

would not sustain the libel as hampeficken. For in that case, the Tenuel was not indicted for hampeficken, but only of oppression and beating of Rogge by way of hampeficken; but any Mention of his having been called out of his house 29 July 1663 Alexander Kenneth McKenzie of Gledie. This one having called a Gentleman out of his barne adjoining to his house, who little suspending any evil intention of him to take a Drink in his house, and as they were going to enter the gate of the house, the person first taking down his sword, and then with made several thrusts at the Inviter; the Invasion was found Releas to suffer only an Arbitrary punishment, and not the Crime of hampeficken 28 March 1695 Balfour of Donsie. Because the assault was not made within the house which is reckoned the owners sanctuary, but before they came to the house; and the Invader was not to enter at his own hand but was invited to it. Nor is hampeficken to invade a person in a place which is not before or not adjoining to his dwelling house, tho' it be at the very door, 28 March 1695 Balfour of Donsie McKenzie from part 1 Ed. 21 52 infam. 11. Nor yet is it hampeficken to beat a Man in his shop, separate from the house or in one of his several houses, as he does not, Ca. ball. Consil. Erug. ca. 13. And that striking Violently into a Mans play house, and thrusting at him with a drawn sword within the house was not found to be hampeficken; because he did not by and right force; but only was punished as assault and Misdemeanor by the offenders. Having Gard on in favor of the Courts and Enacting himself Judicially not to give or trouble by word or writ the person offending, under the pain of being banished the town and prison to get thereof 11 June 1669 Mings Murray. Quarters of the beating a servant in his Masters house, by

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hampeficken, all he was not invaded and beaten in his Masters house; being hampeficken is the beating a man in his own house, vide 22 July 1672 Mr. Alexander, and others. Where this point was argued and not put in mind in respect the libel was found for servant upon another's head.

Hampeficken may be pursued either as a Distinct Crime for so or pursued only as an aggravation of another Crime, which it hath always been reckoned as appears from the 2d Instance of David's Aggravation for the Abjuration of Rochab and Baana for killing of the King upon his bed in his own house 2 Jan. 4. 11. 85 12.

Hampeficken is counted as a separate Crime, not punished Capitally as the beating of a woman Reg. Mag. lib. 4 cap. 9 n. 3. Consequently must be tried before the Lord of the Shire and not before any Inferior Court. One was condemned to be hanged for hampeficken committed on a Lady in her own Garden 23 Feb. 1638 Thomas Crombie. By our Act Law this Crime was to be pursued shortly within a Night after Commission thereof Reg. Mag. lib. 4 cap. 9 n. 3, June 1. cap. 10 n. 2. Which short time was allowed for getting the advice of friends. But that short Prescription is now obsolete, and our present Law doth not think the pursuit of this Crime more than attend to so short a time McKenzie from part 1 Ed. 21 53. For it was absurd that a Man against whom hampeficken is placed at the Distance of several days Journey from Edinburgh should be obliged to pursue for it there before a Magistrate past over. Thus an Indictment for hampeficken was sustained two Months after the fact, 23 Feb. 1638 Thomas Crombie. But yet for George McKenzie (sic) think it reasonable, that being probably the party