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# P L E A S

OF THE

# C R O W N :

O R,

A Methodical SUMMARY of the  
Principal Matters relating to that  
Subject.

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By Sir MATTHEW HALE, *Knight,*  
*late Chief Justice of the King's Bench.*

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The Fifth Edition.

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1715

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Printed by J. R. Assignee of *Edw. Sayer, Esq;*  
for *J. Walthoe*, in the *Middle Temple Cloysters*, and  
*J. Walthoe Junr.* at the *Golden Ball* against the *Royal*  
*Exchange* in *Cornhill.* 1716.



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THE  
PREFACE.

**T** *Here was lately published an Impression. such as it was, of this Book without any Name of Author to it, but yet was commonly given out to have been written by the late Chief Justice Sir Matthew Hale, and sold for a Book of his writing. The Original indeed was written by him many Tears since : But that Impression, as it seems, was from a surreptitious and very faulty Copy, and was accordingly very faulty and corrupt throughout in many respects, what by Omissions, not only of Marginal References very frequently, but of many intire Paragraphs, whereby the Book it self is in many places mutilated, as the Reader may easily observe, page 19, 23, 48, 52, 57, 108, 110, 122, 183, 187, 200, 202, 203, 208. of that Impression compared with*

A 2 this,

## The Preface.

*this, besides divers other shorter, but not less material, Notes left out in other places: What by Omissions and Mistakes of single Words, Sentences and parts of Sentences, and sometimes by an unskilful critical endeavour, to restore to some Sense, what those Mistakes had made Non-sense, whereby the Sense is in many places maimed and broken, in some much altered, and in some expressed quite contrary to the Author's words and meaning. Instances whereof the Reader may see, page 2. line 17. p. 4. l. 1. p. 7. l. 6. p. 10. l. 17. p. 14. l. 6. p. 15. l. penult. p. 16. l. 13, &c. the like throughout the whole Book. And what by Transposition of divers Matters misplaced among other things to which they have little or no affinity or relation, whereby they are not only wanting in their proper places, but the order and coherence of those other Matters, among which they are interposed, is interrupted and confounded: Thus one half of the Matter belonging to the Title Process, which should have been continued, page 176. is placed page 191, 192, 193. under the Title Pleas, and*

## The Preface.

*and the greatest part of the Title Principal and Accessary, which should have been continued page 196. is there left off in the midst of a Sentence, and placed before at page 177. as if it was the beginning of the Title: And under the same Title 4 Paragraphs together, which belong to Accessaries after, and should have been continued page 180. where in the Original they have a Connexion with what immediately precedes and follows, are placed before at page 179. among what belongs to Accessaries before. Again the greatest part of what belongs to the Title Clergy, and should have been continued page 191. is placed page 197, &c. under the Title Arraignment. To these might be added other Faults and Mistakes, but these may suffice to shew the general corruption of that Impression.*

*And though divers of these Faults and Mistakes are not to be imputed to any Negligence in the Transcriber or Publisher, (whereof, notwithstanding he cannot be acquitted in others) but partly to his unacquaintance with the Author's Hand; and partly to his*

## The Preface.

*Ignorance of his way of writing, who frequently at the end of his Chapters or Sections used to leave more or less blank Paper, and when other Matter occurred, more than could be inserted in those places, did many times write the rest in some other place, where he found most room for it, and for the most part without any Note of Reference to it; so that it was very difficult for any, who was not well acquainted with his Writings, to reduce those Transpositions to their proper places; and therefore, of the many Copies, which are abroad of this Book, I could never yet see any free from divers such Mistakes: Yet by this means (to mention no other) whether through want of Skill, or of Care, or of acquaintānce with the Author's Hand or way of writing, both the Author himself was much injured by the Publication in that manner, and the Reader also.*

*Wherefore to do some Right to the Memory of the deceased Author, and to the Publick, and more particularly in some sort (as far as in respect of some Circumstances was thought fit) to gratifie  
the*

## The Preface.

*the Gentlemen of this honourable Profession of the Law, who possibly may take it ill to be totally deprived of the benefit of the Writings of so great a Master in it; it was thought good by a Friend of the Author's, (whose care the Author desired in the Publication of his Writings, after his Death) to furnish the Book Sellers with a compleat Copy, corrected according to the Author's Original, only what things were therein transposed, were in the Copy reduced to their proper places according to his mind.*

*To this end it is fit also that the Reader be acquainted that this Book was written many Tears since, about the end of the Reign of King Charles the First, or not many Years after; was not by the Author intended for the Press, nor fitted for it; and as he saith in a Letter to one of his honorable Brethren, to whom he lent it, was then never read over by him since he wrote it, as the Reader may of himself perceive, by some Faults which had escaped him in writing, and remain uncorrected, as page 8. line 22.*

## The Preface.

*after the word Dower, it is apparent that the word, saved, or some such is wanting, (which in the former Impression was endeavoured to be amended, but not without diminution of the Author's meaning) and some others, which are left to the Reader to correct according to his own Judgment, a method often approved by the most judicious Criticks in the publishing of other Mens writings, and for some special Reasons at this time thought fit to be observed in this.*

*But lest while we endeavour to do Right to the Author, we should do wrong to his Book, the Reader must also know, that notwithstanding what hath been said, this Book hath been well accepted and esteemed by divers of the most eminent Lawyers, who much desired and obtained of the Author himself to have Copies of it many Years since. And though probably the Author never at all read it intirely over after he wrote it; yet it is certain he, many Years after, made divers occasional Additions to it: And, if I be not much mistaken, he did usually carry it with him in his Circuits.*

*He*

## The Preface.

*He hath written a large Work upon this Subject, intituled, An History of the Pleas of the Crown, wherein he shews what the Law anciently was in these Matters, what Alterations have from time to time been made in it, and what it is at this Day. He wrote it on purpose to be Printed, finished it, had it all transcribed for the Press in his Life-time, and had revised part of it after it was transcribed: But whether, or when it will be published, is uncertain. In this he doth summarily relate what the Law is at this time, or rather was when he wrote it; for some Alterations it hath since received, though not many, by some late Statutes; and therefore may not only be of use, 'till that be published, but may also continue of good use after that is published, whenever it be, as the most proper Introduction for Students to this part of the Law that is extant, and as a Synopsis or Epitome of the most useful part of that.*

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<b>C.</b> M. Car. Dy. Dyer's Re- ports.	
<b>C.</b> Coke upon Mag. Charta.	Kel. Kellewey's Re- ports.
<b>C.</b> West. I. Coke upon W. I. C.	Lamb. Lambard's Justice.
<b>P. C.</b> Coke's Pleas of the Crown.	<b>S. P. C.</b> Staund- forde's Pleas of the Crown.
<b>Com.</b> Plowden's Commentaries.	4 <b>R. Coke's</b> 4th Report.
<b>Cr. &amp; Crom.</b> Crompton.	9 <b>R. Coke's</b> 9th Report.
<b>Dal.</b> Dalton's Ju- stice.	

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# PLEAS

OF THE

# CROWN.

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**T**HIS Treatise is divided under these Considerations;

1. Of the Kinds of Offences.

2. Of the Incidents unto these Offences.

The Kinds of the Offences are distinguished according to the diversity of the Laws by which they are introduced, *viz.*

Offences by the Common Law.

Offences by the Statute.

Offences by the Common Law, distinguish'd according to the degrees of the Offence,

B Capital,

## Pleas of the Crown.

} Capital,  
 { Not Capital.

Of Capital Offences, they are such,

1. As are immediately against God.

2. Immediately against Man.

Those that are Offences not Capital by Common Law, as Mispri-  
 fions, Maihem, Breach of the Peace,  
 &c.

Offences by the Stat. } Capital.  
 { Not Capital.

The latter are many, and not here to be treated of.

*Heretic.*

## Herésie.

Godolphin's  
Repetitorium  
Canonicum,  
560 to 563,  
652.  
11 Co. 29. b.

1. **N**OW first concerning Offences Capital, that are immediately against the Divine Majesty, which are

{ Herésie,  
and  
Witchcraft.

1. Concerning Herésie, wherein considerable,

I. What is Herésie?

At this day all those former Acts which determined certain Points to be Herésie stand repealed; and though there be no express Act determining what shall be said Herésie, yet the Statute of 1 *El. cap. 1.* directing the High Commission, restrains it,

1. To what formerly determined Herésie, by the Authority of the Canonical Scriptures.

2. To what adjudged so by the first four General Councils.

3. To what expressly adjudged

B 2 Herésie

C. Pl. c. 5.  
St. 1 E. c. 1.

Heresie by any other General Council, by Express words of Canonical Scripture.

4. To what so determined by Parliament, by assent of the Convocation.

II. Who to judge of Heresie?

1. The Temporal Judge cannot punish any Person for Heresie by Indictment or otherwise:

But yet incidently he may take knowledge whether a Tenet be Heresie, or not: As where by force of the Statute of 2 Hen. 4. now

M. 5. E. 4. Rot  
143 coram  
Rege.

M. 11 H. 7.  
R. 327. C. B.

repealed, *Kesar* was committed for saying, *That though he were Excommunicate by the Archbishop, he was not so before God*: and *Warner* committed for saying, *Non tenetur solvere decimas*, and thereupon imprisoned: In a *Habeas Corpus* by the former, and a special Justification in an Action brought by the latter, adjudged neither Heresie.

2. All the Statutes that gave power to arrest or imprison for Heresie, viz. 2 H. 4. 15. 2 H. 5. 7. 5 R. 2. c. 5. 1 & 2 Ph. & Mar. c. 6. are repealed by 1 Eliz. III. The

III. The way to convict of Heresie,

I. By the Common Law.

1. By the Archbishops and Bishops in a general Synod.
2. By the Bishop of the Diocese.

2. By the Stat. 23 H. 8. c. 9.

By the Archbishop in case of the assent or neglect of his Suffragan.

IV. The Punishment of a Party convict of Heresie.

Upon Certificate of such Conviction, a Writ *De Heretico Comburendo* granted, without which they cannot proceed to any temporal punishment.

This Writ now taken away, &c. by Stat. 29 Car. 2. c. 40. Vide Repert. C. 652.

But if after Conviction he abjure his Opinion, his life is saved.

But if he relapse after Abjuration, then irrecoverable.

§. But by the Statute 2 H. 5. c. 7. all Statutes which introduc'd any Forfeiture stand repealed: Neither did the Common Law inflict any Forfeiture, because the proceeding was only *pro salute anime*.

## *Witchcraft.*

**A**T Common Law Witchcraft punished with death, as Heresie, by Writ *De Heretico Comburendo*.  
C. P. c. 6.

The Statute of 1 Jac. 12. the only Law now in force against it, and divides it into two Degrees:

I. Witchcraft in the first Degree made Felony without benefit of Clergy, including four Species:

1. Invocation or Conjuraton of an Evil Spirit.

2. Consult, covenant with, entertain, employ, feed, or reward any Evil Spirit to any intent, though no act be done thereupon.

3. Take up any dead Person, or any part thereof, to be employed or used in Witchcraft, Charm, &c. though not actually used or employed.

4. Exer-

4. Exercise any Witchcraft, Inchantment, Charm, or Sorcery, whereby any Person shall be killed, destroyed, consumed, or lamed in his or her Body, or any part thereof; which requires the act to be done, *viz.* laming, consuming, &c.

These and all Accessary before, to suffer as Felons without Clergy: But Accessaries may be after; but then they have Clergy, because not specially excluded.

II. Witchcraft in the second Degree.

1. To take upon them by Witchcraft, Inchantment, Charm, or Sorcery to tell where Treasure is to be found: They that take upon them to do it, though they cannot, yet within this Law.

2. Or where Goods lost or stollen may be found.

3. Or to the intent to provoke any Person to unlawful Love; these Clauses come under the word [*taking upon.*]

## Witchcraft.

4. Whereby Goods or Cattel shall be destroyed ; which requires an actual destroying, and not a bare taking upon them.

5. Or shall use Witchcraft, &c. to hurt any Person, though the same be not effected.

The Punishment of these,

1. The first Offence a years Imprisonment and Pillory.

2. The second Offence Felony : but this requires,

1. An actual conviction and Judgment for the first.

2. The second Offence must be committed after the Judgment for the first.

The like in Forgery, Transportation of Sheep, &c.

But the Consequents upon an Attainder, *viz.* Corruption of Blood, and loss of Dower : but during life the Lands forfeit.

And note, a Saving against Corruption of Blood preserves the Descent ; and saving of the Land to the Heir prevents corruption of Blood.

*High-*

## High Treason.

**C**oncerning Offences against Keeling's Re-  
 Man immediately distinguish- ports from  
 ed in their Judgment or Event; F. 7 to 24,  
 Capital, or not Capital. & 70, 72, 76,  
 77.

Capital either by the Common Holborn's  
 Law or the Statutes; and these ei- reading on  
 ther Treason or Felonies. Stat. 25. E. 3.  
 & Stat. 7 W.  
 3 c. 3. 8 & 9  
 W. 3. c. 26.

Treason, either } High Treason,  
 or  
 } Petit Treason.

High Treason: and this though an Offence at Common Law, yet because there be some mixtures of Introductions of new Treasons by Statute, would be considered together.

I. Considering High Treason, it is distinguished into four kinds.

1. That which concerns immediately the King, or his Wife, or Children.

2. That

## High Treason.

2. That which concerns his Officers in the Administration of Justice.
3. That which concerns his Seal.
4. That which concerns his Coin.

Before we come to the Particulars, some things to be generally premised.

1. That those that have any such disability upon them, that disables them to act reasonably, cannot commit Treason, *viz.* *Non compos mentis*, and Infants within the Age of discretion.

2 Co. 27.

1 And. 107.  
post 43.

C. P. fo. 4.

And therefore if a Traytor becomes *Non compos* before Conviction, he shall not be Arraigned; if after Conviction, he shall not be executed.

An Alien Enemy, committing any hostile act, dealt with as an Enemy: an Alien Amy committing any Treason, a Traytor within the Law.

2. The Statute of 25 E. 3. reduced and settled all Treasons; and by that means all Treasons that were before

before are reduced, and the Stat. of 1 *Ma. c. 1.* reinforced the Statute 25 *E. 3.* and reduced all new Treasons unto the old Standard of 25 *E. 3.* and so all new Treasons declared between 25 *E. 3.* and 1 *Ma.* abrogated.

3. All Treason includes Felony ; C. Pl. 15. therefore if the Indictment want *proditorie*, a Pardon of all Felonies discharges it.

Now concerning the kinds of  
High Treason.

1. Compassing and imagining the death of the King, Queen, or Prince, and declaring the same by some open Deed. Cro. Car. 322. & C. Pl. 14.

I. What is a Compassing the death? Post 13.&22.

Declaring by an open act a design to depose or imprison the King, is an Overt act to manifest a compassing of His Death.

Calculating Nativity *de Roy nemy* compassing.

II. What a King?

1. A King before his Coronation,  
a King

## High Treason.

a King within this Statute when the Crown descends upon him.

2. A King *de facto*, and not *de jure*, a King within this Act, and a Treason against him punishable, though the right Heir get the Crown,

3. A Titular King, that is not Regnant; as the Husband of the Queen regnant not a King within the Act. V. 1 & 2 Ph. & Ma. c. 10. but the Queen is.

4. The right Heir to the Crown, yet not in Possession thereof, is not a King within the Act.

## III. What the King's Wife?

It extends not to a Queen Dowager.

## IV. What the eldest Son and Heir of the King within the Act?

The second Son, after the death of the eldest, within the Stat.

The eldest Son of a Queen Regnant within the Statute.

The Collateral Heir apparent, as *Roger Mortimer* 11 R. 2. the Duke of York 39 H. 6. not Son and Heir within this Act.

## V. What

V. What an Overt act requisite to make such compassing Treason? In Keeling, Sir H. Vane's case.

1. An Overt act must be alleged in every such Indictment, and proved.

2. Compassing by bare words is not an Overt act, as appears by many temporary Statutes against it: 26 H. 8. c. 13. 1 El. c. 6. 13 El. c. 1. 14 El. c. 1. &c. but the same set down by him in writing is an Overt act. Cro. Car. 322. acc. Sed Keeling's Reports, &c. contra.

3. Conspiring the death of the King, and providing weapons to effect it; or sending Letters to second it; assembling People to take the King into their power; Lord Cobham's case: writing Letters to a Foreign Prince inciting to invasion; an Overt act. Post. 22.

4. Conspiring to levy War no Overt act unless levied, because it relates to a distinct Treason, Keeling, &c. contra.

II. Treason levying War against the King. 2 And. 4. & 66.

1. A conspiring or compassing to levy War, without a War *de facto*, no Treason; but if a War levied, the Conspirators Traytors as well Keeling's Reports con.

2 And. 4. the  
the case of  
Apprentices.

Holborn's  
Read. p. 11.

2 And. m.  
case.

as the Actors: This appears by the Stat. 13. *El. c. 1.* that made such Conspiracy to levy War Treason during the Queen's life.

2. A raising a Force to burn or throw down a particular Inclosure only a Riot; but if it had been to go from Town to Town, and cast in all Inclosures, *Bradshaw's Case*; or to change Religion, or to inhanche the Salaries of Labourers, a levying of War, because the End publick.

3. Joyning with Rebels *pro timore mortis, & recesserunt quàm citò potuerunt*, no levying War. *Oldcastle's case.*

4. Holding a Fort or Castle against the King's Force a levying War.

III. Treason Adhering to the King's Enemies, giving them Aid within the Land and without.

1. What Adhering?

1. Giving Aid and Comfort to them.

2. Surrender the King's Castle for reward.

## 2. What an Enemy ?

1. The Subject of the King becoming a Rebel, he that out of the Realm succours him, this not adhering to an Enemy within this Clause.

*Note, a Rebel Subject is no Enemy. Holborn's Reading p. 14.*

2. An Enemy coming hostilely into *England*, shall be dealt with as an Enemy, executed by Marshal Law, or ransomed; but a Subject assisting him shall be dealt with as a Traytor.

3. The *Scots* invading *England* in the Queen's time adjudged Enemies, though *Scotland* then in Amity. Lord *Herri's* case.

3. Within the Land or without, how that Foreign Treason shall be tried.

1. At Common Law for a Foreign Treason the Indictment and Trial must be where the Land lies.

2. By the *Stat. 32 H. 8. c. 2.* Dy. 298. which is yet in Force it may be inquired of and tried in *B. R.* or by Commission in any County where

## High Treason.

where the King appoints; the King's Signature may be either to the Commission or the Warrant thereof.

Dyer 360.

1 Inst. 261.

Dr. Plunket's case in B. R.

Tr. 33 Car.

2. & 1 And.

262. Orack's

case, and cited in Cal-

vin's case,

Treason done in *Ireland* is within that Stat. *Perrot's Case. post. 204, 205.*

3. By the *Stat. 28 H. 8. c. 15.* Treason upon the Sea inquirable and triable by Commission in any County; at Civil Law it must be before Lord Admiral.

## IV. Treason, Violation of

1. The King's Wife extends not to a Dowager.

§. If she consent 'tis Treason in her.

2. The Prince's Wife.

§. The same Law as before.

3. The King's eldest Daughter then living.

Thus far of Treasons that relate to the King's Person and nearest Relations, wherein generally,

1. There must be an Overt act to manifest that Offence.

2. That must be made appear by manifest proof, and not by conjectures.

3. He

3. He must be lawfully attaint thereof, either by Confession or by his Peers in his life-time.

And therefore if a Person be slain in open War, he forfeits nothing, neither can he be attaint in such case, but by Parliament.

2. Thus far of Treasons relating to the King immediately ; now follows that which is Interpretative Treason.

§. Killing the Chancellor, Treasurer, Justice of one Bench or other, Justice in Eyre, or of Assize, or Oyer and Terminer in their place, doing their Offices.

1. This extends but to the Persons here named, not to the Lord Steward, Constable, or Marshal, or Lords of Parliament.

2. It extends to these only doing their Office.

3. It extends only to a killing, not a wounding without death.

But by Stat. 3 *H. 7. c. 14.* compassing to kill the King, or any of his Council, made Felony.

## High Treason.

3. Counterfeiting the Great Seal  
or Privy Seal.

1. It must be an actual counterfeiting: Therefore compassing to do it, no Treason.

2. Affixing the Great Seal by the Chancellor without Warrant, no Treason.

3. Fixing a true Great Seal to another Patent is a great Misprision, but not Treason; nor a Counterfeiting within this Statute, 2 H.

4. 25.

4. Aiders and Consenters to such Counterfeiting are within this Act.

5. The Counterfeiting of the Privy Signet or Sign Manual not Treason within this Act, but made so by the Statute of 1 & 2 P. & M.

c. 11.

V. 12 Co.  
Leak's Case,  
& 3 Inst. Tit.  
High Treason.

## High Treason.

19

V. Treason concerning the Coin. Vide Sr. 8. 9.  
W. 3. c. 26.

### I. Counterfeiting the King's Coin.

This was Treason at Common Law, but yet the Judgment was only as in case of Petit Treason: And this being but affirmance of the Common Law. Vide Si Mr. de Mint fait de memi al-lay, &c. est Treason, 3 H. 7, 20. Vide post. 298. 3 Inst. 17.

But whereas Clipping, &c. is made High Treason by subsequent Statutes, the Judgment is, To be hang'd, drawn, and quartered, because introductive of new Laws. V. 2 Lev. 98. contra.

Herein considerable.

I. What shall be a Counterfeiting? Clipping, Washing, and Filing of Money for lucre or gain, any of the proper Money of the Realm, or of other Realms, allowed to be current by Proclamation, not within this Statute, but made High Treason by Stat. 5 *El. c. 11.* but no corruption of Blood or loss of Dower.

Impairing, diminishing, falsifying, scaling or lightening the proper Money of this Realm, or the Money of any other Realm,

C 2

made

## High Treason.

made current by Proclamation, their Counsellors, Consenters, and Aiders within neither of the former, but made Treason by the Stat. of 18 *El.* 1. but without corruption of Blood, or loss of Dower.

2. What his Money ?

This extended only to the proper Money of this Realm :

But now,

1 *Ma. c.* 6. Forging or Counterfeiting Money made current by Proclamation, is High Treason.

14 *El. c.* 3. Forging of Foreign Coin not current here; Misprision of Treason in the Forgers, their Aiders and Abettors.

See the Stat.  
8 & 9 *W.* 3.  
cap. 26.

V. 12 *Co.* 81.  
82.

Vide post  
127. contra

And Note, The bare forging of the King's Coin, without uttering, is Treason, 6 *H.* 7. 13.

*Mes uttering de faux money fait deins le Realm (siant ceo destre fals est solment Misprison de Treason, 3. H. 7.*

10. *Iffint Receaving, Aiding, &c. cestuy que ad counterfeit, Dy. 296.*  
Sir John Conyer's Case.

*Nota,*

## High Treason.

21

*Nota, Est grand Misprison, mes  
xemy Misprison de Treason, & issint  
resolue 1661.*

But Note, in  
Wilson's Case  
in Keeling's  
Reports, Re-  
solvd, That  
if one knows  
others that  
coin Money,  
and he utter  
it, 'tis High  
Treason, for  
there are no  
Accessaries in  
Treason. Vid.  
post, 127.

2. The second Offence concern-  
ing Money declared Treason is, If  
any Person bring into the Realm  
counterfeit Money.

1. It must be Counterfeit.

2. Counterfeit to the similitude  
of *English* Money.

3. Brought from a Foreign Realm,  
and therefore not from *Ireland* barely.

4. Brought knowingly.

5. Brought in, and not barely  
uttered here: But if false or clipt  
Money be found in his hands, by the  
Statute *de Moneta* if he be suspicious,  
he may be arrested till he have  
found his Warrant.

6. He must merchandize there-  
with, or make payment thereof.

*Certain High Treason made by subse-  
quent Statutes in force.*

1 5 *El. c. 1.* Refusing Oath of Su-  
premacy upon the second tender,  
Treason, without corruption of  
Blood.

C 3

Ex-

## High Treason.

So aiding, one knowing him a maintainer of the Jurisdiction of the See of Rome. V. Alleyn's R. Prig's Case.

Extolling power of Bishop of Rome Premunire; 13 *El. cap. 2.* Bring in Bulls, or putting in execution, or reconciling to the See of Rome thereby, Treason.

Bringing in *Agnus Dei*, &c. Premunire, 1 *El. c. 1. V. Dy.* 282.

§. 23 *El. c. 1.* Absolving Subjects from Obedience, or reconciling them to Obedience of Rome: Treason in Reconciler and Reconciled.

§, 27 *El. c. 2.* Priest coming into the Realm, not submitting in two days, Treason. The like for *English* in Foreign Seminaries.

*Petty*

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*Note,* The Stat. 1 *Mar.* doth not only repeal all Treasons, but all Declarations of Treasons, made by any Act of Parliament since the Stat. 25 *E. 3.* But by 13 *Car. 2.* the conspiring, compassing, and intending to levy War, is High Treason, in case they express or declare such Imagination, Intention, &c. by printing, writing, preaching, or malicious, or advised speaking. *Vide Keeling's Reports, sed quer.* of the Resolutions thereupon. And see now the Stat. 7 *W. 3. c. 3.* For regulating Trials in Cases of Treason, &c.

## *Petty Treason.*

**I**S confined by Stat. 25 E. 3. to three Particulars :

1. Where a Servant kills his Master.

This extends to some other Cases :

1. Servant kills his Mistress.

2. Servant kills his Master's Wife.

3. Where a Servant, upon Malice taken during his Service, kills his Master after departure from his Service.

2. Wife killing her Husband.

If the Wife and a Stranger kill the Husband, petty Treason in the Wife, Murder in the Stranger.

If the Wife or Servant procure a Stranger to kill her Husband or Master, the Procurer accessory only to Murder :

**Petty Treason.**

der : But if she procure a  
 Servant to do it, Treason  
 in both,

3. Ecclesiastical Person, Secular or  
 Regular, kills Superior.

Note, Aiders and Abettors, and  
 Procurers to Petty Treason, are  
 within this Act.

V. C. P. 20.  
 Crom. 18.  
 Dal. (edit.  
 1715) p. 338.  
 H. 5. Car.  
 Dodding-  
 ton's Case.

This Act not taken by Equity.

Yet Son kills Father or Mother,  
 it is Petit Treason, receiving Meat,  
 Drink, or Wages.

The Judgment in Petit Treason  
 for a Man to be hang'd and drawn,  
 A Woman to be burnt.

Crom. 18.

Whatsoever will make a Man  
 guilty or principal in Murder, will  
 make a Man guilty or principal in  
 Petit Treason.

Dal. c. 142.  
 P. 338.

But if the Servant kill the Master  
 upon a sudden falling out, this is  
 not Petit Treason, but Manslaugh-  
 ter.

Crom. 19.  
 Pigg's Case.

If the Servant or Wife be of  
 Confederacy to kill the Husband  
 or Master, and be in the same  
 House, though not in the same  
 Room, they are principals and guilty

## Petty Treason.

25

ty of Petit Treason, for it is a pre-  
fence.

*Servant tue Mr. per procurement le  
Feme absent : il est Petit Treason in  
Servant, & Accessory al Petit Treason in  
Feme. 2. Si Estr. fait ceo per procure-  
ment Feme ou Servant : est Murder in  
l' Estr. & Accessory al Murder in Feme  
ou Servant. 3. Si Estr. fait ceo per  
procurement & in presence de Feme ou  
Servant : est Pet. Treason in Feme ou  
Servant, & Murder in l' Estr. Dy.  
332. 254, 128.*

---

of

*Of Felonies: And 1. Of  
Felonies of the Death of  
a Man.*

**T**HUS far of High and Petit  
Treason.

Now for Felonies, they are either ; by Common Law, by Statute.

Felonies by Common Law : And they are of four kinds :

1. Such as are committed against the Life.

2. Such as are against the Goods of a Man.

3. Such as are against the Habitation of a Man.

4. Such as are against the Protection of Publique Justice.

Felonies committed against the Life of two Natures.

1. That which is committed against his own Life, *Felo de se*.

2. Committed against another's Life :

1. Involuntary.

1. *Per*

## Felonies.

27

1. *Per infortunium*, and therein of Deodands.

2. *Per necessitatem*.

In defence of Justice.

In defence of Self.

2. Voluntary, without Malice.

With Malice.

---

*Felo*

## *Felo De Se.*

### 1. **T**HE *Person.*

1. As in other Felonies, so in this, the Person that commits it, must be of age of discretion, and *Compos mentis*; otherwise no Forfeiture: Therefore if a Lunatick, during his Lunacy, a Man distract by force of Disease, or *non compos*, kill himself, no Felony,

2. As in other Felonies the death must ensue within a year and a day after the stroke, &c.

2. The Act may be voluntary. Involuntary in some cases.

If *A.* assault *B.* and *B.* falling down with his knife drawn, *A.* in pursuit to kill *B.* by haste falleth upon the knife, *A.* is *Felo de se*, and forfeits his Goods.

Sr. P. C. 16.  
Dalt. (Edit.  
1715) p.342.

But

But if *B.* were standing in his Defence, with his knife drawn, *A.* runs upon the Weapon and kills himself, *A.* is not *Felo de se.* C. P. C. p. 54.

3. The Conviction.

1. If the Body can be seen, then the Conviction before Coroner, *super visum Corporis*, and not traversable.

2. If not seen, then before the Justices of the Peace, and then traversable by the Executor or Administrator. C. P. C. 55.

In the same manner, if enquired in *B. R.* in same County, traversable.

4. The Forfeiture :

1. When? by the Conviction.

2. How? relating to the stroke.

Therefore, Villain gives himself a mortal stroke; Lord seifeth goods; Villain dies; King shall have them.

3. Of what?

Joint things intire, all forfeited, C. P. C. 55, unless in case of Merchants.

Joint things severable, *Moiety* forfeit.

¶

But

**Felo De Se.**

But joint Chattels in Husband  
and Wife, all forfeit for this Of-  
fence of Husband.

---

*Chance.*

## Chancemedley.

**F**Elony for the death of another,  
either involuntary, or volun-  
tary.

Involuntary *per infortunium* ;  
*Ex necessitate.*

Involuntary *per infortunium.*

*Chancemedley*, where a Man do-  
ing a lawful act, without intent of  
hurt to another, and death casually  
ensues :

As, shooting at Rovers, or at a  
Bird, or hewing a Tree, and the  
Hatchet-head flies off.

A School-master in reasonable Cr. 26.  
manner beating a Scholar, or Father  
his Son, or Master his Servant.

Doing a lawful thing that may  
breed danger, and giving warning ;  
Justing by command of the Prince.

But if the act be unlawful, then  
death ensuing, Manslaughter or  
Murder.

Shooting at a Deer in another's C. P. C. 56.  
Park, the Arrow glanceth and kil- Keeling 117.  
leth a stander by, Manslaughter.

Throwing Stones or shooting in the High-way, and death ensuing, Manslaughter.

**C. P.C. 57.** But if a Man, knowing People passing by in the Street, throw a Stone, over the Wall, Murder.

**Dalt. (Edit. 1719) p. 352.** Playing at Hand-sword without command of the King, death ensuing, Manslaughter.

So that an unlawful act, without an ill intent, Manslaughter; with an ill intent, Murder.

**St. P.C. c. 15.** And this causeth forfeiture of Goods; but a Pardon of Course upon the special Matter found.

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*Deodand.*

## *Deodand.*

**B**Ut there is a death *per infortunium* without the default or procurement of another : Fall from a Tree, or by a Horse or Cart : And there Thing that occasions the Death is forfeited and Deodand : Wherein considerable,

1. What forfeited as a Deodand.

1. If a Man fall from a Cart, or from a Ship in fresh-water, it is a Deodand ; otherwise in salt-water. C. P. C. 58

2. If an Infant under fourteen be slain by fall from a Cart, Horse, or Mill, no Deodand ; but if slain by a Horse, Ox, or Bull, then a Deodand.

3. If a Man kill another with any Sword, a Deodand. Dalt. Just. p. 353.

2. When forfeited, *viz.*

When found by Inquisition ; therefore the Jury ought to find Dalt. (Edit. 1715) c. 149.

D

the

For by *Carus* the price; and this is before Co-  
*Plow* 260. If roner.  
 my Horse  
 strike *A.* and 3. The Relation of the Forfeiture is to the stroke.  
 I. sell him,  
 and then *A.*  
 dies, the Horse is forfeited as a Deodand.

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## *Homicide ex Necessitate.*

**T**His of several sorts :

1. In reference to Justice.
2. In defence of his Person, House, Goods.

*Homicide ex necessitate*

§. 1. In reference to Justice, of several kinds :

1. In execution of Justice.
2. In advancement of Justice.

Homicide in execution of Justice requires certain prescripts.

1. That the Judgment be given by one that hath Jurisdiction in the Cause.

If a Justice of Peace give Judgment in Treason, the Execution thereof Murder in Judge and Officer. Dal. (1755) P. 354, 355.

But if he give Judgment of Death in Trespass, Felony in the Judge, but not in the Officer that executes it.

2. That it be done by a lawful Officer.

Therefore if a Stranger of his own Dal. c. 150.

D 2

own

**Homicide ex Necessitate.**

own head, or the Judge that gives the Judgment, execute it, where it is to be done by the Sheriff, Felony.

3. That it be done pursuant to the Judgment.

St. P. C. c. 4. Judgment to be hang'd, Sheriff beheads him, Felony.

2. Homicide in advancement of Justice in Causes

} Criminal,  
} Civil.

1. In Causes Criminal.

Dal. c. 150. If a Sheriff or Bailiff, having warrant to arrest a Person indicted of Felony, and he will not obey, or suffer himself to be arrested, the Bailiff kills him, no Felony.

Cro. fo. 27. The same, if any Person that pursues upon Hue-and-Cry, or otherwise, to arrest a Felon that flies.

C. P. C. 221. If a Felon arrested break away from his Conductors to Gaol, they may kill him, if they cannot otherwise take him.

But

But in the latter Case there must be a Felony done.

If a Prisoner assaults his Gaoler, and he kill the Prisoner, no Felony.

Rioters or forcible Enterers or Detainers, standing in opposition to the Justice's lawful warrant, and one of them slain, no Felony.

Keeper or Parker may kill Hunters, if they fly or defend themselves. Cr. f. 28.

Champion in hœ de dēt, ou Combatant in Appele, excuse in killing the other.

2. In Civil Causes.

Though Sheriff cannot kill a Man who flies from the execution of a Civil Process, yet if he resist the arrest, the Sheriff or his Officer need not give back, but may kill the Assailant. C. Pl. c. 56.

§. So if in the arrest and striving together, the Officer kill him, no Felony.

Now touching all the former Homicides, these things observable :

1. There must be no Malice coloured under pretence of Necessity ; for if it be, it alters the Case, and makes it Murder.

2. The Party that did the Fact must be arraigned, and upon Not Guilty pleaded, the Special Matter must be found.

3 Upon this Special Matter thus found, the Party is to be dismissed without any Forfeiture or Pardon purchased.

---

2. Thus

2. **T**HUS of Homicide *ex necessitate* in reference to Publick Justice : Others there are that are grounded upon private Interest, and they of two kinds :

1. Justifiable, and consequently inducing no Forfeiture at all, nor needing Pardon.

2. Excusable, and yet inducing a Forfeiture.

1. Justifiable and inducing no Forfeiture, where a Person comes to commit a known Felony.

1. If a Man come to burn my Dal. c. 150.  
House, and I shoot out of my House, or issue out of my House, and kill him, no Felony.
2. If a Woman kill him that assaulterh to ravish her, no Felony.
3. If Thieves assault me in the High-way, or in my House to rob me, and I, or my <sup>24</sup>H. 8. c. 5.  
Servant kill them, no Felony or Forfeiture.

**Homicide ex Necessitate.**

But if the assault in my House were not to rob me, but to beat me, &c. there would be only *se defendendo*, and Goods forfeited, and a Pardon of course to be granted, because they came not to commit a known Felony; for it cannot be judged whether he meant to kill me.

Dal. c. 150.

If one come to enter into my House, claiming Title, and I kill him, Manslaughter.

Crom. 24.

If *A.* enter wrongfully into the House of *B.* riotously and forcibly, *B.* and others endeavour to fire the House, *A.* kills, Manslaughter.

## *Se defendendo.*

**H**omicide excusable *Se defendendo*, which though it save the Life, yet the Goods are forfeited; this requires these Things :

What may be done, or not done *se defendendo*. Vide Keeling 128, to 138.

1. It must be an inevitable necessity.

In case of a justifiable Homicide, as of a Thief that comes to rob me, or by an Officer resisted in Executing an Arrest, the Party need not give back to the Wall. C. P. C. f. 56.

But in this Homicide *se defendendo*, the Party that is assaulted not excused, unless he give back to the Wall. C. P. C. 57.

But if the assault be so fierce, and in such a Place, that giving back would endanger his Life, then he need not give back. C. P. C. 57.

A Man fights, and falls to the Ground, then flying not necessarily. Dalt. c. 150.

2. It must be in his Defence.

If *A.* be assaulted by *B.* and be fore a mortal wound given, *A.* gives back C. P. C. 56.

**Se defendendo.**

back till he come to the Wall, and then in his Defence kills *B.* this is *Se d fendendo.*

But if the mortal wound first given, then Manslaughter.

Dal. c. 150.  
Crom. 26.

If *A.* upon malice prepenſe strike *B.* and then fly to the wall, and then in his own defence kills *B.* this is Murder.

But if there be Malice between *A.* and *B.* and *A.* strike first, *B.* retreats to the wall, and in his own defence kills *A.* this is *Se defendendo.*

Crom. fo. 25.

If malice be betwixt *A.* and *B.* and *A.* assaults *B.* *B.* retreats to the wall, and then kills *A.* in his own defence; if it be in the High-way he shall be discharged; but if not, yet it is *Se defendendo.* *Copston's Case.*

*Murder*

## Murder.

**T**HUS far of Homicide Involuntary : Vide Keeling  
24. &c. 40,  
50, 80, 89. &c.  
120 to 138.

Homicide Voluntary is either : Vide. post. 56.  
*Ex malitia pracogitata*, which is Murder.

*Sine malitia*, Manslaughter.

Murder is when a Person killeth another of malice within any County in *England*, so he die within a Year and a Day.

2. Who shall be said a Person killing ?

A Man that is *Non Compos* kills another, this is no Felony. Dalt. c. 145.  
2 Co. 27. Vide  
ante 10.

§. The same for a Lunatick during his Lunacy.

But he that incites a Mad-man to kill another, is a principal Murderer.

A Man drunk killeth another, this is Felony.

An Infant within Age of Discretion kills a Man, no Felony ; as if he be nine or ten Years old.

But if by Circumstances it appeareth

Crom. 27. peareth he could distinguish between Good and Evil; it is Felony: As if he hide the Dead, make Excuses, &c.

St. P. C. c. 9. But in such Cases Execution in prudence respited to obtain a Pardon.

2. What said Malice ?

It is either implied or expressed.

Implied malice is collected either from the manner of doing, or from the Person slain, or from the Person killing.

1. Malice implied in the manner of doing.

C. P. C. 52. Poisoning wilfully any Man, implies Malice.

Da. c. 145. If a Man do an act that apparently must introduce harm, and Death ensue; as to run among a multitude with a Horse used to strike.

But note, that if it were with an intention to do harm, then Murder; if without such intention, Manslaughter.

The like of throwing a Stone over a House among many People, the intention of doing harm makes it

it Murder ; want of such intention, Manſlaughter, becauſe the act unlawful.

For an Intention of Evil, though not againſt a particular Perſon , makes a Malice.

Killing any Perſon without pro- Vide Maw-  
gridge's Caſe  
in Keeling's  
Reports.  
vocation, Murder.

*A.* comes to rob *B.* *B.* reſiſts and ſtrikes, *A.* kills him, Murder.

*A.* diſtorts his mouth, and laughs at *B.* who thereupon kills him, M. 42. 43 El.  
Brame's Caſe.  
Murder.

2. Malice implied in reſpect of the Perſon killed.

If a Watchman or Conſtable, or any that comes in his Aſſiſtance, doing their Office, be killed, it is 4R. Hamden's  
Caſe, Young's  
Caſe.  
Murder, though the killer knew not him to be ſuch.

If any Magiſtrate or Miniſter of Vide Sir H.  
Ferrer's Caſe,  
in 1 Jones, &  
in Cro. Car.  
& Tompſon's  
Caſe in Keel-  
ing, & v. Cro.  
Car. 183.  
Juſtice, having a lawful Warrant, be killed doing his Office, it is Murder: As where a Serjeant comes to arreſt,

1. Though in the Night.
2. Though on Sunday.
3. Though upon the Arreſt  
he

9 Rep. Mack-  
ally's Case.

V. Cro. Car.  
183. Pewe's  
Case.

he shew not out of what  
Court, or whose Suit,

4. Though the Process erro-  
neous.
5. Though he shew not his  
Warrant or Mace where it  
is not demanded.

But if the Officer do what is not  
warrantable, as break open a Win-  
dow to arrest, there though slain,  
Manlaughter only, *P. 15 Car. Cook's*  
*Case.*

Malefactors come into a Park, the  
Parker shoots, they fly, he pursues,  
they kill him, Murder in all ; for  
their first Entry was with a maliti-  
ous intent. *M. 17 Jac. Usran's*  
*Case.*

3. Malice implied in respect of  
the Person killing.

*A.* assaults *B.* to rob him, *B.* re-  
sists, *A.* kills him, Murder.

