

Warranted by our old Law Reg. Majest. lib. 4 Cap. 26. Item Stat. lib. d. Quon. Attach. Cap. 83. Stat. David 2 Cap. 29. And also by the Law of England Stat. 17. Car. 2. lib. 2. Tit. 1. 183. 3. Stat. 231. Hale Jul. 222. Stat. 22. Car. 2. lib. 2. Cap. 29. § 45. But yet one is put to the Knowledge of an Inquest as Accessory to a Crime committed by his Sons and Servants, the Chief principal, & thrown and his Sons and an Indictment against a person was Accessory to Robbery was sustained, albeit the principal Actor was not Convicted, 1 July 1717 James Graham alias G. -mouch Greigoroch. Because now since the Act Establishing the Relevancy of libelling Art and part in General, those Charged as Art and part are founded as principal Criminals, and not understood to be stated Accessories: And the King ought not to suffer prejudices thus taken on the Chief Malefactors. Albeit it hath been pleaded that the said Statute Concerns only the Relevancy of the libel without respect to the Manner of procedure and their wrongness, and no loss in the Matter, being upon Discussion the principal parties, and denouncing them fugitives, Accessories might be indicted against, the according to Julius Clarus (Cortent. lib. 5. § fin. Luch. 90 v. 65 Non sufficit Cujus Mod. Contumacia facta. But on the other hand, if the odor of it is casting principal offenders, Contrary the Accessories be not observed, proof must be had to our fundamental Constitution, be had against all Criminals, ut Constet de Corpore Delicti: Which is the not Consistive against the Absence of several Families and Courts behind it, as this was an heinous Impression, one being indicted as Accessory to and Art and part, another sitting a Man, it was pleaded for the party that he could not be tried till the principal party who killed him were called and Convicted; or Denounce fugitive for not appearing, which makes him stand good to have tautly did nowed up the Crimes. For if he were cited, he might have an Exception that he was Absent, or killed in self Defence, or the like. It was replied for the purpose, that in Criminals who have any hand therein may be called Separately without respect to one another, especially by a

Law which makes it Relevant to libel Art and part. And for the pannel, it is a Criminal libel founded on Art and part or Relevant to such libel simply upon Art and part, or having Accessories a Crime can be sustained, then the person be cited as the principal Actor to whom it is alleged and Counsel was given; being the Pannel is not accused as guilty of the Crime and Accessory as Art and part, but is only indicted against as Art and part. The Lords Respected the Dilatory Defence; 28 August 1695 Remonstrance of Newtons there brought Indictments raised before the Lord High Admiral of Scotland, and Appoyed to him by the privy Council against the Captain of a ship and his Crew for Piracy and Murder, the procurator Fiscal declared, that he indicted first upon the Indictment against some of the Crew. It was pleaded for those, that they could not be put to the sword till when Captain was indicted against; seeing they were under his Command who might have Defences for him self and them, that probably they could not make for themselves. Which Dilatory Defence was Respected: because they were not Convicted for any thing acted by him as their Captain and them as his Crew, but Charged as being partakers of the Crimes libelled, which no Commission or Adj. par. tax had or might pretend to find warrant: and finally quod iniquat equal 13 March 1705 Captain Thomas Green and his Crew.

It is relevant to libel in General that persons are Art and part of the Crimes Charged upon them, without necessity for the purpose to specify in what way and Maner they were Accessory but 151. Parl. 12. § 6. which cannot be well known till the witness are Examined: seeing they dare not produce Evidence in or provide any declare in what they can Depend. And if a libel on Art and part in General were not allowed, a Criminal might come off too enough were proved to fix the guilt upon him, if not precisely in the terms libelled. If a purpose was not put to qualify his General Allegance of Art and part, and yet the Pannel was forced to be particular in the qualification of self Depon 212 November 1668. By Captain William Barclay to Ogilvie his Servant. By this freedom of libelling Art and part in General many Substantive Questions of Law are necessarily Intruded