strathblain: bid. supra page 23 N. 1.

* N. 1. The Kings Advocate having given a commission to his majestys followers for being his Deputy during his absence at London; the said order being qualified by taking the oaths in capacity of Advocate Deputy, protested that his acceptance of or using such a deputacion should not be construed as an Acknowledgement that he by virtue of his office as follower had not a sufficient power, in absence of the Advocate to pursue all actions criminal, or defend in any suit, so far as his matters shoud be concerned, but should be without prejudice to him of pursuing or defending in any such actions by virtue of the powers competent to him as follower as he saw cause 24 June 1717.

* N. 2. The Kings follower having after the pleading and Informations upon an Indictment caused execute the same Indictment a second time and present to the pannels an additional list of witnesses, he moved when the Lords were going to advise that the Advocates for the pannels might, if they had any more to say against the Indictment so executed a second time be ordered to plead it then, that their Lordships should be allowed to proceed upon both Indictments. To which it was answered for the pannels, that it was necessary to plead to a second Indictment upon the same fact, while the first is standing, and undischarged by default; especially where the second was admitted upon the same fact upon the first the Lords found that his majesty's Advocate was under no necessity of depositing the Dist. upon the Indictment, but might in fact in both at the same time; and that the Advocates for the pannels were at liberty to plead against the second Indictment, which they thought fit, 15 November 1717 John Lindsay & David Borth.

* N. 3. An Advocate who was consulted by a private person about his right to the possession of a House, having after he was made Advocate for the Sovereign, concurred and been consulted about his raising of criminal letters against his first client for violent retaining possession of his house against him, and after the letters were executed, for which he got not only the ordinary capacity of an Advocate upon the account of his concurrence as Lord Advocate, but also fees for his Advice in the matter: He when the criminal came in being removed from the office of Advocate for the Sovereign, appeared for his first client. But as he was going to plead, the pursuer interrupted him, by saying that he could not open against him, because he had been consulted and retained for him, and knew the secrets of his cause: To which it was answered, that the Lord Advocate taking fees from the pursuer of a criminal process is not understood to be a public officer, but a private lawyer, but only Actions' officer, in order to concur in his public office for the Interest of the King, which lays him under a necessity to be a joint pursuer, with the Advocate, and therefore when that office ceased he was at liberty to serve the first client, or any other person. Nor could he propose any secrets of the pursuers cause, since there was nothing but open matters of fact to be proved: The Lords without pronouncing any formal Interlocutor, publicly gave it as their opinion, that he should deliver his pleading for the pannels to be managed by another, which he did. And therefore the Lords declared that they did not allow, that the Sovereigns Advocate might take fees from a private pursuer by Retention of his office as Lord Advocate, and not as the said private pursuers Advocate, August 1712 for David Dalrymple.

* N. 4. The Kings Advocate by the necessity of his office is excused from profaning the Calumny in criminal prosecutions. But if he use any person with a gross Calumnyous process, knowing it to be such, the irregularity of his office would not exempt him from a condign arbitrary punishment and Reparation of damages to the party injured, proff. In re de Accusatione quest. 16. n. 20. 21. 22.

* For no person is excused for his Calumny l. 2. C. de his qui accus. non poss. l. 9. C. de Calumniatoribus