Prisoner by Durefs of the Gaoler  
comes to an untimely end, Mur-  
der.

Executing Martial Law in time  
of Peace, Murder.

2. Malice

- 2 Malice Express considerable,
1. In the Principal in the first degree, that doth the act.
  2. In the Principal in the second degree, that is present and aiding, or abetting.
  3. In the Accessory before the Fact.

1. In the Principal in the first degree.

1. If a Person have no particular Malice against any special Person, but comes with a general Resolution against all Opposers, if the act be unlawful, and Death ensue, it is Murder: As if it be to commit a Crom. 20. Riot, to enter into a Park. Lord *Dacre's Case*.

2. If there be Malice between *A.* Keeling 87. and *B.* and they meet and fight upon that Malice, though *A.* gives first 111, 113, 114, 118. blow, yet if *B.* kill him, it is Murder. Crom. 21.

If there be Malice between *A.* and *B.* and *A.* assault *B.* and after *A.* flies to the Wall, and there in his V.Keeling 58. own Defence kill *B.* by some this is Murder, but *Quere.* If

V Keeling 56. If there be a Quarrel between *A.* and *B.* and *A.* challenge *B.* *B.* declines it; but at length upon impor- tunity, and to vindicate his Reputa- tion, meets and fights, and kills *A.* this is Murder, P. 14 *Jac. Taverner's Case.*

Keel 27. 127, 128. If *A.* and *B.* fall out upon a sud- den, and they presently agree to fight, and each fetch a Weapon and go into the Field, and one kills the

C. P.C. 57. 55. other; this only Manslaughter, be- cause the Blood never cooled: But otherwise, if they appoint to fight the next day.

Ibid. 27. 56. 127.

Laurence's Case. 38 El.

*A.* and *B.* fall out, *A.* saith he will not strike, but will give *B.* a pot of Ale to touch him, *B.* strikes, *A.* kills him, Murder.

If *A.* and *B.* are in Malice, and *A.* challenge the Field, and *B.* refuse to meet, but saith he shall go to mor- row to such a Town, *A.* meets him, assaults him, and *B.* kills him, Man- slaughter, and no Murder.

H. 9 Jac. Rawly's Case.

The Child of *A.* beats the Child of *B.* who runs home to his Father, and he runs three quarters of a Mile, beats

beats the other Child, and he dies,  
**Manlaughter.**

3. If malice be not continuing  
 till the death, no Murder.

*A.* and *B.* combat upon malice, Cro. 21.  
 and are parted, and after they meet  
 and combat upon the sudden, and  
 one kills the other, by some not  
 Murder, because the first Malice  
 satisfied.

If the party killed had wounded  
 at the first combat the party slaying,  
*Quere.*

*A.* and *B.* are at malice, and re-  
 conciled, and after upon a new oc-  
 casion fall out and kill, no Mur-  
 der.

4. Though the malice did not  
 rise so high as death, but intended Keeling 64,  
 133, 134.  
 only to beat the party, yet if mali-  
 tious, it is Murder if death en-  
 sue.

A Keeper of *Esterly* Park finds a  
 Boy stealing wood, bound him to  
 his Horse-tail and beat him, the  
 Horse ran away, kill'd the Child,  
 Murder, for it was a deliberate act, Cro. Car. 131.  
 m. Case.  
*M. 4 Car. B. R. Holloray's Case.*

E 5. The

5. The malice intended to one, *egreditur persona*, and makes the death of another upon that malice, Murder, and qualifies the act in the same manner, as if it had had its due effect.

Dyer 128.

*A.* having malice at *B.* strikes at him, and misseeth, and kills *C.* this is murder in *A.* and if it had been without malice prepenſe, Manſlaughter.

Com. 101.  
Ellys's Cafe.

*A.* having malice to *B.* assaults him, and kills the Servant of *B.* this is Murder in *A.*

9 Rep. Gore's  
Cafe.

*A.* lays poison to kill *B.* and *C.* at misadventure takes it and dies, Murder in *A.* Contrary if it had been laid to kill Rats; then *infortunium*.

*A.* and *B.* combat upon malice; *C.* comes to part them, *A.* kills *C.* this is Murder, and *per ascens*, Murder in both; and if the falling out were sudden, then only Manſlaughter in him that kill'd him. Vide *Dyer* 128. 20 *E.* 3. *Corone* 262.

6. The Malice must be of Corporal damage to the party.

2. Prin-

2. Principals in second degree, that are aiding and abetting.

1. If two or more come together to kill, rob, or beat a man, or to commit a Riot, and one of them kills a man, this is murder in all them of that party that are present, aiding or abetting him thereunto, or that were ready to aid him, though but lookers on; otherwise if he came there by chance. Dal. 280. Br. Tit. Coro. 171. St. P. C. c 40.

2. All are said to be present that are in the same House, though in another Room, or in the same Park, though half a mile distant, and out of view; therefore if they came to commit a Felony, such persons aiding or abetting shall be said present. 34 H. 8. B. Con. 172. M. 17 Jac. Warnial's Case. Cro. 19. Dal. c. 145.

3. A. and B. fall out, and appoint the field; A. takes C. his Second, B. takes D. his Second; A. kills B. this is doubtless Murder in C. and it hath been held Murder in D. also, for it is a compact; but it seems otherwise. Dal. c. 145. Dy. 128.

4. If A. and B. having malice prepense meet and fight, and C. the

Com. 100. Servant of *A.* not acquainted there-with, take part with *A.* his Master, and kill *B.* this is Murder in *A.* but only Manslaughter in *C.*

Keel. 61, 62. The same Law if *C.* came in suddenly and took part with *A.* and killed *B.* V. Sir *Ferdinando Cary's* Case, 14 Jac.

Keeling 66. *Mes si un vient la per chance, & nabette, nest principall, nec accessory al Manslaughter ou Murder, Stamf. 40.*

3. What malice in the Accessary before the Fact.

*A.* commands *B.* to kill *C.* with a Gun, he kills him with a Sword, *A.* is accessary to this Murder, because the killing was the substance.

But if he command *B.* to kill *C.* and he by mistake kill *D.* this is Murder in *B.* but *A.* is not accessary thereunto.

*A.* commands *B.* to beat *C.* who beats him, whereof he dies, this is Murder in *B.* and *A.* is accessary, because death ensues upon the act commanded.

4. What

4. What Killing?

Poison, Weapon, Gun, Bow, Cruelling, Bruising, Smothering, Strangling, Famishing, inciting Dogs.

§. Laying a Sick man in the cold.

Laying an Infant in an Orchard under Leaves, and he stricken with a Kite.

A man keeps a Beast used to strike knowingly, and ties it not up; the Beast kills a man, Felony by some, by others not, but a great misdemeanour, 3 E. 3. Cor. 311. St. Dal. c. 145.

5. What the person killed?

It must be a person in *rerum natura*.

If a Woman quick with Child take a potion to kill it, and accordingly it is destroyed without being born alive, a great misprision, but no Felony; but if born alive, and after dies of that potion, it is Murder. Intent to conceal it, no Murder. Keel. 32.

The like if it dies of a stroke given by another in like manner.

§. Counsel before the birth to destroy it, and after the Child is born C. P. C. c. 7. Dal. c. 145. contra.

Ibid.

destroyed accordingly, the counsellor is accessory.

6. What a place within the Realm?

C. P. C. c. 7.

Stroke and death *in partibus transmarinis* not punishable at Common Law, but before the Constable and Marshal.

Note, This is now altered by Stat.

Stroke and death upon the Sea inquirable before the Admiral, or according to the Stat. of 28 H. 8. c. 13. But stroke upon the Sea, and death within the Body of the County, not punishable at all.

If the stroke in one County, and the death in another, the party shall be indicted where the death happened.

An accessory in the County of *A.* to a Felony committed in the County of *B.* the accessory after Certificate of the Conviction and Attainder of the principal, may be arraigned upon an Indictment in the County of *A.* where he was accessory. Stat. 2 E. 6. c. 24. V. *Formam Processus inde in B. R. C. P. C. cap. 7. Overbury's Case.*

7. The

7. The party must die within  
the year and day of that stroke, or  
poison, &c. V. Keel. 26.  
tho' the party  
dye thro' his  
own disorder  
or negligence, 'tis no excuse.

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See the differences between Murder and Manslaughter, in Keel. 24, 25, 40, 50, 59, 66, 80, 121, 124.

## *Manslaughter.*

**K**ILLING another upon a sudden falling out, or provocation, or unjustifiable act, Manslaughter.

1. What a sudden falling out?

C. P. C. c. 8. Two combat and part, and presently come together and fight, or one presently fetcheth a Weapon and killeth the other, or they presently fetch their weapons, and go into the field, and one kills the other, Manslaughter.

Divers Rioters enter into another's house forcibly, and eject the people; afterwards they being in possession, the party ejected, with twenty more, come in the night to the house, endeavour to fire it, and one within shoots and kills one of the assailants; ruled to be Manslaughter, because their entry and holding with force, illegal; and not Murder, because a sudden provocation.

So *A.* claims title to the house of *B.* *A.* attempts to enter and shoots at the house; *B.* shoots out and kills *A.* adjudged Manlaughter.

Two fall out and fight, and one Dal. c. 146. breaks his Sword; a stranger standing by sends him another, and he kills therewith, Manlaughter in both.

2. What a sudden provocation?

Two strive for the wall, and one kills the other, Manlaughter.

3. What unlawful act, whereupon death ensuing will make Manlaughter.

If the unlawful act be deliberate, and tend to the personal hurt of any immediately, or by way of necessary consequence, death ensuing, is Murder.

But if either such deliberation or intent of personal hurt be wanting, Manlaughter.

Two play at Foils, and one kills the other, Manlaughter. Sir *John Chichester's Case.* 11 H. 7. 23. V. Alleyn's Reports. 12.  
*Keil.* 108. 136. *Wrasling, & un tu autre.*

1 Jones 432.  
Williams's  
Caſe.

A man throws a ſtone at another, which glanceth and killeth another, Manſlaughter ; and not Murder, becauſe no malicious intent to hurt; not *per infortunium*, becauſe doing an unlawful act.

There is a particular Manſlaughter, wherein Clergy is ouſt, by the *Stat. 1. Jac. c. 8.* wherein,

1. He that is ouſted of Clergy by that Statute, muſt be eſpecially Indicted purſuant to the Statute.

V. in Murder  
ante 46.

2. It extends to him that actually gave the ſtroke, not to thoſe that are preſent.

3. Need not conclude *contra formam Statuti*.

4. Although the Indictment be ſpecial upon the Statute, yet the Jury may find general Manſlaughter. *H. 23 Car. B. R. Page's Caſe.*

*A Newgate rep. 16 Car. 2.* A man whips his horſe in the ſtreet to make him run ſpeedily, and the horſe runs over a Child, and kills him ; Manſlaughter : But another whips the horſe, whereby he ſprings out, and runs over a Child, and kills him ;

*per*

*per Infortunium. Nota, Indictment de Murder p ceo que est per infortun, sur non cul. pled, Jury poet trover lui non cul si soit Coroners Inquest que trove ceo per misfortune & le party constt ceo. Prettye's Case.*

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*Stabbing. Vide Allyn's Reports 43. Page and Harwood were indicted upon the Stat 1 Jac. 1. c. 8. for Stabbing of J. S. the Indictment was that A. stab'd him, and that P. and H. were present abetting, &c. contra formam Statuti and per Cur, they had their Clergy tho' found guilty contra formam Statuti, for upon the Indictment they might all have been found guilty at Common Law. And the Indictment needed not to have concluded contra formam Statuti, for the Statute alters not the Nature of the Offence, but only takes away a privilege which the Common Law allowed in such Cases. And note, upon the Stat. of Stabbing, Clergy is only taken from him who actually gave the Wound. Vide Keeling's Rep. 27, 128, 130.*

Larceny.

## *Larceny.*

**W**E come to Offences Capital, which refer to the Goods of any Person, *viz.* Larceny, which is of two kinds;

{ Simple Larceny,  
 { Mixt and complexed Larceny.

Simple Larceny of two kinds:  
 Grand Larceny, of the value of twelve pence.

Petit Larceny, under that value.

Poulton de  
 Pace, &c. 125.  
 above the va-  
 lue of 12 d.

Simple Larceny, a felonious and fraudulent taking away by any person of the meer personal goods of another, not from the person, nor out of his house, to the value of twelve pence.

I. What

I. What shall be said a felonious taking, imports two things:

1. A taking necessary; the Indictment must be *cepit*; if it be *felonice abduxit Equum*, not sufficient.

If a person find goods lost, and convert them, though the conversion were *animo furandi*: yet no Felony. C. P. C. 108.

If a man hath a bare charge of goods, Felony may be by him committed: As a Butler that hath charge of Plate; Shepherd of sheep; the like of him that hath a bare special use, as the guest that hath Plate set before him. Ibid.

But he that hath a possession by delivery thereof cannot commit Felony.

A Carrier hath goods delivered to him, and he carries them away, no Felony.

A. lendeth his horse to a Stranger, who rides away, no Felony.

A Clothier delivers Yarn to a Weaver

Keeling's Reports. Weaver to weave, he carries it away, or imbezils it, no Felony.

A Silk-throwster had Men came to work in his own House, and delivered Silk to one of them who stole it; agreed to be Felony notwithstanding the delivery.

But this hath two Exceptions:

1. If the privity be determin'd, that it may be Felony.

*A.* delivers a Pack or a Tun of Wine to a Carrier, he opens it, and takes out Goods or Wine, *animo furandi*, Felony.

So if *A.* deliver goods to *B.* to carry to a certain place, he carries it to the place appointed, and after takes it *animo furandi*; Felony.

2. By Stat. 21 *H.* 8. *c.* 7. whereby if a Servant goes away with the goods of his Master delivered to him above value of 40 shillings, herein

1. Extends not to Apprentice, nor Servants within eighteen years.

2. Requires a Delivery.

If one Servant deliver the goods to the other, this a delivery by Master.

C. P. C. c. 44.  
Dalt. c. 155.

If the Master deliver an Obligation, or deliver Cattel to sell, and the Servant receive the money and depart with it, it is no Felony; the like if he had gone away with the Obligation.

3. He must go away with it. Wastefully consuming, &c. thereof, no Felony.

4. Now by the Stat. of 1 E. 6. c. 12. he may have his Clergy.

5. He must be a Servant at the time of the delivery, and going away; therefore for imbezilling after Master's death, Stat. 33 H. 6. c. 1. gives remedy.

6. If a Servant receive his Master's Rents, and go away with them, not within the Statute.

If a man, seeing a Horse in the Pasture of the Owner, having a mind to steal him, obtains a Replevin, and thereby hath the Horse delivered, this is a Felonious taking.

C. P. C. 47.

So to take Goods, &c.

by colour of

a Ca. Sa. &c.

Vide Farr's

Cafe in Keel.

Reports, and

If Siderfin 256.

If *A.* feloniously take my Horse and *B.* feloniously takes him from him, *B.* may be appealed or indicted as of a felonious taking from me.

Crom. 34.

§. Stat. 33 H. 8. c. 1. False token.

*Un prist feme de J. S. oue ses biens coudre le volunt, est Felony: Contra si feme prist les biens le baron & ala oue estr. de sa bone volunt. 13 Ass. 6. Issint si feme covert prist biens le baron, ou eux dona al estr. que eux import, nest Felony. Abridg. Ass. 63.*

## II. What a carrying away?

*C. P. C. c. 47.* A Guest takes sheets out of the bed, brings them into a Hall with an intent to carry them away, but is apprehended before this; a carrying away.

*A.* takes the horse of *B.* with an intent to steal him, but is apprehended before he can get out of the Pasture; this is taking away.

Crom. 33.

*A.* kills my sheep, strips them, carries away their skins, Felony; so if he pull off their wooll.

## III. By

III. By whom? and who such  
a person as may commit  
Larceny?

An Infant under fourteen years Dal. 157.  
may commit Larceny; but pru-  
dence to respite Judgment; yet one  
under fourteen burnt in the hand;  
Precedents.

A Feme covert by her own act  
may commit Larceny, and in such  
case the husband may be Accessary  
to the wife in receiving her; but  
not *e converso*.

But she cannot feloniously take  
her husband's goods; and though  
she so take her husband's goods, and  
deliver them to a stranger, yet no  
felony in the stranger.

If husband and wife do both a Dal. 157.  
felony, this is felony in both, and  
both arraigned for it.

*Nota*, Books old and latter, and  
Practice, *contra*.

If the wife commits murder by  
coercion of her husband, murder  
in both; but if theft, no Felony in  
her;

her ; but a bare Command excuseth her not.

But if a Servant commit theft by coercion of his Master, yet it is Felony.

#### IV. What meer personal Goods?

Dal. c. 83.

1. If they are in the realty, or annexed thereunto, no Larceny: As Corn or Grass growing, Apples on Trees.

§. Stealing a Chest of Charters, no Felony, though the Chest above value.

Taking Lead off a Church, no Felony; otherwise if he leave it a while, and after come and take it.

Taking an Infant Ward, no Felony.

2. If they are of a base Nature, as Mastiffs, Dogs, Bears, Foxes, Monkeys, Ferrets, or their Whelps, there can be no Felony of them; but of Hawks reclaimed Felony may be.

#### V. What

V. What said the Goods of another.

1. He that hath a special property, as a Bailiff, &c. they are his goods *pro tempore*. A. bails goods to B. and after to the intent to charge B. steals them from him, Felony in A. 21 H. 7. Kel. 70. *Cloth in maines Taylor.*

2. He that takes the goods of a Chapel in time of vacation, indictable *quare bona Capelle*; so *bona Parochianorum*, *bona mortui*, or *bona ignoti*. &c. Dal. c. 156.

So to steal the shroud off a person buried; and it shall be *bona executorum*. V. *tamen contra*, 15 Jac. C. P. C. c. 47. 12 Co. Heyne's Case. *Nottingham's Case.*

But taking of Treasure trove, Wrecks, Waifs and Strays before seizure, no Felony.

Taking an Obligation Felony, because in action.

Taking fish in a River no Felony, but fish in a Net, Trunk, or Pond, Felony, because not at their natural

liberty : So of old Pigeons out of the house.

Where a man hath a property only *ratione loci*, or *privilegii*, in things *fera natura*, as Coneys or Deer in my Ground, Park, or Warren, no Felony.

2 Inst. 201.

But if reduced to tameness, and fit for food, as Deer, Coneys, Cranes, Partridge, Pheasants, he that steal-eth them, knowing them tame, committeth Felony.

Mes fil ne co-  
nusant de eta-  
men, est Felo-  
ny. V. M.  
Charta. 201.

So of Swans marked and pinioned, or Swans unmarked if tame, kept in a Mote, Pond, or private River.

Where a Man hath a property *ratione impotentia* in things wild by nature, as young Hawks in the nest, young Pigeons in the nest, Felony thereof.

Taking of Eggs of Hawk or Swan out of the ground of another, no Felony, but punishable by Statute.

But taking any thing *domita natura*, as Duck, Hen, Geese, Turkeys, Peacocks, or their Eggs; or Dome-

stick beasts, as Horses, Mares, Colts, &c. or their young, Felony.

VI. Where this shall be said  
a felonious taking.

If *A.* steal goods in the County Crom. 34.  
of *B.* and carry them into the Coun- V. 4 H. 7. 5.  
ty of *C.* he may be appealed or in-  
dicted in the County of *C.* for Lar-  
ceny, but can be indicted of Rob-  
bery only in the County of *B.* only  
in the former case the Stat. of 25 *H.*  
8. c. 1, ousts them of their Clergy,  
if they were not to have had Cler-  
gy if arraigned in the County of *B.*  
where the Robbery committed.

*Si guest prist sheets hors de lect  
feloniously, & eux import in hale, &  
la sur fear de pursuit relinquish eux,  
Felony. 27 Ass. 39.*

VI. Of the value of twelve  
pence or above.

1. *Nota,* That in case of Grand West. 1. c. 15.  
Larceny it must be above the value 21 Jac. c. 6.  
of twelve pence; and if it be but

of the value of twelve pence, or under, it is Petit Larceny.

2. If two steal goods to the value of thirteen pence, this is grand Larceny in both.

Dal. c. 154.  
Crom. 36.  
St. P. C. 24.

3. If one person at several times, at one time steal four pence, at another six pence, at another three pence, in all amounting to above twelve pence, from the same person, all these put together in one Indictment, amount to grand Larceny; and Judgment of death.

4. If a man be indicted of stealing goods to the value of ten shillings, and the Jurors find specially, as they may, the value but ten pence, 'tis but petty Larceny, and no Judgment of Death.

And note, petty Larceny is Felony, though not of death; and for this he shall forfeit Goods, and be subject to whipping; or other Corporal punishment. *Issint si fugam fecit furtiens.* Coron. 106.

Rob.

## Robbery.

**C**omplicated or mixt Larceny, which hath a further degree of guilt in it.

1. For that it is a taking from the person.

2. For that it is a taking out of the house.

1. Taking from the person.

1. Where the person is put in fear, and then 'tis Robbery.

2. When not put in fear, and then 'tis Larceny from the person.

Robbery is a felonious and violent taking away from the person of another money or goods to any value, putting him in fear.

1. Violent and putting him in fear; the words of the Indictment run, *violenter & felonice*, and that distinguishes him from a Cut-purse.

2. Taking away.

1. An assault to rob without any taking, is no Felony.

Stamford's  
P. C. 28.

If a Thief, with or without weapon drawn, bid the party deliver his purse, and he doth it, this is a taking to make it Robbery.

Crom. 31.

If a Thief command to deliver his purse, and he deliver, and the Thief finding little in it, deliver it back, this is Robbery.

C. P. C. c. 16.

If a Thief compel the true man by fear to swear to fetch him a sum of money, which he doth accordingly, and the Thief receives it, it is Robbery.

If the true man's purse be fastned to his girdle, the Thief cuts the girdle, the purse falls to the ground, no Robbery; but if the Thief take up the purse, though he let it fall again, Robbery, though he never take it up more.

All that come in company to rob, Principals, though one only actually do it.

*A. B.* and *C.* assault *D.* to rob him in the High-way, but rob him not, for that he escaped: *A.* rides from the rest, in the same High-way, and

Crom. 34.

And. 116.

*Pudsey's Case.*

robs *E.* out of view of the rest, and came

came back to the rest, and for this B. and C. arraigned and hanged, though assented not, because they all came to the end to rob. *Pudsey's Case*.

3. Taking from the person.

If the true man, seeking to escape, cast his Purse into a Bush, or let fall his Hat, if the Thief take it, Robbery.

Taking a thing in the presence, is in law a taking from the person.

If one take or drive my Cattel Dal. c. 154. out of my Pasture in my presence, this is Robbery, if he make an assault upon me, or put me in fear.

But if he take any thing from my person without putting me in fear by assault or violence, no Robbery; and the Indictment runs that he took it from the person violently and feloniously, putting him in fear. Dalt. ibid. Dy. 224.

4. Of what value soever, C. P. C. c. 16. Though under twelve pence.

*Mes in foren County in tiel case Petit Larciny, car ne'st Robbery la.* 2 Jac. More's Rep.

Now though Robbery and simple

ple Larceny are both Capital, yet they differ in these Respects :

1. The Principal and Accessary before are ousted of Clergy, but not in simple Larceny.

§. Stat. 23 H. 8. c. 1. 1 E. 6. 12. 25 H. 8. 3, 4 & 5 Phil. & Ma. c. 4. *Nota*, speaks of Robbery in or near the High-way.

2. In the form of the Indictment :

An Indictment of Robbery supposeth an assault, beating and wounding, and taking from the person *felonice* ; or at least assault and putting in fear, *felonice & violenter cepit a persona* : Other Indictments, though of a taking from the person, yet not *violenter*.

3. In case of other thefts, though from the person, not felony of death, unless it exceed twelve pence : But here it is Felony of death if never so small.

*Larceny*

## *Larceny from the Person.*

**L**arceny from the person without putting in fear; which may be either by picking the pocket, or cutting the Purse, which is supposed to be done *clam & secreta a persona*.

In this Case by the Stat. of 8 *El.* c. 4. if the Indictment pursue the Statute, which is secretly without the knowledge of the party, *clam & secreta*, he is ousted of his Clergy.

But if it be under value of twelve pence, then it remains petty Larceny, as before; for the Statute did not alter the Offence, though it took a Privilege. C. P. C. c. 86.  
Crom. 103.

Larceny from the person, which is neither *clam & secreta a persona*, nor with putting in terror, nor so laid in the Indictment, nor so found by the Jury, Clergy. *Dyer* 224. 17 *Jac. Harman's Case*.

*Larceny*

## *Larceny from the House.*

**L** Arceny receives another aggravation when it is taken from the Habitation of a man.

Per Stat. 23  
H. 8. c. 1.

Robbing any person in their dwelling-house, the owner, his wife, or children, or servants being within, and put in fear, ousted of Clergy in case of Conviction, together with Accessories before, by Stat. 23 *H. 8. c. 1.*

Felonious taking of goods to the value of five shillings out of any dwelling-house or out-house, though no person within, oust of Clergy, by 39 *El. c. 15.*

These have a mark upon them as Larcenies complicated, and so oust of Clergy. *V. infra, Clergy.*

*Piracy.*

## *Piracy.*

**T**O this we may add Piracy and Depredation upon the Sea.

This at Common Law conceived C. P. C. c. 49. petty Treason, if done by a Subject.

But this alter'd by Stat. 25 *Ed.* 3.

Since that Statute an offence triable by the Civil Law till 28 *H.* 8. 15.

The Stat. 28 *H.* 8. alters not the More 756. offence; but it remains only an offence by the Civil Law: and therefore a pardon of all Felonies doth not discharge it: but it gives a trial Ibid. by the course of Common Law:

1. It extends not to the Accessaries: but if the Accessary were at Sea, triable by the Civil Law; if at Land, by no Law: for Stat. 2, 3 *E.* 6. More ibid. extends not to it.

2. It extends not to Offences in Creeks or Ports within the Body of a County, because punishable by the Common Law.

3. Though

**Piracy.**

3. Though it give forfeiture of Life, Lands, and Goods, yet no Corruption of Blood.

4. *Paine fort & dure* in case of standing mute.

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*Note,* Clergy is not allowable for Piracy, if arraigned upon the Stat. 28 H.8. and the Piracy made *in alto mari*: For the Stat. does not make it Felony, but only appoints the manner of Trial. *Mo.* 756.

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**Burglary.**

## Burglary.

V. Keel. 30,  
42, 43, 62, 67,  
69, 82, 84. &c.

3. **WE** come to the offences against the dwelling or habitation; and that of two kinds:

1. Burglary.
2. Arson, or Burning.

Burglary by the Common Law is, where a person in the night time breaketh and entreth into the Mansion-House of another, to the intent to commit some Felony within the same, whether the felonious intent be executed or not.

### I. What shall be said in the Night?

By some after Sun-set and before Sun-rising it is night. *Dal. c. 99.*

But it seems that so long as the Countenance of a person may be discerned it is day. *Coron. 293.* C. P. C. c. 14.

### II. What

1 And. 115.  
 If a Thief by  
 Night comes  
 to a House,  
 and one with-  
 in opens the  
 Door and the  
 Thief intend-  
 ing to kill  
 him, shoots at  
 him; the Bul-  
 let misses the  
 Man, but  
 breaks thro'  
 the Wall on  
 the other side;  
 'tis not Burg-  
 lary.  
 So to break  
 open a Cup-  
 board fixt to  
 the Freehold.  
 Keel. 63, 69.

## II. What breaking and En- tring?

The entring into a house by the doors open is a Breaking in Law; but here not sufficient without an actual breaking: therefore if the door be open, or window be open, and the Thief draw out Goods thereby, no Burglary.

But if the Thief break the window, draw the latch, unlock the door, break a hole in the wall, these are Breaking.

And as there must be a Breaking, so there must be an Entry:

Setting the foot over the threshold;

§. Putting the hand, or a hook, or a pistol within the window, or door;

Turning the key where the door is locked on the inside.

§. An Entry.

Keel. 42, 43,  
 44, 82.

In some cases Burglary without actual breaking.

Divers

Divers come to commit Burglary, and one does it, the rest watch at the Lane's end, Burglary in all.

A Thief goes down a Chimney Crom. 30. to rob, Burglary.

Thieves having an intent to rob, V. Keeling 62, 63, 82. raise Hue-and-Cry, and bring the Constable, to whom the Owner C. P.C. 14. opens the Door, and when they come in, they bind the Constable, and rob the Owner, Burglary.

A Thief assaults the House, the Owner for fear throws out his money, it seems not Burglary, but only Robbery.

A Thief gets in by the Doors Dal. c. 151. Keeling 70. open in the Day, lies there till Night, then robs and goes away; no Burglary: But if he break open the Door to go out, Burglary.

The Servant opens the Window Dal. ubi supra. to let in a Thief, who comes in and steals; Burglary in the Stranger, but Robbery in the Servant.

If *A.* enter into the Hall by the doors open, the Owner retires to a Chamber, and there *A.* breaks in, this a Breaking and Entering.

G

If

If Thieves enter into a House, through a hole made there before, no Burglary.

V. Keeling  
67. m. cs.  
Trin. 16 Jac.  
Edmond's  
Case.

A. lies in one part of the House, B. his Servant in another, between them a Stair-foot-door latched, the Servant in the Night draws the Latch, and enters his Master's Chamber to murder him, Burglary.

V. Keeling  
27, 52, 63, 69,  
83, 84.

### III. What, a Mansion House?

The Church a Mansion House within the Law.

§. The Out-buildings, as Barns, Stables, are parcel of the Mansion House, and Burglary may be committed in them.

Nota, *L'use ore est, si soit un Barne ou Stable* disjoined at any distance from the House, *nest Burglary*.

Burglary may be committed in a Mansion House, though all Persons be out upon occasion.

V. 4 Co.  
Brook's Case.

So if a Man hath two Houses, and sometimes lives in one, sometimes in another.

A Shop parcel of a Mansion house.

A

A Chamber in an Inns of Court, where a Person usually lodges, a Mansion House.

V. Cro. Car. Evans and Finch's Case

But a Booth is not; and therefore remedy specially provided *per Stat.* 5 E. 6. c. 9.

Lodgings in Somerset-House, &c. not the Mansion House of the Lodger, but of the K. V. Keeling, Burges's Case.

But an Indictment *quod fregit clausum ad ipsum interficiendam*, no Felony, for no Mansion House.

A. leases to B. a Shop, parcel of his House, to work in, where B. works in the Day, which is broken, ruled not Burglary, because severed *per Lease. Trin. 17 Jac.*

V. 1 And. 115. ante, p. 80.

IV. With Intent to commit some Felony.

If the House be broken and entred with an intent to commit a Trespass, as to beat the Owner, no Felony.

V. 1 And. 115. Burglary, tho' not entred. C. P. C. c. 14.

If with intent to commit a Rape, by some no Burglary, because no Felony at Common Law; but this seems otherwise, though the Felony be not done.

V. Keeling 30. 'tis Burglary.

What breaking of a House or robbing it,

ousts Clergy, V. Keeling 31, 58, 67, 70.

What words in a Stat. shall not oust Clergy, vide ibid. 104.

The Indictment runs, *Burglariter & felonice domum, &c. fregerunt vel intraverunt ad ipsum, &c. interficiendum.*

And by the Stat. of 18. El. c. 6. Clergy taken away in all Burglary.

## Arson.

**B**urning is Felony at Common Law by any that shall maliciously and voluntarily burn the House of another.

Vide 11 Co. 29, &c. Poulter's Case. Cro. Car. 376, 377. 4 Co. 20. 1 Jones 351. 3 Inst. 66 3 H. 7. 10 2 In. 188. Stamf. P. C. 36.

### Burning.

Setting fire to a House, without burning it, or any part of it, no Felony; but if part of the House be burnt thereby, it is Felony by Common Law.

Stat. West. 1. c. 15. 2 Inst. 185. &c. 11 H. 7. fo. 1. 3 Inst. 66. Stamf. 36.

### Maliciously.

*A.* intending to burn only the House of *B.* thereby burns the House of *C.* this is Felony; and he may be Indicted, That *ex malitia pracogit'* he burnt the House of *C.*

*A.* maliciously burns his own House, to the intent to burn others, but none else but his own burnt, ruled no Felony, but a great Misdemeanor; upon which set in the Pillory, and bound perpetually to good Behaviour. 9 Car. B. R. *Haines's* Case.

V. 1 Jones 351. & Cro. Car. 274.

Mes si le meason d'autre pt ē est  
combure, est Felony.

The House.

In-set House, or Out-set House.

Quære 11 Co.  
29. b. contra.  
3 Inst. 114.  
Stamf. 123.

If parcel of the Mansion House,  
as Stable, Mill-house, Sheep-house,  
Barn, and no Clergy.

§. But burning of a Barn, not par-  
cel of a Mansion House, if it hath  
Corn or Hay in it, Felony, other-  
wise not.

But Felon not oust of Clergy, un-  
less part of a Mansion House or Barn  
with Corn.

Burning the frame of an House by  
37 H. 8. attempting to burn a Stack  
of Corn by 3 & 4 E. 6. made Felony  
but both repealed. 1 Ma.

But in *Northumberland, Cumber-  
land, Westmorland, and Durham*, Fe-  
lony to burn a Stack of Corn, by  
43 El. c. 3.

*Nota*, The Indictment of Burgla-  
ry *Domum Mansionalem*; of Arson  
only *Domum*.

*Breach*

## Breach of Prison.

**N**OW we come to those Felonies that are the hindrance of amesning a Felon to publick Justice; And they are of three kinds in reference to the Person that causeth it:

V. post. 107.  
Keeling 45.  
77. Stamford,  
P.C. 30, 31, 32

1. In the Party himself:

{ Breach of Prison.  
{ Escape.

2. In the Officer or Person that permits it: And then,

{ Voluntary.  
{ Involuntary.

3. In a Stranger, that is Rescue.

1. Breach of Prison.

At Common Law, it seems all breach of Prison, Felony; but by

V. Inst. 589.  
post. 109.

Stat. 1 E. 2. *nullus de cetero, qui prisonam fregit, subeat Judicium vitæ vel membrorum pro fractione prisonæ, nisi causa, pro qua capt' & imprisonat' fuerit, tale Judicium requirit.*

G 4

And

## Breach of Prison.

And herein these things are considerable :

1. Who may arrest or imprison?
  2. What a Prison ?
  3. What breaking a Prison ?
  4. What a Cause that requires a Judgment to make this Felony ?
- 

*Arrest.*

## *Arrest.*

1. **W**Ho may arrest or imprison? This is either

1. By a private Person.
2. By a publick Officer.
  1. Arrest by a private Person, and that two kinds.
    1. Either commanded and enjoined by Law.
    - 2, Or permitted and allowed by Law.

Arrest commanded by Law : C. P. C. 53.

1. Persons present at the committing of a Felony must use their endeavours to apprehend the Offender, otherwise they are to be fined and imprisoned.

Hence it is, that if a Murder be committed in the Day in a Town not inclosed, the Township shall be amerced; if in a walled Town, be it Night or Day, the Town shall be amerced if Offender escape. St. P. C. 29.  
 3 *H.* 7. 1.

So

So it seems if one strike another dangerously, though Death hath not yet happened.

C. P. C. 52. 2. Upon Hue-and-Cry well levied, every Man may and must arrest the Offender upon whom it is levied, by Stat. *Winchester*: And want of pursuit thereof is punishable by Fine and Imprisonment.

The manner of levying Hue-and-Cry is, where a Felony is committed, or a dangerous stroke given, resort to the Constable, declare the Fact, describe the Party, and the way he is gone, who thereupon is to raise the Town, be it by Night or Day, and to give the next Constable warning, and he the next.

3. In aid to an Officer that hath a lawful Warrant in Fact, or in Law, to arrest a Malefactor.

And in these Cases it seems it is in the power of such private Person to break the House, if upon demand he cannot be admitted to take the

Dal. c. 170. Offender. 7 E. 3. 16.

V. Cook. Jur. *Videtur*, 1. *Sur felony fait & just*  
Courts 177. *suspicion ascun poit arrefter.* 2 E. 4. 8.

2. *Sur Arrest dt' arnesner al Common Gaol, 20 E. 4. 6. ou deliver al Constable, 10 E. 4. 17.*

2. A permissive Arrest by a private Person :

If a Felony in Fact be committed, and a private Person suspect another upon probable cause, he may be arrested, though in Truth innocent : And these may be probable Causes :

Hue-and-Cry levied :

§. Company with the Offenders ;

§. Goods in his Custody ;

§. Living vagrantly ;

§. Common Fame.

But upon such Suspicion he cannot break open the Door of a House, C. Jur. Courts 179. but may enter, the Door being open.

The Person arrested by either of these Means by a private Person, must be brought to the Constable ; and if Constable be not to be found, Dal. fo. 418. to a Justice ; and in case of a Felony known, put in the Stocks or Common Gaol till he be brought to a Constable.

2. Arrest

## Arrest.

2. Arrest by a publick Officer without Process of Law.

*Nota*, Whatsoever a private Person may do in this Case, an Officer as a private Person may do.

Now these Officers,

### 1. Constable.

If Complaint be made to a Constable of Felony committed, or of a dangerous blow given, though the Party not dead ; or in case there be an assault upon the Constable, or in case of any other breach of the Peace, the Constable may imprison the Party in the Stocks, in the Gaol, or in his House, till he can bring him before a Justice of Peace.

But if it be a bare breach of the Peace, unless it be in his view, he cannot arrest the Party ; but Complaint must be made to a Justice of Peace, for the Constable is but a Conservator, not Justice of Peace, unless Felony be done.

If a Constable see an Affray, and the Malefactors fly into another County before arrest, he may pursue  
sue

sue them and arrest them there, and then he must bring them before a Justice of that County, where arrested.

But if the Escape was after arrest, then he may retake them in another County, and bring them to the first.

He may break open Doors to Da't. c. 127. take an Offender, where Felony committed, or a dangerous wound given.

2. By a Justice of Peace, who upon complaint may issue out his Warrant to apprehend the Party.

1. A general Warrant to search C. Jur. Courts for Felons or stolen Goods, not 177. good.

2. If a Justice hath cause of suspicion, he may arrest as a common Person, not as a Justice.

3. Upon Complaint of a Felony committed, and where doubt may be of apprehending the Offender, in assistance of the Party suspecting, he may grant his Warrant to the Constable to apprehend the Party; but the Party suspecting  
ought

ought to be present, because it is his arrest.

But by vertue of such Warrant, Doors cannot be broken up.

4 But at the Sessions the Justices may award a *Capias* against the Person indicted, and by vertue thereof the Sheriff may break open Doors.

A Party being apprehended by such Warrant, is either to be committed, bailed, or discharged.

The Commitment by a Justice, ought to be to the Common Gaol, by the Stat. 2; *H. 8. c. 2.* and the *Mittimus* ought to be,

Co. M. Car.  
Stat. 1 E. 2.  
V. 2 Inf. 591.

1. Under Seal, and in the Name.
2. Contain the Cause.
3. Have an apt Conclusion, *viz.* there to stay till delivered by Law, otherwise the Warrant void.

C.P.C. c. 100.  
fo. 209.

And note, That a Person committed for Treason, Felony, or other Crime, cannot be discharged till

till indicted or acquitted, or *Ignoramus* found, or discharged by Proclamation, or by the King's Bench upon *Habeas Corpus*.

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N. B. A Warrant or Mittimus to answer to such Things as shall be objected against him, is utterly void. 2 *Inst.* 591.

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*Bail.*

## *Bail.*

**I**N order to the consideration of Arrests and Escapes, here fit to consider of Bail and Mainprise in Cases of Felony.

1. What Bail is?
2. In what Cases?
3. By whom?

1. Bail are Sureties taken by a Person authorized, to appear at a Day, and to answer and be justified by the Law.

The difference between Bail and Mainprise is, That Mainperners are only Surety; but Bail is a Custody; and therefore the Bail may reseize the Prisoner if they doubt he will fly; and detain him and bring him before a Justice; and the Justice ought to commit the Prisoner in discharge of the Bail; or put him to find new Sureties: The like may be done by the Justices in case of insufficient Bail.

If a Justice of Peace take insufficient Bail, and the Party appear not, the Justice finable by Justice of Gaol-Delivery.

The sufficiency of the Bail in respect of their number, two at least; and those Subsidy Men in case of Felony.

And in respect of the Sum, forty pounds at least.

Bail is either in a certain Sum, or *corpus pro corpore*; in which case the Offender not appearing, the Surety shall not be executed, but only fined. 29 *Affis.* 44.

2. In what Cases?

1. Generally; To refuse Bail where the Party ought to be bailed, the Party offering the same, is finable as a Misdemeanor;

§. And admitting Bail when it ought not, is punishable by the Justice of Gaol-Delivery by Fine, or punishable as a negligent Escape at Common Law, *de quo infra*.

2. Particularly; At Common Law, Bail in all Cases but Homicide; But now the Stat. *Westm.* 1. c. 15.

H

directs

directs in what Casesailable, and what not ?

