

=ferred in the Opinion of many Lawyers from Deeds done by Drunken Men, who are not sensible of what they do, *Christin. Term 4. Art. 9. &* by adulterating the Complainers Wife, because not committed animo injurioso but animo libidinis *Christin. 1610. Art. 7. 2<sup>o</sup>* Pasturing Cattle not willfully upon the Complainers undoubted Property, which may happen by the Oversight of Keres or Servants, or willfully upon ground whereof the Right was doubtful and controverted before the Charge, is not a Contravention: Tho' the former might found a Proceff for Damage and the latter a Molestation or Perambulation 14 July 1626 L. Grange contra Deffon. Spotswood *Pratt. Tit. Contravention and Lawburrows Stair Lib. 1. Tit. 9. 30. Lib. 4. Tit. 48. §. 7.* But Deeds of Violence as hanging or hamstringing of Oxen even upon debatable grounds are Contraventions *McKenzie Resolv. on Act 77. Par. 6. §. 6.* 3<sup>o</sup> Contravention being a Penally libellus coloratus with punishment Hope *Mag. Pratt. Tit. Contraventions Murther contra L. Burscub.* Thus the Complaint of a Superenter to the casting of a Ditch, whereby the Complainers Lands were overflowed, was sustained to make it no Contravention, but only to found an Action of Damage and Interest 21 January 1633 L. Weem contra L. Gairnathie. 4<sup>o</sup> Contravention is not incurred by Injuries done upon self-provocation in self-Defence *Spotswood 1610. McKenzie Resolv. on Act 77. Par. 6. §. 5.* 5<sup>o</sup> Noent Caution be found against injuries done not only to the Charger but also to his Wife, Bairns, Tenants and Servants, yet those other Persons are not intitled to any Penalty for such Contravention, unless the Charge be also at their Instance, but in some Sort wholly bound to the King and the Charges, if injured by the same, as their others. The Charger is understood to be injured, if by Injuries offered to their Persons, disabling or discouraging them in their Duty to themselves the King, his Tenants or Servants, unless for a special Cause no Ways relating to the Master, which Speciality must be proved, or else the Injury is presumed to be done upon self-provocation *Stair Lib. 4. Tit. 48. §. 10. McKenzie Resolv. on Act 77. Par. 7. §. 6. 2<sup>o</sup>* He is not injured by atrocious Injuries against the Fame of his Wife or Children, unless whose Fraudulent are comprehended when the immediate Parent is dead, but in other Cases, or Accusations against the Lands, Fiefs, Possessions, Goods and Gear of his Children, flow from him, *Stair 1610. §. 10.* or in their other Lands or Possessions upon his Account, 1633 Lindsay contra Deniston, nor the taking away Goods out of it 9 Feb. January 1632 Grant contra Grant were sustained as Grounds of Contravention upon his Account, or out of Prejudice <sup>against</sup> him. But Action for Damage and Punishment lay to the Tenants themselves.

These Words of the Charge to find Caution, *Skeithless* in their Bodies, Lands, Fiefs, Possessions, Goods and Gear, and no Ways troubled therein, would at first seem to restrict the Effect of Lawburrows to Shauks in their Bodies, Lands, Goods, So as Contravention should not be inferred from other Injuries of menacing, preaching, reviling, Defamations, or from Attempts against the Body by Stralings off, or escaped the more atrocious than Injuries in Goods and Gear. But the last Words no Ways to be molested or troubled therein, importing Attention of <sup>the</sup> <sub>the</sub>

grounds even to such of Trouble or molesting, tho' no other Damage or Injury Spotswood *Pratt. Tit. Contravention L. Balcaskie and Strong contra Spotswood.* The Contravention was found incurred by jolting a Stake at one upon his Death, or offering to strike him with a Whinger tho' no Hurt was done *Pratt. 25. Decemb. 1709 L. Greenyards contra L. Chackmunnan. Stair Lib. 5. Tit. 9. §. 30.* Contravention was incurred by hindering one to drain the Tithes of Lands to which <sup>the</sup> Right and was recently in Possession of raising the Thresher he had for some Years to Tenants of the ground for a Silver Tith; that Discontinuance of his Draining and tacit Abdication being interrupted by him in that very Year whereupon the Contravention was found, which was found to infer a Spuilzie had he offered to drain and was hindered, and was found to import a Contravention 25 July 1677 Hay contra Long's. 11<sup>o</sup> Contravention was found incurred by killing a Park of the Jurifers ground, no no Value was used therein to Duomo *Stair L. Whallingham contra the L. Loops.* But was again in the other Hand, not Payment of a Debt to the Creditor, to whom Judgment in Lawburrows is given, tho' not Contravention, tho' the Party separated from him: Because it is not properly an Injury *Stair Lib. 4. Tit. 48. §. 7.*

Trouble or molesting by the Person complained upon, or others, is not causing standing hearings, and so that in of the premises, tho' himself, as relating to no Warrant or Contumace, Whose Warrant or Contumace is necessary, his private may scripte not punishable, But in the Case of persons, property, criminal, Witness to prove such supporting Warrants, and of that Nature, as that they heard the principal Party express Words clearly, or being given, deception, and agreed upon the Words, or own his calling to account, or servant, who thereupon immediately committed the Deed without his consent, the Actor or executing him for it. However Circumstances inferre to servant or Command as to inferior Damages of a lesser Sort, and not unreasonably done, must be instructed by Word or Deed of Party, being what was said at one Time, might have been afterwards countermanded, and so is not presumed to be a constant Warrant *Stair Lib. 5. Tit. 9. 26.*

The Friends of one put under Burrows of the Peace, were some time ago punishable for bringing him to whom the Burrows was found *Act 98. Par. 6. §. 6.* But now Lawburrows obligeth only the Party charged therewith, with his own Deed, or the Deeds of others whom he might stop or let. Which Words whom he might stop or let, are not to be read jointly with the preceding Words of the Charge to find Caution, Command Assistance and Rehabilitation, but if Contraventions were not inferre by Command or Rehabilitation to any other than Persons in the Contraveener's Power, Noryet are they, when separately read, to be so largely interpreted, as to extend them to all Persons over whom the Party charged hath any Authority, as Children in Families or Servants having no Warrant or Contumace from him, for so doing. But by those whom the Party charged may stop or let, are to be understood only his Wife, Children, Domestick, Servants and Tenants acting by his Authority or Approbation *Spotswood Pratt. Tit. Contravention and Lawburrows Stair Lib. 5. Tit. 9. 26.* proved by his Oath, or inferre from pregnant Circumstances, as when they committed an atrocious Deed against the Charges, without any Occasion or Provocation given to themselves = selves