

law, upon pain of losing their places, and all the privi-
leges thereof, to buy depending pleas Act 216 Parl. 14
J. 6. v. o. to purchase for Money, Rights to things in Controversie
be before the Court where they serve. Because such persons
are; by their quality and Authority, thro' able to create more
trouble to the other Litigant. See vol. pag. 106 inq. 229. 230. 231. 232.

Cap. 5.

of Battery.

Battery (from the French Batre to strike) is when the
pursuer, or Defendant in any Action before a Court, Superior
or Inferior, lays wound or Grievance on the other party, so as he may
be Criminally punished for it, or it act and part by endeavour
to Commit such offences at any time from seizure or Execution
the summons till the final Execution of the Decree
Act 138 Parl. 2. at 219 Parl. 14 J. 6. Invasions by any force
the without Battery 29 July 1662 Hamilton contra Harris
A suspensions Invasions of the Plaintiff by the King him or
the without Battery 29 July 1662 Hamilton contra Harris
the Breast with a staff, was sustained to Excuse but that
of suspension, tho' it did not appear that Invasions was
upon account of the Process, but upon occasion of Injury
Goods, and the the Plaintiff pursued this suit, and was
Dunk after being first assaulted by him 13 Feb. 1679 Crime
sland contra Godwin. But the first Aggressor only is liable
of Battery, and not he who stands in his own Defence
any 1675 Fleisch contra Juintours. And the beating of some
more persons against whom a Common cause is
ding, is reputed Battery only as to the Interest of those
are beat, tho' they in effect Represented all the Part
wards and were Commissioned by them, 19 Feb. 1672 C. Mith
dale contra Joints of Duncon. Sir George Mackenzie (C. 1
part 2 Tit. 6 § 7) says, it was not Determined in the foregoing
case Whether an order to beat is probable, pro ut dicitur
By Writings, as Crimes ordinarily are, or probable
Scripto vel Inimicis ut to put a Civil effect, being
other ways a Mand. Quia facta might be taken

by writings: nor yet Decided, if a Libel has a profl. fac. lo. of
a servants' words, or only actual beating or invasion with Injuria
this personally. But J. J. John Mordaunt (Barr. 158) observes,
that it was found in the said case that an order and Libel
tion of Battery might be proved even before the session pro
de jure.

On the guilt of Battery, for the p. Car, and sentence is now
in favour of the party Attached, upon proof of the Injury
done him, without farther Disputing in the cause, or proving of
his prosecution. In Actions where Battery Intervenes, the
Plaintiff loses the whole plea, altho' he had foundry, & ten
cured in his favour, and not such points only as were pending
and Undisputed the time of the fact: seeing his whole cause
had not come to a wound by a sentence, in which case where
Compensation had been pronounced by the offender in favour
of Defense or Reply, upon grounds of debt owing to him
by the other party; the Battery is not only Effectual
to Depose his Pleas of Compensation in the Depen-
ding plea; but to Extinguish the ground of the Depen-
ding plea, so as Action will not be Respiced nor 20 January
1683 Maxwell of Methergate contra Pleasart of Broom Battery.
A Decree for Battery is not Rescribible upon any ground, with
out Exception of Minority. Nor is the offence to be pardoned
by the King; and the King a Commission thereof is held ad
Convention to the Effect aforesaid. Nay farther, if the Offen-
dor suffer himself to be Denounced out Law for not finding
Caution, or for not Appearance to stand by the Law, his life
and Estate falls Immediately without Waiting the
Course of Year and Day at the word Act 138 Parl. 2. at 219
Part. 14 J. 6.

The Statute (Act 138 & d. Act 219) Requires the offender
to be first tried and Convicted or Denounced by the Cri-
minal Judge, but the Lord of session can try this Crime in
the first Instance without Necessity of any previous
Application to the Criminal Judge 31 January 1673 Fleisch
contra Juintours and it may be tried before the Court of
Judiciary or other Criminal Judge Competent altho' it
is not pardoned by the Act of Judicament 22 Feb. 1722