At this Day, in all Offences below Felony, the Party accused isailable, unless

1. Ousted by that Statute, or some other Statute.

2. Unless Judgment be given.

Crom. 154. If a Person be brought before a Justice, if it appears no Felony be committed, he may discharge him; but if a Felony be committed, though it appears not that the Party accused is guilty, yet he cannot discharge him, but must commit or bail him.

The cases of Felony wherein the Parties are notailable, are

1. In respect of the hainousness of the Offence.

1. In a Charge of Treason against the King's Person.

§. Counterfeiting the Seal ;

§. Falsifying Money.

Dal. c. 161.

2. Arson, or burning Houses.

3. In a Charge of Homicide.

1. In case of a Charge of Murder, Justices of Peace cannot bail, but the

the King's Bench may ; but do not in discretion, for the Stat. *West.* 1. extends not to that Court. Dal. c. 161.  
V. C. super.  
Stat.

2. In case of Manlaughter, tho' it be but *se defendendo*, and so appear to the Justices of Peace, they cannot bail the Party accused.

1. If he confess the Fact upon Examination. Dal. c. 161.

2. If taken with the manner, if apparently known or manifested he killed another.

But if it be a *non liquet* that he is the Person, and the Charge but Manlaughter, there it seems they may bail.

So if he have given a dangerous stroke, he may be bailed till the Party dead.

But such bailment where Manlaughter or other Felony is committed, must be

1. By two Justices, one of the *Quorum*.

2. After Examination, &c.

And these be all the Persons excluded from bail simply, in respect of the nature of the Offence ; Hence 3 H. 7. c. 3.  
St. 1 & 2 Ph.  
& M. c. 13.

C. West. 1. c.  
15.

1. All Accessories before or after any Offence, bailable; but if the Principal be attainted, and Accessary indicted, he shall not be bailed until he hath pleaded to the Indictment.

St. P.C. c. 18.

2. Persons indicted of Larceny before the Sheriff, if of good Name.

3. Imprisonment for a light suspicion, if of good Name.

4. Indicted or accused of petty Larceny only.

5. Appellee of Approver after death of Approver.

6. Accused for Trespass, for which a Man ought not to lose Life or Member, if bail not taken away by a subsequent Stat.

Dal. c. 161.  
f. 421.

And hence also a Party indicted for Burglary or Robbery may be bailed.

2. As bail is ousted in some Cases, in respect of the greatness and consequence of the Offence charged, so it is in respect of the Notoriety of the Offence: For Bail is, when *stat indifferent*, whether the Party be guilty or no: But when that indifference

ferency is removed, the Offender otherwiseailable is become notailable.

1. If a Person be Attaint by Utlary of any Felony, yet if the Defendant comes in and pleads in avoidance of the Utlary, be it in Appeal or Indictment, the King's Bench may bail him. West. 1. c. 15.

2. If he be convict by Verdict or Confession of any Felony, he is notailable. Dal. c. 166.

But if a Man be convict of Manslaughter *se defendendo*, the Justices of B. R. or Gaol-Delivery, or special Writ, may bail him, but not Justices of Peace: So if he have a Charter of Pardon. Dal. f 422.

3. He that becomes an Approver cannot be bailed.

4. He that abjures cannot be bailed.

5. He that's taken with the manner, notailable; and consequently neither he that's taken freshly upon Hue-and-Cry. *Bridges's Case*. Justice of Peace fined 40 *l.* for bailing such.

H 3

6. He

6. He that breaks Prison not bailable.

7. Open and notorious Thieves not bailable.

But he that is taken for a light Suspicion bailable.

But if the Presumption be strong, or the Defamation great, the Justices may refuse to bail him: This lies in discretion.

8. Those that are appealed by Provers, unless

1. The Prover die.

2. The Prover wave his Appeal.

3. Unless he be of good Name.

And the reason hereof, because when the Approver appeals another, he confesseth himself guilty, and therefore induceth a Presumption of guilt in another.

But this concerns not Justices of Peace, because no Man can become Approver before them, because they cannot assign a Coroner; but they may take the Confession by way of Evidence.

But a bare Indictment or Appeal did not in duce such a Presumption that may hinder the bailing of a Person otherwiseailable. V. Stat. West. 1. c. 25.

But in Appeals of Death the Court in discretion admit not the Defendant to bail but upon weighty Cause. St. P. C. 18.

If the Party be acquitted within the Year upon Indictment, he is not to be discharged, but remanded or bailed at discretion, that an Appeal may be prosecuted against him. 3 H. 7. c. 1.

This Statute extends only where the Party indicted of Murder is acquitted, not where found guilty of Manslaughter, or se defendendo, &c. V. Keeling's Reports.

5. Who may take bail, or bail Offenders ?

Bail was taken either *virtute brevis*, or *ex officio*.

1. Bail taken *virtute brevis*, that was either General or Special.

The general Writs.

*Homine replegiando*.

*Habeas Corpus* in the King's Bench.

Writ of Mainprise; this was directed to the Sheriff, commanding him to deliver by the Mainprise of

H 4

twelve

twelve, the Party indicted before him.

But now by Stat. 28 E. 3. c. 9. these Inquests before Sheriff are taken away, and consequently the Writ of Mainprise.

Special Writ, as where a Party convict of Manslaughter *se defendendo*; a Special Writ to certify the

2. Bail *ex officio*.

1. The King's Bench, who have a higher Power than any other Power.

1. They may, either in case of an Original Suit, by Indictment or Appeal before them, or upon an Indictment or Commitment returned to them, by *Habeas Corpus* or *Certiorari*, bail where another Court cannot:

In case of Murder. B. Mainprise, 60, 63. &c.

In the Cases prohibited by Stat. West. 1. c. 15. V. Coke *ibid. verb. Viscounts, & autres verb ne soient replevisable.*

2. Justices of Gaol-Delivery, who may bail in Cases where Justices of Peace

Peace cannot, if it be of a thing within their cognizance :

§. As a Person convict of Manslaughter *se defendendo*;

§. Or a Person convict of Manslaughter that hath a Pardon to plead.

### 3. Justices of Peace.

§. 1. They cannot bail in any Case, but where they have cognizance of the Cause ; therefore if taken upon Process of Rebellion out of Chancery, they cannot bail.

2. The Statutes that give Power to Justices of Peace to bail in case of Felony, are 3 *H. 7. c. 3. 1* & 2 *Ph. & Ma. c. 13.* upon which two kinds of bailments.

1. Upon the first Accusation, and before Examination, and that doubtless must be done,

1. By two Justices, whereof one of the *Quorum*.

2. After Examination taken Cr. 196. concerning the Offence.

2. After commitment : And though some Opinion be, that he may be bailed by one Justice, yet it seems

seems otherwise; for the Stat. of 1 R. 3. that gave power to one, stands repealed by 3 H. 7.

3. After Indictment and Process thereupon issued in case of Trespas or Misdemeanor, or Penal Statute, not prohibiting bail, he may be bailed by two Justices, whereof one of the *Quorum*; and by some by one Justice, and thereupon may grant a *Supersed.* to the *Exigent*. But it seems this holds not upon a Process upon Indictment of Felony. *Quare*.

4. The Sheriff, Bail, or Officers which was of Indictment before them: But these are removed from that Power, as it seems by the Stat. 22 E. 3. c. 9.

1 E. 3, 4. c. 3. whereby they are not to make Process, but to remove them to the Sessions of the Peace.

## Rumper Prison.

Vide ante 87.  
Keeling 45.  
& 77.

**N**OW having considered the Persons that may arrest and bail, it makes way to consider the Offence against such Arrest or Imprisonment, by breaking such Prison, &c. And herein ensues the second Consideration.

2. What a Prison within this Statute?

1. The Stocks.
2. The Prison of a Lord of a Franchise.
3. The Custody of any that lawfully arrests, or the House of the Constable, or other Person where detained.
4. The Church, where a Person abjuring is.
5. The Prison of the Ordinary, which is now ousted.  
Stat. 23 H. 8. c. 11.

3. What

## 3. What a breaking ?

If the Prison be fired without the privity of the Prisoner, he may lawfully break it to save himself.

2. If Gaoler do voluntarily permit him to escape, Felony in the Gaoler, not in the Prisoner; but if negligent, Felony in the Prisoner, and Misdemeanor in the Gaoler.

3. If Prisoner under Custody be rescued, or Prison broke by Strangers without his procurement, no Felony in the Prisoner.

4. Going out, the Doors open, no Felony; for the Statute requires an actual breaking.

4. *Nisi causa; tale iudicium, &c.*

V.2 Inst. 591.  
11 H. 4. 11.  
Com. 401.  
Cole's Case.

1. If *A.* mortally wound *B.* and is committed, and he break Prison, and *B.* then die, no Felony.

2. If a Felony, made by a subsequent Statute, and an Offender committed therefore, break Prison, Felony.

3. Com-

3. Committed for suspicion of Felony, yet if a Felony done, breaking Prison, Felony. V.2 Inst. 592.

4. If the Offence for which the Party was committed appear not by matter of Record, necessary a Felony be done, else breach of Prison, no Felony.

But if it appear by matter of Record, and the Party taken by *Capias*, if he break Prison, Felony, though no Felony done,

5. If Felony was done, yet breach of Prison no Felony, unless a lawful *Mittimus, de quo supra.*

6. The Indictment for the breach must be Special, that it may appear he was committed for Felony.

5. *Tale Judicium requirit.*

1. Breach of Prison turns into Felony only, though the Party were committed for Treason. V.2 Inst. 589.  
ante 87, 88.  
So adjudged  
10 H. 6. & V.  
2 Inst. 591. &  
Cro. 1 Car. &  
1 Jones.  
Berstead's  
Case.

But if a Prisoner break a Prison wherein Traitors are, to let out the Traitors, this is Treason.

2. A

## Rumper Prison.

2. A Man imprisoned for Petit Larceny, or *Se defendendo*, breaks Prison, no Felony.

3. If a Prisoner break Prison, he may be arraigned of that before he be convict of the first Felony.

But a Gaoler permitting a voluntary Escape, shall not be arraigned till the Prisoner be first attaint; for if the Prisoner be acquit, the Escape dispunishable.

Dal. c. 159.

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*Escape*

## *Escape in the Party.*

**N***Ota*, If a Person escapes before arrest, not punishable in him as Felony, but for the Flight he forfeits Goods when presented.

In case a Man slain in the Day, if the Offender escape, Township amerced. *Vide supra*.

*Issint si soit dangereusement wound,*  
 3 H 7. c. 1. *Et si soit vill immune ser.*  
*amerce, soit ceo in jour ou nuit.* 3 E. 3.  
 Coron. 299. Stat. Winton cap. 4.

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*Escape*

*Escape in the Officer, or him  
that makes Arrest.*

**T**His is either in case of Arrest,  
1. By a Stranger.  
2. By an Officer.

If a Stranger arrest a Man for Felony, or suspicion thereof, and deliver him over to four others, and they receive him and let him go at large, this an Escape in both ; for the first Man should have delivered him to the Constable ; and the latter should not have let him go at large.

And the same Law seems to be for an Escape by a Stranger that hath a Prisoner in his Custody, as for an Officer in case of Escape voluntary or negligent.

## *Escape by an Officer.*

### **E**scape of an Officer.

#### 1. Negligent.

1. Bailing a person not bailable, through ignorance, by one that hath power to bail, a negligent Escape.

But it seems if done by a Gaoler a voluntary Escape ; because he hath no such power.

2. The ordinary punishment of a negligent Escape.

1. Of a party attaint  
100*l*.

2. Of a party indict  
5*l*.

3. Of a party not indict, at discretion.

3. For insufficiency of the Gaoler, the Sheriff must answer for negligent Escapes.

## Escape.

4. A Gaoler *de facto*, though not *de jure*, must answer for Escapes.
5. If after a negligent Escape the Gaoler retake him upon fresh Suit before he be punished, it excuseth. If the Constable bring a person to Gaol, the Gaoler refuseth him, the Villain shall be charged, and Gaoler fined.

## 2. Voluntary Escape.

Stat. 14 E. 3.  
c. 10.

1. Hath the same Crime that the person permitted to escape stood committed for, *viz.* Treason or Felony.

2. But this is in the immediate person that permits it; and therefore though civilly the Sheriff must answer for offences of Gaoler, yet not criminally.

3. There must be a Felony really done, and a Commitment by a lawful Warrant.

4. If within the year the Prisoner be acquitted upon Indictment, yet a voluntary Escape is punishable as Felony.

Felony, because wife intitled to her Appeal.

5. The Escape if voluntary punishable *ut supra*, though the Prisoner were not indicted. Dal. c. 159. Dy. 99.

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## Rescue.

An Indictment of Rescue excepted to, because it wanted the Words *vi & armis*, but held *Rescuffit* implies it. Cro. Jac. 345, 472.

I. **A** Hinderance of a person to be arrested that has committed Felony is a Misdemeanor, but no Felony.

2. But if the party be arrested and then rescued, if the arrest was for Felony, the Rescuer is a Felon; if for Treason, a Traitor; because they are all Principals.

But he shall not be arraigned till the Principal attainted; and if the Principal die before attainder, the Rescuer shall be fined and imprisoned.

3. There must be a Felony really done, and a lawful Commitment.

N. *Rescue hors de custody de Constable, &c. est Felony, licet ne fait arrefne al Gaol.*

*Note, The Diversity in 1 Inst. 161. where the Arrest is upon a Warrant of Record, and where upon a Warrant or Authority in Law.*

*Felonies by the Statute.* C. P. C. c. 4.

3. **H** *En. 7. c. 14.*  
 Imagining and conspiring  
 to kill the King, or any of his  
 Council,

§. Clergy not taken away.

1 *Jac. c. 12.*

§. Witchcraft, *de quo supra.*

§. 25 *H. 8. c. 6.* revived by 5 *El.*

*c. 17.*

Buggery with Man or Beast. 12 Rep. 36.

§. Without benefit of Clergy. and 3 Inst.

*Debet esse Penetratio* as well as  
*Emissio.*

In this and Rape *carnaliter cognovit.* 12 Co. the  
 Case of Bug-

13 *E. 1. c. 34.*

Rape: This was Felony at Com-  
 mon Law; then by Stat. *Westm. 1.*  
*c. 13.* made but a Misdemeanor;  
 then by this Statute restored to Fe-  
 lony again. 12 Co. the  
 Case of Bug-  
 gery in this  
 and Rape, all  
 that are aid-  
 ers or present  
 are Princi-  
 pals.  
 3 Inst.  
 post. 186.

And hence it is that it is not in-  
 quirable in a Leet, because though  
 now Felony, yet it lost its nature by  
*W. 1. c. 13.* C. sur ceo  
 Stat. 3 Inst.

## Felonies by the Statute.

*Nul Appeal done al party.*

13 E. 3. *Coron.* 169.

If the woman be under ten years, then though she consent, yet by Stat. 18 El. c. 6. it is a Rape; if above ten years, if she consent not, a Rape, though she consent after.

But in such case of a subsequent consent, the Stat. 6 R. 2. c. 6. gives the Appeal to the Husband; if none, to the Father, &c.

Clergy taken away by Stat. 18 El. c. 7. upon Conviction by verdict, or Confession, or utlawed.

*Cestuy que ayd in Rape est Ravistor.*

11 H. 4. 13.

3 H. 7. c. 2.

Taking a woman against her will and marrying her, Felony.

1. Such Maid, Widow, or Wife must have Lands, Tenements, or Goods, or be Heir Apparent.

2. She must be taken against her will.

3. She must be married or defiled.

4. Extends not to taking a Ward or Bondwoman.

*Nota,*

*Nota*, The taking away in one County, and marrying in another, indicted where married; and they may enquire of the forcible taking.

2. Privy to the marriage, but not to the force, not Guilty. 3. Marriage with consent not excusing so long as she is under force. 13 *Car. Fulwood's Case*.

All Accessaries before or after made Principals by this Act.

Clergy taken away by Stat. 39 *El. c. 2*.

5 *H. 4. c. 5*.

Malicious cutting out Tongue or putting out Eyes, Felony.

Clergy not taken away.

Extends not to cutting off Ears.

8 *H. 6. c. 12*

Stealing, carrying away or avoiding Records, Felony. And

The Judges of either Bench enabled to hear and determine the same.

Accessaries before made Principals.

§. Clergy allowable.

5 *H. 4. c. 4*.

## Felonies by the Statute.

Multiplication of Gold or Silver,  
Felony.

1 *H. 7. c. 1.*

Hunting unlawfully in Forests,  
Chases, or Warrens with painted  
faces by night, and rescuers, *viz.*  
other than the party arrested, Felony.

31 *El. c. 4.*

Imbezilling the King's Armour,  
&c. Felony.

Qualifications.

1. Ought to be impeached within a year.

2. Offender loseth Lands but during life.

3. No Corruption of blood.

4. Wife loseth not Dower.

5. Defendant admitted to proof.

3 *Fac. c. 4.*

Subjects passing Sea to serve foreign Prince, not having taken Oath of Obedience:

No Corruption of blood.

Offender may have Clergy.

*Articuli*

*Articuli super Cartas c. 2.*

Purveyors Felons in certain cases ;

§. They may have Clergy.

39 *El. c. 17.*

Wandering Soldiers Felons in certain cases.

§. Excluded of Clergy.

18 *H. 6. c. 19.*

Soldiers retained, as is prescribed in the Act, departing from their Captains without licence.

§. 2 *E. 6. c. 2. ad idem.*

§. Clergy excluded.

1 *Jac. 12.*

Marrying a second husband or wife, the former living, Felony : except cases following : Keel. 27, 79, 80, 104.

1. The man under fourteen, or the wife under twelve, at time of first marriage, and not agreeing after first Espousals, may marry a second husband or wife. 3 Inst.

2. A man or wife absent above seven years, second marriage no Felony : If beyond Sea, though notice  
of

1 Jac. 11. of life ; If in *England*, then without notice.

V. 3 Inst. 88. 3. After a Divorce, though a  
Cro. Car. *mensa & thoro* only.  
Porter's Case.

Keel. 79, 80. 4. After a nullity declared of the  
Mr. Middleton's Case. former marriage by Ecclesiastical Court,

Offenders have Clergy.

1 Jac. c. 31.

§. For going with a Plague sore, but this discontinued.

14 E. 3. 20.

Gaoler compelling Prisoner, by Durefs to become Appellor, Felony, whether the Appellees be acquitted or not.

3 H. 5, c. 1.

Coining, or bringing in Gally half pence, Suskins, or Dodkins.

§. And 2 H. 6. c. 9. payment of blanks,

Offender hath Clergy.

17 E. 3. n. 15.

Transportation of Silver, or Importation of false money made Felony,

Offender hath Clergy.

11 H. 6. c. 15.

Expor-

Exportation of Wooll or Woollfells, other than to the Staple of *Calais*.

37 *E.* 3. 19.

Stealing Falcons, &c. or concealing the same after Proclamation, Felony,

Offender hath Clergy.

3 *H.* 6. c. 1.

Congregation of Masons to prevent Statutes of Labourers;

§. But this obsolete; by the Statute 5 *El.* the Acts to which it relates are repealed.

27 *El.* c. 2.

Receiving, retaining, or maintaining a Jesuit or Popish Priest knowingly,

Clergy excluded.

35 *El.* c. 1.

Felony refusing to make Abjuration, or after Abjuration not to depart, in some case

Clergy excluded.

1 & 2 *Ph. & M.* c. 4.

*Egyptians* above fourteen years remaining here a month.

St. 12 Ann.  
Ses. 2. c. 23.

§. And 5 *El.* c. 20. takes away Clergy.

39 *El.*

V. St. 12. An.  
Sef. 2. c. 23.  
a Repeal of  
former Stat.

39 *El. c. 4.* 1 *Jac. c. 7. 25.*

Dangerous Rogue adjudged to  
the Gallies; and returning without  
licence, Felony:

§. But Offender hath Clergy:

§. But branded Rogue Felon, and  
no Clergy.

5 *El. c. 14.*

V. Post 151.

Forging a Deed after a former  
Conviction.

C.P.C. f. 172.

If a man be convict or condem-  
ned of publishing a forged Deed,  
and after he forge a Deed, this is  
Felony.

If the offence were after a former,  
but before conviction thereof, no  
Felony.

Clergy ousted.

8 *El. c. 3.*

Sending sheep beyond Sea after  
a former conviction,

Clergy allowed.

33 *H. 6, c. 1.*

Servants after decease of their  
Master, riotously spoiling Goods,  
&c.

Offenders shall have Clergy.

21 *H. 8. 7.*

Servant imbezilling Goods of their Masters delivered to them, Felony ; Vide Stat. 12 Ann.

But the Statute of 27 *H. 8. c. 17.* that took away Clergy being repealed by 1 *E. 6. c. 12.* they may now have Clergy.

22 *H. 8. c. 11. 2 & 3 Ph. & Ma. c. 19.*

Cutting Powdike, Felony,  
Offender hath Clergy.

43 *El c. 13.*

Detaining persons in *Cumberland,* &c. against their will, and giving or receiving blackmail, &c. Felony,  
without Clergy,

*Note,* By Stat. 3 *H. c. 4.* compassing to kill the King or any of his Council is Felony, *Vide ante 17.*

*Mispri-*

## *Misprisions.*

**N**OW we come to Offences Criminal, but not Capital; and those of two kinds:

1. Offences by Common Law :
2. Offences against special Statutes.

Offences by Common Law not Capital, are either greater Offences or lesser :

Greater ; and those come under name of Misprisions, which again are of two sorts :

Negative, in not doing that they ought, or of Omission.

Positive, in doing some great Misdemeanor they ought not.

*Misprision*

## Misprision of Treason.

### The Negative Misprisions.

#### 1. Misprision of Treason.

**M** All Treason includes 2 R. 3. 9.  
 Misprision: The Concealing of any  
 Treason, is declared Misprision only C. P. C. c. 3.  
 by the Statute of 1, 2 Mar. c. 10.  
*que indure auxi misprision.*

But this in case of bare know-  
 ledge; for if knowledge and Assent,  
 it is Treason: and though the Treason  
 be by Statute, yet the conceal-  
 ing thereof is Misprision of Treason.

Every man therefore that know-  
 eth a Treason, must with all speed  
 reveal it to the King, his Privy  
 Council, or other Magistrate.

He that receives and comforts  
 a Traitor knowingly, be it a  
 counterfeiter of Coin or other, is a  
 Principal Traitor, and not only C. P. C. c. 64.  
 fol. 138.  
 guilty of Misprision. *Abingdon's Case*  
 against the Opinion in *Dyer* 296. V. ante 20, 21.  
*Conier's Case.*

The

## Misprision of Treason.

The Judgment in case of Misprision of Treason is Imprisonment during life, forfeiture of Goods, forfeiture of profits of Land during life.

*Nota, Si un conust un que ad counterfeit coigne, & ne lui discover, est Misprision de Treason. Mes si un solment utter counterfeit coigne, sciant ceo estre counterfeit, nest Misprision de Treason, mes serra Fine & Imprison. Issint resolve a Newgate. 1661.*

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*Note, Nothing is Misprision of Treason, but the knowing of Treason, and concealing it. Co. Pl. Cor. 36.*

*Misprision*

## Misprison of Felony.

2. **M**isprison of Felony is either by Common Law, or by Statute.

By the Common Law a concealment of a Felony, or procuring of the concealing thereof.

### The Punishment.

1. If a common Person, Fine and Imprisonment.

2. If an Officer, as Sheriff, Coroner, Imprisonment for a year, and Ransom at the King's pleasure by Stat. *W. 1. c. 9.*

By the Stat. 3 *H. 7. c. 1.* 33 *H. 8. c. 6.* one knowing of an unlawful Assembly, and not discovering it within 24 hours.

Concealment of Jurors, *v. Stat.*

K

*Theft.*

*Theft-bote.*

3. **T**Heft-bote, which is more than a bare Misprifion of Felony, and is where the Owner doth not know the Felony, but takes his Goods again, or other Amends, not to profecute.

But taking the Goods again barely no offence, unless he favour the Thief.

The punishment hereof is Ransom and Imprifonment.

## Misprisions Positive or of Commission.

1. **D**iscovery by one of the C. P. C. c. 46.  
grand Inquest of the Per-  
sons indicted, or Evidence against  
them, Misprision, punishable by  
Fine and Imprisonment, but no Fe-  
lony, nor Treason.

2. A person dissuading Witnesses C. P. C. c. 64.  
from bringing in Evidence against a  
Felon is no Accessary, but a great  
Misprision, punishable by Fine and  
Imprisonment.

3. Reproaching a Judge, assault-  
ing an Attorney against him, or  
abusing a Juror that gave verdict  
against him; a great Misprision, pu-  
nishable by Fine and Imprisonment.

4. Rescuing a Prisoner from the  
Bar of the Courts of *B. R. Cant.*  
*B. C.* or *Exchequer*, a Misprision for  
which the party shall lose his Hand,  
Goods, Profits of Lands during  
Life, and perpetual Imprisonment.

5. If a man strike sitting the four  
Courts at *Westminster*, in the pre-

## Misprisions Positive.

sence of the Court, the like Judgment.

6. If in presence of those Courts, or before Justices of Assize or Oyer and Terminer, a person draw his Sword upon any Judge or Justice, though he strikes not, or strike another, like Judgment.

7. By Stat. 33 *H.* 8. c. 12. striking in the King's presence, drawing blood; loss of hand and perpetual Imprisonment, Fine and Ransom.

8. By Stat. 14 *El.* c. 3. forging of Money not current, Misprision of Treason.

9. Stranger uttering false Money made within this Realm, knowing it Counterfeit. 3 *H.* 7. 10.

10. A Lord of Parliament departing from Parliament. 3 *E.* 3.

*Maibem.*

*Maihem.*

V. 4 Co. Hud-  
son's Case.  
And post 18p.  
Poulton de  
Page. 15.

**A**ND hither we may refer Maihem, which though it be a particular Crime, for which Appeal lieth, yet it is not Felony of death.

Cutting off the hand, or striking out a tooth, Maihem, but not cutting off the ear. C. P. C. c. 40.

The Judgment is only Fine and Damages; and therefore if recovery in Trespass, it is a good barr in Appeal of Maihem.

*Note, By Stat. 22, 23 Car. 2. c. 1. If any Person or Persons of Malice forethought do cut out or disable the Tongue, put out an Eye, slit the Nose, cut off the Nose or Lip, or cut off or disable any Limb or Member of any of the King's Subjects, with Intention in so doing to Maim or disfigure them; such Persons and their Counsellors, Aiders and Abettors shall suffer as in Case of Felony, without Benefit of Clergy.*

## *Offences not Capital.*

**O**ffences of an Inferior nature :  
they are either such as are  
committed by an Officer,

Neglect of Duty,

Bribery,

Extortion.

Post. 151.

Or such as refer to a common  
Person, without relation to Office,  
and those reducible to three kinds :

1. Breaches of publick Peace,  
and therein

1. Of Affrays.
  2. Of Riots.
  3. Of Forcible Entries.
  4. Forcible Detainers.
  5. Barretries.
  6. Riding armed, &c.
2. Deccipts and Cozenage.
3. Nufances, *viz.*

Decay of Bridges.

Decay of High-ways.

Inns and Ale-houses.

## Breach of the Peace.

### I. Affrays.

**I**F weapons drawn, or stroke given or offered; but words no Affray: menace to kill or beat, no Affray; but yet for safeguard of Peace, Constable may bring them before Justice.

*Note,* Whatever is cause of being bound to the good Behaviour, is a Breach of the good Behaviour. Palm. 129.

In Affrays considerable,

1. What a private man may do?

Private persons may stay Affrayers till heat over, and deliver them to Constable.

If person hurt another dangerously, private person may arrest the Offender, and bring him to Gaol or next Justice.

Dal. c. 8.  
Lamb 134.  
Br. Faux Im-  
pris. 35, 44.

2. What by a Constable.

1. Affray in presence of a Constable, he ought to do his endeavour to suppress it, otherwise finable.

2. If an Affrayer fly to a house, or if made in a house, Con-

K 4                      stable

## Breach of the Peace.

stable may break open house to preserve peace, or take the Offender.

3. If in Affray assault be made upon the Constable, he may strike again, or imprison Offender.
  4. Constable may in such case imprison till he find surety of Peace.
  5. But it seems if Affray past, and not in view of Constable, he cannot imprison without warrant of the Justice, unless Felony done, or like to be done.
3. What by a Justice?
1. In his presence, the same power that a private person or Constable, and may imprison, till surety of Peace found; the like upon Complaint.
  2. If dangerous hurt, Justice may imprison till appear whether the party die or live, or bail the party.
- The former, better discretion.

V. Pal. 129.

II. Riots.

## II. Riots.

When above the number of two meet to do some unlawful act, and do act it; but if they meet and act it not, an unlawful Assembly, in power of Justices to suppress them.

13 H. 4. c. 7.

A man for safeguard of his house against Malefactors or Trespassers, may assemble his Friends for his Defence.

But he cannot assemble to prevent a beating threatned in his presence.

Riot recorded by one Justice upon view traversable; by two not, because pursuant to the Statute.

## III. For-

V. St. 5 R. 2.  
15 R. 2. 8 H.  
6. and 31 El.  
in Dalton.

### III. *Forcible Entry.*

Forcible Entry must be either,  
*Manu forti,*

Furnished with unusual weapons,

Menace of life or limb,

Breaking open door:

*Contra* it seems if door only latched,  
ed,

V. Yelv. 90.  
Indictment  
on St. H. 6.  
for a forcible  
Entry.

Ejecting forcibly the possessors.

*Cum multitudine gentium*, one may  
commit a Force, three at least  
a Riot.

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### IV. *Forcible*

IV. *Forcible Detainer.*

Menacing the Possessor to go out upon pain of loss of life or limb.

Unusual Weapons or Company.

§. Refusing to admit the Justice to come in to view the Force.

Detainer with Force justifiable where party in possession three years;

§. But though his Possession lawful, yet if within the three years actually removed, though restored by the Justices, enables not a Detainer with Force.

But if the three years Possession hath been by Force, then the last forcible Detainer punishable, and hinders not Restitution.

If a Disseisee within the three years make lawful Claim, this an Interruption of his Possession.

*Restitution*

*Restitution.*

1. By whom?

1. Justices *B. R.* may restore upon Indictment removed before them.

2. One Justice of Peace cannot restore upon an Indictment before them; nor Sessions of Peace, unless upon Indictment found at Sessions.

3. It seems Justice of Goal-Delivery, or Oyer and Terminer, cannot restore.

2. How?

Upon view.

Upon Indictment;

Must be sufficient,

*Adhuc extra tenet.*

If erroneous, may be superseded by the same Justice before executed: After it is executed, then Re-restitution in *B. R.* upon Indictment quashed.

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V. Yelv. 90. Rex vers' Ford, Indictment on 8 H. 6. for forcible Entry and Detainer; the grand Jury as to the Entry returned Ignoramus, and as to the Detainer *Billa vera*; and the Court not observing the difference awarded Restitution, which being removed by *Certiorari* into *B. R.* a Re-restitution was awarded, &c.

Resti-

Restitution stayed.

By Certiorari.

By quashing Indictment.

By pleading thereunto,  
which is nevertheless  
in discretion.

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Restitution of stolen Goods, tho' sold in  
Market Overt. V. Keel. 45 to 49. V. Stat.  
31 El. c. 12. of stolen Horses.

Restitution not to be in Robbery, unless the  
Jury find the fresh Suit. *ibid* 96.

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*Barretry.*

V. *Barretry.*VI. *Riding Armed.*VII. *Going Armed.*

V. Stat. 20 R. 2. c. 1. 7 R. 2. c. 13.  
 2 E. 2. c. 3. Stat. Northampton.

*Nuisances.*

*Nuisances.*V. 9 Co. Ba-  
ten's Case.

**B**Ridges Publick  
Are not chargeable upon a  
particular Person, but *ratione te-*  
*nturæ.*

But of Common Right repairable  
by the whole County.

The manner of Repairing direct-  
ed by Stat. 22 *H. 8. c. 5.*

V. an Indictment for stopping quædam pars  
aquæ, and held ill, it should have been quædam  
pars Terræ aqua cooperta. 4 Co. Luterel's Case.  
Vide Cro. Jac. 324.

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*High-*

*Highways.***H**ighways: Provisions,

1. For their enlarging and removing Trees within 200 foot of either side.

13 *El.* 1. c. 5.

5 *El.* c. 15.

2. For their Amending *vide* the Stat.

5 *El.* c. 13.

29 *El.* c. 5.

2 & 3 *P. & M.* c. 8.

The Charge of repair of Highways lies of common right upon that Parish wherein they are, unless

1. A Special Prescription cast it upon another.

2. Unless the Owner of the Land, in which they are, inclose it, then it must be cast upon the Owner.

But they that have Ditches on either side ought to scour them.  
8 *H.* 7. 5.

Inns,  
Ale-houses.  
Bawdy-houses.  
Gaming-houses.

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Of Bakers. Vide Hob. 129. Pal. 28. 393. 544.

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L

Common

## Common Inns.

1. **A**NY Person may erect a Common Inn, so it be not *ad nocumentum*.

Vide Palmer,  
367.

1. In respect of their multitude, when there are enough ancient Inns before.

2. In respect of the inconvenience of the Place or situation.

3. In respect of Disorders there permitted.

All which are common Nuisances, and may be presented and fined.

2. He that erects a Common Inn and refuses to entertain Guests, may be indicted and fined for the same.

3. If a Common Inn, contrary to Statute, suffer Persons to tipple there as Ale-houses, he may be compelled to be bound; or may be suppressed as Ale-houses; or may be indicted at Sessions.

## *Ale-houses.*

SEE for Ale-houses, the suppressing of them, and the punishing of tippling in them, 5 *E. 6. c. 25.*  
 1 *Fac. c. 9.* 4 *Fac. c. 5.* 7 *Fac. c. 10.*  
 21 *Fac. c. 7.* 1 *Car. c. 4.* 3 *Car. c. 3.*

An Ale-house-keeper suppressed according to the Stat. of 5 & 6 *El. c. 25.* by two Justices, whereof one of the *Quorum*, cannot be allowed but in open Sessions.

An Ale-house-keeper suppressed for the Offences 7 *Fac. c. 18.* 21 *Fac. c. 7.* for suffering tippling; or 7 *Fac. c. 10.* for selling less than is there directed, or 21 *Fac. c. 7.* for continuing drinking in another Ale-house, or 21 *Fac.* for being drunk, cannot be licenced in three Years, and if he be, such Licence void.

Stat. 6 *E. 6. c. 25.*

None to sell Ale, &c. unless licenced in open Sessions, or by two Justices, one of the *Quorum*.

L 2

Persons

## Ale-houses.

Persons licenced to be bound by  
Recogn. not to keep unlawful Games,  
and for using good Order.

Recogn. return. next Quar. Sessi-  
ons.

Process upon Recogn. at Sessi-  
ons.

Persons unlicenced keeping Ale-  
house, imprisoned by two Justices,  
one of the *Quorum*, for three days,  
and till Recogn. given not to sell  
Ale.

Certificate of such Recogn. Con-  
viction, and Fine 20 s.

1 *Fac. c. 9.*

Ale-man, Inn-keeper or Victual-  
ler suffering Inhabitant to sit tip-  
pling, forfeit 10 s. to the Poor.

Conviction before one Justice,  
&c. by two Witnesses.

Penalties levied by Constables  
and Churchwardens by Distress and  
Sale within six days.

In default of distress, Offender  
committed till payment, *per* Justice.

Constables, &c. neglecting to le-  
vy or certifie default of Distress, for-  
feits 40 s.

4 *Fac.*

4 *Jac. c. 5.*

Person drunk forfeits 5 s. to be paid, within a week after Conviction, to the poor : If neglect, levy by distress, by Warrant from Justice: If not able to pay, commit to Stocks for six hours.

Constable neglecting Duty, forf. 10 to the use of the Poor.

Any Person sitting rippling, dwelling in the said Parish, forf. 3 s. 4 d. to poor, proved before Justice, levy *per* distress, and for want of distress, commit *per* Justice to House of Correction.

Second Offence, bound to good Behaviour.

Constables, &c. bound by Oaths to prevent Offences.

Punishment within six Months.

21 *Jac. c. 7.*

Former Act extend to Foreigners, as well as Inhabitants.

One Witness suffice to convict, or view of Justice.

Ale-house suppress, not licenced for three Years *per* Stat. 7 *Jac. c. 10.*

**Ale-houses.**

I *Car. cap. 4.* Former Stat.  
extend to Inn-keepers and Ta-  
verns.

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*Offences*

*Offences not Capital by  
Statute.*

**O**ffences not Capital, more particularly by Statute.

Forgery by Stat. 5 *El. c. 13.*

Vide ante  
124. 2 *Rol.*  
*abr.* 26. 13  
Co. Read and  
Booth's Case.  
& 3 *Inst.* For-  
gery of Deeds,  
9 Co. in Lord  
Sanchar's  
Case.

Perjury and Subornation thereof,  
5 *El. c. 9.* Vide 3 *Inst.* 167.

V. Siderf. 454.  
1 *Mod.* 55.  
*Latch.* 232.  
5 Co. Flower's  
Case. *Hob.* 52.  
*Cro. Jac.* 120.  
*Palmer* 535.

ChamPERTY, Embracery and Main-  
tainance, 32 *H. 8. c. 9.*

L 4

*In-*

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*Extortion,* Vide Siderfin, le Roy vers. Cover.  
Indictment, quod colore Officii, he took 50 s.  
&c. Vide post. 208. in Informations.

V. Cro. Car.  
Fenn's Case.

Ingrossing, Forestalling, and Re-  
grating. 5 E. 6. c. 14.

Salt Victual within Statute.

V. Cro. Jac.  
214.

Apples and Cherries, &c. no Vi-  
ctual.

Malt seems not, but Corn and  
Grain expressly Victual, by 5 Ed. 6.

A Stranger, or Subject, bringing  
Victual into the Realm, may sell  
them in gross, but the Vendee can-  
not; neither may any Merchant buy  
within the Realm, and sell in gross.

Attempting to inhance the price  
of Merchandize, a kind of forestal-  
ing.

Selling Corn in the Sheaf unlaw-  
ful.

*Matters*

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N. B. By Stat. 13 El. the Stat. 5 Ed. 6. shall  
not extend to any Wines, Oils, Sugars, Spices,  
&c. or other Foreign Victual, except Fish or  
Salt,

## Matters of Religion.

1. **R**eviling the Sacraments, imprisonment, fine, and ransom. 1 *El. 6. c. 1.* repealed, 1 *M. c. 2.* revived 1 *El. c. 7.*

2. Not coming to Church to hear Common Prayer, by 5 *E. 6. c. 1.* subject to the Church Censures.

*Nota*, 3 *E. 6. c. 1.* settled a Book of Common Prayer; enjoined the use: Refusing to use it, using other, or depraving it, Imprisonment for six Months for first Offence; twelve Months for second, during Life for third.

5 *E. 6. c. 1.* alters the Prayers, but applies the Penalty to the new Book.

*Nota*, repeal 1 *Ma.* that repealed 1 *Fac. c. 25.*

1 *El. c. 2.* enacts the use of the Book of 5 *El. 6.* with some Alterations.

Any that,

1. Refuse to use it;

2. Use

## Matters of Religion.

2. Use another Form :

3. Deprave it.

§. If Spiritual, six Months Imprisonment, first Offence ; one Year's Imprisonment, second Offence ; Deprivation, third Offence.

If Lay, first Offence, twelve Months Imprisonment ; second Offence, during Life.

Depraving Book of Common Prayer, first Offence 100 Marks ; second Offence 400 Marks ; third Offence forfeit Goods, and Imprisonment during Life.

8 *El. c. 1.* touching Consecrating Bishops.

Concerning repair to Church.

1 *El. 2.* Every Sunday and Holiday *sub pœna 12 d. per diem.*

Vide 12 Co.  
Ford & Shel-  
don's Case.

§. 23 *E. c. 1.* 20 *l. per mensem* for absenting ; and if absent twelve Months upon Certificate, bound to good Behaviour.

V. 1 Rol. abr.  
888. Palmer's  
R. Sir J.  
Webb's Case.  
& 2 Rol. R.  
m. Case. Cro.  
Jac. 480. 356.  
Pop. 180.

29 *El. c. 2.* Conviction of Recu-  
sancy.

35 *El. c. 1.* Penalty of disswading from Church ; holding of Conventicles ; commit to Prison without Bail until Conformity. Non-

Nonconformity within 3 Months after Conviction, shall abjure the Realm.

Not departing, or returning, Felony without benefit of Clergy.

Submitting, discharged of the Penalty by this Act.

Relapsing, loseth the Benefit of the Submission. V. 1 Bulstr.  
Holt's Case.

Ten pounds *per mensem* for every Person retaining or relieving Recusant after Notice.

Cap. 2. Recusants not to remove five Miles from dwelling.

1 Jac. c. 4. Conformable Heir of a Recusant discharged: Third part disch. of Forfeiture.

Penalty of sending Children to Seminaries.

