Ibid. Sect. 6. And the Unlawfull Execution of an Statute is its own Nature Lawfull, may Make an Assembly Riotous V. G. If three or more persons in a Violent and tumultuous Manner join together in Removing a Nuisance or other thing which may be Lawfully done in a peaceable Manner they are Riotously, Tho if the Act intended to be done by them were Never so Unlawfull; for the Law will not suffer persons to take a Redress of their Grievances by such Dangerous Disturbances of the Publick peace. However the Justice of the quarrel in which such an Assembly doth ingage is Certainly a great Mitigation of the offence, Hawkins ibid. Sect. 7. A Master is answerable for a Riot committed by his servants in obedience to his order. Nor doth a Master's order exempt his servant from the ordinary punishment. Thus it was found how ever, that they, tho by order of their Master, stood down or assisted to pull down or Utterly Destroy a dam ised for keeping up and conveying the water to certain Mills belonging to the Pursuer, which were thereby Cast and put from going. Albeit it was pleaded for the panne that they ought to be assoilzied because servants should obey their Master in all things not plainly wicked and prohibited by Laws presumed to be known by every Body: and the panne could not know but their Master had Right to order them to pull down the dam dike so that the in the Event the Doeing so were found to be a Fault, his Command should Excuse Goale them who did no more of the guilt than the Instrument with which they wrought. The Reason it was answered, that no man is bound to obey his Master in an Unlawfull thing and the Lords for preserving the peace are Judges to all persons without Exception and being mostly Violated by such as are Surrounded out and upon by others having power and influence over them, and could not easily be suppressed if those Under such protection might be active and impune 14 Decem 1713

1713 Major Monro & his tenants. Whom a Criminal pursuit for a Riot did put upon the way and Manner of Executing Captions which is more proper to be Determined before the Civil Judges, the Commissioners of Justiciary Dec. 3 the Diet Simplicitor 21 January 1684. Mr Alexander Christy Andrew Clerk and others. Anciently we had Courts called Courts or Neighbour or Domestick Feuds and Riots called Under the pain of Guerra, which afterward were Declared Under the pain of Slaughter Reiff and Usurpation on the Kings Regalia and his Authority Act 70 Parl 8 Jac 3

Grounds of Petty Riots and great Riots.

A Petty Riot is the forcible doeing of some Unlawfull thing by three or More persons assembled together for that purpose of their own Authority. Which Crime is Punishable by Arbitrary punishment. Thus several persons being indicted for invading the pursuer in the Exercise of a Service of casting Peat and Divot out of certain Lands for the use of the pursuers Lands, by coming over his Ground and Dikes Vi armata, throwing his Lady to the Ground and presenting a Gun to the Ground and forcibly carrying away the Peat and Divots that had been cast for Tenants to the pursuers Instrument Letters of Lawborrows and Un interrupted possession of the said Service: It was pleaded for the panels that the question of Lands Right ought first to be Decided before a Criminal process can be Instanced for Invading him in the Exercise of it Act 34 Parl 4 Jac 6 Instr. Wherein particular Diets for Civil Acts are to be first at the Discretion of the Lords, the Matter being first Civilly Decided before them. 2dly No process at the pursuers Instance, because the Instrument and Letters of Lawborrows Libelled are not produced, which ought to be done in a trial before the Court of Justiciary who as the Diets are Peremptory. It was Replyed for the pursuer 1mo by the Law first observed Distinction of the first Right (Act 34 Parl 4 Jac 6) Tenants only placed above the panne pleading in Defence and