

may in the second, be Divided from the quality. Others allow such qualified confessions to infer only an Arbitrary punishment Pros. Garin. ibid. n. 116. but others do more solidly clear the Difficulty by Distinction. Thus Mascard. de probat. vol. 2. conclus. 868 n. 4. 5. M. Shon. Bnm. part 2 tit. 24 § 1. If the quality was added to the Confession or Interdally, it ought not to be regarded. For it is not Supposable, that a Man would Confess a Crime; and at the same time forget his own Defence. 2. If the Confessor be loaded with strong presumptions of guilt abstracting from his Confession, the Quality must be otherwise proved than by the Confession: Because presumptions transfer the Burden of proof upon him against whom they lie; and non scinditur Confessio, nisi ad finem. traria Judicia God. Fabr. de fear. Def. 6. But 3. in other cases a qualified Confession implying a Defence, can no more be Divided than an oath; and should either be altogether believed or quite Rejected, and sustained equally to prove the Defence and the Libel. For as it was not the Duty of such a Confessor to fix guilt upon himself: so it is presumable, that he who was so Inguenious as to Confess a fact committed by him, was also sincere in his Relation of the Circumstances of it. And Homicidium in Dubio non Dolus, sed ad Defensionem factum presumitur. & sic qualitas adjecta habet pro se presumptionem. A person cannot be tried for his life upon his confession of a Crime made *Spe Veris*, or upon Assurance of his life. Because it is not a full and Absolute, but a qualified Confession, which cannot be a ground to violate the fact of Impunity given, that is, cannot be Divided from the quality under which it was Made, or cannot be made use of without performing the quality; altho the Judge who promises Impunity could not pardon the Crime, nor would any Criminal ever be Inguenious in his Confession, if notwithstanding the public faith of the Promise and Assurance given of life he might be prosecuted.

too thereon, without regard to such Assurance Monach. de Arbitr. Judic. qu. lib. 2. cas. 367 n. 6. Gomes. 3 Var. Resol. Sup. 12 de probat. Delict. n. 6. Pros. Garin. ibid. n. 276 & seqq. 9 January 1678 Mr James Mitchell. But such a promise of impunity of life, doth not hinder the ~~Confessor~~ Confessor to be prosecuted upon his Confession in order to an Arbitrary punishment Monach. ibid. Pros. Garin. ibid. 9 January 1678 Mr James Mitchell.

Altho the pannel May Require and get the pursuers oath of Balmung, upon the Verity of the Libel ult. Feb. 1681 David Hobbs. The pursuers oath in Supplement of farther Evidence, is not Regularly taken in Criminal cases. McKenzie For n. part 2 tit. 25 § 1. But yet the Dimming of ones eye may be proved by oath of the party injured 23 July 1643 David Rowison. And in a trial for Mutilation, the pursuers oath was taken upon the Verity of the Libel at the Kings Advocates Desire, the Against the Will of the pannel, who contended that such an oath could only be taken if the person Accused Urged the Giving thereof 20 July 1627 Duncan Woodie. The pursuers oath was also taken in Supplement of other proof of Murder 31 July 1641 William Grazer or slaughter 27 April 1641 Janet Corser. Nor is a pannel bound to swear Against himself, where the punishment of the Crime is Corporal, or, as the Doctors phrase it, Corporis afflictiva. Partly, for that it is Unjust to force a Man to Condemn himself; partly, because it is likely the Accused party Might be tempted to Redoem his life or limb by perjury with the loss of his soul. McKenzie Bnm. part 2 tit. 25 § 1. Aye, the pannel in a Criminal Action where the punishment of the Crime is Corporal, cannot be forced to swear Against himself, tho the pursuer Declares that he will not assist for Corporal punishment and pass from any such Conclusion. McKenzie ibid. 52: he canse a private person Restricting his pursuit, will not hinder the Kings Advocate to pursue the Crime in its utmost Extent. Nor could his Majesty's Advocate by his Conurrence in a Declaration passing from the Criminal Con-