3 Jac. c. 4 & 5. Penalty for refusing Oath of Supremacy.

1 El. c. 1.

5 El. c. 1.

Of Obedience,

3 Jac. c. 4.

7 Jac. c. 6.

## *King's Bench.*

**N**OW we come to consider of the Proceedings against a Party for Felony; and therein,

1. Concerning the Jurisdiction or Court wherein Proceedings are to be had in Capital Causes; and those are principally,

V. 9 Co. Lord  
Sanchar's  
Case.

1. The King's Bench.
2. Justices of Gaol-Delivery.
3. Justices of Oyer and Terminer, and Assizes.
4. The Sheriff and Coroner.
5. The Lord Steward of the Household.

The King's Bench the Supreme Court of Criminal Jurisdiction. It is a Court of Oyer and Terminer, Gaol-Delivery, and Eyre, in that County where it sits.

o R Sanchar's  
Case.

By the coming of the King's Bench into any County, during the sitting thereof in that County, all power and proceedings of Commissioners of Oyer and Terminer is suspended.

But

But a Special Commission of Oyer and Terminer bearing *Teste* in the Term may be granted; and King's Bench may adjourn, and then they may sit.

Where the King's Bench proceeds upon an Offence committed in the same County, there need not fifteen Days between the *Teste* and Return of the *Venire facias*; But if they proceed upon a Cause removed by *Certiorari*, they must have fifteen Days.

C. P. C. p. 27.  
9 Rep. San-  
char's Case.

Vide 1 And.  
111, 112. post.  
256.

## Gaol-Delivery.

C. Jur. Courts,  
sub hoc titulo.

1. **T**HE Justices of Peace ought to deliver the Indictments not determined unto these Judges, and they may arraign any Person in Prison upon them.

2. They may take Indictments against any Person in Prison, and so may Justices of Oyer and Terminer, and herein they have a concurrent Jurisdiction.

3. They may take a Pannel returned by the Sheriff without a Precept.

4. They may deliver by Proclamation Persons suspected, where there is no Evidence to indict them.

5. May award Execution of Persons in Prison outlawed before Justices of Peace.

6. May assign Coroner to an Appeal, and make Process against the Appellee in a Foreign County.

7. May punish those that unduly bail Prisoners. Stat. *de Finibus*, 1 & 2 Ph. & Ma. c. 13.

8. May

8. May deliver the Gaol of Persons committed for High Treason.

9. May receive Appeals by Bill against Persons in Prison.

10. By Stat. 9 E. 3. 15. must send their Records into the Treasury of the Exchequer at *Michaelmas*.

11. Others may be added to the former Commission by Commission of Association, or their power committed to fewer by *Si non Omnes*.

12. By Stat. 2 & 3 Ph. & Ma. c. 18. a general Commission of Gaol-Delivery through the County, determines not a Special Commission granted in a Corporation, &c. parcel thereof.

13. By Stat. 1 E. 6. c. 7. the subsequent Commissioners of Gaol-Delivery, power to give Judgment upon such as were reprieved before Judgment by former Commissioners, and Process before any former Commissioners of Peace, Gaol-Delivery, Oyer and Terminer, or others, not discontinued by granting new Commissions.

If

If a Prisoner be bailed, he is yet in Prison to be arraigned before these Justices, for he is a Prisoner : Contrary in case of Mainprise. 21 H.

Cr. Jur. 226. 7. 33. 9 E. 4. 2. 39 H. 6. 27.

Although their Commission determine with their Session, after they are gone, they may command a reprieve or Execution. Dyer 205.

*Licet soit ad Gaolum deliberandum, hac vice uncore pnt' adjourner leur Commission.* Cr. Jur. 226.

*Commission d' Oyer & Terminer, & Gaol-Delivery, pnt' estoyer ensemble.* Ibid. Bro. Commission 24.

*Justices de Gaol-Delivery & Oyer & Terminer, pnt' enquire per ambideux powers, and make up their Records accordingly.* 9 H. 7. 9. Cr. Jur. 226.

## Oyer and Terminer.

V. 1 And. 111,  
112. 2 Roll. |  
abr. 96. post.  
256.

1. **T**He Justices Authority must be by Commission, and not by Writ, otherwise their Proceedings void. 42 Ass. 12.

2. They cannot proceed but upon an Indictment taken before themselves.

3. By good Opinion they may proceed the same Day or Session against a Party indicted before them. V. 3 Inst. 164.  
*Nota le contrar' ad estre adjudge.*

4. Where Offences are limited to be heard and determined in any Court of Record, generally it may be heard and determined by them. *Quare*; for Gregory's Case *contra*. V. Dyer 236.

5. Others may be added, or their power contracted by Association, or *Si non omnes*, as before.

6. One sitting without Adjournment determines their Commission.

.M

7. Justices

## Oyer and Terminer.

7. Justices of Oyer and Terminer, or of Peace, cannot assign a Coroner, as Justices of Gaol-Delivery may.

8. By Stat. 9 E. 3. they are also to send their Records determined into the Exchequer.

V. 12 Aff. 21. 9. A *Supersedeas* suspends their power, and a *Procedendo* revives it; but a new Commission determines it; the like of Commission of *Nisi prius*, &c. but it determines not without Notice.

1. By shewing the new Commission.

V. 2 & 3 P. & M. c. 10. 2. Or proclaiming it in the County.

3. Or Sessions held by new Commission.

10. An Award upon the Roll not sufficient to return a Jury, but a Precept under Seal of the Commissioners.

V. 1 Ard. 109. 11. And *Nota*, That a Special Commission of Oyer and Terminer may be granted to sit in one County to hear and determine Treasons, &c. in another, but then the Indictment must

Oyer and Terminer.

163

must be found in proper County,  
and the Trial by Jurors of proper  
County. C. P. C. f. 27.

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N. B. If one be *Felo de se*, and no Inquisition  
taken, because the Body cannot be found, an  
Indictment may be before Justices of Oyer and  
Terminer at their Sessions. 5 Co. Foxley's Case.

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M 2

Justices

## *Justices of Assize.*

**B**Y Stat. 27 E. 1. c. 3. *de finibus*,  
Justices of Assize have power  
to deliver Gaols of Felons and Mur-  
derers.

And by some Opinion they may  
do it *virtute officii*, without any spe-  
cial Commission. S. P. C. c. 5.

But in case of Counterfeiting  
Coin, &c. upon Stat. 3 H. 5. Stat.  
2. c. 7. they must have a Special  
Commission.

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## Justice of Peace.

Vide 9 Co. 16.  
ante, 163.  
2 Roll. abr.  
96, &c. 5 Co.  
Foxley's Case.

**T**HE Stat. of 18 E. 3. c. 2. gives them power by Commission to hear and determine Felonies and Trespasses against the Peace.

But then there must be a special Clause in their Commission, *Necnon ad aud' & terminand' felonias, &c.* Otherwise they cannot do it.

Yet that Clause doth not in propriety make the Justices of Peace Justices of Oyer and Terminer, because that it is a distinct Commission; and therefore a Statute, as that of 5 El. c. 14. limiting Forgery to be heard and determined before Justices of Oyer and Terminer, gives not the power therein to Justices of Peace; but the Justices of the King's Bench are Justices of Oyer and Terminer within that Statute.

By force of the general words of their Commission, they may enquire of Murder at their Sessions; for though by Stat. 6 E. 1. c. 9.

M 3

and

V. C. P. C. c.  
14. Dal. c. 40.  
9 Rep. 118.

and 4 E. 3. Murders and other Homicides must stay till Gaol-Delivery; yet the Stat. of 18 E. 3. c. 2. 24 E. 3. c. 1. 17 R. 2. c. 10. hath enlarged their Commission and Power.

Yet in respect the Stat. 1 & 2 Ph. & Ma. c. 13 directs Justices of Peace to take Examinations in Case of Homicide and other Felonies, and to certify them to the Justices of Gaol-Delivery; in point of Discretion they do forbear to proceed to determine great Felonies.

Dal. c. 40.

But for Petit Larceny, and other small Felonies, they use to bind over the Prosecutor to the Sessions.

By St. 4 E. 3.  
c. 2.

The Justices of Peace may proceed upon Indictments taken before themselves, or former Justices of Peace: But cannot proceed upon Indictments before Coroner, or Oyer and Terminer; but Justices of Gaol-Delivery may; and the Justices of Peace are to deliver the Indictments taken before them to the Justices of Gaol-Delivery, by Stat. 4 E. 3. c. 2.

They cannot deliver Persons suspected by Proclamation, as Justices of Gaol-Delivery may. Cr. f. 9.

In Cases of Felonies by Statute limited to be heard before Justices of Peace, they may proceed at Sessions; and consequently may bind over Informers, and certifie Examinations at Sessions.

But such Felonies by Statute, as are specially limited to Justices of Oyer and Terminer, or other Justices, and not to them, the Justices of Peace cannot proceed to take Indictments, as upon Stat. 3 *H. 7. c. 18.* for contriving to destroy the King, &c. upon Stat. 33. *H. 8. c. 12.* Murderers in the King's Palace; upon Stat. 8 *H. 6. c. 12.* of razing or imbezilling Records; upon Stat. 5 *El. c.* of Forgery; upon Stat. 13 *H. 6. c. 1.* secret imbezilling Goods, &c. upon Stat. 2 & 3 *Ed. 6. c. 24.* Striken in one City, and dies in another, or accessory in another County.

But in the former Cases it seems Dal. c. 40. they may take the Examinations,

## Justices of Peace.

and commit the Offenders, and bind over Prosecutors.

If any Indictment be taken before Justices of Oyer and Terminer, Gaol-Delivery, or Coroner, they cannot proceed upon them; but upon Indictments taken before the Sheriff in his Turn, they may proceed by Stat. 1 E. 4. c. 2.

In Cases of Treason, Misprision of Treason, or Premunire, regularly Justices of Peace have no Jurisdiction; yet two Things may be done :

Dal. c. 90.

1. In any Case of Treason, because it is a breach of the Peace, they may, upon complaint, imprison Offenders, take Examinations, bind Prosecutors over, and certify their proceedings into King's Bench or Gaol-Delivery.

Dal. c. 2.

2. In some Cases they are enabled to take Indictments, but not to hear and determine the same, but certify the same into the King's Bench, upon Stat. of 5 & 23 El.

1. Maintainer of Authority of the See of *Rome*.

2. Obtaining Bulls, &c.

3. With-

3. Withdrawing from Allegiance.

4. Bringing in *Agnus Dei*, &c.

A Person bringing one before a Justice suspect of Felony, and refusing to be bound to prosecute, may be committed, if it appear he can testify materially.

They may enquire of any Felony within the County, though within the Verge. 4 *R. Wigg's Case*.

V. 1 Rol.abr.  
Tit. Coroner.

## Coroner

**H**ath power in three Cases :

1. To take Indictments of Death; but this he can only do *super visum corporis*, otherwise void. Hence,

St. P.C. f. 52.

1. If the Body be interred before he come, the Township amerced, and he must dig up the Body; so if the Township suffer the Body to lie long to Putrefaction, without sending for the Coroner: The like of one dying in Prison.
2. If the Coroner be remiss, and comes not being sent for, he shall be fined and imprisoned.
3. He may enquire of flight, and such Presentment not Traversable.
4. If the Body cannot be seen the Justices of the Peace may enquire thereof.

*Nota,*

*Nota*, The Record of the Coroner of great Authority; if he Record a Confession of a Felony by Approver, or a Confession of breach of Prison, or an Abjuration, it shall not be Traversed.

And it seems by some he hath power to enquire of Rape, breach of Prison.

5 Jur. dnt. Co-  
roner acquit  
person occise  
dnt' enquire  
quis occidit.  
11 E. 4. 3.  
14 H. 7. 2.

He hath Jurisdiction upon Arms of the Sea, where a Man may see from side to side.

2. Concerning Appeals.

The Coroner, together with the Sheriff hath power in the County-Court to receive Appeals of Robbery and other Felonies: But then it must be of a Felony in the same County: Upon this Appeal they may grant Process till utlawry; but it seems they cannot send an *Exigent*, because prohibited by Stat. of *Magna Cart. c. 17.*

St. P. C. f. 52.

Such Appeal may be by Bill; and it may be removed into King's Bench by *Certiorari*, but it must issue both to Sheriff and Coroner, and not to Sheriff only.

St. P. C. f. 64

It

It appears by Stat. 3 H. 7. c. 1. That an Appeal of Murder by Bill lies before Sheriff and Coroner.

3. The Coroner alone may take the Appeal of an Approver of a Felony in any County.

St. P.C. f. 53. But then he cannot make Proceſs thereupon, but enter it in his Roll, and ſend it to the Juſtices of Gaol-Delivery, who thereupon may iſſue their Proceſs to the Sheriff of the foreign County to take the Appellee.

4. To take the Abjuration of him that acknowledges a Felony done in the ſame County, or any other.

And note, That though more Coroners than one in any County, yet any one may exerciſe any of the Powers before.

But the Preſentment of him that is firſt taken ſtands.

*Sheriff.*

## Sheriff.

**T**HE power of the Sheriff to take Indictments, was either *virtute Commissionis*, which is taken away by the Stat. 28 E. 3. c. 9.

*Officii*; in his Turn: Wherein,

1. The Turns must be held *infra* St. P.C. f. 84. *mensem Paschæ & Michaelis*; otherwise the Indictments there are void *per Stat. 31 E. 3. c. 14.*

2. The Indictments must be under Seal of the Jury by Stat. of *West. 2. c. 13.* indented *per Stat. 1 E. 3. c. 17.* and the same for Lords of Franchises.

3. The Indictors must be of good Name, having 20 s. Freehold, or 26 s. 8 d. Copyhold; otherwise Sheriff punishable by Stat. 1 R. 3. c. 4.

4. The Turn can take no Indictment but of that which is Felony by Common Law, or of such Matters as are particularly by Act of Parliament limited to them, and there-

fore an Indictment of Rape void there.

5. Upon an Indictment of Felony before the Sheriff in his Turn, they can make out no Process, but must send them to the Justices of Peace, who have power to proceed thereupon, as if taken before themselves, by Stat. 1 E. 4. c. 2.

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*Court-Leet.*

**T**HE Court-Leet hath in effect the same Jurisdiction with the Turn ; but Presentments of Felony before them are to be sent before Justices of Gaol-Delivery. 3 *H.* 4. Vide 158. 18.

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*The*

*The means of bringing Capital Offenders to Trial.*

**H**AVING considered the Courts of Justice, now we come to consider the means of bringing Capital Offenders to their Trial ; and that is regularly by one of these three ways;

Appeal.  
Approver.  
Indictment.

And herein some Things are proper to each Proceeding.

§. Some things are common to them all, which come to be considered after particulars, proper to either, dispatched, *viz.*

Process.

Arraignment ; and therein of Principal and Accessary.

Demeanour of the Party arraigned ;

Standing

Standing mute.  
Confessing.  
Pleading and Pleas.

Declinatory.  
Sanctuary.  
Clergy.

In Barr,  
Pardon.  
*Anterfoits acquit.*  
*Anterfoits convict.*

To the Felony.  
Trial,  
By Battel.  
By Jury, and therein  
Process against the Jury.  
Challenge.  
Evidence.  
Verdict.  
By Peers in case of  
Nobility.

N                      Judg-

178 **Bringing Capital Offenders to trial.**

**Judgment in the several Cases  
Capital.**

**Execution.**

**Reprieve.**

**Falsifier** { **By Error.**  
              { **By Plea.**

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*Appeal.*

## Appeal.

V. Keeling's  
Reports, 37,  
90, 91, &c.  
to 108.

**A**ppeals in respect of the manner  
of proceeding, are of two  
kinds;

1. By Writ.
2. By Bill.

V. post 187.

Touching Appeals by Bill, they  
may be prosecuted,

1. In the King's Bench against  
any that is *in custodia Mareschalci*, or  
let to bail: they are the Sovereign  
Coroners.

2. In the Court before Commis-  
sioners of Gaol-Delivery against a  
Prisoner, or one let to Bail, but not  
of one let to Mainprize.

But if one of the Appellees ab-  
sent, remove in *B. R.* by *Certiorari*.

3. By some before Justices of  
Peace, *quod quare* 44 *E.* 3. *Coron.*  
95.

4. Before Sheriff and Coroner,  
as before; and it may be removed  
by *Certiorari* in *B. R.* 3 *H.* 7. *c.* 1.

N 2

5. Be-

5. Before the Constable and Marshal, of a Felony done out of the Realm. 1 *H. 4. c. 34.*

2. In relation to the Matter.

Appeals are in matter,

1. Not Capital, as an Appeal of Maihem, which may be commenced in King's Bench, Gaol-Delivery, or before Coroner and Sheriff.

This, though it be *felonice*, yet is but a Trespass in its Nature and Judgment.

2. Of Treason; but this ousted by Stat. 1 *H. 4. c. 14.*

2. Of Felony; and these of three kinds,

1. Of Death.

2. Of Larceny.

3. Of Rape.

V. ante 33.  
Pulton de  
Pace, 15, 16,  
17.  
4 Co. 43.

## Appeal of Death.

V. Keel. Rep.  
93 to 108.

**A**N Appeal of Death is either <sup>1</sup> Inst. 123 b.  
by the Wife, or Heir Male. <sup>2</sup> 87 b.

1. Appeal of Death by the Wife ;  
and therein these requisites ;

1. She ought to be a Wife *de* <sup>2</sup> Inst. 68.  
*jure*, and not *de facto* on- Post. 188.  
ly ; and therefore *ne unq;* <sup>3</sup> Leon. 268.  
*onc' accouple* a good Plea. <sup>1</sup> Inst. 34. b.

2. But she need not be dow- West. 2. c. 34.  
able ; for if she had elop- <sup>2</sup> Inst. 68.  
ped, or the Husband been <sup>1</sup> Inst. 33.  
attaint ; yet she may have  
an Appeal of his death.

3. She ought to continue his Dy. 88, 296.  
Widow ; for if she marry <sup>2</sup> Inst. 68, 69.  
before, or pending the Ap- Stamf. 59.  
peal, the Appeal fails for  
ever ; or if she marry after V. <sup>1</sup> Inst. 33.  
Judgment she cannot have <sup>2</sup> Inst. 69.  
Execution.

2. Appeal of Death by the Heir.

1. If the dead hath a Wife, the Kelw. 120. '  
Heir shall not have Appeal Stamf. 59. b.  
though she die within the  
year : but if the Wife

N 3 kill

1 Jones 425.  
1 Leon. 326.  
Dy. 50. pl. 4.

kill the Husband, there the Heir shall have an Appeal.

2. He must be Heir by course of Common Law; this hath these Exceptions.

1. Where Heir is disabled by Attainder.

Stamf. 60.

2. Where the Appeal is against the Heir; in these cases it goes to the next Heir, as if the other were dead without Issue.

Dy. 69. p. 31.  
Stamf. 59, 80.  
Br. Appeal.  
30, 75, 88,  
144, 156.

3. It must be by Heir that was Heir at time of death of Ancestor; for if he die within the year before, or after Appeal commenced, it is lost.

Stamf. 59.

But it seems if the Heir having Judgment die, his Heir may have Execution.

Mag. Char.  
c. 34.

4. It must be an Heir and Male; *Nullus capiatur propter Appellum femine alterius quam viri sui*: But if be Heir; and Male, though he derive through Females,

Females, he may have an Appeal. C. Lit. 25. b.

5. A Man above Seventy, or an Infant, may have Appeal; but no Battel waged, and adjudged of late times the Paroll shall not demurr. <sup>2 Inst. 320. Kelw. 120. Br. Appeal. 116, 119.</sup>

*Sed quere.*

But an Ideot, Monk, or Man mute, shall have no Appeal, neither of death, nor otherwise. <sup>Stamf. 60.</sup>

And note, the Appeal of death must be within year and day after death by Stat. <sup>C. P. C. 53. 4 Co. Heydon's Cafe. 1 Inst. 254. b.</sup> 3 E. 6. c. 24. stricken in one County, and dies in another; or Accessary in one County to death in another; Appeal brought where party died. <sup>3 Mod. 121.</sup>

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Of conspiring the Death of a Man. Vide <sup>2 Inst. 384.</sup>

Vide Cro. Car. Pigot's Cafe, Appeal of such Conspiracy.

*Appeal of Robbery.*Stamf. P. C.  
60, 61.

22 Aff. 97.

Br. Appeal.

100.

Fitz. Cor. 39.

1 Inst. 123. b.

Servant robbed, Master or Ser-  
may have Appeal.

But Testator robbed, Executors  
shall not have Appeal.

Villain shall not have Appeal of  
Robbery against his Lord; *contra* of  
death.

Two joint Owners robbed, Sur-  
vivor shall have Appeal.

A Woman or Infant shall have an  
Appeal of Robbery.

If a man be robbed at several  
times, he must put all into one Ap-  
peal.

What omitted is confiscate.

The Appeal affirms the continua-  
tion of the property. Therefore if  
*A.* rob *B.* in the County of *S.* and  
go with the Goods in the County of  
*D.* an Appeal of Larceny lies in the  
County of *D.* but not of Robbery,  
for that is upon a taking from the  
person.

If *A.* be robbed by *B.* who is  
robbed by *C.* *A.* may have an Appeal  
of Larceny against *C.* This

Kelw. 160.

This Appeal may be prosecuted in a year, two, or three, if there was fresh suit; and the judging of fresh suit lies in the discretion of the Court.

V. 4 Leon.  
Doyley's  
Case 20 years  
after, sed  
22 Aff. 97.  
contra.  
V. Stamf. 62.

And note, This, or any other Appeal lies against an Infant, against a Monk, without naming his Sovereign, against a Feme covert without naming her Husband.

What a Bar in Appeal of Robbery. V. 4 Co. Hudson's Case.

See 4 Co. Brook's Case, an Appeal of Burglary. 2 Leonard 83. m. Case.

V. ante 117,  
118.

*Appeal of Rape.*

Appeal of Rape

1. Lies for the party ravished.
2. But if she consented to the Rape afterwards, then by Stat. 6 R. 2. c. 6. it is given to the Husband; if none, to the Father; if none, to the Heir, whether Male or Female.

If she be taken in one County, and ravished in another, the Appeal of Rape lies in that County where actually ravished.

Although by Stat. W. 1. c. 13. whereby Rape was turned into Trespass, forty days limited for her Suit; yet it being again made Felony by Stat. W. 2. c. and no time limited for it, it may be brought in any reasonable time.

Vide Appeal of Maihem, ante 133, & 180.

*Process*

*Process in Appeal.*

Concerning Process in Appeals, V. Cro. Jac. v. *infra* Process in general, because many things therein common to Appeals and Indictments. Bradly versus Banks, Return of a Writ of Appeal.

The Count in an Appeal.

1. The Plaintiff in his Appeal V. Cro. Jac. must mention the place and day; <sup>283.</sup> need not mention the hour; and though day be mistaken, not material upon Evidence.

2. It sufficeth for Plaintiff to count against Defendant, according to the construction that the Law maketh upon the Fact:

If *A. B.* and *C.* present, and *B.* only strike the mortal stroke, he may count against them all, that they stroke: So in Rape.

3. An Appeal by Heir ought to shew *comment.*

4. In Appeal of Rape, *felonie rapuit* sufficient without saying *carnaliter cognovit. vid. 11 H. 4. 1.*

5. In

5. In Appeal against *A. B.* and *C. A.* only appears, he must count against all by the better Opinion.

V. 4 Co.  
Wair's Case.  
2 Inst. 183.  
West. 1. c. 14.

6. At this day but one Appeal against all Principals and Accessaries, and if an Appeal be against *A.* and he is attaint or acquit, or Plaintiff non-suit, he cannot have another Appeal against *B.* But if Accessary in one County to Felony in another, there several Appeals against Principal and Accessaries.

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*Note,* If he that is attainted of Treason or Felony be slain by one who hath no Authority, his eldest Son can have no Appeal: but his Wife may. 7 Co. in Calvin's Case.

If one Brother be slain, the other Brother of the half Blood shall never have an Appeal. Co. Lit. 14.

*Pleas*

*Pleas to the Writ and in Bar.*

Writ of Appeal abate,

1. For insufficiency in the Writ, as wanting *rapuit*, false Latin, &c.

2. Multiplicity of Action; a second Writ of Appeal purchased, pending a former Writ, abates; but if pending a former in the County, abates not.

But if the first Appeal by Bill be removed into the Bench by *Certiorari*, and the Plaintiff had appeared thereupon, and counted, abates the second Writ.

*Nul tiel in rerum natura*, as one of the Defendants, abates *vers* &c.

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*Pleas*

*Pleas in Barr.*

*Vid. infra in ceo general Title as to  
auterfoits convict or acquit.*

C.P.C. 98.

1. He may plead any thing where-  
by it appears the Plaintiff is not in-  
titled to the Appeal; *de quo v. su-  
pra.*

2. Nonsuit in a former Appeal  
after Declaration, so of a *Re-  
traxit.*

3. The Plaintiff brought an Ap-  
peal of the same Felony against  
another, who was acquit or attaint  
at his Suit.

4. Plaintiff hath released to De-  
fendant; but if Appeal against Di-  
voſce, a Release or *Retraxit* as to  
one, no barr for the other.

5. If Defendant plead in Barr,  
he may also plead over to the Fel-  
ony, and it shall not be double.

1. But in case of a Release  
pleaded, he shall not plead  
over to the Felony, because  
repugnant.

2. In

2. In case of Villenage pleaded he shall not plead to the Felony, because Infranchisement; yet if that barr found against him, he may plead not Guilty; and so in any other case where he pleads in Barr without pleading over, except Release.

## Approver.

C.P.C. c. 65. 1. **W**HAT it is to be an Approver? 0570  
C.P.C. f. 142.

A person indicted of Treason or Felony not disabled to accuse before competent Judges, confessing the Indictment, and sworn to reveal all Treasons and Felonies he knows, and then before a Coroner entering his Appeal against *participes Criminis* in the Indictment within the Realm.

2. Who may be an Approver, and who not?

1. A Peer of the Realm cannot be an Approver.

2. A person attaint cannot be an Approver; nor a person out of Prison, though indicted.

3. A Woman, Infant, Idiot, *Non compos*, Clerk, cannot be Approver.

4. But a man above seventy, or maimed may, but he shall not wage Battel.

I

5. Clerk

5. Clerk convict may:
3. In what Cases?
  1. None can approve but an Indicted; and therefore if only in Prison upon suspicion, he may indeed confess the Felony, but such Confession amounteth not to an Attainder or Conviction, though it be an Evidence; and therefore cannot approve.
  2. The Appellee in Appeal cannot be an Approver.
  3. The Appellee of Approver cannot be Approver, for that would be infinite.
  4. Though a person indicted approve, yet if after an Appeal be against him, the Approvement ceaseth.
  5. He that hath once pleaded to the Felony cannot be Approver, but shall be hanged, for he is found false.
4. Of what Offences?

**Approver.**

It must be only of the Offences contained in the Indictment, be it Felony or Treason, and therefore not of another Offence, nor of an Accessary before or after, to the same offence; yet his Oath general, therefore as to the other Offences, it is but a Detection, not an Improvement.

5. Before whom?

Before such Judges only as can assign a Coroner, as King's Bench, Gaol-Delivery, Oyer and Terminer, High Steward; but not before Justices of Peace, Court Baron, or County Court.

But it is in the discretion of the Court either to suffer him to be Approver, or to respite Judgment and Execution, till he hath convicted all his Partners.

6. How demeaned after Appeal?

1. After Felony confessed upon the Arraignment, a Coroner assigned and sworn in Court to discover Offenders.

2. A

2. A day prefixt, within which he is to perfect his Appeal before the Coroner, and in every of these days he must appeal; for if he fail in any, and the Coroner record it, he is to be hanged.

The time limited to perfect his Appeal by 5 E. 2. c. 34. is three days, but that repealed, 15 E. 2.

3. During the time limited for his Appeal, he shall be at large, and have *1 d. per diem* till his Appeal finished.
4. If he appeal persons beyond Sea, or such as are not *in rerum natura*, and that appear by Testimony of Country, or by Return of Sheriff, *quod non fuit inventus* he shall be hanged.
5. After his Appeal formed before the Coroner, he must repeat it *verbatim* before the Court; and if he fail thereof,

## Approver.

thereof, and the Coroner record it, he shall be hang-  
ed.

## 7. Process in Appeal.

1. In the same County the Co-  
roner may award Process  
to the Sheriff till Exigent.

2. If Appellee be in a foreign  
County, then the Judges  
before whom the Appeal is,  
may grant Process, *viz.*  
*B. R.* or *Itinerant* by Com-  
mon Law: and by Stat.  
28 *E. 1. de Appellatis*, the  
Justices of Gaol-Delivery  
may send Process into a  
foreign County, as well to  
apprehend the Appellee, as  
a *Venire Facias* to try the  
Issue.

S. P. C. f. 146.

## 8. Proceeding upon Trial.

The Appellee may put himself  
upon the Country, or wage Battel.

If five Appellees, and they wage  
Battel, he must fight them all.

If two Approvers against one Ap-  
pellee, if the Appellee vanquish the  
first, he is acquitted against the rest:  
though

though Appellor retract his Appeal, or be vanquished; yet if the Offence be within Clergy he shall have it; and so of the Appellee.

9. Proceeding after Trial.

If the Appellor convict the Appellee, either by Battel or Verdict, the King *ex merito justitiæ* is to pardon him; and from the time of his Appeal till his Pardon or Conviction, ought to have wages.

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## *Indictments.*

*Note, a Man  
attainted of  
Felony may  
be indicted  
of Treason.  
4 Co 590.*

**T**H E S E things considerable:

1. Where an Indictment requisite in cases Capital, and where not.
2. What the quality of Indictors.
3. Of what matters they may enquire.
4. Before whom found.
5. What requisite in the manner of them.

*V. 3 Mod.  
Crofton's  
Case.*

1. Where an Indictment requisite for party to be arraigned at the King's Suit.

1. By the ancient Law, if a man was taken in Larceny with the manner, and that brought into Court with the Prisoner, the Prisoner should be arraigned thereupon without any Indictment. Stat. P. C. f. 148.

And such was the use of those Manors that had Infangthef. *Ibid.* f. 29. *V. 1 E. 3. 17. 17 Ass. 49.* but this disused.

2. If

2. If Trespass be brought *de muliere abducta cum bonis viri*, and the Defendant found Guilty; or if in Trespass for Goods the Defendant be found that he stole them; this in the King's Bench equivalent to an Indictment, and the Defendant put to answer to the Felony.

S. P. C. f. 94.  
And note, tho' an Indictment be for Felony, yet the Judgment may be Trespass. Keeling 29.

3. In some Cases upon Appeals by Appellors or Approvers not prosecuting, &c. the Defendant arraigned at the King's Suit; because it carries a presumption of truth; and therefore if the Defendant be both appealed and indicted upon a non-prosecution of the Appeal, the party shall be arraigned upon the Appeal, not the Indictment. 4 E. 4. 10.

Wherein,

1. If the Plaintiff in Appeal by Writ be Nonsuit before Declaration, he shall not be arraigned at the King's Suit. 1. Because no certainty. 2. The Writ may be at another's Suit; but if it be by Bill, either by Appellor or Approver, it seems he shall, because the certainty appears; therefore in the former

S. P. C. 148.

Case, if there be no Indictment against him, he is dismissed.

V. Keel. 95,  
to 98, 103,  
105.

2. If the Plaintiff release his Appeal after he hath commenced it, the party shall be arraigned at King's Suit: But if before it was commenced, then not; because it was never well commenced.

3. If the Plaintiff or Approver after Appeal commenced, confess it false, or take to his Clergy, or wave his Appeal, yet arraigned at the Suit of the King: But if the Approver after Battel joyned do in the field confess it false, the Appellor hang'd, and the Appellee discharged, because amounts to a vanquishment.

4. If the Appeal abate by Act of the Plaintiff, as taking Husband; or act in Law, as death; Appellee arraigned at the King's Suit: But if it abate by insufficiency in the Appeal, as by false Latin, Misnomer, or because Plaintiff disabled to commence Appeal, as Utlary of Felony, or Trespass; or the year and day past; or Plaintiff not Wife or Heir; Defendant not arraigned upon Appeal, but may be indicted.

5. If

5. If the King pardon after Bat-  
tel joyned in Appeal by Approver,  
no Arraignment at King's Suit, but  
Appellee discharged.

And note, where the Prisoner S. P. C. 104.  
arraigned upon the Appeal, a *Ces-*  
*set Processus* entred upon the Indict-  
ment.

The return of the Sheriff of Ref- S. P. C.  
cue or Escape of a Felon, not suffi-  
cient to put the Party to answer  
the Felony.

2. The second thing considerable  
is the quality of the Indictor.

Concerning Indictments in Leets and Turnes, *V. ante* upon Stat. W. 2. Ante 137,  
c. 13. 1 E. 3. c. 17. 1 R. 3. c. 4. 142, 151, 174.  
1 E. 4. c. 3.

There is a general Statute that C. P. C. f. 33.  
refers to all Indictors, as well in  
case of Felony as Treason, 11 H. 4.  
c. 9. which requires

1. Indictors not to be
  1. Persons fled to Sanctuary
  2. Not outlawed.
  3. Not indicted or attainted.
  4. Not by Conspiracy.

V. 1 Rol. Rep.  
the King and  
George.

2. That

2. That the Indictors be the King's Liege people.

3. Returned by the Sheriff, or Bailiffs of Franchises.

4. Not at the nomination of any person.

And all Indictments taken contrary, void.

Hence it follows,

1. That the Prisoner upon his Arraignment may plead this matter, or any point of the Statute, and may plead over to the Felony. *Vide Scarlet's Case.*

2. Though there be twenty of the Grand Jury, yet if one is outlawed, or taken at the nomination of another, it avoids the whole Indictment.

By Stat. 3 *H. 8. c. 12.* Justices of Gaol-Delivery, or of Peace, whereof one of the *Quorum*, in open Sessions may reform the Pannel of the Grand Jury, by putting in and taking out Names, and the Sheriff is to return the Pannel so reformed.

But this takes not away the former Statute of 11 *H. 4.* nor alters it.

By Stat. 33 *H. 6. c. 2.*

Special provision is made for the quality of the Indictors in *Lancashire.*

3. Of which things they can enquire.

Regularly they can enquire of nothing but what ariseth within the Body of the County for which they are returned.

And therefore if an Indictment for scandalous words, or other matter transitory, be found, upon not guilty pleaded thereunto, if upon Evidence it appear to be spoken in another County, the Defendant is not guilty.

And therefore where stroke was in one County, and death in another, he could not be indicted where party died.

But for a Nufance in one County to another, a Jury of the County where Nufance is committed may indict it.

But divers Statutes have introduced an alteration of the Law in some Capital Cafes, 28 *H. 8. c. 15.*

Trea-

Treasons, Felonies, Robberies, Murders, and Confederacies upon the Sea may be enquired, tried, heard, determined, and judged in such Shires and places as shall be limited by the King's Commission to be directed for the same.

A Treason done out of the Land, it hath been held that it may be enquired of and tried where the Offender had lands; but to avoid the Question by Stat. 35 *H. 8. c. 2.* all Treasons and Misprisions, or concealments of Treasons done out of *England*, may be enquired, heard, and determined by the Justices of the King's Bench, by persons of the County where the Bench sits, or before Commissioners, and in such Shires as shall be appointed by the King's Commission, by good men of the same Shire, as if the Treasons, &c. had been done in the same Shire where inquired.

Tho' the Indictment lays it as done in one County, yet Evidence may be of Facts done in others. Keel. 15, 33.

C. P. C. f. 71.

Upon this Statute,

1. If the Bench remove after Indictment into another County, the Trial shall be by persons of the first County.
2. The

2. The King's writing his name to the Commission, or putting his Signature to the Warrant, sufficient.

V. 1 And.  
262. That  
Treason done  
in Ireland  
may be tryed  
here, V. ante  
16.

3. *Ireland* is out of the Realm to this purpose.

The Statutes stand unrepealed by Stat. of 1 *Ma. c.*, but the Stat of 32 *H. 8. c. 4.* for Trial of Treason in *Wales* repealed by 1 *Ma.*

C. P. C. f. 24.

Again, by Stat. 2, & 3 *El. c. 24.* a man stricken in the County of *D.* dies in the County of *S.* or Accessary in one County to Felony in another County, may be indicted and tried in the County where the death was, or Felony committed by the Principal; but it must be laid according to truth.

C. P. C. 49.

If inquest conceal any matter presentable before Justices of Peace, they may impanel Inquest to enquire of such Concealments, and amerce the Concealers, by Stat. 3 *H. 7. c. 1.*

4. Before whom found.

Of this before.

2

5. The

Keeling 21,  
28, 32, 69, 70,  
82, 112, 125.

St. P. C.

## 5. The Form of Indictments.

### 1. By Statutes:

4 H. 4. c. 2. *Insidiatores viarum*  
& *depopulatores agrorum* to  
be omitted in Indictments;  
and if inserted, yet Clergy  
not thereby taken away.

37 H. 8. c. 8. Indictment not  
to be quashed for want of the  
words, *viz. gladiis, baculis, &*  
*cultellis.*

### 2. At Common Law:

1. Want of certainty vitiates;  
want of year, day, or place.

Indictment for Escape of one taken on suspicion of Felony, without shewing what Felony, *Male.*

Indictment for receipt of a Felon without shewing who received, *Male.*

Indictment *ad magnum curiam &*  
*Letam, Male.*

Indictment for making Alchimy  
*ad instar pecunie Regis*, without  
shewing what money, *Male.*

Indictment *quod communis male-*  
*factor*, without shewing wherein,  
*Male.*

Indictment *quod cepit, or furatus*  
*est.*

V. Keel. 29.  
Tho' the In-  
dictment is  
Felony, the  
Judgment  
may be Tref-  
pass. V. *ibid.*  
30, 52, & 82.

*est*, without saying *felonice*; *abduxit equum*, without saying *cepit*; or *car-naliter cognovit*, without saying *ra-puit*; or *burgariter*, when it should be *burglariter*; or if Felony be-fore Justices of Peace, without saying *necnon ad diversa felonias*, &c. or before the Mayor of London with-out saying & Coronatore, or of a murder with a Gun, without saying *percussit*, Male.

One indicted of Burglary and stealing; and acquitted, can't after-ward be in-dicted for Burglary, but may for a Felony done at the same Time. Vide Keel. 30, 52.

Indictment supposing the stroke Keel. 28, 32,  
1. Augusti, death 2. Augusti, & sic 89, to 125.  
*felonice murdravit* 1. Augusti, Male.

But *sic murdravit modo* & *informa præd'*; or *præd'* 2. Augusti, Bene.

Indictment, *quod dedit mortalem plagam circa pectus*, Male: but in *sinistra parte ventris circa umbilicum*, Bene.

Indictment *de morte cuiusdam ignoti*, or *felonice cepit bona*, &c. *cuiusdam ignoti*, or *domus* & *Ecclesie*, in time of vacation: good.

Indictment of Poisoning with se- C. P. C. c. 62.  
veral sorts of poison, without shew- Where an  
ing of which he died, good. Indictment  
shall con-  
clude *contra formam Statuti* or not, V. Keel. 32, 69, 70. Dy. 365.

V. 2 And. 69.  
The Parties  
confession out  
of Court, a  
Proof in  
Treason.

### 6. Proof upon Indictments.

In case of Treason and Misprision by the Stat. 1 E. 6. c. 12. & 5 E. 6. c. 11. there ought to be two lawful Accusers, that is, witnesses upon every Indictment.

t. P. C. 24.

An Accuser by hearsay is no lawful Accuser within this Statute.

The necessity of such proof upon Indictment of Treason is not taken away by Stat. 1 E. 1. 2. 1 & 2 Ph. & Ma. 7. 11. but only in the case of counterfeiting Coin.

St. P. C. 164.

But these Witnesses need not be present with the Indictors, but they may send it to them in writing.

Of Informations, V. 3 Inst. 193. 4 Inst. 172.  
On the Stat. 37 H. 8. of Usury, V. 11 Co.  
Dr. Foster's Case. Cro. Jac. 104. On 23 H. 8.  
c. 4. for Extortion in Victualers. Cro. Car. 112,  
146. Hutton 98. Mo 321. See also Cro. Car.  
112. touching Informations on the Stat. 21 Jac.  
33 H. 8. &c. Information for not coming to  
Church. Cro. Jac. 142. On the Stat. 31 El.  
of Symony. Cro. Car. Bawd-rock and Mac-  
kaller. 3 Lev. 169. 7 Co. 26. On the Stat.  
against Forgery, Perjury, &c. V. ante 151.

Proctor

## *Process.*

**N**OW we come to those Proceedings that for the most part are common both to Appeals and Indictments. And

### 1. Of Process.

1. Upon an Indictment or Appeal of Death, but one *Capias*, and then *Exigent*: But in case of Robbery, then by Stat. 25 E. 3. c. 14. two *Capias*'s, then *Exigent*; but this Stat. extends not to Death.
2. But Indictments, or Appeals of Treason, or any Felony, or Trespas against a Person of another County after one *Cap.*, a second *Cap.* with Proclamations shall be granted to the Sheriff of that County wherein he is supposed to be conversant before an *Exigent* shall issue, by Stat. 8 H. 6. c. 10. And

P

up-

## Process.

upon this Statute Process shall go to a County Palatine; and if in the Indictment he be styled *nuper de D.* and so in several Counties, the second *Cap.* shall go to every County.

