

a prescription by possession. Then *2do*, The Earl's nine years of interruption must be discounted; then the five years since the summons was raised, making in all 54 years.

No 12.

Fountainhall, v. 1. p. 69.

1693. February 2. HIS MAJESTY'S ADVOCATE *against* MONCRIEFF.

No 13.

THE King's Advocate cannot prosecute any action at the King's instance, tending to challenge the right of any of his Majesty's subjects, without a special mandate to that effect, though he may give his concurrence to a process brought by one subject against another.

Fol. Dic. v. 1. p. 525. Fountainhall.

* * This case is No 2. p. 3460., *voce* DESUETUDE.

1727. December 28. STEVEN *against* DUNDAS.

No 14.

A party, upon a signed information, as guilty of forgery, being committed to prison by the King's Advocate, and no day being fixed for his trial, within sixty days, conform to the act of Parliament, was liberated of course: Thereupon, he insisted against the King's Advocate to exhibit the information, which the LORDS found the Advocate obliged to do. See APPENDIX.

Fol. Dic. v. 1. p. 526.

1735. July 25.

EARL of BREADALBANE and HIS MAJESTY'S ADVOCATE *against* MENZIES of Culdares.

No 15.

THOUGH in reductions of grants from the Crown, custom has required a special warrant, yet it was found, that the King's Advocate, without any special warrant, might insist in a declarator of the boundaries of the King's forest, because this is only protecting the rights of the Crown from encroachments, not cutting down the right of private parties. See APPENDIX.

Fol. Dic. v. 1. p. 525.

1766. June. SIR JOHN GORDON *against* HIS MAJESTY'S ADVOCATE.

No 16.

SIR JOHN GORDON of Invergordon brought a complaint before the Court of Justiciary against his Majesty's Advocate, "for a breach of duty, in refusing

The Court refused to interpose its authority to

No 16.
oblige the
King's Advoca-
cate to con-
cur in a pro-
secution.

to bring a criminal indictment before this Court against Colonel John Scot and others, as guilty of bribery and corruption at the Michaelmas elections of Dingwall 1758, though he was required so to do by Sir John Gordon, the complainer; and praying that the Court would interpose their authority to oblige his Majesty's Advocate to prosecute the said cause." And in support of the complaint, it was *urged*, that any private informer of a crime, giving sufficient evidence, and offering to pay the expense of the prosecution, has a right to demand of the King's Advocate, that he should prosecute that crime for his Majesty's interest; and to demand the interposition of the Court, in case of refusal.

Answered for the King's Advocate, That there is nothing more fixed in our law, than that the prosecution of all crimes *ad vindictam publicam* belongs to the King and to his Advocate acting by his authority. Hence it is, that he may insist in such actions, or desert them as he sees cause, without any controul on the part of the Court. Contradictory to this known privilege, the direct tendency of the present complaint is, to transfer the *vindicta publica* from the King to every private informer who is willing to defray the expense of the prosecution, generally more out of resentment than zeal for the public.

"The Court refused to interpose."

Fol. Dic. v. 3. p. 369. Sel. Dec. No 247. p. 319.

1795. June 15.

SIR WILLIAM JARDINE, with CONCOURSE OF HIS MAJESTY'S ADVOCATE, *against*
MAGDALENE BARBERIE DE LA MOTTE.

No 17.
The crime of
attempting
to suborn
witnesses to
commit per-
jury, cannot
be prosecut-
ed at the in-
stance of the
party who
would have
been hurt,
had the at-
tempt been
carried into
effect; but at
the instance
of the King's
Advocate.

IN 1787, Sir William Jardine obtained a decree of divorce against his wife, Mrs Magdalene Barberie de la Motte.

Mrs De la Motte afterwards raised a criminal prosecution against Sir William for subornation of perjury, alleging that he had bribed some of the material witnesses to swear falsely against her in the process of divorce.

Sir William, on the other hand, some time before the date of Mrs De la Motte's indictment, had, with the concurrence of the Lord Advocate, instituted a prosecution against her, charging her with the same crime, on account of her having, as he alleged, used menaces towards these witnesses, and given them promises of reward, with the view of getting them to swear, that they had formerly, in consequence of being bribed by him, given false evidence against her, while in fact they had on that occasion only told the truth.

Mrs De la Motte afterwards deserted the diet at her instance, *pro loco et tempore*, and in defence against the relevancy of the indictment brought by Sir William,