

questionem facti juratores

The Premises Considered your Petitioner humbly craves such relief for his unjust molestation as your Honours think meet

And as in Duty bound he shall pray &c.

The Charge.

That Doctor Luke Barber did call Ellenor the now wife of Henry Spide Whore that he did diverse times affirm that she was a whore and that he had taken her with her Coats up & that Rogue Tho. Hughes with his breeches down and that he brought none but Rogues & Whores out of England some out of Bridewell some out of Newgate & some from the Whipping Post and also her oath was false & malicious which he would prove.

This being the Charge my Adversary accuses me with It is his duty to prove it actionable yet for satisfaction of this honourable Court I shall for once endeavour to prove the negative viz.

That none of all the Charge is actionable & that out of Shepard & his Authority ^{being} the very book the honble Lieut. General Chancellor and this honourable Court the other day made use of in a case of the like nature, first then as to the word Whore the ^D Shepard fol. 76 affirms positively that the Action will not lye for saying a woman is a Whore or Bawd (albeit they be married) and then for the Gesture I found her in with that Rogue Tom Hughes as I am charged the said Shepard declares himself in fol 80 ut infra, if any words be spoke in themselves not actionable of a young woman or man charging them with Incontinency or otherwise by which they lose their match the Loss of the match must be averred Specially It is not good Pasch 15 Car. B.R. Ayres Case Sandersons Case Trin. 17 Car B.C. so if any words of passion only not actionable be spoken as to say a man is forsworn he is a Rogue Villian or the like if any action be brought upon them it must be maintained by a special averment of Loss Co. 4. 15. Now for the last part of his Charge viz. & also that her oath was false & malicious which he would prove, this I likewise conceive is not actionable for the said Shepard saith fol 77. So in a Case depending between A & B in the Kings Bench certain Affidavits being openly read in the Court the Defend. saith openly there is not a word true in them as I can prove by twenty witnesses this is not actionable Pasch 15 Car. B.R. moltons Case. Besides may it please your Honours when I spoke the words it was not so much as an Affidavit until sworn to no Affidavit & it was some space of time before she had deposed. Lastly to give your Honours further Satisfaction having as I humbly conceive sufficiently proved nothing in my Adversarys Charge can be actionable I shall now prove also under Correction of this honble Court that grant they were actionable in themselves yet as they are Charged