St. P. C. f. 67.

3. In Appeal or Indictment against Principal and Accessary, by Stat. *W. I. c. 14.* Process of Utlary must stay against Accessary till Principal attaint. *et c.*

But if it be an Appeal by Writ, which is general till Declaration, the Plaintiff must at his peril distinguish the Process; for if he take his *Exigent* against all, he must count against all as Principals. *et c.*

An Appeal against divers, one appears and pleads to the Writ, or in Bar, which goes to all, Process of Utlary shall stay against the rest till Plea determined.

An

An Indictment or Appeal may be removed in *B. R.* by *Certiorari*,<sup>1</sup> but it must accord with the Appeal.

Upon an Appeal removed by *Certiorari*, the Plaintiff is without Day; and to compel the Plaintiff to proceed, the Defendant may take out a *Scire Facias*, and upon two *Nihils*, or a *Scire Feci* and default, Defendant discharged. 186-18913

But the Plaintiff upon such Appeal removed, may have *Capias* & *Exigent*.

If the Defendant comes in by *Capias*, and after appearance make default, a new *Capias*; if upon *Exigent*, a new *Exigent*; and upon second appearance shall plead *de novo*, for the first Issue and Inquest is *sine die*.

## *Arraignment.*

1. **I**N what manner a Person is to be arraigned?

*Keel. fo. 10.* The Prisoner at the time of his Arraignment ought not to be in Irons.

2. Where arraigned upon several Appeals or Indictments.

If a Man be indicted or appealed of Robbery or Death at the Suit of one, he shall be arraigned and tried at the Suit of another, because they have several Interests in the Judgments.

And now the same Law is of an Indictment of Robbery, because by Stat. 21 *H. 8. c. 11.* the Party is to have Restitution.

But if the Appeal by one be not commenced till after an Attainder at the Suit of another, he shall not be arraigned upon another Suit:

But if the first Attainder be pardoned, he shall be arraigned upon the

the second Appeal commenced after the Attainder.

But after an Attainder of Felony, he may be arraigned for Treason for the King's Interest.

By the Common Law, a Clerk convict should have answered all Felonies, and were acquit or convict at the Suit of others.

But this was remedied by *Stat. 25 E. 3. c. 4. pro Clero.* And therefore after that Stat. the Clerk convict and delivered to the Ordinary, was discharged of all former Felonies whereof he was not arraigned before Clergy; and that although those other Offences were not within Clergy. *Dyer 214.*

But now by *Stat. 8 El. c. 4.* after Purgation, and *18 El. c. 7.* after burning in the Hand, he shall be put to answer former Felonies upon Appeal or Indictment. *Vid. infra in auterfois acquit & convict.*

3. Concerning the Arraignment V. post. 221. of Principal and Accessary.

## Arraignment.

1. Who shall be said an Accessary before,  
after ?
2. How the Proceeding shall be against them upon their Arraignment ?

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*N. B.* A Prisoner may be arraigned and tried immediately by a Commission of Gaol-Delivery and of Oyer and Terminer : But if tried by a Commission of Oyer and Terminer only, there must be 15 Days after pleading to return Juries, &c. Vide Keeling fo. 7. post. 256.

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*Principal and Accessary.* V. ante 117.  
Margin.

**1** **W**HO an Accessary?

1. In Treason no Accessaries, Nor in Petit Larceny. 12 Co. 86. Sed 2 Inst. 183. contra. C.P.C. f. 138. 4 & 5 P. & M. c. 4. but all Principals; but a Procurer before, or a Receiver knowingly after, is guilty as Principal in High Treason.
2. Where an Act of Parliament makes a Felony, it doth. incidently make such Accessaries as would be Accessaries before or after to a Felony at Common Law; as in Case of Buggery, Rape, &c. C. P. C. f. 59.
3. The Accessary cannot be guilty of Petty Treason, where the Principal is but Murder.
4. If divers come to commit an unlawful act, and be present at the time of Felony committed, though one of them only doth it, they are all Principals. Vide the Case of the King & Plummer in Keeling.

## Principal and Accessary.

So if one present move the other to strike: Or if one present, did nothing, but yet came to assist Party if need; or if one hold the Party while the Felon strikes him; or if one present deliver his Weapon to the other that strikes; for they are *presentes, auxiliantes, abettantes, or confortantes.*

S. P. C. f. 40. But if one came casually, not of the Confederacy, though he hindered not the Felony, he is neither Principal nor Accessary, although he apprehend not the Felon.

V. 1 And. 16.  
Pudsey's Case.  
Kee'ing 52,  
53.

4 Rep. 44.  
Vaux's Case.  
C. P. C. 138.

§ 5. In some Cases a Person absent may be Principal.

1. He that puts Poison in any thing to poison another, and leaves it, though not present when taken: And so it seems are all that are present when the Poison is so infused, and consenting thereto.

2. If upon the same Ground, or in the same House, though not within view of the Fact, when many come

come to do an unlawful act: See *V. Rex. con.*  
before Lord *Dacre's Case*,<sup>1</sup> and *Pud-* *Plummer in*  
*sey's Case*, in Murder and Robbery. & *Pudsey's*  
*Keeling;*

3. By special Act of Parliament, *Cafe. r And.*  
as upon the Stat. 3 *H. 7. c. 2. 8 H.* <sup>116.</sup>  
6. 12.

2. Accessaries<sup>11</sup> before; he that *V. Dyer 168.*  
commandeth or assenteth<sup>12</sup> to the  
committing of a Felony, and is ab-  
sent when done.

1. In Manslaughter there can be <sup>4 Rep. Bi-</sup>  
no Accessary before, because done *bith's Cafe.*  
without premeditation.

2. Where the Execution varies *C. P. C. f. 57.*  
from the Command, in the Person  
slain; as a Command to kill *A.* and  
he kill *B.* or in the nature of the  
Offence; as a Command to rob *A.* as  
he goes to Market, and he break  
open his House and robs it, the  
Commander is not Accessary.

3. But a Command to poison *J. S.*  
and he shoots him; a Command to  
rob or beat *J. S.* and he beats him  
to Death, the Commander Accessa-  
ry.

4. If *A.* command *B.* to rob *C.*  
and before the Fact *A.* repents, and  
coun-

## Principal and Accessary.

countermands his command, yet *B.* kills him, *A.* is not Accessary.

5. If *A.* poison an Apple, and deliver it to *C.* to deliver to *D.* *C.* not knowing delivers it, Murder in *A.* but no Offence in *C.*

V. post. 220.  
St. P. C. 41.

3. Accessary after,

1. A receipt of stolen Goods makes not Accessary, unless he receive Thief. *Ou receive le biens a auter felon*; 9 H. 4. 1.

2. Every Receipt to make an Accessary, must be knowing him to be such.

But if a Man be attaint of Felony in the County of *A.* the Law presumes notice thereof in the same County: Therefore the Receipt of him in the same County seems Accessary; *Contra* if in another County. *Videtur cognitio requisita in utroque.*

3. Receipt of a Felon, that hath given Bond to appear at Sessions, &c. not Accessary.

4. Relieving a Felon with Money, Victuals, Horse for his journey, know.

knowing, Accessary : But if he be in Prison, then lawful. *1st Dal. ac. 108.*

5. A Brother receiving his Brother may be Accessary, or a Husband his Wife, but not the Wife of her Husband.

6. A Man may be Accessary to an Accessary : And

The same Man may be Principal and Accessary where Felony done by divers.

7. But sending a Letter in favour of a Felon, instructing him to read, advising to labour Witnesses not to appear, not revealing a Felony intended, permitting a Felon to escape without Arrest, makes no Accessary : *Mes contempt.*

8. Accessary cannot be, unless a Felony committed ; therefore *A.* wounds *B.* dangerously, *C.* receives *A.* then *B.* dies, *C.* is not Accessary.

## Principal and Accessary.

9. Si Felon vient al meason I. S. que suffer lui d' aler hors, nest Felony nisi prist mony au autrechose par lui suffer escape. 9 H. 4. 1.

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A. counterfeits the Great Seal, and B knowing it, receives, abetts and comforts him; not Treason, nor can he be an Accessary. 12 Co. 86.

J. S. is robbed, and afterwards pursues the Felon and takes his Goods from him, and suffers him to escape. J. S. is not Accessary, but it is a Concealment. Moor. 8.

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*Arraignment of the Principal and Accessary, and things Observable therein.*

1. **I**F the Principal be acquitted, or be convict only of Manslaughter, or *se defendendo*, or before Attainder hath his Clergy, or be pardoned, or die, the Accessary shall not be arraigned; otherwise if after Attainder. S. P. C. 47.  
C. P. C. 139.  
4 R. Seyer's  
Case,

2. If the Principal be attaint at the Suit of the King, the Accessary shall not be arraigned at the Suit of the Party, *Iffint si soit attaint d' autre felony.* S. P. C. 47.

3. If Principal stand mute, Accessary not arraigned. *V. contra*  
2 R. 3. 22. 3 H. 7. 1.

4. The *Exigent* shall not go out against Accessary, till Principal attaint by *Stat. W. 1. c. 14.* S. P. C. 46.

5. Where

## Arrestment of Principal, &amp;c.

5. Where Principal appears not, Accessary shall be put to answer: But he shall not be tried till Principal attaint or appear, unless he will, for he may wave the benefit of the Law.

6. If he be indicted as Accessary to two, and one of the Principals appears and is convict, the Court may, if they please, try the Accessary; and if he be found Accessary to him that is attaint, he shall be condemned; if not found Accessary to him, yet he may after be arraigned as Accessary to the other when he appears.

7. If Principal and Accessary appear and plead to the Felony, they may be tried by the same Inquest; but the Principal must be first Convict, and have Judgment, before Judgment against Accessary; and the Jury shall be charged, That if they find the Principal not guilty, they shall find the Accessary not guilty.

8. If Principal be erroneously attainted, yet Accessary shall not take

St. P. C. 47.

Com. 100.  
Girtin's Case.

C. West. 1.  
c. 14.  
V. Steven's  
Case, Cro.  
Car. 409.

take advantage thereof, but be arraigned.

9. If Murder or other Offence were in one County, and Accessary in another, by 2 Stat. 6. c. 24. V. 1 And. 194.  
Grevil's Case.

24.

1. If Accessary be in *Middlesex*, C.P. C. p. 49. where the King's Bench sits, and Principal in another County, the King's Bench may try the Accessary.

2. Certificate in such Case shall be upon a *Certiorari* or Special Writ, if need be, formed upon the Matter, and not by Precept, under their Seals, in their own Names. Ibid.

3. The High Steward is within the Act.

*Accessory al Petit Larceny.* 3 Cr. V. 12 Co. 86.  
750. *nemy al Homicide per infortun.* No Accessaries in petty  
15 E. 3. Coron. 116. Larceny.

*Novel felony fait per Stat. videtur null Accessory nisi specialment enact.* Sed vid. 2 Inst.  
183. contra.  
*que.* V. Dy. 88. Stam. 44.

*Vi. pur Tryal d' Accessory in foreign County,* 2 E. 6. cap. 24. Dy. 253.

*Acquit*

## Arraignment of Principal, &amp;c.

V. post. 244.

*Acquit come Principal nemy arrain  
come Accessory: Mes acquit come Ac-  
cessory arrain come Principal.*

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Vide Popham. 107. Everet's Case.  
Cro. Car. 409. Steven's Case.

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*Muse*

*Mute, Paine fort & dure.*

V. Keeling  
27. 36, 37.  
V. Stat. West.  
1. cap. 12 &  
ee inquiry de  
offence dnt'  
Pain fort &  
dure.

**N**OW we come to the De-  
meanor of the Prisoner upon  
his appearance :

And thereupon either,

V. Tit. Cler-  
gy postea.

1. He stands mute.
2. He pleads.
3. Or he confesseth the  
Fact.

1. What said a standing Mute ?  
This of two kinds.

1. When he answers nothing at  
all: And then it shall be enquired  
whether he stand Mute by Malice  
or by the Act of God.

V. West. 1. c.  
12.  
St. P. C. f. 150.

If it be by the Act of God, then  
the Felony shall be enquired of, and  
whether he be the same Person, as if  
he had pleaded not guilty.

If by Malice, or if the Prisoner  
hath cut out his own Tongue, then  
he shall have Penance.

Q

Nota,,

**Mute, Paine fort & dure.**

Nota, Si ad unfoits pled al Felony licet apres estoit mute, ser. trie. 15 E.4.33.

Viez Père estoit mute aver. Penance. 7 Car. Lord Castlehaven's Case.

2. When he pleads, but not effectually; as when he answers not directly to the Fact, or concludes not upon the Country, then if the Cause be probable, he shall be put to his Penance. C. P. C. p. 227.

Nota, Si Chall. ultra 35. Standing mute? V. C. P. C. fo. 227.

2. What the consequent of standing mute? 1. *forfeit biens.* 14 E. 4. 7.

Keeling 36.

1. In Treason it is a Conviction.

2. After Attainder, and ask't what he can say, why no Execution? Standing mute, he shall be Executed.

3. In Appeal standing mute, Judgment against him to be hanged. *Contra* 14 E. 4. 1.

4. Upon Stat. 33 H. 8. c. 2. of Felony within the Verge, Offender standing mute, Judgment against him.

5. But

5. But in other Cafes of Felony, *Paine fort & dure*, and forfeits Goods.

1. Remanded to Prison.
2. Lie naked in some dark Room, with Hands and Legs extended.
3. Weights encreafed.

Keeling 27.  
One standing  
Mute, his  
Thumbs were  
tied with  
Whip-cord,  
&c.

---

N. B. By Stat. 25 H. 8. c. 3. Clergy is taken away from fuch as stand mute, or challenge above 24, if indicted for any petty Treason, wilful burning of Houfes, Murder, Robbery, or Burglary, or other Felony, &c.

*Pleas.*

**I**F the Prisoner plead, it is either,

1. Declinatory.

Sanctuary.

Clergy.

V. Post. 243.

2. Or to the Felony :

1. Demurring.

2. Pleading in Bar.

3. Pleading the general Issue.

Declinatory Exceptions.

1. Sanctuary and the Consequents, Abjuration ousted by Stat. 21 Jac. c. 28.

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*Clergy.*

## Clergy.

Clergy wherein,

1. Who shall have benefit of Clergy ?
2. In what Cases ?
3. At what Time ?
4. Who the Judge ?
5. What the Consequent ?

1. Who shall have Clergy, and who not ?

1. A blind Man shall not have his Clergy. *Nec Jew, nec Turk; contr. de Greek on home excommeng'*
2. A Woman cannot have the benefit of Clergy.

Provision by Stat. 21 *Jac. c. 6.* C. P. C. c. 124. that for stealing Goods under 10 s. without Burglary or Robbery, &c. shall be burnt in the Hand for the first Offence.

3. Bigamy ousted of Clergy by *Stat. de Bigamis, 4 E. 1.* but restored to it by *Stat. 1 E. 6. c. 12.*

Q 3

Cestuy

V. Al. Poulter's Case.  
11 Co. & Keeling's Reports. 41. 98 to 108.  
Vide ante 46. 227.

No Clergy-man or Clerk in Orders is to be burnt.  
Hob. 294. Sed Vide Stat. 28. H. 8. c. 1. contra.  
V. 11 Co. 29. b. 3 Inst. 114.

## Clergy

*Cestuy que abjure avera Clergy apres son retourne.* 8 H. 8. Kel. 186.

Hob. 294. *Cestuy que ad unfoits Clergy, naver auterfoits nisi deins orders.* 4 H. 7. c. 13. 17.

2. In what Cases: Some Things premised in general.

1. By *Stat. 25 E. 3. c. 4. pro Clero.* Clergy allowed in all Treasons or Felonies, (except Treasons against the King;) so that after that Statute, there was Clergy in all Cases, but

{ Treason,  
{ Sacrilege.

Note, V. 11  
Co. 29. b.

2. Consequently wheresoever Clergy is not allowable in any other Cases, it is taken away by some Act of Parliament.

3. Consequently where any Felony is made by a new Stat. Clergy is to be allowed, unless expressly taken away.

1

4. Con-

4. Consequently where by any special Act of Parl. Clergy V. 11 Co. Poulter's Case. is taken away in any Offence, the Indictment ought to bring the Case within the Statute. As upon the Stat. 3 & 4 Ph. & Ma. c. 4. the Indictment must run *malitiose*; so upon Stat. 8 El. c. 4. it must be *clams & secreta*; in case of Murder, *ex malitia præcogitata*, otherwise Clergy allowable.
5. Consequently a Statute taking away Clergy from the Principal, doth not thereby take it from the Accessaries before, unless specially provided for.
6. Where Clergy is allowable, it is to be allowed, though the Party be Convict by Confession, Verdict, or stand Mute, or challenges peremptorily above
- 35.

## 2. Particular Offences where Clergy, and where not.

1. High Treason no Clergy.
2. In Petty Treason.

Principal oust of Clergy, if convicted by Verdict or Confession, by *Stat. 23 H. 8. c. 1.* revived by *5 & 6 E. 6. c. 10.* and by *Stat. 25 H. 8. c. 3.* though standing Mute, not directly answering, or challenging above twenty.

Not oust of Clergy in Appeal, unless Convict by Verdict or Confession.

Accessaries before the Fact maliciously, oust of Clergy in all cases by *4 & 5 Ph. & Ma. c. 4.*

3. Wilful Murder of Malice prepense, Principal oust of Clergy in all cases, by *Stat. 23 H. 8. c. 1. 25 H. 8. c. 3. 1 E. 6. c. 12.*

Accessary before maliciously, ousted in all cases by *4 & 5 Ph. & Ma. c. 4.*

V. i And. 114.  
& Sr. 8 & 18.  
Eliz. Co. Pl.  
Cor. 115.  
Keel. 68, 69,  
70.

4. Ar-

4. Arson of Houses, or Barns full of Corn, Principal oust of Clergy in all cases, *viz.* *sur* Conviction by Verdict, or Confession, by 23 *H. 8. c. 1.* upon standing Mute, not direct answering, challenge above twenty, by *Stat. 25 H. 8. c. 3.*

But Utlary stands subject to V. 11 Co, Poulter's Case.  
Clergy.

Accessory ousted of Clergy in all cases by 4 & 5 *Phil. & Ma. c. 4.*

5. Simple Burglary.

Principal ousted of Clergy, if utlawed, Convict by Verdict, or Confession.

Not ousted if stand Mute, challenge above twenty, or not directly answering.

Accessory before or after, not oust of Clergy.

6. Burglary, any Person being in the House, or put in fear or dread.

## Clergy.

Principal oust of Clergy in all cases, *viz.* by *Stat. 1 E. 6. 12.* in case of any Conviction or Attainder; and by *25 H. 8. c. 3.* revived by *5 & 6 E. 6. c. 10.* it takes away Clergy where above twenty challenged.

But Accessaries not ousted of Clergy.

7. Robbery, which hath several Qualifications, with these Considerations :

1. From the Person

Without putting in fear, but *clam & secreta* : by *Stat. 8. El. c. 4.* Principal in all cases oust of Clergy, Accessary not oust.

With putting in fear, Robbery in or near the High-way.

1. Principal in all cases oust of Clergy, *viz.* if Appeal or Indictment by *23 H. 8. c. 1.* Convict *23 H. 8. c. 1.* Attaint *1 E. 6. c. 12.* Mute, Challenge above twenty, by *Stat. 25 H. 8. c. 3.* revived by *5 & 6 E. 6. c. 10.*

2. Ac-

2. Accessary before oust of Clergy in all cases by 4 & 5 Ph. & Ma. c. 4.

2. From Dwelling-house ; and this of three kinds :

1. Owner, Wife, or Servants being in the House, or put in fear, here Clergy.

1. As to Principal, taken away by 23 H. 8. c. 1. in case of Conviction by Verdict, or Confession, and by 25 H. 8. c. 3. revived by 5 & 6 E. 6. c. 10. in case of standing mute, challenge *ultra* twenty, not directly answering : Also to a Conviction in a foreign County, if it appear by Examination not to be within Clergy in the same County.

2. Accessary in all cases oust of Clergy, by Stat. 4 & 5 Ph. & Ma. c. 4.

*Nota,* A Stranger in the House brings it not within Statute.

2. Rob-

## Clergy.

2. Robbing any Person by Day or Night, any Person being in the same House, and put in fear.

Principal oust of Clergy by 1 E. 6. c. 12. in all cases, but challenging twenty; and by *Stat. 5 & 6 E. 6.* if in a foreign County Clergy upon Examination taken away.

Accessaries, Clergy taken away by 4 & 5 Ph. & Ma. c. 4. in all cases.

3. Robbing any Person in his Dwelling-house, the Owner, his Wife, or Children being in any part of the House, or within the Precincts thereof, though there be no putting in fear. And this extends to Booths in Fairs.

Principal oust of Clergy by 5 & 6 E. 6. c. 9. in case where the Offender is found guilty.

In *Pyacy*,  
Clergy not  
allowable V.  
Mo. 756. ante  
77, 78.

Prin-

Principal thereof in other cases shall have Clergy; as in standing Mute, challenge *ultra* twenty.

Accessory oust by *Stat. 4 & 5 Ph. & Ma. c. 4.*

4. Robbery to the value of 5 s. out of any Dwelling-house or Out-house thereunto belonging, though none in the House, by *St. 35 El. c. 39.*

Principal oust of Clergy in case of Conviction, not of standing Mute.

Accessory shall have Clergy.

*Un enter in le lodging Sir H. Hungate parcell de Whitehall, nul person esteant in lodging, mes in autre part de Whitehall & infreint un chamber & prist biens: Rule per advise de Justices, 1. L' Indictment doit estre pur infreindre le meason de Roy vocat Whitehall & pur Embleer les biens Sir H. H. divers persons esteant in le meason: Car nient semble al Chamber in Inne de Court, lou chescun ad several property. 2. Que ceo fuit deins le Stat. 5 & 6 E. 6. & l' Enditement l' accordant. 3. Que in Inditement*  
*sur*

*sur Stat. 23 H. 8. vel 5 & 6 E. 6. doit estre actual breaking & auxi Robbery.*

4. *Que si laron enter in meason le doores open, & infreint Chamber, & prist biens, est deins le Stat. 5 E. 6. d' ouster luy de Clergy.*

8. Larceny without any of these Circumstances,

Horfe-stealing oust of Clergy, by 1 E. 6. c. 12. 2 & 3 E. 6. c. 33. Principal oust in all Cafes ;

Accessary ousted in no Cafes.

But other Larceny, not being Robbery nor Cut-purse, have Clergy.

9. In Rape, Clergy oust by Stat. 18 El. c. 7.

So in Buggery. V. 12 Co. the Case of Buggery.

10. Though the Offence be within Clergy, yet if he had formerly his Clergy and were burnt in the Hand, the Stat. of 4 H. 7. c. 13. ousts him of Clergy, unless he were a Person in Orders, and then he must produce his Certificate presently, or by a Time prefixed.

And see the Stat. 34 & 35 H. 8. c. 14. for the manner of the Certificate of such Convictions and other Attainders.

And

And though Stat. of 32 H. 8. c. 1. hath put Men in Orders in the same Condition with others, in reference to Clergy; yet as to this Point of the Stat. 4 H. 7. the Clause of the Statute 1 E. 6. c. 12. doth give a Person in Orders his Clergy the second time in all Cases, but in case of 1. Challenge above twenty; 2. Outlary.

3. When Clergy shall be allowed. V. 3 Inft. 69.

1. Now the use is not to put the Party to challenge his Clergy till he hath pleaded, and the Inquest thereupon taken:

1. For advantage of the Party, if acquitted. St.P.C.fo.131.

2. For advantage of the King for Forfeiture, if Convict.

2. It may be allowed in Discretion, though the Party challenge not.

Allowed under the Gallows, or where Judgment of *Paine fort & dure* given, or where challenge above twenty.

V.

V. *Crom. Jur.* 126. Allow south Gallows per *Just. B. R.* mes nemy Gaol-Delivery: Mes pnt' apres Judgment devant adjournment, *Dy.* 205.

*Licet Ordinary return non legit, & est record, & re pry al autre Sessions & tunc legit, avera benefit de ceo, Dy.* 202.

34 H. 6. 49 *Coron.* 20.

#### 4. The Judge.

The Ordinary is but Minister, the Judge at Common Law is the Judge when and where to allow it, and of the Reading, 9 *E.* 4. 28. *Coron.* 32.

#### 5. What the Effect of Clergy allowed.

1. In ancient Time the Consequent was delivery to the Ordinary, either to make Purgation, or *absque Purgatione*, as the Case required.

But by Stat. 18 *El. c.* 7. now only burnt in the Hand, which hath these Effects ;

1. Enables the Judge to deliver him out of Prison ; but yet if he see cause, he may detain him till he find Sureties of good Behaviour :

And

And by the Stat. 3 H. 7. c. 1.

If Clergy within the year,  
he is to be bailed or com-  
mitted at discretion, till  
the year past.

2. It gives him a Capacity to <sup>Foxley's Case,</sup>  
purchase Goods, and retain <sup>5 Rep.</sup>  
the profits of his Lands.

But the Goods he had at the  
time of the Conviction are  
forfeit.

3. It restores him to his Cre-  
dit. *Hob.* 377. *Searle's*  
*Case.*

*Le Stat. 25 H. 8. que toll Clergy  
del persons arrain in forrein County sur  
examination extent solment al tiels  
felonies d'ont Clergy oust per Stat.  
23 H. 8. & nemy per subsequent Stat.  
Et pur ceo rule in Anne Cole's Case,  
Si feme infreint meason in County de  
S. in day time, & prist biens South  
value de 10 s. & eux import in Coun-  
ty de D. & la arraine, el serra arse  
in maine: quia nul mister in favor  
come require per le Stat. 23 H. 8.*

*Robbery de value de 10 d. & import  
in forrein County & la arrain est Pe-*

## Clergy.

*tit Larceny. 2 Jac. Moore's Rep. quia le Stat. 25 H. 8. extend folment al cestuy que demand Clergy, que nest in case de Pet. Larceny.*

*Indite de Robbery in quadam via pedestri avera Clergy: Car le Stat. parle de Robbery in vel prope altam viam regiam. T. 38 H. 8. Moore 5.*

## *Pleas to the Felony.*

### 1. **D**emurrer.

2. Pleas in Abatement and Barr.
3. The General Issue.

#### 1. For Demurrer.

It amounts to a Confession of the Indictment, as laid; and therefore if the Indictment good, Judgment against the Prisoner, and Execution, C. West. 1. c. 12.

#### 2. For Pleas in Abatement.

If Prisoner plead *Misnomer* of his Surname unto an Appeal, it goes in Abatement; but in case of Indictment he shall be put to answer the Treason or Felony. St. P.C. 118.  
1 H. 5. 5.  
4 Leon. 121.  
2 Rolls 225.  
2 Inst. 665,  
670.

But Misnomer of the Christian Name goes in Abatement; and if it be confessed by the King's Attorney, or found, the Indictment falls.

11 H. 4. *Coron.* 88.

But then he must give his true Name, and by that Name he may be forthwith indicted.

V. Foreign  
Plea pleaded,  
Post. 225.  
V. Keel. 25,  
26, & 30, 52.  
1 Jones. 198.  
Sir W. Withi-  
pole's Case.

*Pleas in Barr.*

*Auterfoits acquit.*

*Auterfoits acquit:*

1. If a person be acquitted upon an insufficient Indictment or Appeal, yet upon a new Indictment he may be arraigned for the same Felony.

4 R. *Vaux's Case*, licet Judgment done.

St.P.C.f.105,  
106.

2. *Auterfoits acquit* of one Felony, no Barr to an Indictment or Appeal of another Felony, &c. though committed before the Acquittal.

V. 27 Aff.Pl.  
10. 8 H. 5. 6,  
7.  
Keel. 25, 26.

3. *Auterfoits acquit* as Principal, no Barr to an Indictment against him as Accessary to the same Felony after; But it seems he cannot be after indicted as Accessary before.  
*Stamf.* 105.

4. In an Appeal of Death or other Felony, *Auterfoits acquit*, upon an Indictment for the same Felony, was a good Barr in all Cases; therefore  
if

if an Appeal was pending, the Court would surcease the Arraignment of the Prisoner upon an Indictment till it was determined: Or though no Appeal pending, yet in case of death, would surcease till the year past.

But at this day *Auterfoits acquit* in an Indictment of Death, no Barr to an Appeal, by Stat. 3 *H. 7. c. 1.* for the Prisoner notwithstanding the Acquittal; but in other Appeals it stands a Barr to an Appeal.

5. But *Auterfoits acquit* in an Appeal, Barr to an Indictment of the same Felony. V Keel. Arm-  
strong and  
Lifter's Case.

1. Unless the Appeal be erroneous in Substance.
2. Or unless the Appeal be by a wrong Person.
3. Unless the Acquittal be by Battel; for in these cases he may be indicted again.

6. He that pleads this Plea, need not have the Record *in poigne*, because it goes in Barr. 3 *E. 3. B. Corron. 217.* R 3 7. Though

## Auterfoits acquit.

7. Though there be Variance between the Indictment, &c. yet if it be such as may admit an Averment to be the same, yet it may be pleaded.

Variance in the Name if *Conus per une name & auter.*

Variance in the day of Felony supposed to be committed.

Variance in the place, but by the Opinion of 4 H. 5. acquit of Larceny in one County, no Barr in another.

*Variance in l'offence auterfoits acquit, attaint de murder ou manslaughter turr. Pet. Treason.*

*Auterfoits Convict or Attaint.*

4 Co. Wigg's  
Case.

1. Where a Barr to the same Felony.

2. *Auterfoits attaint* of the same Felony in an Appeal, Barr to an Indictment; for the Effect is obtained, the death of the party; But *vide* no Barr in Appeal. C. P. C. 213.

2. *Auterfoits convict* by Verdict or Confession of Manslaughter in an Indictment, and had Clergy, Barr in Appeal, though it be of Murder, for the fact the same in both, though the offences differ in degree. 4 Rep. 45. Wigg's Case.

*Auterfoits acquit sur insufficient enditement, & nul Judgment done, nest plea: mes auterment est si Judgment soit done tanque ceo revers.* Vaux's Case, 4 Rep.

2. Where a Barr to an Arraignment for another Offence.

**Auterfoits Convict.**

S. P. C. 107.

1. *Auterfoits* attaint of Felony is no Barr to arraign him of Treason committed before the Felony, for the King's Interest.

C. P. C. 213.

And it seems if the Treason was committed after the Felony, then he shall be arraigned of the Treason, for the Offence is different.

2. *Auterfoits* attaint of one Felony, barr to an Arraignment of Felony ; but this hath these Exceptions :

1. Where the first Attainder is pardoned, there he may be arraigned for the former Felonies though committed before.

S. P. C. 66. 107.

2. In case of Appeal he shall be arraigned at every one of their Suits, notwithstanding he be attaint at one Suit.

The like it seems upon Indictment of Robbery, because by the Stat. the party is to have restitution.

3. *Aut.*

3. *Auterfoits convict*, and had Clergy after Stat. 25 *E.* 3. c. 5. had been a barr to an Arraignment for another Felony, though not within Clergy. *Dy.* 214.

But now by Stat. 8 *El.* c. 4. after Purgation, and 18 *El.* c. 7. after burning in the Hand, he shall be put to answer former Felonies not within Clergy, or for any Offence after Clergy allowed.

And note, that he that pleads a Plea in barr to an Indictment or Appeal that confesseth not the Felony, shall plead over to the Felony; otherwise if it confess the Felony; as Pardon, or Release.

*Pardons.*

V. 12 Co. the  
Case of Par-  
dons, and  
4 Co. and  
6 Co. divers  
Cases of Par-  
dons, &c.

## Pardons.

3. **P**ardons  
Are either of Course and  
Right; such are:

1. For a person Convict of Man-  
slaughter, or *se defendendo*.

S. P. C. 102.

2. An Approver that vanquish-  
eth the Appellee.

### Pardons of Grace.

1. Some things requisite to their  
allowance by Statute.

1: By Stat. 13 R. 2. c. 1. Pardon  
of Murder, Rape, or Treason must  
be especially expressed in the Par-  
don, otherwise it ought not to be  
allowed in such Cases. *Vide si extend*  
*al Petit Treason & Accessories*, 22 E.

4. 19 Lamb. 293.

2. By Stat. 10 E. 3 c. 2. there must  
be Surety of good abearing, other-  
wise the Charter void; but a spe-  
cial *Non obstante* may prevent it.

2. Matter

2. Matter at Common Law considerable.

1. Charter of Pardon no barr of an Appeal: and if the party be utlawed in Appeal, and the King pardon, he shall have a *Scire Facias*, against the Appellor, who may pray Execution notwithstanding such Pardon; but if returned *Scire feci*, and appears not, then Appellee shall upon the Pardon be discharged.

2. Pardon of all Felonies is no barr to Execution, if the Felon be attaint; yet an Exception of all Burglaries excepts the Burglary for which the party is attainted. V. 6 Co. the Case of Pardons.

3. Pardon of all Attainders not good, without a Pardon of the Felony.

4. The Pardon of Felony reciting in the Pardon that the party is indicted, and in truth he is not, this is void.

5. The

C. P. C. 337.  
V. 5 Co Big-  
gin's Case.

5. The King may pardon the burning in the hand in Appeal, & l'imprisonment per ceo discharge.

6. *Sil apres infreint Pease Sire fac. gist a repealer le Pardon, & ser. pendu pur primer offence per le Stat. 10 E. 3. 3 H. 7. 7. vizt. nisi soit non obstante le Stat.*

7. *Pardon de tout Felonies per A. & B. vel eor. alter. commit pardon several. Dy. 34. 22 E. 4. 7.*

### *Pleading the Pardon.*

He that pleads a general Pardon by Parliament, wherein are Exceptions, must averr that he is none of the persons excepted.

But of a General Pardon by Parliament, without Exception, the Court *ex Officio* must take notice.

He that pleads a particular Pardon,

1. Must shew it under Seal.
2. Must have a Writ of Allowance, *q'il ad trove Surety scm. Stat. 10 E. 3.*

*Mes lon nul briefe d'allowance nul mort, 5 E. 4. 132.*

3. If variance, he must averr that the same person.

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A Peer of the Realm may be indicted for Felony or Treason in B R. and may plead his Pardon before he pleads non cul. 1 Rol. R. Lord Norris's Case.

But a common Person can't plead non cul. after a Pardon pleaded. V. Palmer's R. Potter's Case.

A Pardon of all Felonies does not discharge Piracy. Ante 77. Pardon of Petit Treason. V. Dyer 235. V. 6 Co. Case of Pardons.

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*General*

## *General Issue.*

**T**HUS far of Pleas in Barr upon Indictments or Appeals; now we come to Pleas to the Fact, Not Guilty.

1. Regularly he that pleads any special matter in Bar in Cases Capital, that confesseth not the Felony, notwithstanding the Plea found against him, the Felony shall be enquired of, and therefore he shall plead over to the Felony.

2. The immediate consequent of this Plea is Trial; and that is either

By the Country.

By Peers.

By Battel.

*Trial*

## Trial per Patriam.

I. **C**ONCERNING Trial *per patriam*; In Petit Treason V. 2 Co. 27.  
and therein,

1. Where Issues tried.
2. What Process against Jury.
3. Before whom.
4. Challenge.
5. Evidence to be given.
6. Verdict.

I. Where tried.

1. For Trial of foreign Treasons and foreign Accessaries, or stroke in one County, and death in another, *v. supra* in Indictments.

2. For Trial of foreign Pleas by V. Foreign Plea pleaded in Treason. C. P. C. 27.  
Stat. 22 *H. 8. c. 14.* made perpetual by 32 *H. 8. c. 3.* Foreign Pleas pleaded by a person indicted of Felony, and triable by the Country, shall be tried where the party is arraigned; but it is now in Treason triable in the foreign County by vertue of Stat. 1 & 2 *Ph. & Ma. c.*

2. *Pro-*

2: *Process against the Jury.*

V. Keel. f. 7.  
ante 217.

1. *Nota*, The Justices of Goal-Delivery have their Pannel returned by the Sheriff, without any Precept, by a bare Award; but Justices of Oyer and Terminer not.

2. By good Opinion, the Justices of Peace, or Oyer and Terminer, cannot make their *Venire Facias* to try an Issue returnable the same Sessions; but Justices of Goal-Delivery clearly may.

S. P. C. f. 155.

3. If several persons Arraigned upon an Indictment or Appeal, and they severally plead Not Guilty, the Plaintiff may take out one *Venire Facias*, or several.

4. If the *Venire Facias* be joint, Challenge by one drawn against all.

Com. 100.

5. Though Pannel be joint, and *Tales* awarded, yet Court of Goal-Delivery may after sever the Pannel to prevent that inconvenience.

6. In Appeal, if after Issue, Plaintiff tries it not, a *Venire* by *Proviso* may be for the Defendant; yet upon that *Venire* Plaintiff may have a *Tales*.

3. *Tales*.

1. If a full Jury appear not, or be challenged in Indictment or Appeal, the Plaintiff may have a *Tales*.

2. Upon Indictment or Appeal, because Defendant may challenge peremptorily, *Tales* may be granted larger than the principal Pannel, as forty *Tales*. 14 H. 7. 7.

3. But the succeeding *Tales* must be less than the former, unless the first be quashed, and then the same number with that which is quashed.

4. If any of the Jury die before sworn, a new *Tales* grantable.

3. *Before whom.*

Nor any  
Challenge to  
the Array.  
Post 261.

1. A *Nisi prius* not grantable where the King Party, unless prayed by his Attorney.

2. By Stat. 14 *H. 6. c.* power to Justices of *Nisi prius* to give Judgment in Felony and Treason tried before them.

3. By Stat. 42 *E. 3. c. 11.* Enquest in Assize and Gaol-Delivery may be taken before the Pannel returned in Court, but not in other Cases.

Challenge.

V. Keel. 9. 35,  
54.

4. Challenge of Array or Polls.

1. *Ex parte Regis* by Stat. 33 E. 1. c. the King shall not challenge without Cause; but yet he is not compellable to shew the cause till the Pannel perused.

2. *Ex parte prisonarii*, the Challenge is either peremptory, or upon Cause.

After a Chal-  
lenge to the  
Polls, no  
Challenge can  
be to the  
Hundred.

1. Peremptory Challenge.

2 Rol. ab. 636.

1. A peremptory Challenge not allowable, but where the life of a Prisoner comes in question, and therefore not upon collateral Issues.

Also after  
four Jurors  
sworn, there  
can't be any  
Challenge to  
the Hundred.  
ibid.

2. At Common Law he might have challenged peremptorily 35. under three full Juries; and if he challenged above, he should have Judgment to be hanged. 3 H. 7. 12.

But by Stat. 22 H. 8. c. 4. made perpetual, by 32 H. 8. c. 3. it is reduced to 20; and now if he challenge above 20, he shall not be therefore hanged, or forfeit, but his

C. P. C. 227. Challenge over-ruled, and he put upon his Trial; yet *vide Statutes, semble contra.*

C. P. C. 27. 3. In Case of Treason and petty Treason, the Challenge of 35 restored by Stat. 1 & 2 P. & M. c. 10.

N. B. In Appeal of Manslaughter the Defendant may challenge twenty peremptorily as well as upon an Indictment. Mo. 12.

2. Challenge for Cause; we mention but three;

1. Cause of Insufficiencies. By the Stat. 2 H. 5. c. 3. 40s. per Ann. required in County; but this, as to Aliens, corrected by 8 H. 6. c. ult. in Cities by Stat. 23 H. 8. c. 13. Goods to the value of 40 l.

2. Unindifferency.

Indictor not to be of Jury by Stat. 23 E. 3. c. 3.

3. In reference to an Alien, & *medietat' linguæ*, where

C. P. C. 27. 1. In no Case Indictors ought to be *de medietate linguæ*.

2. In Treason trial. *per medietat' linguæ* *repelet per Stat. 1 & 2 Ph. & Ma. que ad repelet* 21 E. 3. in that Case.

3. In Appeal by an Alien against an Alien *no medietat' lingua.*
4. Scot no Alien to have *medietatem lingua.*
5. The Jurors need not be of the same Nation, but any Aliens.
6. He that will have advantage of Trial *per medietatem lingua* must pray it, otherwise he cannot have benefit by way of Challenge. *Dy. 304, 357.*
7. *Egyptians* excluded from the Trial *per 1 & 2 Ph. & Ma. c. 4.*

---

See a Challenge by a Peer, for that no Kr. was returned. *Dy. 208. C. P. C. 27. Post 267.*

No Challenges are to be on Trials by Peers. *Keel. 54.*

Where the King is party no Challenge to the Array. *2 Rol. abr. 645. V. ibid 659.*

## Evidence.

### 5. Evidence to the Petit Jury.

#### 1. In Case of Treason

See now the Stat. 7 W. 3. c. 3. for regulating Trials in Cases of Treason, &c.

There must be two Accusers or Witnesses by Stat. 1 E. 6. c. 12. & 5 E. 6. c. 11. and this stands notwithstanding Stat. 1 & 2 Ph. & Ma. c. 11. but only in Case of Treason for counterfeiting Coin.

