

Conclusion, prejudices the King's Interest. And for the same Reason, the the just trial should defer the Verity of a Crime to the pannel's oath, And he deny it, he might do with standing again tried for the same, and be convicted upon clear proof: seeing none can remit Crimes Directly or Indirectly but the sovereign Monarchie. But yet Sir George Mackenzie observes on act 2 Parl. 2 sess. 2 Ch. 2 tells us, that the privy council of Scotland in the year 1681 ordained persons to depone concerning their being sitting of Rebels, upon the Kings Advocates Declaring, that he subscribed only ad personam & Arbitrarium. Because 1st the in Crimes ~~the~~ Defaming omni jure, as Justice & ultion &c. the Kings Advocates Declaration could not take the stigma Imprinted by God and Nature, yet in Crimes made such only by the Municipal laws in favour of the King and his Government, the Infamy may be taken away by the Kings Advocates Declaring that he subscribed to it only as an irregular Transgression, and the Confession doth not Defame where no Crime is acknowledged. Where there is no Remission where the Irregularity was not justified as a Crime; and there is no thing more Ordinary, than for his Majesty's Advocate to Restrict his pursuits of Capital Crimes to Arbitrary punishments. Vide 11 July 1682 Margat Weir's case, where that point was Debated but not Determined. Again, proof by oath of the pannel is not Allowed in the case of a Crime Inferring Infamy; quia vitæ & famæ Equivocantur quoad hoc. Unless there be an Express Statute obliging them to swear, as there is in the case of Usury Act 247 Parl. 15 Act 7 Parl. 16 J. 6. Simony Act 1 Parl. 21 Act 247 Parl. 15 Act 7 Parl. 16 J. 6. which are odious and Pleading the Receiving a fraudulent Disposition from another time Crimes. And the bearing Unlawful Oaths at 6 Parl. 16 J. 6. Mackenzie observes on d. act 6. This point whether a wife subscribed for an Arbitrary Crime may be obliged to give her oath upon the fact she

is Accused of to the prejudice of her husband; seeing in that case Corporal punishment may be inflicted, as to which her husband is not concerned, was Debated but not Determined 11 July 1682 Margat Weir. But offences that are punishable only by fining, and not Corporally may be proved by the pannel's oath and he, if he Refuse to swear may be held as Confessed and Convicted 13 Feb. 1634 Bailie of McCrossk contra Darling 15 November 1637 Robert Birnst 8 July 1646 William Black Mackenzie Crim. part 2 tit. 25 51.

The Crimes are not Commonly to be proved by writ, yet some Crimes as falsehood, perjury, usury and a Defamatory libel are proved in that Manner. When the Lord of Session have Addressed and Improven a writ ad falsum, and Remitted the forger to the Justice court in order to Condemn punishment, the proof in the session is not repeated and taken over again before the Commissioners of Justiciary and Assize, but it sufficeth to produce and read to them publicly the Decree of Improbation: because a sentence of the Lord of Session in falsehood, who are Authorized to Judge it habere pro veritate, and id probatio probata. Sir George Mackenzie (Crim. part 2 tit. 25 53) says, that in perjury case

a Discharge wanting. Writers Name and Witnesses, was sustained to prove usury; in respect the pursuer offered to prove by the Defenders oath that he subscribed it, and persons charged with Usury are bound to swear when Required. But he doubts, ~~that~~ such a writ would prove any other Crime: seeing it is null by Act of Parliament and not trusted quoad any Civil effect, and should forsooth be Credited in a Criminal suit, where the pannel is not obliged to swear as in Civil cases. Comparatio Litterarum Comparison of hands is not good Evidence in Criminal cases, but worketh only a presumption, which may be wrong: seeing Mord hand writ is often Counterfeited, and one Mans hand will not appear the same on all occasions because