

## KING'S ADVOCATE.

1541. February 25.

The KING and SIR WILLIAM HERIOT *against* The SHERIFF of FIFE.

**R**EDUCTION of ony decrete, or rolment of court, beand intentit at the instance of ony persoun, and be the King's grace for his interes, as the common use and consuetude is in sic causis; gif his Hienis discharges his interes thairintill, the partie nevertheless may persew conform to his summoundis; because the reduction of decretis or rolmentis of courtis concernis specialle the persoun and actioun of the partie.

*Balfour, (PURSUER.) No 9. p. 291.*

No 1.  
Altho' the King discharge his interest, the party is not thereby affected.

1581. January 19. HIS MAJESTY'S ADVOCATE *against* ESSELMONT.

*In crimine falsi*, the King's Advocate may pursue *per se, ob vindictam publicam*, without the concurrence of an informer. See APPENDIX.

*Fol. Dic. v. 1. p. 525. Colvil, MS.*

No 2.

1582. June. HIS MAJESTY'S ADVOCATE *against* FERGUSON.

THE King's Advocate pursued one Bernard Ferguson for the production of an infestment, containing into it a bond and obligation for delivering of a reversion, the which infestment was under the note of Mr James Colvil; and there-after the said James was summoned to hear and see the same to be improven. It was *alleged* by the said Bernard, and the Laird of Balgony, who had interest in the said matter, That the Advocate had no interest, by himself only, to pursue any person for the production of his evidents, and improbation of the same, except he had some party to concur with him, and to be his instructor, and who was interested and damnified. To which was *answered*, That the King's Advocate had sufficient interest, by himself only, and needed no informer *quia interest reipublicæ ne crimina maneat impunita*, and the action of *falset fuit crimen publicum et publici iudicii et actio popularis*, and so the Advocate had sufficient interest by himself only. To this was *answered*, That the action of *falset* was civilly intended before the Lords, and concluded and contained

No 3.  
Found that the King's Advocate cannot pursue an improbation by himself, but must have an informer.

No 3.

in itself *interesse et dæmnum partis, quia falsitas et dolus non est sine damno*, and so it must follow of necessity, that there is ay some party civilly hurt and prejudged, and interested; for otherways, if it came to the King's Advocate only, he might ay compel all men to produce their writings and evidents, at his instance, and pick at them as he pleased; and also there was alleged a late practise betwixt the Laird of Essilmont, and the L. of Straloch, No 2. p. 7895. into an improbation, in the whilk it was found by the Lords, that the Advocate had no place to improve without the informer.—THE LORDS, after long reasoning, found, by voting, for the most part, that the Advocate ought to have an informer, and to cause him to be notified to the Lords.

*Fol. Dic. v. 1. p. 525. Colvil, MS. p. 331.*

1583. June.

His MAJESTY'S ADVOCATE *against* CHAPMAN.

No 4.

The Lords refused to sustain improbation of a writ, at the instance of the King's Advocate alone, when the parties concerned were agreed about it.

THERE WAS a contract into the books of Council betwixt two brethren called Chapmans, sons to umquhil ——— Chapman, who was a writer in Edinburgh. The King's Advocate compeared, and desired to be admitted to improve the said contract. It was *alleged*, That, in respect the parties had consented to the registration of the same, and that there was no person hurt by the same, *et dolus non fit sine damno*, nor yet was it a contract *contra bonos mores, aut contra utilitatem regis aut regni*, that the King's Advocate could on no manner of way be heard to improve. It was *answered*, That *crimen falsi fuit actio popularis et de publicis judiciis, et interest reipublicæ ne hujusmodi crimina maneant impunita*; and therefore, albeit the parties would make collusion among themselves, by invention and forging of falsets, yet the King's Advocate ought to be heard ay to improve.—THE LORDS pronounced, by interlocutor, that they would not hear the King's Advocate to improve.

*Fol. Dic. v. 1. p. 525. Colvil, MS. p. 366.*

No 5.

In conformity with the above.

1584. March. His MAJESTY'S ADVOCATE *against* FORREST.

THERE WAS one Moncur that had pursued Forrest of F, for the improbation of a letter of tack, and having succumbed in the probation, thereafter the Advocate pursued to hear the same to be improven. It was *alleged*, after that the manner of improbation was given in by the Advocate, that he ought to have no process without an information; for otherways, the King's Advocate, by the privy information of the party, might cause any man to produce his evidents under the pretext of improbation, and then to quarrel and pick at them. It was reasoned on the other part, That the King's interest, and his Advocates, were separated from the other party, *et quod interest reipublicæ et regis ne crimina maneant impunita*, and so the Advocate might both inform and