Or charge him with Another Crime as Murder or Sacrilege for calling him a thief or cheat, there lies an Action of Injury to both Gail. observ. 100. Berlich. Conclus. Pract. part 4 Concl. 64. Carpzov. Crim. part 2 qu. 97 n. 22 & 29. One Criminally pursued for having caused print and publish a Defamatory libel against a Magistrate, pleaded in his Defence 1° that the pursuer having first Attacked him by a Criminal libel before the Court of Justiciary for Crimes of a Very high Nature, it was Lawfull for him in his own Defence to Endeavour to Clear his good Name by publishing Crimes whereof the pursuer was guilty, to Make out the Accusation to be less Regarded. 2° The Pannel's Defence was Justifyed by the law of Retaliation; in so far as the Pursuer having not only been the occasion of the criminal Accusation but also did by himself without Consent of the Procurator Advocate, Was after he Understood my Lord Advocate Was not to Insist print and Disperse the said Criminal Accusation. To which it was Answered 1° the pursuer Accusing the Pannel before the Court of Justiciary being in the Discharge of law was first and allowable The Printing such libel before the Court of Justiciary till the Diet be Deserted is unusuall in order to the Carrying on the trial as law allows. And tho the Advocate might Insinuate in Discourse, that he Inclined to Desert the Diet, he might not withstanding have Insisted: and the Diet was not Deserted for a Month after the Printing. The Lords found the libel Relevant to Infer an Arbitrary Punishment and Damages 26 June 1710 William Forgeson of Auchinblain. One Accused by a Woman to a Publick Session as the Father of a Child brought forth by her leaving by giving her Money provyded with her to Keep a Declaration in Writing Dictated by himself, that a Certain other Married Man was

not he was father of her Child, and so guilty of a Fact Informing the Crime of Notour Adultery, was found liable to an Arbitrary punishment. Albert the Pannel did Justify the so doing upon this pretence, that it was not upon any Design to Defame Another but to Vindicate himself and he might as is ordinary in such cases pass the woman a small Matter to be free of her trouble 1 August. 1710 Charles Isaacson & Robert Torrie Jt. 3° A Litigant is not thought Injurious for objecting against the Reputation of a Witness produced against him in order to Infect him, or Diminish the Testimony, if he has any probable ground for the Exception or Challenge tho he cannot fully prove it Farinac. Contravers. lib 3 qu. 13. Jul. Clar. § fin. qu. 53 n. 4 Carpzov. Defin. Forens. part 4 Const. 42 Def. 7. Jo. Voet Comm. ad Pand. de Injur. n. 20. 4° The Soliciting Divorce Articles of Adultery or Murder and the Exhibiting Divorce Articles of Adultery or Murder and Intenting to the Justices of peace against a person to the Intent he may be bound to the good Behaviour, or Making Complaint of him in a Legal Way in a Competent Court is no ground for an Action of Injury because the Accuser pursues the ordinary course of Justice, and Complaints of that Nature ought not to be Discouraged Coke 4 Rep. 14. 1 Mod. Rep. 56. Rol. 1 Abr. 33. 34. But if it shall Manifestly appear from the Whole Circumstances of the case that a prosecution is Intended by false Malicious and groundless Oaths, and Commenced, not with a Design to go thro with it, but only to Expose the Defendants Character under the shew of a legal proceeding; there is no Reason why such a Mockery of Publick Justice should not rather Aggravate the offence than Make it Escape to be one, and Make such Scandal a good ground of an Indictment at the Suit of the King, as Makes the Malice of the Prosecutor a good foundation of an Action on the case at the Suit of the party, Hawkins pl.