

Liber B B they are not, & then conceaues under th<sup>e</sup> submission afores<sup>d</sup> a Jury ought not, nor can haue cognizance thereof, for Ad questionem Legis Iudices, ad questionem facti Juratores.

The p<sup>r</sup>misses considered yo<sup>r</sup> Pet<sup>r</sup> humbly craues such releife for his uniuert molestacōn as yo<sup>r</sup> hon<sup>rs</sup> thinke meete And as in duty bound hee shall pray &c:

The Charge.

That Luke Barber did call Elionor th<sup>e</sup> now Wife of Henry Spink whoare, That hee did diuers times affirme th<sup>t</sup> shee was a whore And th<sup>t</sup> hee had taken her w<sup>th</sup> her coates up, & th<sup>t</sup> Rogue Thomas Hewes w<sup>th</sup> his Breeches downe, And th<sup>t</sup> hee brought none but Rogues & whoares out of England, some out of Bridewell, some out of Newgate, & some from th<sup>e</sup> whipping Post, And allsoe th<sup>t</sup> her oath was false & malicious w<sup>ch</sup> hee would proue.

This being th<sup>e</sup> Charge my Aduersary accuses mee w<sup>th</sup> tis his duty to proue it actionable. Yett for satisfaction of this hon<sup>ble</sup> Court, [p. 159] I shall for once endeauo<sup>r</sup> to proue th<sup>e</sup> negatiue (Viz<sup>t</sup>) That none of all th<sup>e</sup> Charge is actionable, & th<sup>t</sup> out of Shephard & his authorities, Being th<sup>e</sup> uery Booke th<sup>e</sup> hon<sup>ble</sup> Leiu<sup>t</sup> Grall, Chancelo<sup>r</sup> & this hon<sup>ble</sup> Court th<sup>e</sup> other day made use of, in a Case of th<sup>e</sup> like nature

ffirst then as to th<sup>e</sup> words (whore) th<sup>e</sup> s<sup>d</sup> Shephard fol. 76, affirms posituely th<sup>t</sup> th<sup>e</sup> accōn will not lye for saying a woman is a whore or Bawd (albeit they bee marryed) And then for th<sup>e</sup> gesture I fownd her in, w<sup>th</sup> that Rogue Tom Hewes as I am charged, The s<sup>d</sup> Shephard declares himselfe in fol. 80, ut infra, If any words be spoake in themselues not actionable of a yowng woman or man, charging them w<sup>th</sup> incontinency or otherwise by w<sup>ch</sup> they loose their match, the Losse of th<sup>e</sup> match must bee auerred specially it is not good Patch, 15 Car. B. R. Ayres Case, Sandersons Case, Trin. 17 Car. B. C. Soe if any words of passion only not actionable be spoaken as to say a man is forsworne, hee is a Rogue, Vallaine or th<sup>e</sup> like, If any accōn bee brought uppon them, it must bee main-  
tained by a speciall auerm<sup>t</sup> of losse. Coo-4-15.

Now for th<sup>e</sup> last part of his Charge (Viz<sup>t</sup>) and allso th<sup>t</sup> her oath was false & malitious, w<sup>ch</sup> hee would proue. this I likewise conceaue is not actionable, ffor th<sup>e</sup> s<sup>d</sup> Shephard sayth fol. 77 soe, in a case depending betweene A & B in th<sup>e</sup> Kings Bench Certaine affidauitts being openly read in th<sup>e</sup> Court, th<sup>e</sup> defend<sup>t</sup> sayth openly there is not a word true in them as I can proue by twenty wittnesses this is not actionable Patch. 15 Car. B. R. Moltons Case.

Besides may it please yo<sup>r</sup> hon<sup>rs</sup> when I spoake th<sup>e</sup> words it was not soe much as an affidauitt, Vntill sworne to, noe affidauitt, & it was some space of time before shee had deposed.