

But yet it is not an easy Matter to rid Marches betwixt
their several provinces. Because, 1^o About the grand
bate among Criminals arise from Circumstances
implying that a Crime was Committed *op. ausilio* *Aff*
toutia, Mandate. &c. of such a one: It is Relevant in
land to libel Art and part in General against the
offence to the Commission of a Crime, without qualify-
ing the Manner of Accusation act 151 Parl. 12 J. 6 whereby
the Affixer necessarily turn Judges of the Relevancy
of the qualifications of Art and part libelled in ge-
neral, which offend in Apicibus Juris. 2^o In advising
proof, some coincident points of Relevancy concern
the liability of witnesses, and the Import of Extra-
judicial Confession frequently fall to be Considered.
The Import of presumptions hath also been Remit-
ted to the Consideration of the Affixer 2 August 1638 To
Mol. cum 12 April 1637 Andrew Math. Albo
the quality and Circumstances of presumptions
in effect the grounds and relevancy of them.
overindubie the Justices are only to Judge what
accord law, and the Affixer Matters of fact. And by an
Act of the Privy Council of Scotland Dated 3 December
1669 and Recorded in the Books of Adjournal that for
day, it was Declared, that the Justices are to Determine
all questions arising concerning the Relevancy of
proof: And that if the Jury should proceed to Accuse
notwithstanding of what is found to be legal Evidence
by the Justices, they are liable to be tried by an Affixer
of Error, and punished. For the Affixers are sufficient
Judges of proof as to the Matter of fact: Yet whether
the testimony of a witness or Confession of a party
be legal proof *de jure*, or Not, is a point of law
belongs to the Judge, and Not to the Affixer. *Regulations*
libel

libelled falls under the Cognizance of the Justices: there-
fore Advocates in any intricate case should not libel
art and part simply, but specify grounds Art and part,
whereby the Judge will Determine the Relevancy of the
qualifications of Art and part. Sir George Mackenzie (Crim
part 2 Epit. 23 54) is of opinion, that all Inconveniences
of this sort might be Remedied and perfectly Cured, by
subjecting the proof as well as the Relevancy to the
Cognizance of the Justices; which he offers as an Ex-
pedient over him, and Inference with the Reason
following. 1^o There is a Contingency or Affinity betwixt
Relevancy and proof, that they cannot be well separa-
ted in order to advising by Different Judges. And Many
intricate points of Relevancy fall to be Considered in
Examining proof. 2^o Affixers are oft times ignorant
persons who stumble at what is referred to them,
and Mistake what is found Relevant: And its Dan-
gers for them in Criminal causes to Judge according to
their private knowledge without lawful proof. In other
learned and civilized Nations, the Judge Discharge both
the Relevancy and proof. And as we have already
removed from the old custom of Employing an Affixer
quest in civil cases; there is the like reason to set them
also in Criminal trials: Especially Considering, that
for saving Expenses, Affixers are seldom or never taken
out of the place where the Crime was Committed, but are
generally Burgesses of Edinburgh who know as little
of the Matter of fact as the Judges, and persons of that
kind are at a mighty loss in their private affairs by such
unnecessary Diversion. In England, and in Commissions
of Oyer and terminer in Scotland, the the Chairman
of the Court directs the Jury what is law; yet they
mostly Determine both the point of law and fact
de jure *supra* *infra*
When the Discourses to the Jury are ended, they
cast