These Witnesses must not be only by hearsay.

#### 2. In Case of Felony.

##### 1. What allowed as Evidence:

1. By Stat. 1 & 2 Ph. & Ma.

c. 13. & 2 & 3 Ph. & Ma.

c. 10. the Justice hath power to examine the Offender and Informer.

2. The examination of the Offender not upon Oath, but subscribed by him.

3. Examination of others must be upon Oath.

4. This must be certified by the Justices.

1. If it be but a small Felony, to the Sessions.

2. If

2. If it be a great Felony,  
*&c.* to the next Gaol-  
 Delivery.

5. These Examinations, if the  
 party be dead or absent,  
 may be given in Evidence.

But Prudence to have the  
 Justice or his Clerk  
 sworn to the truth of the  
 Examinations.

6. But Examinations taken up-  
 on a Cause of Divorce for  
 a forcible Marriage, not al-  
 lowed to be read upon an  
 Indictment upon 3 *H.* 7.  
 for the same Marriage.

2. By whom.

1. Wife, or her Examination, Dal. c. 111.  
 not to be used for or against  
 her Husband.

2. The Examination of an  
 Infant of Thirteen, nay of  
 Nine, allowed in some Ca-  
 ses.

3. One attaint of Conspiracy,  
 Forgery, or Perjury, not  
 allowed a Witness.

4. One duly set on Pillory. C. F. C. 219.

3. In what manner. S 4 1. Evi-

1. Evidence for the King always upon Oath:

C. P. C. c. 22. But Evidence for the Prisoner not upon Oath; yet no known Law that restrains it: But by some Statutes in some Cases, Evidence for the Prisoner upon Oath, as 31 *El.*

c. 4. 4 *Fac. c. 1.*  
The Confession of the Offender taken upon Examination, Evidence with Oath not of the Informer.

4. Where Evidence maintains the Indictment.

1. If the Indictment be of a Felony, &c. at one day, though the Evidence be another day, either before or after, the Jury may find generally against Prisoner, and leave the person that is interested in point of time to falsifie; Or the Jury may find the true day upon their Verdict, and then the forfeiture shall relate thither.

Co. Lit. 283.

C. P. C. f. 230.  
Post. 270.

So in Treasur  
per Keeling's  
Rep. 15, 33.

2. If the Indictment lay the Felony at one place, the Evidence proving the fact at another place in the same County, maintains the Indictment. 3. If

3. If the Indictment and Evidence differ *in specie mortis*, then it maintains it not: as Indictment of Poisoning, Evidence of stabbing maintains it not.

But if the Indictment be of poisoning with one kind of Poison, and the Evidence of another; or of killing with a Dagger, and the Evidence is of killing with a Staff, yet it maintains the Indictment; for it agrees in substance and kind. C. P. C. 135.  
9 Rep. Mackally's Case.

The like of Accessaries before, though the Poison or Weapon different.

4. Indictment that *A.* gave the mortal blow, and *B. C.* and *D.* were *præsentes & abettantes*; Evidence that *B.* gave the blow, and *A. C.* and *D.* *præsentes & abettantes*, yet it maintains the Indictment. 9 Rep. Sanchez's Case.

5. Indictment of *A.* as Accessary to *B.* and *C.* Evidence proves him Accessary only to *B.* maintains the Indictment.

6. Indictment of Murder, *ex malitia præcogitata*; Evidence of malice

lice in Law, as killing an Officer, or without Provocation, yet maintains the Indictment.

7. Indictment upon Statute of Stabbing, 21 *Jac.* Evidence that the dead struck first, yet Evidence to maintain the Indictment for Manslaughter generally. *H.* 23 *Car.* *Harwood's Case.*

8. Two indicted as Principals, Evidence proves one Accessary before, he shall be discharged of that Indictment. 26 *H.* 8. 5.

9. *Vide Stat.* 21 *Jac.* c. 27. Mother endeavouring to conceal the death of her Bastard-child, shall suffer death as in case of Murder, unless she prove by one Witness that the Child was born dead.

V. Keel. 32.

*Verdict.*

## *Verdict.*

### 6. VERDICT in Cases Capital.

1. It must be given, and the Jury cannot be discharged till it be given. St. P. C. 165.

2. It must be given openly in Court, and no privy Verdict. Otherwise on Informations at the Affizes. 1 Ventr. 95.

3. It may be found Specially ; as an Indictment of Murder, the Jury may find him Guilty

1. Of Manslaughter :

2. *Per Infortunium* :

3. *Se Defendendo*.

V. 3 Inst. 220.  
and Stamf. 15.

But then they must find the manner of it, that the Court may judge thereof ; so for the value or the manner of the Larceny. If they cannot agree, they are to be carried in Carts. 1 Ventr. 95.

## *Trial by Battel, Peers.*

NOW we should come to Trial By Battel. V. the Judgment herein.

By Peers: *V.* the whole Process thereof, *C. Pl. Cor.* 27. 2 Inst. 182.  
V. ante 265.

*Judg-*

## Judgments in the several Cases.

### I. IN High Treason.

V. 1 H 7. 24.  
and Cases in  
Parliament.  
131, and 186.  
C. P. C. 218,  
219.

1. In all Cases, except counterfeiting Coin, drawn, hang'd, Entrails taken out and burnt, Head cut off, Body quartered, Head and Quarters hang'd up.

2. In counterfeiting Coin, drawn and hang'd: *Iffint per tonsure.* Dy. 230.

V. 3 K. b.  
278. Cro.  
Cat. 278.  
V. ante 19

But the Judgment of a Woman in those cases, drawn and burnt.

### II. In Petty Treason.

1. For a Man, drawn and hang'd.

2. For a Woman, drawn and burnt.

### III, In Felony.

Hang'd till dead : And this cannot be by the King altered to beheading.

IV. In

IV. *In Petty Larceny.*

To be whipt.  
He forfeits Goods.

V. *Death per Infortunium.*

No exprefs Judgment; yet forfeits Goods.

V. 1 Rol. Rep. 217. where the Body of one drowned, can't be found.

VI. *Death se defendendo.*

No exprefs Judgment; yet forfeits Goods.

VII. *Misprifion of Treafon.*

Forfeits Goods; Forfeits Profits of Land during Life; perpetual Imprifonment.

*Vide* for Seifure of Goods.

1. Not before Indictment.
2. Not removed before Attainder. 1 R. 3. c. 3.

V. On a conviction of Confpiracy 3 Inft. 222.

V. Keel. 29 a. Judgment for Trefpafs, tho' the Indictment was Felony, and fee ibid 77. feveral Judgments on one and the fame Verdict. *Fal.*

*Falsifying Attainders.*

- 3 Inst. 231. 1. By the Party, by Writ of Error.  
 2. By others falsifying it.
- 3 Inst. 130. 1. A Purchaser may falsifie an Attainder of the Vendor by Utlary or Confession in the point, if he purchase before the Attainder, and after the time of the Felony supposed.  
 2. A Purchaser *mesne* between the time of the Felony committed, and the Attainder by Verdict, cannor falsifie in the point of the Offence, but he may for the time.  
 3. If the Attainder was by such as had no good Commission, the Party himself may falsifie the Attainder. *Casus Com. Leicest.*
- 3 Inst. 231. 4. If the Principal attainted, and then the Accessary and Principal reverse the Attainder, the Attainder of the Accessary is *eo ipso* avoided, and his Heirs may have *Mortdanc'* against the Lord by Escheat.
- 2 Inst. 183. 5. At-

5. Attaint of Treason or Felony, and then the Treason is pardoned by Act of Parliament, the Party or his Heir shall V. 3 Inst. 232. falsifie Attainder by Plea.

6. In Case of Goods.

1. *Fugam fecit* found by the Coroner cannot be falsified, though upon his Arraignment it be found he did not fly: But if the Indictment be void or insufficient, no Forfeiture.

2. A man indicted before Justices of Oyer and Terminer, acquitted by Verdict, and found he fled, and the particulars of his Goods found, they may be traversed by any that hath property. S. P. C. 148. 3 Inst. 232.

3. Default till Exigent, though after acquitted, Goods forfeited; for it is a *fugam fecit* in Law.

But if the Indictment, Appeal, or Process insufficient, the Forfeiture saved; so if reversed by Error, or pardoned before Exigent.

*Nota*, Flight or Exigent in case of Petty Larceny, forfeits Goods.

*Execution*

## *Execution and Reprieve.*

- C. P. C. 212, 217.  
 V. Stamf. 13.  
 and 35 H. 6.  
 68. acc.  
 Sed V. 27 Aff.  
 pl. 41. and  
 F. N. B. 144.  
 V. 12 Co.  
 130.
- 1.** THE Execution must be pursuant to the Judgment, and cannot be altered by the King, as from beheading to hanging.
- 2.** But King may pardon part of the Execution ; as in Treason, he may pardon all but beheading.
- V. Keel. 77.
- 3.** It must be done by the proper Officer.
- C. P. C. c. 7.  
 217.  
 S. P. C. 198.
- 4.** If a Woman, convict of Treason or Felony, be quick with Child, she shall have one Reprieve, but not a second time.
- How Execution is awarded on Attainders by Outlawry, vide Keel. 13.

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F I N I S.

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**TREATISE**  
TOUCHING  
**SHERIFFS**  
**Accompts.**

Written by the Honourable  
Sir *MATTHEW HALE*, K<sup>t</sup>.  
Sometime Lord Chief Justice of His Ma-  
jesty's Court of *King's-Bench*.

To which is added,  
*A Tryal of WITCHES,*

At the Assizes held at *Bury St. Edmonds*, for the  
County of *Suffolk*, on the 10th of *March*  
1664, before the said Sir *Matthew Hale*, Kt.

L O N D O N,  
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FOR  
The Right Honourable  
THE  
LORD HIGH TREASURER  
OF  
ENGLAND,  
And the  
CHANCELLOR  
Of the  
EXCHEQUER.

**A**ccording to my Promise to you Lordships, I have given a large Historical Narrative of the Sheriffs Acccompts for the Annual Revenue of their Countries: Wherein some things may occur that may be useful to the understanding of the Sheriffs Acccompts, and many other old obscure  
A 2 Records,

## *The Epistle Dedicatory.*

Records, and some things incidently opened, that have been formerly obscure and scarce intelligible, yet fit to be known. Some things also relating to the difference between the Auditors of the Revenue, and the Officers of the Pipe. There may be some Mistakes of my own, I confess, in a Matter of so great intricacy, perplexity and obsoleteness, which I could not easily correct, in the Country, because many of my Papers are at *London* that concern this Business, and, I fear, hardly to be retrieved into a due order, in regard of the late distraction. And here may be some Mistakes in the Transcriber, which at this distance I could not examine. But, possibly, notwithstanding these Mistakes, Your Lordships may find something that may be useful, and when I wait upon you, I shall review and correct.

*Your Lordships*

*humble Servant,*



A. Short

# TREATISE

Touching

## Sheriffs Accompts.

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### CHAP. I.

*Touching the Ancient and Modern  
Weight and Allay of Sterling Silver.*



It will be necessary for the better understanding of Sheriffs Accompts, especially in the elder times, to examine these matters, *viz.*

I. Touching the Denomination, Weight and Allay of Sterling Money, the Corruptions thereof in both, and the Remedies

## A Short Treatise touching

dies that have been formerly applied for the reformation of these Corruptions.

II. Concerning Firmes, their nature, and how they were answered in former times. The first shall be the subject of this Chapter, the second the subject of the next.

Concerning the former of these, I shall apply my self singly to the business of Silver Coin, because that was the usual Species wherein the King's Firmes were commonly answered.

And first concerning the Coin of Silver, there are these things considerable therein.

1. The Authority or Power that gives it its Stamp, Weight, Denomination and Value.
2. The Matter of it.
3. The Weight and Denomination.

As concerning the first of these, it is, without all question, the inherent Regality and Prerogative of the Crown, to give the Currentness, Allay, Weight, Denomination and extrinseck Value to the Coin of this Kingdom: and as it is a part of his Regality and Prerogative, so it is a part of his Regal Revenue, which is called the King's Seigniorage, or Royalty, or Coinage, *viz.* ordinarily, on every pound weight of Gold, the King had for his Coin 5*s.* out of which he paid to the Master of the Mint, for his work, sometimes 1*s.* sometimes 1*s.* 6*d.* Upon every pound weight of Silver, the Seigniorage, or Coinage, answered to the King, in the time of King *Edm.* 3. was 8 peny weight, *pondere*, which about that time amounted to 1*s.* out of which he paid sometimes 8*d.* sometimes 9*d.* to the Master. In th

the time of *H. 5.* the King's Seigniorage of every pound weight of Silver was 15*d.* See *Rot. Parl. 9 H. 5. pars 2. N. 15.* although the Authorization, Denomination and Stamp of Coin was undoubtedly the King's Right, yet it appears by *Roger Hawood*, that in the troublesome times of King Stephen, *viz. An. Dom. 1149. Omnes Potentes, tam Episcopi quam Comites & Barones, suam faciebant monetam.* But Henry the second coming to the Crown, remedied this usurpation of the Baronage: *Novam fecit monetam qua sola recepta erat & accepta in regno.* And since that time, the exercise as well as the right of coining of Money in the Kingdom hath remained uninterruptedly in the Crown. It is true, that by certain ancient Privileges, derived by Charter and Usage from the Crown, divers, especially of the eminent Clergy, had their Mints or Coinages of Money. As the Abbot of *St. Edmunds-Bury*, *Claus. 32 H. 8. m. 15. dorso*: And the Archbishop of *York Claus. 5 E. 3. pars 1. m. 10. 19. dorso*, and some others. But although they had the Profit of the Coin, yet they had neither the Denomination, Stamp, nor Allay: For upon every change of the Coin by the King's Proclamation, there issued over a Mandate to the Treasurer and Barons to deliver a Stamp over to those private Mints to be used. But this liberty of Coinage in private Lords hath been long since disused, and in a great measure, if not altogether, reassumed by the Statute of *3 H. 7. Cap. 6.*

2. Concerning the second, *viz.* the Matter or Species whereof the currant Coin of this Kingdom hath been made, it is Gold or Silver, but not altogether pure, but with an Allay of

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Copper, at least from the time of King *H. 1.* and *H. 2.* though possibly in ancienter times the Species whereof the Coin was made might be pure Gold or Silver; and this Allay was that which gave the Denomination of Sterling to that Coin, *viz.* Sterling Gold, or Sterling Silver: Wherein there will be inquirable,

1. Whence that Denomination came.
2. How ancient that Denomination was.
3. What was the Allay that gave Silver that Denomination.

For the former of these there are various conjectures, and nothing of certainty.

*Spelman* supposeth it to take that Denomination from the *Esterlings*, who, as he supposeth, came over and reformed our Coin to that Allay. Of this Opinion was *Cambden*, *A Germanis, quos Angli Esterlings, ab Orientali situ, vocarunt, facta est appellatio; quos Johannes Rex, ad Argentum in suam puritatem redigendam, primus evocavit: Et ejusmodi nummi Esterlingi, in antiquis scripturis semper reperiuntur.* Some suppose that it might be taken up from the *Starre Judaeorum*, who being the great Brokers for Money, accepted and allowed Money of that Allay, for currant payment of their Stars or Obligations. Others from the impression of a Sterling, or of an Asterisck upon the Coin. *Pur ceo que le form d'un Stare, dont le diminutive est Sterling, fuit impressit ou stamp sur ceo.*

*Auters pur ceo que le primer de cest Standard fuit coyn en le Castle de Sterlin in Scotland pur le Roy Edw. 1.* And possibly as the proper name of the fourth part of a Penny was called a Farthing, and ordinarily a Ferling; so in truth the proper name of a Penny in those times

times was called a Sterling, without any other reason of it than the use of the times and arbitrary imposition, as other names usually grow. For the old Act of 51 *H. 3.* called *Compositio Mensurarum*, tells us that *Denarius Angliæ Sterlingus dicitur.* And because this was the root of the measure, especially of Silver Coin, as will be shewed, therefore all our Coin of the same Allay was also called Sterling, as five Shillings Sterling, five Pounds Sterling.

2. When this name of Sterling came first in is uncertain, only we are certain it was a Denomination in use in the time of *H. 3.* or *Ed. 1.* and after-ages. But it was not in use at the time of the compiling of *Doomsday*, for if it were we should have found it there, where there is so great occasion of mention of *Firmes*, *Rents* and *Payments*.

*Standard del mony en French est appel Pied de mony per Bodin, Pes monetarium, quasi Princeps ibi pedem figit.*

*Matth. Paris mag. Hist. 220. b. In le 12 an. de Roy John le premier standard del English mony fuit establiſh en Realm d' Ireland, et fuit equal al primes, & que l' English mony ne fuit au quart part melior in value que l' Irish, come ceo ad estre depuis le temps del Edw. 4. Et fuit change in Ireland come ceo fuit change in Engleterre. Le primer difference & inequality inter les Standards del English monies, & Irish monies est troue in 5 Ed. 4. car donq; fuit declare in Parliament icy que le Noble serra currant en cest Realm pur 10 s. & issint fuit que l' Irish Shilling forsque 9d. Dengetre.*

*Hovenden in Rich 1. fol. 377. b. Videns igitur Galfridus Eboracensis electus, quod nisi mediante pecuniis*

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*pecunia amorem Regis sui nullatenus habere possit, promisit ei tria millia Librarum Sterlingorum pro amore ejus habendo. Que fuit devant le temps del Roy John; p. que semble que le temps quant cest money fait primerment coin est uncertain. Car ascuns dient que fuit fait per Osbright un Roy de Saxon race 160 ans devant le Norman conquest. Nummus a Numa que fuit le primer Roy que fesoit moneies en Rome. Issint Sterlings, alias Esterling, queux primes fesoient le money de cest Standard en Engleterre.*

3. As touching the Allay that is by use and custom fitted to that Money which we call the Sterling, or Sterling Allay; perchance we shall not find that constancy in the Allay as is generally thought.

The Sterling Allay of Gold, according to the Red Book of the Exchequer is this. The Pound weight of Gold consists of twenty four Charats, every Charat weighing half an Ounce of Silver; and every Charat of Gold consists of four Grains, and consequently every Grain of Gold weighing thirty of these Grains which we call Silver Grains, whereof hereafter.

In the the time of *Edw. 3.* the Pound of Sterling Gold consisted of twenty three Charats, three Grains and a half of pure Gold, and half a Grain of Allay of Copper.

The Sterling Silver, as it seems to me, in former times had an Allay differing from what it is at this day. At this day a Pound weight of Silver (*viz.* 12 Ounces to the Pound, or Troy weight) consists of eleven Ounces two Penny-weight of fine Silver, and eighteen Penny-weight of Allay of Copper: Every Pound containing twelve Ounces, and every Ounce divided into 20

parts

## Sheriffs Accompts.

parts called twenty Penny-weight : For at that time 20 Penny-weight weighed one Ounce, which though the Penny-weight be altered, yet the Denomination continues. And this Allay was in use in the forty sixth year of King *Edw.* 3. and for some time before, and hath continued ever since.

In the Treatise of Money in the Red Book of the Exchequer which seems to be written in the time of *Edw.* 3. for it mentions the Indentures of the Mint, in 23 *Ed.* 3. it is said the use was then that in every pound weight of Sterling Silver there was sixteen Penny-weight of Allay: The consequence whereof is, that the Pound of Sterling Silver then contained eleven Ounces four Penny-weight of fine Silver, and sixteen Penny-weight of Copper.

And it should seem by what follows in the Chapter, that in the time of *H.* 2. the Allay of Copper in Sterling Silver was less than that: For upon every Pound weight of Silver Money they used to allow 12 Penny-weight *ad dealbandam firmam*; which seems to be the remedy for the reduction of the Money then currant into fine Silver, *sed de hoc postea.*

But at this day, and for very many reasons, the Allay of Sterling Silver hath been 18 Penny-weight of Copper allowed to 11 Ounces 2 Penny weight of fine Silver; thereby making up the Pound weight Troy of Sterling. *Vid.* Indentures of the Mint, *Claus.* 46 *Ed.* 3. *m.* 18. *Dors.* *Claus.* 1. *H.* 5. *m.* 35. *Dors.* *Claus.* 4. *Ed.* 4. *m.* 20. And this I take at this day to continue the Standard of Sterling Silver

23 *E.* 1. *Per special ordinance del Roy les Poliards & Crockards fueront deciz & adnul, quel ordinance suit transmit in Realm d'Ireland & en-*

*rol en Exchequer icy, come est troue in Libro rubro Scaccarii, ibid. pars 2. fol. 2. b.*

*En temps E. 1. Denarius Angliæ, qui nominatur, Sterlingus, rotundus sine tonsura, ponderabit triginta & duo grana in medio spicæ.*

Dy. 6. & 7 Ed. 6. *Sterlingus & Denarius sont tout un. Le Shilling consistoit de 12 Sterlings. 25 E. 3. cap. 6. Le substance de cest denier ou Sterling Peny al primes fuit vicesima pars uncia. Et issint continue tanq. 9 E. 3. quant l' ounce del Silver fuit tallie in 26 pence que proportion fuit continue tanq. 2. H. 6. quant l' ounce del Silver fesoit 32 pence. Et cest insq; al 5 E. 4. quant fesoit 40 pence. Et cest insques 26 H. 8. quant il prepare son journey al Bulloigne & donq; fuit divide en 45 pence. Que continue insques al 2 El. quant l' ounce de pure Silver fuit tallie en 60 pence, & cest Standard remain a cest jour.*

Rastal Money. 345.

Davis 24

*Et quilibet libra de sterling avoit 18d. ob. d' alloy de Copper, & nient plus. Et cest allay de sterling Mony les Ordinances ou Statutes de 25 E. 3. cap. 12. & 2 H. 6. cap. 12. font mention, & est conten en tous Indentures fait enter le Roy & les Maisters del Mint.*

## C H A P. II.

*Concerning the Weight of Coin, and the Difference therein, with regard to the Denomination of Coin.*

**T**HE Pound weight of Gold, though it were the same with that of Silver, yet is made up of smaller parts of a different Denomina-

mination, every pound weight consisting of 24 Charats, and every Charat consisting of 4 Grains

The Pound weight of Silver is subdivided into parts of another Denomination; for every Pound consists of 20 Peny-weights, and every Peny-weight of 24 Grains. This appears by the Books and Records above mentioned. *Et tous susdits moneyes d'argent issint faites serront da.lay de Standard de veil Esterling: Cest ascavoir que chescun leivre d'argent de cestes moneyes de poize tiend: a unze ounces & 2d. de poize d'argent fine, & 18d. de poys dallay, chescun peny weight contenant 24 grains.*

So that every Charat in the Pound weight of Gold equals half an Ounce of Silver; and every Grain of Gold, the fourth part of a Charat, equals 60 Grains of Silver weight.

In that old Ordinance, before mentioned, called *Compositio Mensurarum* 51 H. 3. it is said, *Per ordinationes totius Regni Angliæ sit una mensura Domini Regis composita, viz. quod Denarius Angliæ, qui nominatur Sterlingus, rotundus sine torsura ponderabit triginta & duo Grana frumenti in medio spicæ; & viginti Denarii faciunt Unciam; & duodecim Unciæ faciunt Libram, &c.*

But these thirty two Grains in the middle of the Ear of Corn, are the natural Grains, which were the weight of the then English Sterling Peny. But for the better accomodation of Accompts, these 32 natural Grains are reduced to 24 artificial Grains, which, from very ancient time unto this day are the common measure of the Peny-weight, as the 20 Peny-weight is the measure of an Ounce.

Having thus stated the artificial weights of Gold, and Silver, especially the latter, I shall proceed

proceed to the comparison that now and anciently stands between these artificial weights and the Coin of Silver.

It is very plain that in the latter end of *H.* 3. and the beginning of King *Ed.* 1. and for a long time before, twenty Pence of Sterling Money did weigh an Ounce, and twelve times twenty Pence or twenty Shillings did then weigh a Pound Troy weight: And accordingly as twenty Penny-weight was then an Ounce, and so called, so two hundred and forty Pence, or twenty Shillings was a Pound weight, and so called, *viz. Libra Argenti.* And although at this day the Penny and the 20 Shillings of Silver is much altered in their true weight, yet the Denomination is still retained. The Ounce is commonly divided and estimated by 20 Penny-weight, and 20 Shillings is called *Libra Argenti.*

In the time of King *Edm.* 1. (as appears) an Ounce of Sterling Silver made 20 Sterling Pence, and consequently a Pound of Sterling Silver made 240 Pence Sterling. But process of time hath made a great alteration between the Weight and extrinseck Denomination or Value of Money.

In 46 *E.* 3. it appears by the Indenture of the Mint that a Pound of Sterling Silver made then 300 Sterling Pence. *Claus. 46. E. 3. m. 18.*

And afterwards in 1 *H.* 5, the reduction of Coin was such, that a Pound weight of Sterling Silver made 360 Pence Sterling. *Claus. 1 H. 5. m. 35. dorso.* Which made the Pound weight of Silver to contain 20 Shillings, and deducting 1 Shilling for Coinage, the Merchant had

29 Shillings for his Pound of Silver brought into the Mint.

In the 4th year of *Ed. 4.* the Pound of Sterling Silver yielded 33 Shillings, *viz.* about 396 Pence in the Pound: And consequently 33 Sterling Pence then made the Ounce of Silver. *Clauf. 4. E. 4. m. 20.*

At this day the Ounce of Silver Coined contains 5 Shillings, or 60 Pence: And consequently the Pound weight of Coined Silver yeilds 60 Sterlings, or 720 pence. So that at this day the extrinsical Denomination or Value of Money in proportion to its Weight, is three times higher than it was in the time of *E. 1.* And thus much shall suffice touching the second Enquiry.

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### C H A P. III.

*Touching the Corruptions of Money,  
and the Remedies anciently used in  
relation thereunto.*

**B**Y what hath been before said it appeareth, the two special Requisites of the currant Coin of this Kingdom are,

I. That it be of the true Standard in relation to its weight.

II. Of the true Standard with relation to its Allay: And proportionably to these two Requisites are these Defects, which have happened in Moneys in modern and ancient times, *viz.*

I. The

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I. The defect in the due weight of Money which happened sometimes by counterfeiting the Sterling Money, though with a weight below the Standard. Sometimes by clipping, or otherwise impairing the weight of true Money.

2. The defect in the due Allay: viz. overcharging the fine Silver or Gold with an Allay of Copper more than the Standard, which happened sometimes by the deceit or ignorance of the Officers of the Mint, and sometimes by the counterfeiture of the Coin of *England*.

And by these practices the King's Exchequer (into or through which the most of the Money of the Kingdom successively came) was many times surcharged with such defective Money, and the King thereby deceived in his Firmes.

And therefore in ancient times there were successive Experiments made by the Officers of the King's Revenue for the discovery and avoiding of these defective Monies, and that his Rents might be answered in Money of a just weight and Allay; which, for the better understanding of ancient Records, remain here to be explicated, viz. *Solutio ad Scalam*, *Solutio ad Pensum*, and Combustion, or tryal by fire. The two former being such Remedies as related to defective Weight, and the latter being the Remedy that relates to defect in the Standard of Allay. And, touching this business, although we have very frequent mention of them, in the Pipe-rolls especially, yet the best, and contemporary exposition of them is *Gervasius Tilburienfis*, or the Black Book of the Exchequer, written in the time of H. 2. who gives us the Accompt thereof in his first Book, Cap. *A quibus, & ad quid inventa fuit*

*fuit Argenti examinatio*, who thus expounds it.

1. *Solutio ad Scalam*, viz. *præter quamlibet Libram numeratam sex Denarios*, which it seems was agreed upon a *medium* to be the common Estimate or Remedy for the defective Weight of Money, thereby to avoid the trouble of weighing the Money which was brought into the Exchequer. And this is the meaning of that frequent expression in the ancient Pipe-rolls *In Thesauro 100l. ad Scalam*, which seems to be one hundred Pounds, and one hundred Sixpences, or fifty Shillings.

2. *Solutio ad Pensum*: Which was the payment of Money into the Exchequer by full weight, viz. that a Pound, or 20s. in Silver, *numero*, or by tale, should not be received for a Pound unless it did exactly weigh a Pound weight Troy, or twelve Ounces, and if it wanted any, that then the Payer should make good the weight by adding other Money, although it amounted to more or less than 6d. in the Pound, (which was the *Solutio ad Scalam*, as before is mentioned.) And thus frequently occurs in the Pipe-rolls, *In Thesauro 100l. and pensum*, or full weight.

3. Combustion or tryal by fire: which is by *Gervase* supposed to be set on foot by the Bishop of *Salisbury*, then Treasurer, (though in truth it were much more ancient, as appears by frequent passages in the Book of *Doomsday*;) and the Author gives the reason: *Licet enim numero & pondere videretur esse satisfactum, non tamen materia. Consequens enim non erat ut si pro Libra una numerata 20 Solidos, etiam Libra ponderis respondentis consequenter Libram solvisset:*

B

*Argentum*

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*Argentum enim Cupro vel quovis Aere solviffet.*  
 And thereupon ensued the constitution of examination of Money at the Exchequer by Combustion. Whether this examination was to reduce an equation of Money only to Sterling, viz. a due proportion of Allay with Copper; or to reduce it to fine and pure Silver, and to make the estimate of the Pound or *Libra Argenti*, reserved of their Firmest to be in pure Silver, and without Allay, doth not so clearly appear. Some think the former; and therefore that the old expression of *Firma alba*, blank Firm, and *dealbare Firmam*, was nothing else but Coin melted down and reduced to the Allay of Sterling, and after blanched, or whited, as is done by the Monyers with their Sterling Coin of Silver, which is to this day called blanching. *Vid. Spelman intit. Firman dealbare.* But yet it may seem, by what ensues, that it was to reduce it to fine Silver, and to the estimate of the Pound, or *Libra Argenti* accordingly; for it is evident by what follows, that the difference between a Pound, or *Libra Argenti numero*, and *Libra Argenti blanch*, was 12 Pence in every Pound: Which possibly might be that the allowed Allay of Copper in the Sterling Silver was then twelve Pence weight of Copper in the Pound of fine Silver, whereas it is now 18 Penny-weight in the Pound. This tryal of Silver by Combustion, in those elder ages soon prevailed and obtained against the former reductions *ad Scalam*, & *ad Pensum*, as being the only infallible tryal of the truth of the Metal, whereby the former reductions of *Pensum* and *Scalam* became in time antiquated.

And

And this begat the distinction in the old Rolls of the estimate of Money *Numero*, and the estimate *Blanc*: and in pursuance thereto the reservations of Rents and Firmes by the King were sometimes *Numero*, and sometimes *Blanc*.

The reservations of Rents *numero*, were no other but so much Money reserved in *Pecuniis numeratis*: as *reddendo quinque Libras numero* was fivescore Shillings, which amounted in common estimation to five Pounds Troy weight: And this was the ancient and usual reservation, and, *prima facie*, unless the contrary were expressed, upon all Grants of Lands (reserving so much Rent) it was intended *numero*; that is, so much in Money numbred, and the Firmor was not bound *dealbare Firmam*, or to make good so much in fine Silver, or, if you will, in such Silver as was of the first Allay.

The reservation of so much Money, or so many Pounds *blanc* did enforce the Firmor to make good to the King so much in fine Silver, (or at least in the purest Sterling) and therefore such Firmor, when he paid in his Firme upon such a reservation *blanc*, was bound *dealbare Firmam*, which was to submit his Money to the test of the Fire; and to answer his Money, and make it good in fine Silver according to the reservation, or to pay in allowance thereof that rate which was the ordinary measure of reduction of it to fine Silver, which was 12 *d.* for every Pound as shall be shewed.

And hereupon grew the common difference which is everywhere mentioned in the Pipe-rolls of Firmes *numero*, and Firmes *blanc* or *alb. Firme*.

This difference of these Firmes is expound-

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ed by the Black Book of the Exchequer, *Lib. 2. Cap. Quid sit quosdam fundos dari blanc, quosdam numero, viz.* that if a Firme or Tenement were let by the King generally, without expressing *blanc* or *numero*, it was to be answered only *numero*, unless specially reserved *blanc*, (*viz. 5s. blanc.*) But if a Royalty or Franchise were only granted, then the general reservation of so much Rent, was to be *blanc* Rent. *Porro, Firmam numero dari diximus cum tantum numerando, non examinando ipso satisfit. Cum ergo Rex Firmam alicui contulerit, simul cum Hundredo vel placito qua ex hoc proveniunt, Firma dealbari dicitur: si simpliciter fundum dederit (non determinans cum Hundredo vel blanc,) numero datus dicitur.* And from this diversity of the Rents arising in any County (some *blanc* only, some *numero* only, some in both) arose the diversity in the titling of the Sheriffs Accòmpts, *viz.*

*Firma de remanente Comitatus post terras datas blanc:* Which was applicable to those Rents of his County, which were answered in fine Silver reduced to the test by combustion, or with an allowance of 12d. in the Pound in compensation of it.

*Firma Comitatus numero,* was his Firme for those Rents of his County which were only answered in Money numbred, without reducing them to their fineness by Combustion, or any satisfaction for it: But of this more fully in the ensuing Chapter.

I have before mentroned that when any Firme was reserved or answered *blanc*, the Money was to be melted and answered in fine Silver, or at least to Silver allayed to right and finest

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finest Sterling, or else he was to redeem himself from that trouble by payment of 12*d.* in the Pound: So that that Person upon whom there was reserved 5*l. blanc.* was to pay 5*l. 5s.* if he would not have his Money melted down and made good in fine Silver (or at least in true Sterling.) And this appears to be true by infinite Records: Take two or three for instance.

*In compoto cum Northampton, 21 H. 3. Summa totalis 102*l.* 3*s.* 7*d.* de qua 41*l.* 9*s.* 4*d.* blanc. quæ sunt extensæ ad 41*l.* 13*s.* 9*d.* subtrahuntur ad perficiendum corpus Comitatus & remanet 97*l.* 13*s.* 10*d.* de quibus respondet de proficuo in magno Rotulo.*

*Claus. 13. H. 3. m. 2. Sciatis quod perdonavimus dilectæ Sorori nostræ A. Comitissæ Pembroc centum triginta & quinque Libras blanc. quæ extensæ sunt ad centum quadraginta & unum Libras, & quindecim Solidos.*

*In Compoto Bedf. & Bucks, 13 E. 3. Nic. Passelew de 18*l.* 4*s.* 4*d.* numero pro 17*l.* 7*s.* blanc.*

In all these the proportion riseth very near, taking the small fragments in Pence, that every Pound *blanc* answered one Shilling over, to reduce it to its value.

And hence it is that at this day the ancient Firmors of Cities, as *London, &c.* which were commonly reserved *blanc*, do pay the same in Sterling Money, and one Shilling for every pound over: As if 100*l. blanc* be reserved, there is answered at this day in the Receipt 105*l.* which as before, makes me suppose that *blanc Firme*, or *dealbata Firma*, was in truth when it was reduced to fine Silver, and not

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barely Sterling: for this advance of 12*d.* in the Pound upon such *blanc Firmes* is still answered though paid in Sterling.

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### C H A P. IV.

#### *Concerning the manner of answering the King's Firmes antiently.*

**I**N ancient times, *viz.* about the time of *William* the first and *Henry* the second, the reservation of the King's Firmes and Rents were so many Pounds or Shillings, &c. in Money, and they were answered *numero*, or in *Pecuniis numeratis*, until afterward, for the avoiding of corrupt Money, they were reserved in *blanc* or white Money, which, as before is observed, was intended either of pure Silver, (or at least Silver reduced to the Allay of Sterling) and then whitened or blanched, as is used in the Mint to this day, for all Sterling Money: I shall not much contend whether it were the one or the other, but for the most part in this Discourse I shall suppose it fine Silver.

But although Firmes were reserved in Money, as the best and commonest measures of values, yet it appears by *Tilburienfis, Lib. 1. Cap. A quibus & ad quid instituta fuit Argenti examinatio*; that it was in those ancient times of King *W. 2.* and *H. 1.* usually practised that those Firmes should, according to their values be answered in Cattle, Corn and other provisions; which perchance in its first institution

might

might be a convenience to the King, to have his Family furnished with Provisions *in specie*, and to the Country, among whom Money was not then very plentiful, and they could better answer their Rents in Provisions.

And to the end that an equation might be made between the Rents reserved in Money and the Provision delivered by the Tenants in lieu thereof, the same *Tilburiensis* tells us, there were certain prices and rates set upon provisions, that the Tenant might know what to pay, and the King's Officers might know what to receive. As for Wheat for 100 Men 12*d.* for a fat Ox 12*d.* &c. which it seems were delivered to the hands of the Sheriff, who, if he firm'd the County, might retain it to his own use; but if he firm'd it not, he accompted to the King, for these Provisions or their values, as he did for other rates of the County collected by him.

But as for Cities and Franchises that were granted out to firme, because they had not Provisions of this nature to answer, they paid their Rents in Money.

Thus, it seems, the King's Firmes of Rents of his Firmors and Tenants in the Country, were answered in the time of King *William* the first and *William* his Son. But in the time of *H. 1.* the Tenants were weary of answering their Rents in provisions, and the King's foreign occasions called rather for a supply of Money, and so the Rents were answered by the Tenants as formerly in Money according to the tenour of their reservations, and the delivery of Victual and other Provisions in lieu thereof ceased.

## C H A P. V.

Concerning the manner of collecting the King's Revenues of the County, and the several Kinds of them, with their several Titles.

THE Sheriff of the County had a double Office: 1. As a Minister of Justice under the King for the Preservation of Peace, and Writs issuing out from the King's Courts. 2. As the King's Bayliff of his Revenues arising in the County, which was of two kinds.

1. The improving and letting, and sometimes stocking of the King's Demesnes, and such Lands as were seized into the King's hands (other than such as belonged to the Escheator, as Wardships and Escheats.) And hence it is that there are upon the accompts, especially of *Buckingham* and *Bedford*, allowances made to the Sheriff of that County *ut . . . Comitatus*.

2. The second part of his Office was in collecting of the King's Rents of his County, which sometimes he did as *Custos* or Bayly; sometimes *ut Firmarius*, viz. he took the Rents to his own use, and answered the King a certain *Firme* or Rent at his own peril, whereof more in the ensuing Discourse. Now concerning  
ing

ing the kinds of the King's Revenues arising in the several Counties, we are to take notice that they were of two kinds, *viz.* Annual or Casual.

The Annual Revenue was again of two kinds, *viz.* Fixed and Certain, or Casual and Uncertain.

The Annual, Fixed and Certain Revenue of the Counties were of these kinds.

1. The King's Demesnes that were in his own hands, or let at Rack-rents to Tenants, whereof I have before spoken, and they make not much for that purpose I aim at.

2. Firmes, which were of two kinds, *viz.* Gross Firmes which were charged upon particular Persons, or Cities, or Towns, and so charged in the great Roll; as thus, *Philippus d' Aura debet 2 Marc. de reditu unius virgate terre.* And these were thus charged upon these two reasons: 1. Either because they were never parcel of the Sheriffs Firme of this County, (*de quo infra,*) but great Firmes written out to the Sheriff to be answered by the persons upon whom they were charged. 2. Or else they were such as happened to be reserved after the Firme of the County was reduced to certainty and answered by the Sheriffs. Or else, Secondly, they were small Rents commonly called Vicontiel Rents; the Particulars whereof we shall enumerate under their several heads in due time.

3. Common Fines, at first imposed upon Townships, upon several occasions, as for *Bon pleder*, for Suit and Ward, for excuse of attending the Sheriffs turn: And these grew in process of time to be fixed and settled Revenues.

And

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And these again were of two Sorts; such as came within the Title of *Firma Comitatus*, and were written out under that general Head, *viz. sub nomine Vicecomitis*: And some again were written to the Sheriff in the particular charge of such and such Townships and Lands, and so charged upon the Towns by the express words of the Process.

4. Arrentations of Assarts and Purprestures in Waits and Forests set by Justices in *Eyre*, which for the most part were written out in charge against the particular Lands upon which they were charged: And some perchance were demanded in a gross Summ, among other small Rents *sub nomine Vicecomitis*.

5. *Crementum Comitatus*, or *Firma de cremento Comitatus*; which were some improvements of the King's Rents above the ancient Vicontiel Rents, for which the Sheriff answered under the title of *Firma Comitatus*. And this *Crementum Comitatus*, or the several small advances of the old Vicontiel Rents, were answered under the title of *Crementum Comitatus*, or *Firma de cremento Comitatus*. But those kinds of Firmes *de cremento* are only found in the Counties of *Bedford, Bucks, Norfolk, Suffolk, Warwick, Leicester, Wigorn* and *Gloucester*: Certain other Summs annually charged in gross upon the Sheriff for certain other small or minute Rents under several titles in several Counties; as, *De Cornagio, de Wardis, Castle de Firma, Purprest & Escatt de diversis Firmis, de minutis particulis, Serjancia de tr'is assert infra divers forest*: All which were charged in gross Summs upon the Sheriff, and *sub nomine Vic.* without expressing

expressing any particulars, or upon whom they were charged, which because they were not common to all Countries, but varied according to the various usage of several Counties, I shall not at large handle, but shall content my self with the enquiry into those that were the common Charges of the Sheriffs of every several County, viz. the *Corpus Comitatus*, and the *Proficua Comitatus*.

