

of ham-fueken: because an Inn is not like a private house
 appropriated for the Inn keepers Accomodation, but is public
 and Common for the use of all the Lodgers, and may be En-
 tred by them at all times, even against the Inn keepers, if
 will, and the Innell had the same, these some times before
 so that he cannot be said to have any fore thought or design
 of seeking and Inwarding the Inn keepers in his own house
 within of the innell and others had the use as well as he
 It was design'd for the pursuers An Inn is the Inn keepers
 or proper house where he lod and keeps, as much as a
 Merchants shop, joined to his house, is reckoned a part
 of his house. Nor ought an Inn keeper to expect more
 of his house, than another Man: You it is the
 prejudice in his house than another Man: You it is the
 Justice of the Common Law, to punish such injuries
 done to him, because he is more exposed. If the party
 did for the time stay in the said house, it appears but
 as being committed under trust by a guest or
 =quint humanly and hospitality: for he is not
 to be as hospitable. And the Innell has the same
 he was turned out of doors, argues, that he came design'd
 to Murder his host. It was design'd for the Innell, that
 there is a great Difference betwixt a sleep and an Inn
 a sleep keeper having certain hours appointed for the
 sale of his goods; whereas Inn keepers
 are oblig'd always to receive their Guests. Sir George
 =McKenzie (Crim part 7, fol. 21 52 infund) says, that the
 Justices did only sustain the party as a
 great riot, and not as Ham-fueken: because an Inn
 is a public house belonging as well to the Lodgers
 as to the master. Which is a Mistake, for the Justices
 did not determine this point. But in regard the
 pursuers Declared, that he insisted not upon ham-
 =fueken as a Capital Crime, nor for, but only as an
 aggravating quality of the Crime, betwixt ad parat

Arbitrarium did forbear to give answer to the point re-
 lating to Ham-fueken, and admitted the libel as to
 Declared to the knowledge of an Officer of Newbold 1673
 Muir of Pennington. However the beating a Man and
 his wife within their dwelling house, which was a public
 house as well as private, who came not to lodge in their
 house as travellers, but was their next door neighbour, was
 sustained to infer the Crime of Ham-fueken, 17 March 1673
 John Crawford Robert Stodart and others, 17 March 1673
 traversed whether the beating a Man in his own house
 should be reckoned Ham-fueken, because he had not his
 family there. But in the opinion of the Doct of (Crim
 =part 7, fol. 21 52 infund) Graymont Crim part 1 Argum. Tomes, fol. 21 52
 =part 2, fol. 21 52 infund) that of Sir George McKenzie, 17 March 1673
 =part 2, fol. 21 52 infund) it may be likewise said, that such an offence
 is Ham-fueken: because a shop is the ordinary place of a
 Shopkeepers house. Sir George McKenzie's opinion (Crim
 =part 7, fol. 21 52 infund) that the calling a Man out of his own house
 and beating him immediately at the door of it without any
 provocation given by him, is he should to infer
 the Crime of Ham-fueken, seems to be very well founded:
 because the person injured in that case must be supposed
 to have been maltreated in his own house, and the
 offender, who finds himself called out to beat him with
 out hazard of Ham-fueken; being possibly granted
 =part 7, fol. 21 52 infund) and if it were otherwise, it would not only be
 a house to more private than the Master of it, but
 also it were safe to take the pain of this Crime by call-
 ing a man out of the door of his house, and doing to him
 at the door what he intended to have done in the house.
 the at the same time, that Learned Author best states
 when he tells us that where a Gentleman was pur-
 sued for Ham-fueken in so far as he came to Newbold
 for a public house and there called him out and forced
 him to goe but could not house him, the Justices