

Charges Against him before the Council at Egre, by pro-
 duce Infamies before the Council which Supra Ecclesiastic. R.
 of the 4 Century in the life of Athanasius. But the other
 ordinary Defences Against that and other particular Crimes,
 are set forth in the respective proper places, where those
 are treated of.

The Kings Advocate or solicitor or other Advocates for
 the pursuer, reply to the Defence or grounds of Exculpation
 It is a Common Reply, that those ought not to be admitted
 to proof or sustained because Contrary to the libel. Thus
 where the indictment ^{for the Murder} of a Roman servant bore Expressly
 that the pannel gave her a Mortal wound whereof she
 Died, this Defence that the wound was not Mortal, nor
^{from} ^{her} from going 40 days and More about her ordinary
 Employment, but that she Died thereafter of a fever with
 which she was infected by attending upon her sick brother
 was repelled as contrary to the libel 4 December 1669
 Mr William Somervell. For the where the wound is not held
 to be Expressly to be Mortal, such a Defence might be ad-
 mitted, and the Judge ought to consider Intervallum temp-
 nis or supervenientiam febris; Yet neither these nor any
 other presumption that the party Died not of his wound
 ought to be received, where the libel bears Expressly
 and its offence to be Proved, that the wound was do that
 McLenzie Sum part 1. pt. 11. 510. Again where one was
 indicted for killing another in a single combat, whom he
 had before challenged to fight him, this plea, that if
 the parties did kill such a man, it was in his own Defence
 in so far as the person slain first attacked him with
 a drawn sword, was repelled 17 June 1670 William Mack
 Because, the self Defence might be received to clear
 a libel upon homicide by forethought felony in general
 it could not be sustained Against a libel bearing the
 Express quality, that the killer was the first provoker
 of fight: seeing in the first case self Defence doth not
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Contradict the substance of the libel, but only takes off the
 presumed quality of premeditation or forethought Design to
 kill which need not to be proved, where as the plea of self
 Defence is Directly contrary to a libel founded on provocation
 or and Duelling, which quality must be proved. so that De-
 fences Directly Contrary to such part or quality of a libel,
 as Must be proved by the pursuer, are not presumed. But
 Defences contrary to any quality of a libel which can presumed
 to be true, unless the pannel prove the contrary, are easily ad-
 mitted. V. G. Self Defence is received Against a libel for
 Murder, the contrary to this quality thereof, that the fact
 was committed by Malice premeditated or forethought felony.
 McLenzie Sum. part 1. pt. 12. 56 Part 2. pt. 22. 52 Sum.
 Because can presumed, that quality to be true, without any
 Necessity upon the pursuer to prove it, and so does not bind
 the pannel to contradict the contrary in order to take off
 such presumption. And seeing it sufficient to prove the
 substance of a libel, without Necessity to prove all the
 qualities of it, Exculpation upon self Defence and Casual
 homicide is sustained. for otherways all Defences of Ex-
 culpation might be excluded, by the pursuers Indictment
 Circumstantiating his libel, so as the Defendants Exculpa-
 tion may be Contrary to it. Again the the Excep-
 tion of Alibi, that the party Accused was in another place
 than where the Crime is laid at the time, seems Con-
 trary to the libel, and comes nearest to a Denial of it;
 yet, if it be strongly qualified, so as it was Morally, if not
 simply, impossible, that the pannel could have com-
 mitted the Crime it will be sustained 7 August 1704
 Ludovick Bondtown & John Walbusham. Because
 witnessed might see a Crime committed, and yet be in
 a Mistake as to the Committer of it, whom perhaps
 they did not well know, and it were hard that an In-
 nocent should suffer. But such a Defence of Alibi,
 is ordinarily repelled, when not so qualified: as when
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