The Vicontiel Rents that made up the Sheriffs Firme of the Body of the County, came under various Titles and Denominations in several Counties, viz.

1. *Reditus Assize* in Cumberland, Hertford, Surry.
2. *Firme & feodi Firme* in Cumberland, Northumberland, Nottingham, Stafford.
3. *Firma antiqua* in Huntington.
4. *Albe Firme* in Norf. & Suff.
5. *Blanch Firmes* in Ebor<sup>s</sup>, & Suff.
6. *Blanc Rents* in Kent.
7. *Albus Cervus* in Dorset.
8. *Auxilium Vicecom<sup>r</sup>* in Cant<sup>r</sup>, Cumbr<sup>r</sup>, Effex, Hunt<sup>r</sup>, Leic<sup>r</sup>, North<sup>r</sup>, Suffex, Warw<sup>r</sup>, Wilts.
9. *Auxilium ad Turcum Vicecom<sup>r</sup>* in Devon.
10. *Hidage* in Berks, Bedf. Bucks, Oxon.
11. *Prestatio pro pulchre placitando* in Bedf<sup>r</sup>, Bucks.
12. *Seta & Warda* in Bedf<sup>r</sup>, Bucks.
13. *Visus Franci plegii* in Bedf<sup>r</sup>, Bucks, Cant<sup>r</sup>, Hunt<sup>r</sup>, Effex, Hertford, North<sup>r</sup>ton, Somerset, South<sup>r</sup>ton, Stafford.
14. *Certitudines* in Berks, Heref<sup>r</sup>, Rutland.
15. *Certi reditus* in Lincoln, Leicester, Somerset, South<sup>r</sup>ton, Warwick & Wilts.
16. *Certi*

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16. *Certi redditus ad communem finem in Derby, Nottingham.*
17. *Reditus pro Warda castri in Cant', Northum', Oxon, Norf', & Suff'.*
18. *Reditus ad Turnum Hundredi in Dorset.*
19. *Finis antiquus in Essex.*
20. *Finis pro secta Curie relaxand' in Berks & Oxon.*
21. *Communes fines in Glouc', Heref, Hertf, Surry, Suffolc, Salop.*
22. *Fines Aldermannorum in Suffex.*
23. *Turnum Vicecom' in Essex & Hertf'.*
24. *Secta Burg. & Vill. in Cant'.*
25. *Suit Silver in Staff.*
26. *Hundred Silver in Norf.*
27. *Faith Silver in Staff'.*
28. *Pannel Silver in Norf.*
29. *Ward Silver in Essex.*
30. *Certum lete cum Capitag' in Norf'.*
31. *Lect fee in Suff'.*
32. *Soken fees in Suff'.*
33. *Mott fee in Salop.*

These are the general Titles of those Vicontiel Rents that usually came under the Title of *Firma Comitatus*, which were written generally *sub nomine Vicecom'*, without expressions of the particulars: But the Sheriff that had a particular Roll of these Vicontiel Rents, delivered in that Roll many times upon his Accompts, though not written especially in charge under those names, or in particular by the Summons of the Pipe: And thus much concerning the certain Annual Revenue.

2. The uncertain Annual Revenue was the *Proficuum Comitatus*, which in ancient times when

when most of the Law-suits were transacted in the Counties and Hundred-Court, was a considerable Revenue. But since that time, viz. about the beginning of E. 1. when much of that business was transacted at the great Courts, this profit of the County sunk to very little. And in my enquiry touching this part of the Revenue, I shall first set down what it was not: Secondly, I shall set down what it was, and how it did arise.

1. Touching the former of these what it was not; I say, most clearly it was not that profit which is now the only considerable profit of the Sheriffs employments, viz. the Fees and Perquisites for the execution of Writs, and Process and Execution issuing out of the King's Courts. For,

1. Until the Stat. of 23 H. 6. c. 10. there were no Fees at all by Law due for any execution of Process or Warrants for the same. Till the Stat. of 29 El. 2. there were no Fees allowed by Law for levying of Debts or Damages: But by the exprefs provision of the Stat. of *Westminster* the first, the Sheriff was bound to execute the King's Process without any Fee, which is no other but a declaration of the Common Law.

2. In no Viscontil Schedule or Accompt of the County that ever I could see or hear of, is there any Accompt for Fees for execution of Process, or any mention thereof.

3. If the Sheriff did in those elder times take any Fees for execution of Writs, there was no colour of reason that he should accompt for that: And if he did take more than a reasonable recompence for his pains, it was  
more

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more than could be justified, and not at all due to the King.

II. But now, as to the Second enquiry, what this *Proficuum Comitatus* was: And it seems very plain that it was made up principally by these particulars, as most evidently appears by divers accompts of Sheriffs in ancient times, when they accompted *ut Custodes* or *Ballivi*, not *ut Firmarii*, viz.

I. The Fines, Issues and Amercements, and other Profits of the County-Courts, which in those ancient times were very considerable, for it held Plea in all Writs that were Vicontiel, directed immediately to the Sheriff out of the Chancery, viz. by Justices; and many times not only personal Suits were removed thither out of inferiour Court-Barons and Hundred-Courts, but also Pleas Real, viz. Writs of Right; and in ancient time many real Actions, especially Writs of Right were determined in the County. And therefore it is frequent in the old Schedules of *Proficuum Comitatus*, especially in *Yorkshire* in the times of R. I. and King *John*, such as these; viz. *De J. S. pro licentia concordandi demimark.* *De J. S. pro Warrantia Effonii* 2s. and sometimes a Mark *pro vi'a Comitatus*, sometimes 10s. *quia retraxit se, Demimark.* *De pretio bonorum per distringas demimark.* *Pro transgressione* 2s. *Pro falso clamore demimark, &c.*

So that it appears in the accompt of 20 *Johannis Regis*, the profits of the bare County-Court of *York* for one half year amounted to 31 li. which is more than 100l. in a just estimate at this day.

2. The Profits of the Sheriffs Turns, or the Sheriffs Leets, which had Conuſance of matter Criminal, as his County Court was for matters Civil: and the Profit conſiſted,

1. In Amercements of Sutors that made default.

2. In the Fines and Amercements of ſuch as were convicted of offences inquirable in the turn; as Nufances, Bloodſhed, Affize of Bread and Beer, &c. and theſe aroſe uſually to a conſiderable Sum yearly.

3. The Profits of the Hundred-Courts and Wappentake Courts; the Profits whereof conſiſted in the Fines, Amercements and other Perquiſites of the Hundred-Court, which the Sheriff ſometimes took in kind; ſometimes he let it to Firme. Theſe Baylywicks of theſe Hundreds, and with them the Profits and Perquiſites of Courts were ſometimes let to Firme by the King, and in ſuch caſes the Sheriff accompted *Proficua Ballivatus*, which oftentimes aroſe to very conſiderable Sums. In the time of *H. 3.* the Firmes of the Baylywicks of the Hundreds in *Yorkſhire*, beſide *Stancliff* and *Strafford*, were let for 100*l.* 6*s.* 8*d.* per annum, which was then a conſiderable Sum, and amounts now in Sterling Money to thrice as much. But as the buſineſs and juriſdiction of the Hundred-Courts funk gradually in their employment, (whereby the Perquiſites now do but little ſurmount the charge of keeping them) ſo now by the Stat. of 23 *H. 6. cap. 10.* the Sheriff is reſtrained from letting the Baylywick to Firme; and moſt of the Hundreds, at leaſt in many Counties, are diſjoined from the County and granted out, ſome in Fee-farm, and ſome otherwiſe, though

though there have been frequent attempts of rejoining them to the Sheriffs by acts of Resumption.

And these are the Profits that made up the *Proficuum Comitatus*, for which the Sheriff most commonly in ancient time answered as *Firmarius* at a certain Rent, though sometimes he accounted for it as *Custos* or *Ballivus* as shall be shewn. And I know no other Perquisite that made up the *Proficuum Comitatus* but what is above mentioned; only in *Northumberland* there were some Castle-gard-Rents that were in truth Vicontiel Rents, and in their propriety and nature belonged to the *Corpus Comitatus*, which yet by constant usage were usually answered among the *Proficua Comitatus*. And thus far concerning the annual Revenue of the County, both Certain and Uncertain, chargeable upon the Sheriffs collection.

2. The Revenue Casual consisted of many Particles under various Heads or Titles, *viz.* Debts drawn into the Pipe, and thence written out unto the Sheriff. Fines voluntary or compulsory. Seisures of Lands and Compositions, &c. they may be reduced under these three Heads at this day.

1. The Debts written out to the Sheriff from the several Offices, *viz.* the two Remembrancers, Clerk of the Pipe, &c.

2. The Summons of the Green Wax, written to the Sheriff with the Estreats from the Treasurer's Remembrancers.

3. The foreign Accompts, or Seisures of Lands for Debts or Forfeitures.

As touching escheated Lands and Wardships, they came under the Escheator's charge, and the

the Profits thereof rarely answered by the Sheriff, unless for some few ancient Escheats.

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## C H A P. VI.

*Concerning the manner how the Annual Revenue of the County was usually answered in the ancient times until 10 E. I.*

HAVING shewed what the Annual Profits of the County consisted of, I shall now descend to the manner how it was anciently answered. The Sheriff, as hath been shewn, was the King's Bayly for the collecting of the King's Revenue: And touching the manner of his collecting and answering them, and therein principally concerning those two great parts of the Annual Revenue, *viz.* the *Corpus Comitatus*, or when it was in Firme, the *Firma corporis Comitatus*: And the *Proficuum Comitatus*, and when it was in Firme, the *Firma de proficuo Comitatus*; both which shall be hereafter more fully explained.

These Profits were anciently, and are to this day answered at two Terms in the year, *viz.* Michaelmas and Easter.

But to enable the more effectual levying of them, there always issued to the Sheriff before Easter and Michaelmas, out of the Exchequer a Writ called the Summons of the Pipe, which

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had annexed to it the Charge or Sums for which the Sheriff was answerable, viz. those which were charged upon himself *sub nomine Vicecomitis*, and those which are charged upon others. The Form of the Writ is recorded in the black Book of the Exchequer, *Lib. 2. cap. Qualiter fient Summonitiones*; which continue to this day, viz. *Rex Vic' Ebor' Salutem. Vide sicut teipsum & omnia tua diligas quod sis ad Scaccarium nostrum Westm' in Cro' Sancti Michaelis, vel in Cro' Claus' Pascha, & habes ibi quicquid debes de vetere firma vel nova: Et nominatim hac debita subscripta.* And then the whole charge is inserted, which commonly began with these annual Revenues, viz.

*De Corpore Comitatus*

(or if it were in Firme)

*De Firma de Corpore Com. 100 bl.*

*De Numero Comitatus 10*

*De Proficuo Comitatus*

(or if in Firme)

*De Firma de proficuo Com. 50*

And then the Sum in gross charged upon the Sheriff for divers small Rents, and then afterwards all those Firmes that were charged upon particular persons *seriatim* and in order.

And according to the order wherein they were written out to the Sheriff, accordingly in effect were the Accompts passed, and the Entries made thereof in the great Roll of the Pipe, only the particulars in the Writ was their charge of the Sheriff, unto which he was to give his answer upon his Accompt, and then there are entered his discharges.

And

And this Firme continues there to this day, with such alterations as are hereafter mentioned: And therefore the Ordinance or Statute in *Libro Rubro Scaccarii*, fol. 242. made in 54 H. 3. is nothing else but the stable and fixed method for writing the great Roll, observed both before and since that day.

*Primo, Scribatur Corpus Comitatus, deinde Eleemosyne constitute, & Liberationes & Bri' a p̄isci Vicecom' sicut semper fuit consuetum. Deinde oneretur Vic' de Firmis pro proficuo Comitatus vel de proficuis: Deinde scribantur omnes Firme tam majores quam minores, &c.*

And altho the certain *Debet* of the Sheriff could not be known before the finishing of his Accompt, because it could not be known what he levied, and what not; and what he had paid, and what not; (which Accompts was not until the end of his year) yet it seems there was anciently an estimate what this constant charge of the annual Revenue amounted unto, and what the constant allowances amounted unto, according to a *medium*, or possibly according to those Firmes and gross Sums which were charged immediately upon the Sheriff *sub nomine Vicecomitis*; and these Sums were paid into the Exchequer at the return of the Writ of Summons of the Pipe, and they were, and are to this day called *Profre Vicecom'*, or the Sheriffs Proffers. And by the Statute of 51 H. 3. called *Statutum de Scaccario*, those proffers are appointed to be paid on the morrow of St. Michael, and the morrow *post Clausum Paschæ*; and the payment of these proffers are continued to this day: But altho they are paid, yet if upon the conclusion of the Sheriffs Accompt, and af-

ter the allowances and discharges had by him, it appears that he be in surpluage, or that he is charged with more than indeed he could receive, he hath sometimes, and for the most part, all his proffers paid or allowed to him again: and so indeed it is but a mock-payment, a payment kept on foot to maintain the old method of his Accompt, but is in effect but so much Money lent, for he hath it (and justly enough) allowed to him back again: The reason and justice whereof shall be shewn hereafter. And now to return again from whence we digressed, I shall now search out the meaning of these Firmes, *Corpus Comitatus bl.* and *Numerus Comitatus*, and *Firma de Corpore Comitatus*, and *Proficua Comitatus*, and *Firma de proficuo Comitatus*, I mean as they relate to the Sheriffs Accompt, for what the things were is sufficiently discovered before.

Therefore as to the *Corpus Comitatus*, I have already shewn in the precedent Chapter, what it consisted of, viz. the Vicontiel Rents of the County; and they consisted of two sorts of payment, viz. those that were answered in *blanch* Money, and those that were answered in Money numbred. And this ordinarily made two titles of the *Corpus Comitatus* in most Counties, viz. where there were Firmes of these differing natures, and they are then thus noted, viz.

<i>De Corpore Comitatus</i>	100l. bl.
<i>De Numero Comitatus</i>	50

And they were written out thus generally, without

without expressing the several Vicontiel Rents, but only the gross Sums what they amounted to *blanc*, and what they amounted to *numero*, or *de numero Comitatus*. And the Sheriff upon his Accompt was used to bring in a Vicontiel Roll, containing these particular Vicontiel Rents, what they were and what he had levied.

By this it appears that in the first constitution of this Vicontiel Accompt the Sheriff accompted for these Rents as Bayly or *Custos*, and answered what he levied though they were written out, and stood upon the great Roll all in a lump, and when the Sheriff accompted thus, he accompted as *Custos* or Bayly. But in process of time (but that time being ancient) the Sheriff for the time being took the *Corpus Comitatus* or Vicontiel Rents to Firme, which Firme, for the most part amounted to very near the entire quantity of the Vicontiel Rents. And this Firme in many Counties was very ancient, for we find them mentioned in the Pipe-rolls of the time of King *John* and *R. 1.*

And by this means the Sheriff was to answer at his peril his Firme, for it became his own debt, and he was to gather up the Vicontiel Rents to his own use to make himself a Saver.

The Sheriffs Commission hereupon was with the reservation of the Firme, and although we have not memorials of all those reservations, yet of some we have.

*Inter Communia* of 19 *E. 1.* Bedf. Bucks, *Rex 16. Jan. Anno. 19. Commisit Will. Turvil Com' Bedf. & Bucks cum pertinent' custodi-*

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*end' quamdiu Regi placuerit reddendo inde per annum quantum Johannes Palam nuper Vicecomes eorundem reddere consuevit.*

And by little and little this grew into a usage, the succeeding Sheriff answering the Firme of the County, and of the Profits of the County as his predecessor had done: Whereby the *Firma Comitatus* and the *Firma de proficuis Comitatus* became as settled Firmes charged upon the Sheriff though there were no exprefs reservation of it upon his Patent or Commission of Sheriff.

And because these Firmes were in their first reservation proportioned to the value and nature of those Rents, which now the Sheriff had, as before the King had them, *in specie*; hence the Sheriffs Firme of the County or Body of the County as it was proportionable to the same, answered for the Vicontiel Rents; so it was proportioned to their nature, *viz.* because some of the Vicontiel Rents were in *blanc* Money, the Sheriffs Firme corresponding to that was answered in *blanc* Money: And some of those rents being answered *numero*, the Sheriffs Firme corresponding thereto was answered *numero*.

And by this Accompt the charge both upon the Summons of the Pipe and upon the great Roll, was altered, *viz.* whereas the former Style of the charge was *De corpore Comitatus blanc & numero*, now it was changed, *viz.*

*De Firma de corpore Com'*      100l. bl.

*De numero Comitatus*      40

And thus the manner of the charge stood for the times of *H. 3.* and *E. 1.* and for some time before, at least in some Counties: and so it continues

continues to this day with such alterations as shall be shewn.

And as the *Corpus Comitatus* thus by usage grew a Firme, or Rent charged upon the Sheriff, so also did the *Crementum Comitatus* in those Counties where such *Crementa* was answered, viz.

<i>De Firma Comitatus</i>	100l.
<i>De numero Comitatus</i>	40
<i>De Cremento Comitatus</i>	10

All being governed by the word *Firma*: For, as I have said, a long letting of these Vicontiels to Firme, had brought them to be a settled charge, charged upon, and answered by the Sheriff; and he gathered up the Vicontiels to his own use, to make himself a Saver, and to make good his Firme. And thus much concerning the answering and altering of the charges of the Vicontiels, or the *Corpus Comitatus* both before and after it was in Firme.

2. As concerning the *Proficuum Comitatus*, the proceeding was much the same as that concerning the *Corpus Comitatus*.

In the ancients times, when the *Proficua Comitatus* was at all answered by the Sheriff, it was answered by him, as *Custos* or Bayly upon Accompt: Though in some ancient Pipe-rolls, for some Counties we find no distinct mention of it; as in the Pipe-roll of 19 R. 1. *Glouc. Herbertus reddit comptum de 372l. 14s. 6d. bl. de Firma Comitatus.* The like, *ibid.* 13 *Johannis*. But very frequently afterwards the Sheriffs, when they had the *Corpus Comitatus*, or the Certain Annual Revenues under a

Firme, yet answered the *Proficua Comitatus* as *Custos* or Bayly: for instance, Pipe-roll 9 R. 1. Bedf. & Bucks, Simon de Bello campo reddit *compotum* de 369l. 19s. 11d. bl. Et de 79l. 8s. 1d. numero, de *Firma Comitatus*, without mentioning the *Proficua Comitatus*.

But in the Pipe-roll 25 H. 3. Bedf. & Bucks, Paulinus Pejor, ut *Firmarius reddit compotum* de 369l. 19s. 11d. bl. & de 108l. numero de *Firma Comitatum*.

*Idem Vicecomes reddit compotum* de 100 marc' pro *proficuo Comitatus*.

And Anno 44 H. 3. Alexander Hampden, ut *Firmarius reddit compotum* de 369l. 19s. 11d. bl. & de 108l. numero, de *Firma Comitatum*.

*Idem A. reddit compotum* de 220 marc' pro *proficuo Comitatus* sicut continetur in originali.

And in 51 H. 3. Galfridus Rus ut *Firmarius de anno 50 reddit compotum* de 369l. 19s. 11d. bl. & de 108l. numero de *Firma Comitatus*.

*Idem Galfridus reddit compotum* de 180 marc' pro *proficuo Comitatus* de anno 50. sicut continetur in quodam Rotulo attachiato originali ejusdem anni.

And in the Year following, Edvardus filius Regis primogenitus, Barthol. de Irene Subvicecomes ejus reddit pro eo per breve Regis, *compotum* de 369l. 19s. 11d. bl. & 108l. numero de *Firma Comitatus* hoc anno.

*Idem E. Vic' non reddit* de aliquo *proficuo Comitatus* quia Rex ei commisit dictos *Comitatus* respond' inde per annum de antiqua *Firma corporis*, sicut continetur in originali anni precedentis.

And so in the great Roll of 50 H. 3. Glouc. Reginaldus de Ale de 372l. 14s. 6d. de *Firma Com'*.

*Idem*

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*Idem Vicecomes reddit computum de 80 marc<sup>o</sup> pro proficuo Com<sup>o</sup> & exit<sup>o</sup> ville & nundinorum & Hundredi de Wenham sicut continetur in quodam Rotulo, &c.* and so it continued in the time of *E. I.*

By which it is evident, 1. That sometime there was nothing at all answered *pro proficuis*, but it was cast into the Firme of the County. 2. That although the body of the County, consisting of a certain yearly Revenue was in Firme, yet oftentimes the *Proficua Comitatus* were not in Firme, but the Sheriff accompted for them *ut Custos*, sometime higher, sometime lower, as the profits arose.

But in process of time the *Proficua Comitatus*, at least in some Counties, fell under a Firme, though in some Counties sooner, in some later; and having once begun to be in Firme, the succeeding Sheriff took it as his predecessor left it; and so it became in time a settled Firme, though not expressly reserved upon the Patent of every Sheriff.

And yet in such cases it was become a settled Firme, by usage and custom; yet when the Sheriff found that his Firme was too great for these profits (which were casual, sometimes more, sometimes less) he was in those elder times admitted to accompt *ut Custos*, without being bound to answer his entire Firme, unless he saw fit. But that was rarely in use after the time of *H. 4.* and accordingly it seems to be intimated in that ordinance of *54 H. 3.* above mentioned, for writing the great Roll of the Pipe, *viz. de Firmis pro Proficuis, vel de Proficuis.* And this shall suffice for the unriddling of the Sheriffs Accompts till the *10 and 11 Ed. 1.*

CHAP.

## C H A P. VII.

The Second Period of the Sheriffs  
 Accompts, viz. How they stood  
 from 10 E. 1. until 34 H. 8.

WE have in the former Chapter seen how the Statute of the Sheriffs Accompts stood in relation to the annual Revenue of the County, whether Certain or Uncertain, and both stand now reduced under a Firme, viz.

1. The *Corpus Comitatus* answered under a Firme; partly *blanc*, and partly *numero*.

2. The *Proficua Comitatus* gradually also reduced into a Firme intirely *numero*; but with a liberty for the Sheriff to ease himself of the excess of his Firme above the profits, by submitting to an accompt of these profits as Bayly or *Custos*.

It fell out in process of time that the Kings of *England* granted away many of those Vicontiel Rents, and the Lands upon which some of them were charged, whereby the Sheriff lost much of what was to make up the Firme of his County. And although the Sheriffs, upon shewing thereof upon their Accompts, had an allowance of that which was so granted away, yet it made a trouble and disorder in the Sheriffs Accompts.

And therefore it was necessary to have some provision for the same, but this only  
 con

concerned that part of his Firme which was of the *Corpus Comitatus*, or the Firme of the Certain Annual Revenue. Therefore by the Stat. of Rutland 10 E. 1. this provision is settled.

*Quod non scribatur de cetero corpora Comitatum in Rotulis singulis, quin scribantur in quodam Rotulo annuali per se, & legantur singulis annis super compotum Vicecomitis singula, viz. in singulis Comitatus, ut sciatur si quid nobis possit accidere in quocunque Comitatu. Remanent vero eorundem Comitatum post terras datas scribatur in Rotulis annualibus & onerentur inde Vicecomites. In quibus quidem remanentibus allocentur liberationes, elemosyne, &c. Scribantur etiam in eisdem Rotulis annualibus Firme Vicecomitum, proficui Comitatus, firme Serjantiar' & Assartor', Firme Civitatum, Burgorum & Villarum, & alie Firme de quibus est responsum annuatim ad Scaccarium predictum. Scribantur in eisdem omnia debita terminata & omnia grossa debita de quibus spes est quod aliquod inde reddi possit. Item omnia debita que videntur esse clara, titulum de novis oblatiis. Nihil scribatur in Rotulo Annuali nisi ea de quibus est spes, &c. De Firmis vero mortuis & debitis de quibus non est spes, fiat unus Rotulus, & irrotulentur & legantur singulis annis super Compot' Vicecom' & debita de quibus Vicecomes respondebat scribantur in Rotulo annuali & ibi acquietentur.*

And by this Act these alterations were made.

I. The state of the yearly Rents which heretofore made up the *Corpus Comitatus* was examined, and it was considered what parts thereof had been granted out by the King, to the end that the Sheriffs Firme of the body  
of

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of the County might be abated with respect to those grants; which reduction of the Firme is stiled *Remanentia Firme post terras datas*.

II. The old stile of *Corpus Comitatus* was now put out of the charge; and whereas formerly the Sheriffs charge was *De Firma de corpore Comitatus*, now it was changed, and the charge was *De remanente Firme post terras datas*: And accordingly it was forthwith altered in the great Roll, only when those remaining Rents that were to make good this *Remanentia Firme*, did consist of Rents *blanc*, or of Rents *numero* onely, it was accordingly written, *viz.* in this manner.

*De remanente Firme de Com'* 100l. bl.

*De numero Comitatus* 50

III. There was to be extracted out of the great Roll the old Rents that made up the *Corpus Comitatus* and the title thereof, and those Firmes that were *Firme mortue* or *obsolete*, illeivable Firmes, and those debts that were desperate, and the great Roll of the Pipe (which was written every year) was to be disburthened of them, and they were to be transcribed into another Roll called an *Exannual Roll*.

This *Exannual Roll* to be yearly read to the Sheriff upon his *Accompt*, to see what might be gotten: And if any thing appeared to be good, then the same to be recharged again upon the great Roll of the Pipe.

IV. But there was no alteration hereby made of the *Firma de Proficuis*: So that by this Act as in relation to the Firmes and Rents of the County these things were done. 1. Those Firmes or Rents that were wholly granted away, were wholly put out of charge, whether they were assart Rents or Firmes charged upon particular Persons or Land, or that were within the Sheriffs Firme as, Vicontiel Rents. 2. If any Vicontiel Rents that made up the Sheriffs *Firma de corpore Comitatus* were granted out, the Sheriffs Firme was abated in respect thereof. 3. If there were any Obsolete or Dead Rents, that were either Vicontiel Rents or charged upon particular Lands or Persons which had not been a long time answered, they together with the *Corpus Comitatus* were removed out of the Annual Roll and transmitted into the Exannual Roll read yearly to the Sheriff, to see whether any hope of levying them: But their writing out in charge in the great Roll suspended till they might be after discovered to be leviabie.

And accordingly presently after the making of this Act, the Firme of the Sheriffs charge in the Summons of the Pipe and the entry thereof upon the great Roll was changed, and this memorial is made upon the Pipe-roll for every County.

*Corpus hujus Comitatus non annotatur hic, sed annotatur in quodam Rotulo in quo scribuntur omnia corpora Comitatum Angliæ in manu Regis existentia simul cum Firmis mortuis, & debitis quasi desperatis quæ debent singulis annis legi & recitari super Computum Vic' ut sciatur quid inde accidere possit Regi ex quacunque causa que sunt*

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*in Theſauro. In quibus etiam continetur quod inde Vicecomites onerentur in compotis ſuis predictis de remanentibus Firmarum Comitatum poſt terras datas. Et quod in eifaem remanentibus allocentur liberationes & Eleemoſyne conſtitute & alie allocationes ſi quas Vic, habuerint per Br'ia Regis de eorundem exitibus.*

And according to this Act and Memorandum the great Roll was certified: For inſtance, before this Act the great Roll for Glouceſter did run thus.

*J. F. reddit compotum de 372l. 13s. 6d. blanc. de Firma Comitatus.*

But after this alteration it runs thus.

In the great Roll 12 E. 1. Rogerus de Lockington *Vicecomes reddit compotum de 38l. 14s. 11d. blanc. de remanente Firme Comitatus poſt terras datas.*

*Idem Vic' reddit compotum de 80 marc' de Firma pro proficuis Comitatus* (which was the old Firme thereof before 10 E. 1.)

So again in the Pipe-roll 10 E. 1. which was the Accompt of the year next before the making of this Act the Roll runs thus, *viz.*

Bedf. Bucks, Richardus de Gollington *reddit compotum de 319l 19s. 11d. bl. & de 108l. numero, de Firma Comitatus. Et reddit compotum de 180 marc' de Firma pro proficuo Comitatus ſicut Johannes de Chedley reddere conſuevit.* In the Roll next after the making of this Act it runs thus.

Richardus de Gollington *Vic' reddit compotum de 17l. 7s. bl de remanent' Firme Comitatus poſt terras datas ſicut ſupra continetur, & de 108l. de Firma numero.*

Et

*Et Vic' reddit compotum de 100 marc' de Firma pro proficiis sicut continetur in Rot. 11*: By which instances these things appear, *viz.*

1. That the *Firma de Proficiis* continued the same as before: For therein no alteration was made by the Stat. of Rutland.

2. That the Title of the *Firma de corpore Comitatus* was changed into the Title *de remanente Firme Comitatus post terras datas*.

3. That the quantity of the Firmes were reduced to smaller Sums with respect to those Firmes or Lands charged therewith formerly and since granted out.

4. That yet the Titles of *Blanc* and *Numero* continued or were omitted as the nature of the Vicontiel Rents that remained ungranted were, *viz.* When all the *blanc* Rents were granted out, the *Firme de remanente* was answered only *numero*. Where all the Rents *numero* were granted the Sheriff answered his *Firme* wholly *blanc*. If part of his Rent *blanc* were granted and nothing of those Rents that were answered *numero*, he answered the remaining part of his *Firme* *blanc*, and the entire residue *numero*. For the Sheriffs *Firme* of the County before, and *de remanente* now, did answer to the quantity, and also to the nature or quality of those Vicontiel Rents that he was to receive to make good his *Firme*

But abating that one alteration from *Firma corporis Comitatus* to *de remanente Firme*, and the abridging of the *Firme* as before, and the discharging both of the Summons of the Pipe and the great Roll of those charges that were transcribed into the Exannual Roll, the rest, both of the charge and great Roll continued as before.

But

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But notwithstanding this provision gave some ease to the Sheriffs in relation to those Firmes, yet the charging of them with these Firmes became a matter of continual complaint, for that they were still charged with these Firmes, yet many of the Rents and benefits that should make good their Firmes were sold or became illeivable after *Rot. Parl. 25 E. 3. n. 39. Item pry les Commons que tous Vicounts que sont charge de certain Firmes pur les Counties ou ils sont Vicounts soient discharge de ceo post receipt de leur Eaily per cause de Franchises grant Ronne breve soit mand al Treasurer & Barons deschequer quills faient due allowances al chescun Vicount sur le render de leur Accompts en chescun case la ou ils voilent quil soit reasonable.*

And in the same Parliament in 47, the Sheriffs of *Bedf.* and *Bucks* pray to be discharged of the Firmes of the Baylywick of their Hundreds, because those Baylywicks yielded no profit: They are remitted to the Exchequer, *Rot. Parl. 45 E. 3. n. 45.* The Sheriffs of *Essex* and *Hartford*, pray an ease in respect of illeivable Firmes charged upon them, and Hundreds and Rents granted from them: Answered, *Le Roylour ad fait grace.*

By the Statute of 1 *H. 4. cap. 11.* upon the complaint that the Sheriffs are charged with the ancient Firmes of their County, notwithstanding that great part of the profits of the same be granted to Lords and others: It is enacted that the Sheriffs shall accompt in the Exchequer and have an allowance by their Oaths of the issues of their Counties.

*Rot. Parl. 11 H. 4. n. 46. & sequent.* The Sheriffs of several Counties complain that they

they are charged with several ancient Firmes which they are not able to levy, viz. *Essex* and *Hertf.* with the Firme of the County, and the Firme of the profits of the County: *Tork* with the Firme of the County *post terras datas.* *Devonshire* with the remanent Firme *Comitatus post terras datas,* the *Firma de Proficuis Comitatus,* and a certain Firme of 100 marks called blanch Firme. *Norfolk* and *Suffolk* with a Firme called *de remanent Firme post terras datas,* and *Firma de Proficuo Comitatus,* whereof they complain that they cannot levy any thing, and besides the Hundred and Liberties granted out to the diminution of their Profit; and pray remedy according to the Stat. of 1 H. 4.

They are referred to the King's Council to make such pardon and mitigation as they shall think reasonable.

*Rot. Parl. 1 H. 5. n. 34, 35.* The like Complaints are made in the behalf of the Sheriffs, and prayed that they may have allowances out of their Firmes upon their Oaths according to the Statute of 1 H. 4. But they have the like answer as before, viz. a reference to the Council.

But *Rot. Parl. 4 H. 5. n. 24.* and *4 H. 5. cap. 2.* The like Petition is received, viz. that by their Oaths they may have an allowance of what they cannot levy out of those great Firmes that are charged *sub nomine Vic'*, viz. Firmes of their Counties, *blanc Firmes de novo incremento,* &c. But instead of redress, they lost that Benefit which the Statute of 1 H. 4. had before afforded them. And it is directly enacted that the Sheriffs shall have allowances by their Oath of things casual, which lye not in Firme or annual demand: But of those

things which lye in Firme annual, or demand annual, they be charged as Sheriffs in afore-time had been charged. And thus stood the business of the Sheriffs Firmes until the Statute of 34 *H.* 8. which is the next Period.

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## C H A P. VIII.

*Touching the State of the Sheriffs Firmes from the Statute of 34 H. 8. till the fourteenth Year of the Reign of King Charles I. which is the Second Period.*

**W**E have seen in the former Chapter how the case stood with the Sheriffs Firme after the Statute of *Rutland*, and how the Statute of 4 *H.* 5. *cap.* 2. bound the Firmes charged upon the Sheriffs, closer upon them than for some years before: And so they continued till the making of the Statute of 34. *H.* 8. *cap.* 16.

This Statute recites those several Firmes charged to the Sheriff *sub nomine Vicecomitis*, viz. *de remanent' Firme post terras datas: Firma de Proficuo Comitatus*, and those other minute Firmes demanded *sub nomine Vicecomitis*. And many of these particular small Rents that made up these Firmes charged upon the Sheriffs are left or not leviable, or extinguished by Attainders and Dissolutions of Monasteries.

ries, and yet the Sheriffs continue charged with their Firmes as formerly. It Inacts,

1. That all Sheriffs that have no Tallies of Record, shall upon their days of prefixion deliver in Rolls or Schedules of Parchment containing the particular Sums of Money which he hath or might have levied as parcel of the said ancient Firmes, naming the Person and Lands of which they are to be levied.

2. That after such Schedules delivered, the Court shall have Power to allow and make deductions in the said Sheriffs Firmes of all such Sums of Money as the Firmes shall be more than the Sums in such Schedules shall amount unto.

3. And the Court shall proceed to the recovery of such Sums belonging to the said Firmes as are omitted in such Schedules.

4. That the Sheriff have allowance and discharge of all such illeviable Sums as are written to him in process.

5. That the Sheriff have allowance for entertainment of Justices, &c.

But this was but a temporary Act, and discontinued at the next Parliament. But a farther Act was after made for the ease of the Sheriff, especially in relation to those Firmes, viz. 2 and 3 E. 6. cap. 4. By this it is enacted,

1. That the Sheriff shall have such allowances and Tallies of reward as they had before the Act of 24 H. 8. or may accompt according to the Act at their election.

2. That they that accompt and take no Tally of Record shall be treated in the Exchequer as though the Act of 24 H. 8. were in force.

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3. That those that have no Tallies of reward shall have allowance of the Diet of the Justices, &c.

4. That all such Sheriffs as take no Tallies of reward shall be discharged of all Firmes, Goods, Chattels, Profits, Casualties, &c. as they cannot levy or come by.

5. That all that have Tallies of reward shall be discharged of all Firmes and Sums of Money that they cannot levy, except Vicontiels, with which they are to remain chargeable as before the making of the former Act.

6. That Sheriffs shall have allowances of such Vicontiels as are extinguished by unity of possession in the Crown by dissolution of Monasteries.

7. That the Sheriff at his day of prefixion when he is sworn to his accompt, shall be sworn to deliver into the Court of Exchequer, Rolls or Schedules of Parchment containing all the particular Sums of Money which he hath levied or might levy of his Vicontiels or other Firmes, mentioning the Persons and Lands of which they are leviabie, and the Court to take care for the levying of such of the Vicontiels, or Firmes, which are omitted out of the Schedules, for saving the King's Rights, and to make out proces for the same.

Upon these Acts these things are observable.

I. That those Sheriffs that have Tallies of reward may not discharge themselves of their  
Vicontiels

Vicontiels, viz. the *Remanent' Firme post terras datas*, and *Cr'o Comitatus*, and other small Rents charged *sub nomine Vicecomitis* (if he take his Tally of reward) by oath that he cannot levy it, or all of it.

II. But if such a Sheriff will wave his Tally of reward, he may accompt according to the Statute of 34 H. 8. and so discharge himself of his Vicontiels or Firmes thereof as well as other Firmes. And the truth is, I think, anciently there were some Sheriffs that had Tallies of reward, viz. *York, Northampton, Cumb'land, Hereford, &c.*

But since the making of this Act they have waved them, accounting it more beneficial to take the benefit of those Statutes upon their accompt, than to take their Tallies of reward. So that now all Sheriffs have an equal benefit of the Statutes of 34 H. 8. and 2 and 3 E. 6.

III. But those Sheriffs that had no Tallies of reward might discharge themselves of their Vicontiels and Firmes *de remanente Comitatus*, as well as other things that they could not levy.

IV. That all Sheriffs, as well those that had or had not Tallies of reward might discharge themselves of the casual charges, or their annual uncertain charges; and consequently might, and most ordinarily after this Statute did discharge themselves of the entire *Firme de proficuis Comitatus*, in case the profits of their Counties did not surmount the charge that attended them. And by this means since

the making of this Statute, those Sheriffs that were charged with the *Firma de proficuis* rarely if at all answered any thing for it, because they have always ascertained the Court that there were no such profits beyond the charge in collecting them: or that the charge of keeping the County-Court, the Turns, the Hundred-Courts, which were the things that made up the *Firma de proficuis*, surmounted the benefit.

V. And this making appear was no other than the Oath of the Sheriff, that he could not levy this or that Rent, parcel of his Vicontiels, or that there were no *Proficua Comitatus*, &c. And this Oath of the Sheriff hath always been the Warrant to discharge him of all or any part of his Firmes. By which means it hath most ordinarily come to pass, that although the Sheriff hath paid in his Profers at Easter and Michaelmas, yet when he comes upon his account he doth by his Oath discharge himself of all his *Firma de remanente Comitatus*, and thereby most times the King becomes Debtor to the Sheriff for those Moneys which he received as Profers, or Moneys due by the Sheriff upon his Firme.

And it is but reason; for the Statute gives him that just benefit to discharge himself by his Oath of what he cannot levy or receive.

And yet though the Sheriffs have constantly by their Oath discharged themselves of the entire *Firme de Proficuis Comitatus*, and of a great part of their other Firmes of the Vicontiels, or *Remanent' Firme*, and other Rents charged

charged upon them in gross Sums, by swearing the illeiviableness of some of those Vicontiels which make up those *Remanent' Firme Comitatus* and gross Sums, yet constantly after this Act and until the year of our Lord 1650 the entire Firmes, viz. the entire Firme of the *Remanent' post terras datas*, and the entire Firme *de proficiis Comitatus*, were constantly written out in charge to the Sheriff upon the Summons of the Pipe, and entirely charged upon the great Roll, as they had ever been since the Statute of *Rutland*, and in the very same manner, though in truth it was for the most part but an idle piece of formality; for the Sheriffs constantly swear it off by virtue of the Statute. And thus by these Statutes the Sheriff had ease by his Oath from that part and those parts of his Firmes that he swore he could not levy.

But the truth is the Sheriffs have taken that part of the Statute which was for their ease, viz. to swear in discharge of their Firmes, but have too much omitted that other part of the Statute that was for the King's advantage, viz. the delivery in upon their Oaths the Schedules of their Vicontiels: by which omission possibly many small, but good, Rates have been lost since the Statute of 2 and 3 *E. 6.* which might have been preserved. Although possibly the far greater part were lost long before, as appears by the complaints of the Sheriffs in relation to their Firmes, in the Parliament Roll of 11 *H. 4.* above mentioned. And thus the Sheriffs Firmes stood until the 15th of King *Charles* the first.

## C H A P. IX.

*The Third Period from the fifteenth Year of King Charles the first, until the Year of our Lord 1650, and how the Sheriffs Firmes and Accompts stood in that interval.*

**B**Y an Order of the Court of Exchequer made the 25th. Junii, 15 Car. 1. upon the complaint of the King's Firmor of decayed Rents it was ordered that the Clerk of the Pipe should cast up and compute, and severally and distinctly put in charge arrearages of decayed Rents and parcels of Rents, that process and commissions might be made forth thereupon by virtue of the Order. But this proved uneffectual; for although the same was done accordingly, yet the King received little advantage thereby, neither did it at all convenience the Sheriff, or alter the charge written out in the Summons of the Pipe, or upon the great Roll. For the Firmes continued still in charge as before, without any alterations: And though somewhat of small consequence was found out, which might help to make good the Sheriffs Firmes in some particulars, yet the same still fell short, and the Sheriffs were still enforced to make use of the advantage of the Statute of 2 E. 6. to ease themselves by their Oath of illeivable Repts, till the year 1650.

C H A P,

C H A P. X.

