after his sons leaping the stair was heard cry, Rob the dog for he hath stabbed me in the throat and when the father was taken up dead, no person was found with him, nor any Weapon near or about him 24 February 1707 James Lawder. Homicide may be proved by presumptions not only of man and of law, whereby the fact is taken for true, till the contrary appear: but also may be proved in one case, by a presumption of and by the law, which suffers not a contrary proof to be admitted. By the law of England a Woman Endeavouring to Conceal the death of her bastard child, shall suffer death as in the case of Murder, unless she can prove by one witness at least that it was still born 21 Jacobi cap 27 without No obligatory to prove that the child was born alive or that there were any signs of hurt upon the Body of him. Pleb Cr. lib 2 chap. 46 pel. 43. By the law of Holland where a woman conceals her big belly or being with child during the whole space, and calls not for and makes use of help in the Birth, the Mother if the child is found dead or miscarrying is held to be the Murderer of it, and to be tried and Condemned as such, tho there be no Appearance of wound or bruise upon the body of the child Act 21 sess 2 Parl. M. & M. Upon this presumption that she who was Unwilling to be known to be a Mother had Made away with the child whose birth brought a dishonour upon her. Which statute was ordained to be published at the Market Crosses of the head Burghs of the several shires, and to be read in all the parish Churches by the Reader of the parish. Married woman being indicted for concealing her being with child and not calling for help in the birth and the child's not being found: It was pleaded for the pannel, that the Act of Parliament being made only to prevent the Murdering of Children by single Women cannot be founded on against a Married woman who Needed not Reveal her being with child, which was allowable and she was under No temptation to Conceal. Besides, wives are frequently surprized with abortion when solitary and destitute of help; or of such a Natural constitution as Requires No great assistance



assistance in child birth. Replied for the pursuer 1/ the Statute Concerns all Women whether Married or Mol. 2/ It is not to be supposed a Married woman with child to her own husband will conceal her condition so long or Neglect to call for help. And if she be impregnated by Another, the law should strike more forcibly against her as an adultress, than against a single woman guilty of fornication. Now the pannel's husband having been two years absent from her, the child cannot be his who did not for so long time cohabit with her. The Lords sustained the libel Relevant to infer an Arbitrary punishment 24 November 1701 Catharin Smith. But thereafter in another case, a libel upon the Act of Parliament against a Married woman for the presumptive Murder of her own child, was found Relevant to infer the pain of death and Confiscation of Moveables, 3 August 1724 Margaret Dickson.

It was pleaded for a woman Indicted upon the Statute for the presumptive Murder of her child, that the libel was not Relevant, because it did not Mention that the Statute was published in Manner therein directed, and Read in parish Churches as the law ordains. For that being a Corrective law contrary to the Common law and for a Corrective law contrary to the Common law and for manner practised of the Nation, it ought to be strictly Interpreted, and all the solemn formality therein observed. It was Replied for the pursuer 1/ albeit the publication and Reading in parish churches be appointed, yet the omission thereof is not Declared to Void the penal sanctions. Reading of the Statute in Churches being only a Caution for further Cautionating the Lieges, and Not Essential to it; the omission of such a legal Solemnity can Never Defeat the positive Disposition of the law for Restraining so odious a crime. Their might be a ground to punish those who of duty it was to cause the Statute be Read in the several Congregations. Besides, whatever might be said for the Absolute Necessity of Reading the Statute in the churches