

Persons licensed to preach by any presbytery in Scotland must take the oath of abjuration under the pain of six months imprisonment, and incapacity to enjoy any Benefice or Manse by virtue of any presentation call or other settlement for the space of a year from the time he takes the oath after obtaining license to preach 5. 9. 1. ch. 23.

\* 2. There being two Indiments raised before the Lord High Admiral of Scotland and officers appointed to him by the privy Council against the captain of a ship and his crew for piracy and murder, the procurator fiscal declared that he insisted first upon the Indiment against some of the crew. It was pleaded for those that they could not be split to answer till their captain was indicted against whom they were under his command, who might have defence both for himself and them, that probably they would not make for them selves, which dilatory defence was rejected. Because they were not contented for any thing acted by him as their captain and them as his crew, but charged as socij partakers of the crimes labelled, which no Commission the Captain had or could pretend to, could warrant: And facinus quos inquinat aequal, 13 March 1705 Captain Thomas Green & his crew. vol. 2 pag. 231.

\* 3. But it is not left to the Arbitrament of a panel to crosse those Impannell'd as socij criminis to be first indicted in order to be witnesses for him, ~~with~~ without offering to prove some ground of their Innocence as that they were ably &c. Thus a person Indict'd with others for piracy and murder was not allowed to be first tried, altho' he was cited by the regt as a witness in their Occupation: In Regt there was no special ground of his Innocence or Occupation assign'd why he should be first tried; and to allow panels at Random to crosse others to be first tried would disappoint all criminal proceedings against accomplices of the same crime. Altho' it was pleaded that when persons are accus'd as socij criminis who might be witnesses for or crosse the regt, it should not be necessary to prove any special defence for them in order to their being first tried, seeing the very denial of the libel is sufficient, and their Innocence is presumed till guilt be proved 13 March 1705 Captain Thomas Green & his crew.

\* 4. Altho' it was pleaded for the panels 1<sup>st</sup> that the generality and Indistinctness of the libel abridg'd them of the means of otherwise obvious defences, viz that first a ship was cast away by storm or yet existing, and the men altho, and that the Goods are still extant and disposed of by the owners. 2<sup>d</sup> There was no corpus delicti offered to be proved. In Regt Answer was answered 1<sup>st</sup> the libel is as plain and definite as the Thing will allow. If the panels think the ship and men and Emborded the Cargo, so as not in their knowledge could be had thereof; that was only an aggravation of their villainy, and could not be an excuse for not to proceed: seeing what was the ship or men or Goods were, it was certainly piracy, Robbery and murder, to attack a ship so fully, destroy the men and Rob the Goods. 2<sup>d</sup> proof of the corpus delicti is never required, except in crimes that leave permanent effects, as the killing of a Man, or burning of a House nor yet in those where no such effect can appear by reason of its being destroyed and put out of the way, as when a villain not only murders a man but also burns his Body, to stop or drown in the sea to cover his villainy. In what case no further Inquiry remains than whether such a fact was done.

\* 1. Attaching been pleaded in behalf of a man indicted for harboring the pursuers wife, that it was not relevant to libel that he had violently Lyon with her while she resisted her unwillingly by crying for help, struggling and resisting, but the particular Qualifications of the force and her unwillingness ought to be set forth, as the blood that was drawn in her face or in her body under her clothes, and the tearing of her clothes which are the distinguishing Tokens of a Rape. Regt. lib. 4 cap. 92. Every Degree of violence used by the man, and Resistance on the woman's part is not sufficient to justify it. Because there is force any where so abandoned to not hesitate to prostitute her self without making some show of Resistance, which consequently obligeth the man to use a kind of force when at the same time the manner of her Resistance betrays her willingness to commit such Lechery. Nor can the Qualification of her crying infer the contrary, for that she being seen in the very act of Adultery, or at least in a situation established either to own her self an Adulterous Strumpet or make a point of crying for help, as if she had been so used: against her will. 2<sup>d</sup> The woman was principally injured by a long time being that she was harassed, and was not brought to own it till she was obliged to. None which is an objection against admitting a person to prosecute any crime by a Justice. It was answered 1<sup>st</sup> crying for help, struggling & resisting is all that law requires and intends to appose a woman against the Kings power which is the legal Definition of a Rape. Regt. lib. 4 cap. 92. Nor was it possible in the present case to depend to more particulars by bringing into the Libel the words uttered by the woman altho' or forms of wrestling in her defence, she being carried some way off the high road, and finally dealt with. 2<sup>d</sup> And can the woman's denial impact upon the force and violence is offered to be proved, and the prosecution is competent to others as well as to her. The prohibition of giving money or promising a reward to work in the process is out of the case: for the panel who is charged with an atrocious crime, must show his Innocence, which is not more or less, that the party appointed soon unwilling to commence the process, or was encouraged thereto by officers middlers. The Lords sustain'd the Libel and Rejected the defences 4 April 1723 Colonel Francis Comdors.

\* 2. As not to insert in any Letter passing the signet more than one or many Letters of having more than one or many Bonds or Bills or Receipts than one separate Caption; and that each protest shall of Exchange or receipt have a separate storming and caption, altho' the said protests may happen to contain more Bills or receipts than one; Excepting Bonds & Receipts, Bills and receipts not exceeding 40 pound Scots of principal in each of them, and Bonds or Bills or receipts granted by the same debtor to the same creditor, not being an assignay; whereof two or three or more may be put in the same storming and compounded for at the signet, Act of the writers to the signet 19 March 1722. Nor to subscribe any writs peculiar to the writers to the signet that are not mention'd by themselves or their actual servants by Apponitions <sup>written</sup> in their own Chambers; Except such as shall be subscribed for Brethren writers to the signet conform to their written warrant to the Brethren signing for another to which the Brethren signing for another must subscribe a Note of the Letters summons process and others so sign'd by him; and the warrant is to be shew'd to the underscriber of the signet, when such Letters and others are given in to be signet. But Bills of Advocation and Suspension, signitures or receipts must be drawn by the absent Brother or by the signet, and written by the servant of the absent Brother, where warrants given by absent Brethren to sign for them, in due for three months, and may after Expiring thereof be renew'd for other three months; and if their absence continue longer than three months, the Keeper and Commissioners may, upon application made to them give or give their power of granting warrants for three months longer. Nor yet is any writor to the signet to subscribe any writs peculiar to writers to the signet for less than the process established by Law, except at the Instance of those whom he is allowed to take trials &c. The Forbearers of Stabs and their Deputies, Lords of Session, Advocates, Clerks of Session, Clerks of the Bills and their Deputies, Lords and Clerks of Treasury, Keepers and writers to the seals, writers to the signet, clerks and Keepers of the General Register of stormings and receipts, Masters before the Lords of Session, privy Council & Exchequer, and the writers own Apponitions & servants they not being Assignays; and those in the peers Hall, or such as are known to the writer to be poor. Any writor transgressing or contravening any of these Injunctions is to be suspended for three months and to pay to the Treasurer of the Society 40 pound Scots for the first fault, and to be suspended for