*The Fourth Period of the Sheriffs Firmes from the Year 1650 unto this day, and how they were answered in that interval.*

**I**N the times of the late troubles, viz. 6 Julii, 1650. there was an Order made in the Court of Exchequer touching the Sheriffs Firmes and the Vicontiel Rents, which because it hath set a Rule in this Business, which to this day is observed, I shall here transcribe *verbatim*.

“ Whereas the Sheriffs of several Counties of  
 “ England stand charged in the great Roll of  
 “ the Pipe, and have so stood charged ancient-  
 “ ly with divers Sums of Money in gross,  
 “ *sub nomine Vicecomitis*, under the severall Ti-  
 “ tles of *de rem' Firm' Com' post terras datas :*  
 “ *de veteribus Cr̃i Comitatus. De Firma de pro-*  
 “ *ficuo Comitatus. De Cornagio. De Warda Ca-*  
 “ *stri. De Firma perprestur' & escaet. De e-*  
 “ *merfis Firmis. De minutis particulis. Serjan-*  
 “ *tia de tr̃is Assart' infra diversas Forestas,* and  
 “ the like. And the said Sheriffs yearly, and  
 “ from year to year, have been and still are  
 “ commanded by the Summons of the Pipe,  
 “ to levy the same as heretofore to the use  
 “ of the Crown, so now to the use of the Com-  
 “ mon-

“ mon-wealth, without expressing where, of  
 “ whom, for what cause, or out of what Lands  
 “ or Tenements the same are particularly to  
 “ be levied by the said Sheriffs, or out of what  
 “ particulars the said Sums in gross do so  
 “ arise; in regard where, and that it hath here-  
 “ tofore appeared in the time of King *H. 8.*  
 “ upon complaint of the Sheriffs, that a great  
 “ part of the particular Rents and an-  
 “ nual Sums of Money, wherewith the said  
 “ Sheriffs do stand charged upon their Ac-  
 “ counts in gross, had been long before that  
 “ time payable by Monastaries, Abbots, Pri-  
 “ ors, attainted Persons, and the like, whose  
 “ Estates were come to the Crown, and so  
 “ ought to be discharged by unity of posses-  
 “ sion; and yet that the said Sheriffs were still  
 “ charged in gross with the same, to their  
 “ great burthen and grievance; it was in the  
 “ 34th year of the said late King *H. 8.* en-  
 “ acted by Parliament in the case of these  
 “ Sheriffs, and of all Sheriffs for the time to  
 “ come; that the said Sheriffs should be charged  
 “ to answer upon their Accompts yearly such  
 “ Rents and Sums of Money of the natures a-  
 “ foresaid only, as by the particular Rentals or  
 “ Vicontiels, by them to be yearly delivered in  
 “ upon oath, they should set forth and make  
 “ appear to be by them leviabie; and that  
 “ they should be discharged of all the residue  
 “ which they upon their Oaths should affirm  
 “ to be illeviabile, by virtue of the said Act of  
 “ Parliament, which hath been so continued  
 “ accordingly, ever since. Howbeit the She-  
 “ riffs have from time to time complained,  
 “ and still complain against the writing  
 “ forth

“ forth of more to be levied and answered  
“ by them upon their Accompts, than such  
“ Rents and Sums of Money only as ap-  
“ pears upon the Oaths of their Predecessors,  
“ Sheriffs, to be leviable; and that the rest,  
“ appearing to be illeviable, ought to be re-  
“ moved out of their said annual Roll, and  
“ Commissions thereupon to be awarded out of  
“ the Exchequer, for reviving the same ac-  
“ cording to the true intention of the said Sta-  
“ tute of 34 *H. 8.* which the now Lord Chief  
“ Baron, and the rest of the Barons, taking  
“ into their serious consideration, and being  
“ willing and desirous, so far forth as may  
“ stand with the preservation of the due rights  
“ of the Commonwealth, to give all fitting ease  
“ and satisfaction to Sheriffs therein, accord-  
“ ing to the meaning of the said Statute of 34  
“ *H. 8.* and according to the Statute of *Rutland,*  
“ 10 *Ed. 1.* whereby it is provided that nothing  
“ shall be written out to the Sheriffs but such  
“ Firmes and Debts whereof there is some hope  
“ that something may be levied. And that all  
“ dead Firmes and desperate Debts are to be  
“ removed from the annual or great Roll in-  
“ to the exannual Roll, and not to be writ-  
“ ten forth in process to the Sheriff, but to  
“ be inquired of to see if any thing may be  
“ revived. Whereupon the said Lord Chief  
“ Baron and the rest of the Barons, calling  
“ before them the Clerk of the Pipe, with  
“ the Secondaries, and the rest of the sworn  
“ Clerks of the said Office, and upon debate  
“ of the business, finding it to be a work of  
“ great difficulty, labour and care, to ex-  
“ mine and set forth in every County, from  
“ the

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“ the Originals and Records of such antiquity to be compared with later times, the particulars which are from henceforth to be written to the Sheriffs to levy in certain. And such as are for the reasons aforesaid to be removed out of the said annual Roll, have nevertheless in ease of all Sheriffs for time to come, with respect to the labour and care of the Officers and Clerks to be by them undergone therein. It is this day ordered, that the Clerk of the Pipe, the Secondaries and other sworn Clerks of the said Office in their several Assignments shall in pursuance of the said Statute of *Rutland*, and the said Statute of 34 *H. 8.* use their best endeavour, diligence and care, with as much convenient speed as a work of so great labour and consequence may well be performed, fully to explain and set forth, and shall from henceforth fully explain and set forth, in the subsequent annual Roll of this Court, so many of the particular Rents as they find out and discover by any of the Remembrances, Books, Vicontiels of Sheriffs, or other Records of this Court, to have been, and which be appertaining to the making up of every of the said Firmes so charged in gross Sums as aforesaid, and shall therein distinguish which and how much of those particular Rents have been and are to be yearly answered.

“ And so much of the said Firmes as cannot be explained by setting forth the particulars,

“ culars, together with the particulars so set forth  
“ and explained, which have been in decay and  
“ unanswered by the space of forty years last  
“ past, and which are become illeivable, shall  
“ be thereupon removed and conveyed out of  
“ the said annual Roll and Sheriffs Accompts  
“ into the exannual Roll of this Court. And  
“ that Commissions and Procefs shall be from  
“ time to time awarded to regain and recover  
“ the same, according to the true intention of  
“ the said Statutes.

This Order produced these Effects.

I. Great care was taken to collect and set forth the obscure Rents, and upon what they were charged.

II. The particulars of those Rents and Vicontiels that made up the Sheriffs Firmes formerly, of *Remanent Finne post terras datas*, and *De Cremento Comitatus*, as also those Rents that were charged upon the Sheriffs in gross Sums, as *De diversis Firmis, de minutis particulis Serjantiarum*, and such other charges in gross were wholly left out and omitted.

IV. Instead thereof such particular Rents and Vicontiels as made up formerly these Firmes and gross charges, or Money of them as could be discovered were particularly written out in the Summons of the Pipe, and in the great Roll first under the title of several Hundreds, wherein the Bills lay that were charged or had any Lands charged within them with these Vicontiels and the several Vills under the Titles  
of

of these Hundreds, and the severall Lands that were charged within those Villis, as far forth as could be discovered.

V. Those Vicontiels that were part of those Firmes or gros charges, and likewise such particular Rents charged formerly in the annual Roll in particular, which had not been answered in forty years before, were removed out of the Summons of the Pipe and great Roll into the exannual Roll to be put in process as they could be discovered. And thus the form of the charge which had continued ever since 10 E. 1. as to the Firmes and gros Sums, was too lately changed to the great ease of the Sheriffs, of the Court and of the People, who were often harassed by the Sheriffs to make themselves savers, by levying these obscure, incertain and illeviable Sums. And all this without any detriment to the King, who indeed before had an appearance of great Firmes and Sums expressed in the Summons of the Pipe and great Roll, which yet were sworn off too little by the Sheriffs in pursuance of the Statute of 23 E. 6.

VI. But besides all this, the *Firma de proficuo Comitatus* was also wholly laid aside and put out of the charge of the Summons of the Pipe and the great Roll. It is true there is no clear warrant for putting the Firme out of charge by that order, for that order seems to extend only to Rents and Vicontiels, which indeed made up the other in Firmes and gros Sums charged upon the Sheriffs. But this Firme was answered for the Profits of Courts and

and other casual Perquisites, and not in respect of any Vicontiel or annual Rent. But yet for all that, the true extent of that order might extend to put that Firme wholly out of charge, since it is apparent that the profits of the Sheriffs Courts, whether Hundred-Courts, County-Courts, or *time*, do scarce quit the charges of keeping them at this day, nor for a long time past. Neither is the King *de facto* at any loss thereby, for though before this order this Firme was indeed in charge and carried the shew of some benefit to the King, yet it was wholly sworn off by the Sheriffs by virtue of the Statute of 2 and 3 E. 6.

Only it seems reasonable that though the *Firma de proficuis* be put out of charge so that the Sheriff should not be compelled to answer a Firme to that which yields little or no benefit, yet that the Sheriff should be charged to accompt for the *Proficua Comitatus* as Bayly or *Custos* though not as Firmor.

And that therefore there should stand in charge upon him to accompt *de Proficuis*, which all that I can find considerable to be supplied in that order, or in the present methodizing of the great Roll in Relation hereunto. And although this order was made in the late time of trouble, yet it hath obtained and stood in force unto this day.

The late Act of this Parliament, intituled *An Act for the preventing of the unnecessary delays of Sheriffs, &c.* hath this Clause suitable to the said order, *viz.*

“ And to the end that Sheriffs may for the  
 “ time future be eased of the great charge and  
 “ trouble

“ trouble which they heretofore have been  
 “ put to in passing their Accompts in the Ex-  
 “ chequer, occasioned partly in regard that di-  
 “ vers Sums of Money have stood charged up-  
 “ on them in gross without expressing from  
 “ what persons, or for what cause, or out of  
 “ what Lands and Tenements, the same are  
 “ particularly to be levied, or out of what  
 “ particulars the said Sums in gross do arise,  
 “ whereby it cometh to pass that the Sheriffs  
 “ do still stand charged in gross with divers  
 “ Sums of Money which were heretofore pay-  
 “ able by Abbots, Priors, Persons attainted,  
 “ and such other Persons, whose Estates are  
 “ since come to the Crown, or are otherwise  
 “ discharged or illeivable. And partly by the  
 “ Accompt of Seisures or foreign Accompts,  
 “ and by exaction of undue Fees of Sheriffs up-  
 “ upon their Opposals. But it is enacted, &c.  
 “ that no Sheriffs shall be charged in Accompt  
 “ to answer any illeivable Seisure, Firme, Rent  
 “ or Debt, or either Seisure, Firme, Rent, Debt  
 “ or other matter or thing whatsoever, which  
 “ was not writ in process to him or them to be  
 “ levied wherein, the persons of whom, or the  
 “ Lands and Tenements out of which, toge-  
 “ ther with the cause for which the same shall  
 “ be so levied shall be plainly and particularly  
 “ expressed; but shall be thereof wholly dis-  
 “ charged without Petition, Plea or other trou-  
 “ ble or charge whatsoever.

This Act had in effect discharged the old  
 charges in gross, had not this business been be-  
 fore settled by the order of 1650. But by that  
 order the same thing is done and much more,  
 and put into a very good order. And

And thus I have done with this intricate, Argument touching the Sheriffs Firmes. And the occasion of my strict enquiry into it was, a difference between the Auditors and the Clerk of the Pipe: Upon the whole debate whereof, I found only these matters.

1. That, in truth, the great occasion of complaint was, that the Clerks of the Pipe used different methods of accompting from the Auditors of the Revenue, the not observance whereof occasioned a mistaken representation by the Auditors that there was a deceit in their Accompts, whereas it appeared to be no such thing: For when both accompted their several ways, the issue was that the Accompts agreed in the conclusion.

2. That the *Firme de proficuo Comitatus* was put out of charge without Warrant, and it was thought by the Auditors, a great and considerable loss to the Crown, supposing that the Fees for execution of Process and Writs were to make up that *Firme*: But this is sufficiently unriddled before.

3. That there was an allowance to the Sheriff of *Bucks* of a considerable yearly Sum, *ut Apparatori Comitatus*: This indeed ought not to be allowed at this day, the reason thereof ceasing, as hath been shewed; and therefore from henceforth that charge is to be disallowed, but the Clerk of the Pipe not greatly blamable herein, because there was an order of the Court in the Queens time for making that allowance: But the reason whereupon that or-

der was made was a mistake and an error in the Court, not in the Clerk that followed the order.

4. That there is no accompt given for the Firmes of Baylywicks as was anciently; which indeed, was parcel of the *Proficuum Comitatus*, as hath been shewed. But the truth is, there is no great reason for any such complaint, the Firmes of Baylywicks being taken away by Act of Parliament, and levy disused in most places.

5. That when the Sheriff is in Surplufage, they make it good unto him out of any other debt by the Sheriff himself, or any other Sheriff of the same or any other County, without any Warrant from my Lord Treasurer or the Court. And besides that, the other Sheriff is discharged upon the Roll of his Debt, and it doth not appear upon what reason. And indeed, this is a thing fit to be reformed, and that such allowances be not made without Warrant from the Lord Treasurer, or Order of Court, and that an Entry or Memorandum thereof be made upon the Roll of the Debts so discharged. But yet, the truth is, this manner of allowance hath been a long time used, and it is no novelty or late attempt, neither is there any great damage to the King by it, for it is but the payment of one real Debt with another. But howsoever, this is fit to be reformed by order of the Court, that the Sheriffs deliver not in the Roll of the Vicontiel as is required by the Statute. And it is true, he ought to do it, or should be sworn thereunto,

thereunto. But the necessity is not now so great, because the particular Rents are now charged upon the great Roll by virtue of the order of 1650, which doth in a great measure supply that defect, and yet the delivery in of the Vicontiel Roll may be fit to be revived.

The most of the rest of the complaints were touching particulars mischarged, or not charged, but the Errours were rather in the Complainers than in the Pipe, and for want of a clear understanding of those intricate and obscure proceedings of the Pipe. And upon a full search of the particulars, I find the Clerks of the Pipe gave very clear satisfaction therein.

Upon the whole matter of these Accompts, I do observe these Two or Three Observables.

I. That the inconvenience of retaining the old formalities of proceedings, the same terms and words, and very same mood of all things in Accompts, when the nature of things and times requires a change, and accommodation of new forms or expressions as a piece of hurtful superstition; therefore, although the change of forms of this nature is not to be done rashly and precipitantly, yet when the exigence of things requires it, there must be an accommodation to the present use, understand- and exigence of affairs.

And hence it is that the Accompts of the Auditors of the Revenue are more easily intelligible, as being framed to the use and exigence of the times; but the Accompts of the

## *A Short Treatise touching*

Pipe more mysterious and perplexed, to Persons unacquainted with them, for till 10 E. 1. they kept in all things the precise form of writing their great Roll, as had been used in King Stephen's time. And the same form they kept until 1650, abating the alterations made in 10 E. 1. not without great inconvenience to the King's people and Sheriffs.

II. That these small Rents and Vicontiels would be with much more advantage to the King, and be sold off to the several Persons and Townships chargeable therewith, than be kept in method of collection, as now they are, unless some more ready collecting of them by the Receivers could be thought upon, provided the Money arising by sale be laid out presently in more certain Revenue: For, 1. They are in respect of their smallness, and dispersedness, and uncertainty of charge and manner of collecting very subject to be lost, as they have been commonly from time to time. 2. The charge of collecting and accompting for them by the Sheriff is very great, and the trouble and charge to the people very much more. 3. The cost and trouble to the King in respect of Officers writing and other matters relating thereunto, might be well retrenched thereby. And yet when all is done, it brings a great trouble, and makes a great noise as if it were a Revenue of great moment, and yet by that time the Sheriffs have done swearing of particulars as illeivable, or that they know not where to charge it, it becomes a very pitiful inconsiderable business, and scarce answering the charge of the collecting, accompting and answering

ing

ing it. For it must be observed that altho' by the order of 1650, the charge is more certain than formerly, yet the Sheriff hath still by the Law the benefit of the Statute of 2 and 3 E. 6. even as to those ascertained Rent, and if he cannot find them, he is, and ought to be discharged upon his Oath thereof. And accordingly is daily discharged of many of those Rents, though rendred much more certain by that order, and the pains and method of the Charge and Accompt, used in pursuance hereof. Whereby in process of time, many, even of these Rents particularly charged by virtue of that order, will be successively lost.

*Sed de his curent Superiores.*

F I N I S.



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A  
TRYAL  
OF  
WITCHES,  
AT THE  
ASSIZES

HELD AT

*Bury St. Edmonds* for the County  
of *SUFFOLK*; on the Tenth  
Day of *March*, 1664.

BEFORE

Sir *MATTHEW HALE*, K<sup>t</sup>

THEN

*Lord Chief Baron of His Majesty's*  
*Court of EXCHEQUER.*

---

Taken by a Person then Attending the Court.

---

L O N D O N,

Printed for *D. Brown*, *J. Walthoe*, and *M.*  
*Wotton.* 1716.



A  
T R Y A L  
OF  
W I T C H E S,  
A T T H E  
A S S I Z E S

H E L D A T

*Bury St. Edmonds* for the County  
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TO THE  
READER.

**T**HIS Tryal of Witches hath lain a long time in a private Gentleman's Hands in the Country, it being given to him by the Person that took it in the Court for his own Satisfaction; but it came lately to my Hands, and having perused it, I found it a very remarkable thing, and fit to be Publish'd; especially in these times, wherein things of this nature are so much controverted, and that by persons of much Learning on both Sides. I thought that so exact a Relation of this Tryal would probably give more Satisfaction to a great many Persons, by reason that it is pure Matter of Fact;

*Fact, and that evidently Demonstrated; than the Arguments and Reasons of other very Learned Men, that probably may not be so Intelligible to all Readers; especially, this being held before a Judge, whom for his Integrity, Learning, and Law, hardly any Age, either before or since, could parallel; who not only took a great deal of Pains, and spent much Time in this Tryal himself; but had the Assistance and Opinion of several other very Eminent and Learned Persons: So that this being the most perfect Narrative of any thing of this Nature hitherto Extant, made me unwilling to deprive the World of the Benefit of it; which is the sole Motive that induced me to Publish it.*

*Farewel.*

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## A Tryal of Witches.

*At the Assizes and General Goal delivery, held at Bury St. Edmonds for the County of Suffolk, the Tenth of March, in the Sixteenth Tear of the Reign of our Sovereign Lord King Charles II. before Matthew Hale Knight, Lord Chief Baron of His Majesty's Court of Exchequer; Rose Cullender and Amy Duny, Widows, both of Leystoff in the County aforesaid, were severally indicted for Bewitching Elizabeth and Ann Durent, Jane Bocking, Susan Chandler, William Durent, Elizabeth and Deborah Pacy: And the said Cullender and Duny, being arraigned upon the said Indictments, pleaded Not Guilty: And afterwards, upon a long Evidence, were found Gulty, and thereupon had Judgment to dye for the same.*

*The Evidence whereupon these Persons were convicted of Witchcraft, stands upon divers particular Circumstances.*

I. **T**Hree of the Parties above-named, viz. *Ann Durent, Susan Chandler, and Elizabeth Pacy* were brought to Bury to the Assizes and were in a reasonable good condition: But that Morning they came into the Hall to give Instructions for the drawing of their Bills of Indictments,

ments, the Three Persons fell into strange and violent Fits, screeking out in a most sad manner, so that they could not in any wise give any Instructions in the Court who were the Cause of their Distemper. And although they did after some certain space recover out of their Fits yet they were every one of them struck Dumb, so that none of them could speak neither at that time, nor during the Assizes, until the Conviction of the supposed Witches.

As concerning *William Durent*, being an Infant, his Mother *Dorothy Durent* sworn and examined, deposed in open Court, That about the Tenth of *March Nono Caroli Secundi*, she having a special occasion to go from home, and having none in her House to take care of her said Child (it then sucking) desired *Amy Dmy* her Neighbour, to look to her Child during her absence, for which she promised her to give her a Penny: but the said *Dorothy Durent* desired the same *Amy* not to Suckle her Child, and laid a great charge upon her not to do it. Upon which it was asked by the Court, why she did give that direction, she being an old Woman and not capable of giving Suck? It was answered by the said *Dorothy Durent*, that she very well knew that she did not give Suck, but that for some years before, she had gone under the Reputation of a *Witch*, which was one cause made her give her the caution: Another was, That it was customary with old Women, that if they did look after a sucking Child, and nothing would please it but the Breast, they did use to please the Child to give it the Breast, and it did please the Child, but it sucked.

sucked nothing but Wind, which did the Child hurt. Nevertheless after the departure of this Deponent, the said *Amy* did Suckle the Child: And after the return of the said *Dorothy*, the said *Amy* did acquaint her, *That she had given Suck to the Child* contrary to her command. Whereupon the Deponent was very angry with the said *Amy* for the same; at which the said *Amy* was much discontented, and used many high Expressions and Threatning Speeches towards her; telling her, *That she had as good to have done otherwise than to have found fault with her, and so departed out of her House:* And that very Night her Son fell into strange fits of swoounding, and was held in such terrible manner, that she was much affrighted therewith, and so continued for divers weeks. And the said Examinant farther said, that she being exceedingly troubled at her Child's Distemper, did go to a certain Person named *Doctor Jacob*, who lived at *Tarmouth*, who had the reputation in the Country, to help Children that were Bewitched; who advis'd her to hang up the Childs Blanket in the Chimney-corner all day, and at night when she put the Child to Bed, to put it into the said Blanket, and if she found any thing in it, she should not be afraid, but to throw it into the Fire. And this Deponent did according to his direction; and at night when she took down the Blanket with an intent to put her Child therein, there fell out of the same a great Toad, which ran up and down the Hearth, and she having a young Youth only with her in the House, desired him to catch the Toad, and throw it  
into

into the Fire, which the Youth did accordingly, and held it there with the Tongs; and as soon as it was in the Fire it made a great and horrible Noise, and after a space there was a flashing in the Fire like Gun-powder, making a noise like the discharge of a Pistol, and thereupon the Toad was no more seen nor heard. It was asked by the Court, if that after the noise and flashing, there was not the Substance of the Toad to be seen to consume in the Fire? And it was answered by the said *Dorothy Durent*, that after the flashing and noise, there was no more seen than if there had been none there. The next day there came a young Woman, a Kinswoman of the said *Amy*, and a Neighbour of this Deponent, and told this Deponent, that her Aunt (meaning the said *Amy*) was in a most lamentable condition, having her Face all scorched with Fire, and that she was sitting alone in her House, in her Smock without any Fire. And thereupon this Deponent went into the House of the said *Amy Dury* to see her, and found her in the same condition as was related to her; for her Face, her Legs, and Thighs, which this Deponent saw, seemed very much scorched and burnt with Fire, at which this Deponent seemed much to wonder; and asked the said *Amy* how she came into that sad condition? And the said *Amy* replied, she might thank her for it, for that she this Deponent was the cause thereof, but that she should live to see some of her Children Dead, and she upon Crutches. And this Deponent farther saith, that after the burning of the said Toad, her Child recover'd, and

was

was well again, and was living at the time of the Assizes. And this Deponent farther saith, That about the 6th of March, 11<sup>o</sup> Car. 2. her Daughter *Elizabeth Durent*, being about the Age of Ten Years, was taken in like manner as her first Child was, and in her fits complained much of *Amy Duny*, and said, That she did appear to her, and Afflict her in such manner as the former. And she this Deponent going to the Apothecaries for something for her said Child, when she did return to her own House, she found the said *Amy Duny* there, and asked her what she did do there? And her answer was, *That she came to see her Child, and to give it some Water.* But she this Deponent was very angry with her, and thrust her forth of her doors, and when she was out of doors, she said *You need not be so angry, for your Child will not live long*: And this was on a *Saturday*, and the Child dyed on the *Monday* following. The cause of whose Death this Deponent verily believeth was occasioned by the Witchcraft of the said *Amy Duny*: For that the said *Amy* hath been long reputed to be a *Witch*, and a Person of very evil Behaviour, whose Kindred and Relations have been many of them accused for *Witchcraft*, and some of them have been Condemned.

The said Deponent further saith, That not long after the death of her Daughter *Elizabeth Durent*, she this Deponent was taken with a Lameness in both her Legs, from the Knees downward, that she was fain to go upon Crutches, and that she had no other use of them but only to bear a little upon them till she did remove her Crutches,

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and so continued till the time of the Assizes, that the *Witch* came to be Tryed, and was there upon her Crutches. The Court asked her, *That at the time she was taken with this Lameness, if it were with her according to the Custom of Women?* Her Answer was, that it was so, and that she never had any stoppages of those things, but when she was with Child.

This is the Substance of her Evidence to this Indictment.

There was one thing very remarkable, that after she had gone upon Crutches for upwards of Three Years, and went upon them at the time of the Assizes in the Court when she gave her Evidence, and upon the Juries bringing in their Verdict, by which the said *Amy Dury* was found Guilty, to the great admiration of all Persons, the said *Dorothy Durent* was restored to the use of her Limbs, and went home without making use of her Crutches.

II. As concerning *Elizabeth* and *Deborah Pacy*, the first of the Age of Eleven Years, the other of the Age of Nine Years or thereabouts: As to the Elder, she was brought into the Court at the time of the Instructions given to draw up the Indictments, and afterwards at the time of Tryal of the said Prisoners, but could not speak one Word all the time, and for the most part she remained as one wholly senseless as one in a deep Sleep, and could move no part of her Body, and all the Motion of Life that appeared in her was, that as she lay upon Cushions in the Court upon her back, her stomach and belly, by the drawing of her breath, would arise to a great height:

height: and after the said *Elizabeth* had lain a long time on the Table in the Court, she came a little to her self and fate up, but could neither see nor speak, but was sensible of what was said to her, and after a while she laid her Head on the Bar of the Court with a Cushion under it, and her Hand and her Apron upon that, and there she lay a good space of time: And by the direction of the Judge, *Amy Dunny* was privately brought to *Elizabeth Pacy*, and she touched her hand; whereupon the Child without so much as seeing her, for her Eyes were closed all the while, suddenly leaped up, and caught *Amy Dunny* by the Hand, and afterwards by the Face; and with her Nails scratched her till Blood came, and would by no means leave her till she was taken from her, and afterwards the Child would still be pressing towards her, and making signs of Anger conceived against her.

*Deborah* the younger Daughter was held in such extream manner, that her Parents wholly despaired of her life, and therefore could not bring her to the Assizes.

The Evidence which was given concerning these Two Children was to this Effect.

**S**Amuel Pacy a Merchant of *Leystoff* aforesaid, (a Man who carried himself with much soberness during the Tryal, from whom proceeded no words either of Passion or Malice, though his Children were so greatly Afflicted,) Sworn and Examined, Deposeth, That his younger Daughter *Deborah*, upon *Thursday* the Tenth of *October* last, was suddenly taken with a Lameness in her Legs, so that she could not stand, neither had she any strength in her Limbs to support her, and so she continued until the seventeenth Day of the same Month, which Day being fair and Sunshiny, the Child desired to be carried on the *East* part of the House, to be set upon the Bank which looketh upon the Sea; and whilst she was sitting there, *Amy Dury* came to this Deponents House to buy some Herrings, but being denied, she went away discontented, and presently returned again, and was denied, and likewise the third time, and was denied as at first; and at her last going away, she went away grumbling; but what she said was not perfectly understood. But at the very same instant of time, the said Child was taken with most violent fits, feeling most extream pain in her Stomach, like the pricking of Pins, and Shreeking out in a most dreadful manner like unto a Whelp, and not like unto a sensible Creature.

And

And in this extremity the Child continued to the great grief of the Parents until the Thirtieth of the same Month. During this time this Deponent sent for one Dr. *Feavor*, a Doctor of Physick, to take his advice concerning his Childs Distemper; the Doctor being come, he saw the Child in those fits, but could not conjecture (as he then told this Deponent, and afterwards affirmed in open Court, at this Tryal) what might be the cause of the Childs Affliction. And this Deponent farther saith, That by reason of the circumstances aforesaid, and in regard *Amy Duny* is a Woman of an ill Fame, and commonly reported to be a *Witch* and *Sorcerefs*, and for that the said Child in her fits would cry out of *Amy Duny* as the cause of her Malady, and that she did affright her with Apparitions of her Person (as the Child in the intervals of her fits related) he this Deponent did suspect the said *Amy Duny* for a *Witch*, and charged her with the injury and wrong to his Child, and caused her to be set in the Stocks on the Twenty eighth of the same *October*: And during the time of her continuance there, one *Alice Letteridge* and *Jane Buxton* demanding of her (as they also affirmed in Court upon their Oaths) what should be the reason of Mr. *Pacy's* Childs Distemper? telling her, That she was suspected to be the cause thereof; she replied, *Mr. Pacy keeps a great stir about his Child, but let him stay until he hath done as much by his Children, as I have done by mine.* And being further examined, what she had done to her Children? She answered, *That she had been fain to open her Childs Mouth with a Tap to give it Victuals.*

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And the said Deponent further depofeth, That within two Days after fpeaking of the faid words, being the Thirtieth of *October*, the eldeft Daughter *Elizabeth*, fell into extream Fits, infomuch, that they could not open her Mouth to give her Breath, to preferve her Life without the help of a Tap, which they were enforced to ufe; and the younger Child was in the like manner Afflicted, fo that they ufed the fame alfo for her Relief.

And further the faid Children being grievoufly afflicted would feverally complain in their extremity, and alfo in the intervals, That *Amy Duny* (together with one other Woman whose Perfon and Cloaths they defcribed) did thus Afflict them, their Apparitions appearing before them, to their great terrour and affrightment: And fometimes they would cry out, faying, *There ftands Amy Duny, and there Rose Cullender*; the other Perfon troubling them.

Their fits were various, fometimes they would be lame on one fide of their Bodies, fometimes on the other: Sometimes a forenefs over their whole Bodies, fo as they could endure none to touch them: At other times they would be reftored to the perfect ufe of their Limbs, and deprived of their Hearing; at other times of their Sight, at other times of their Speech; fometimes by the fpace of one day, fometimes for two; and once they were wholly deprived of their Speech for Eight days together, and then reftored to their Speech again. At other times they would fall into Swoonings, and upon the recovery to their Speech they would Cough extreamly, and bring up much Flegme, and with the fame  
crooked

crooked Pins, and one time a Two-penny Nail with a very broad head, which Pins, (amounting to Forty or more) together with the Two-penny Nail were produced in Court, with the affirmation of the said Deponent, that he was present when the said Nail was vomited up, and also most of the Pins. Commonly at the end of every fit they would cast up a Pin, and sometimes they would have four or five Fits in one day.

In this manner the said Children continued with this Deponent for the space of two Months, during which time in their Intervals this Deponent would cause them to Read some Chapters in the *New Testament*. Whereupon this Deponent several times observed, that they would read till they came to the name of Lord, or Jesus, or Christ; and then before they could pronounce either of the said Words they would suddenly fall into their Fits. But when they came to the Name of Satan, or Devil, they would clap their Fingers upon the Book, crying out, *This bites, but makes me speak right well.*

At such time as they be recovered out of their Fits (occasion'd as this Deponent conceives upon their naming of Lord, or Jesus, or Christ,) this Deponent hath demanded of them, what is the cause they cannot pronounce these words? They reply and say, *That Amy Dunny saith, I must not use that name.*

And farther, the said Children after their Fits were past, would tell, how that *Amy Dunny*, and *Rose Cullender* would appear before them, holding their Fists at them, threatening, *That if they related either what they saw or heard,*

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that they would Torment them ten times more than ever they did before.

In their Fits they would cry out, *Their stands Amy Duny, or Rose Cullender*; and sometimes in one place and sometimes in another, running with great violence to the place where they fancied them to stand, striking at them as if they were present; they would appear to them sometimes spinning, and sometimes reeling, or in other postures, deriding or threatening them.

And this Deponent farther saith, That his Children being thus Tormented by all the space aforesaid, and finding no hopes of amendment, he sent them to his Sisters House, one *Margaret Arnold*, who lived at *Yarmouth*, to make tryal, whether the change of the Air might do them any good. And how, and in what manner they were afterwards held, he this Deponent refers himself to the Testimony of his said Sister.

*Margaret Arnold*, Sworn and Examined, saith, That the said *Elizabeth* and *Deborah Pacy* came to her House about the Thirtieth of *November* last; her Brother acquainted her, that he thought they were Bewitch'd, for that they vomited Pins; and farther informed her of the several passages which occurred at his own House. This Deponent said, that she gave no credit to that which was related to her, conceiving possibly the Children might use some deceit in putting Pins in their mouths themselves. Wherefore this Deponent unpinned all their Cloaths, and left not so much as one Pin upon them, but sewed all the Cloaths they wore, instead of pinning of them. But this  
Deponent

Deponent saith, that notwithstanding all this care and circumspection of hers, the Children afterwards raised at several times at least Thirty Pins in her presence, and had most fierce and violent Fits upon them.

The Children would in their Fits cry out against *Rose Cullender* and *Amy Duny*, affirming that they saw them; and they threatned to torment them Ten times more, if they complained of them. At some times the Children (only) would see things run up and down the House in the appearance of Mice; and one of them suddenly snapt one with the Tongue, and threw it into the Fire, and it screeched out like a Rat.

At another time, the younger Child being out of her Fits went out of Doors to take a little fresh Air, and presently a little thing like a Bee flew upon her Face, and would have gone into her Mouth, whereupon the Child ran in all haste to the Door to get into the House again, screeking out in a most terrible manner; whereupon this Deponent made haste to come to her, but before she could get to her, the Child fell into her swooning Fit, and at last with much pain straining herself, she vomited up a Two-penny Nail with a broad Head; and after that the Child had raised up the Nail she came to her understanding; and being demanded by this Deponent, how she came by this Nail? she answered, *That the Bee brought this Nail and forced it into her Mouth.*

And at other times, the Elder Child declared unto this Deponent, that during the time of her Fits, she saw Flies come unto her, and bring with them in their Mouths crooked Pins;  
and

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and after the Child had thus declared the same, she fell again into violent Fits, and afterwards raised several Pins.

At another time, the said Elder Child declared unto this Deponent, and sitting by the Fire suddenly started up and said, *she saw a Mouse*, and she crept under the Table looking after it, and at length, she put something in her Apron, saying, *she had caught it*; and immediately she ran to the Fire and threw it in, and there did appear upon it to this Deponent, like the flashing of Gun-powder, though she confessed she saw nothing in the Childs Hand.

At another time the said Child being speechless, but otherwise, of perfect Understanding, ran round about the House holding her Apron, crying, *busb, busb*, as if there had been some Poultry in the House; but this Deponent could perceiue nothing: But at last she saw the Child stoop, as if she had catcht at something, and put it into her Apron, and afterwards made as if she had thrown it into the Fire: But this Deponent could not discover any thing: But the Child afterwards being restored to her speech, she this Deponent demanded of her what she saw at the time she used such a posture? who answered, *That she saw a Duck*

At another time, the Younger Daughter being recovered out of her Fits, declared, *That Amy Duny had been with her, and that she tempted her to Drown her self, and to cut her Throat, or otherwise to Destroy her self.*

At another time in their Fits they both of them cryed out upon Rose Cullender and Amy Duny, complaining against them; *Why do not you*

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you come your selves, but send your Imps to torment us?

These several passages as most remarkable, the said Deponent did particularly set down as they daily happen'd, and for the reasons aforesaid, she doth verily believe in her Conscience, that the Children were bewitched, and by the said *Amy Duny*, and *Rose Cullender*; though at first she could hardly be induced to believe it.

As concerning *Ann Durent*, one other of the Parties, supposed to be bewitched, present in Court.

*Edmund Durent* her Father Sworn and Examined; said, That he also lived in the said Town of *Leystoff*, and that the said *Rose Cullender*, about the latter end of *November* last, came into this Deponents House to buy some Herrings of his Wife, but being denyed by her, the said *Rose* returned in a discontented manner; and upon the first of *December* after, his Daughter *Ann Durent* was very sorely afflicted in her Stomach, and felt great pain, like the Pricking of Pins, and then fell into swooning Fits, and after the Recovery from her Fits, she declared, That she had seen the Apparition of the said *Rose*, who threatned to Torment her. In this manner she continued from the first of *December*, until this present time of Tryal; having likewise vomited up divers Pins (produced here in Court.) This Maid was present in Court, but could not speak to declare her knowledge, but fell into most violent Fits when she was brought before *Rose Cullender*.

*Ann Baldwin* Sworn and Examined, Depo-  
seth the same thing as touching the Bewitch-  
ing of the said *Ann Durent*. As

## A Tryal of Witches.

As concerning *Jane Bocking* who was so weak, she could not be brought to the Assizes.

*Diana Bocking* Sworn and Examined, Deposed, That she lived in the same Town of *Leystoff*, and that her said Daughter having been formerly afflicted with swooning Fits recovered well of them, and so continued for a certain time; and upon the first of *February* last, she was taken also with great pain in her Stomach, like pricking with Pins; and afterwards fell into swooning Fits, and so continued till the Deponents coming to the Assizes, having during the same time taken little or no food, but daily vomited crooked Pins; and upon *Sunday* last raised Seven Pins. And whilst her Fits were upon her she would spread forth her Arms with her Hands open, and use postures as if she caught at something, and instantly close her Hands again; which being immediately forced open, they found several Pins diversly crooked, but could neither see nor perceive how or in what manner they were conveyed thither. At another time, the same *Jane* being in another of her Fits, talked as if she were discoursing with some Persons in the Room, (though she would give no answer nor seem to take notice of any Person then present) and would in like manner cast abroad her Arms, saying, *I will not have it, I will not have it*; and at last she said, *Then I will have it*, and so waving her Arm with her Hand open, she would presently close the same, which instantly forced open, they found in it a Lath-Nail. In her Fits she would frequently complain of *Rose Cullender*, and *Amy Dury*, saying  
That

That now she saw Rose Cullender standing at the Beds-feet, and another time at the Beds-head, and so in other places. At last she was stricken Dumb and could not speak one Word, though her Fits were not upon her, and so she continued for some Days; and at last her Speech came to her again, and she desired her Mother to get her some Meat; and being demanded the reason why she could not speak in so long time? She answered, *That Amy Duny would not suffer her to speak.* This Lath-Nail, and divers of the Pins were produced in Court.

As concerning *Susan Chandler*, one other of the Parties supposed to be Bewitched and present in Court.

*Mary Chandler* Mother of the said *Susan*, Sworn and Examined, Deposed and said, That about the beginning of *February* last past, the said *Rose Cullender* and *Amy Duny* were Charged by *Mr Samuel Pacy* for Bewitching of his Daughters. And a Warrant being granted at the request of the said *Mr Pacy*, by *Sir Edmund Bacon* Bart. one of the Justices of the Peace for the County of *Suffolk*, to bring them before him, and they being brought before him were Examined, and Confessed nothing. He gave order that they should be searched; whereupon this Deponent with five others were appointed to do the same: And coming to the House of *Rose Cullender*, they did acquaint her with what they were come about, and asked whether she was contented that they should search her? She did not oppose it, whereupon they began at her Head, and so stript her naked, and in the lower part of her Belly they found a thing like a Teat of an  
Inch.

## A Tryal of Witches.

Inch long, they questioned her about it, and she said, *That she had got a strain by carrying of water, which caused that Excrecence.* But upon narrower search, they found in her Privy Parts three more Excrecences or Teats, but smaller than the former: This Deponent farther saith, that in the long Teat, at the end thereof there was a little hole, and it appeared unto them as if it had been lately sucked, and upon the straining of it there issued out white milky Matter.

And this Deponent farther saith, That her said Daughter (being of the Age of Eighteen Years) was then in Service in the said Town of *Leysteff*, and rising up early the next Morning to Wash, this *Rose Cullender* appeared to her, and took her by the hand, whereat she was much affrighted, and went forthwith to her Mother, (being in the same Town) and acquainted her with what she had seen; but being extreamly terrified, she fell extream sick, much grieved at her Stomach; and that Night after being in Bed with another young Woman, she suddenly scried out, and fell into such extream fits as if she were distracted, crying against *Rose Cullender*; saying, *she would come to bed to her.* She continued in this manner beating and wearing her self, infomuch, that this Deponent was glad to get help to attend her. In her Intervals she would declare, *That some time she saw Rose Cullender, at another time with a great Dog with her:* She also vomited up divers crooked Pins; and sometimes she was stricken with blindness, and at another time she was Dumb, and so she appeared to be in Court when the Tryal of the Prisoners

ners was; for she was not able to speak her knowledge; but being brought into the Court at the Tryal, she suddenly fell into her Fits, and being carried out of the Court again, within the space of half an hour she came to her self and recovered her speech, and thereupon was immediately brought into the Court, and asked by the Court, whether she was in Condition to take an Oath, and to give Evidence, she said she could. But when she was Sworn, and asked what she could say against either of the Prisoners? before she could make any answer, she fell into her Fits, screeking out in a miserable manner, crying, *Burn her, Burn her*, which were all the Words she could speak.

*Robert Chandler* Father of the said *Susan* gave in the same Evidence, that his Wife *Mary Chandler* had given; only as to the searching of *Rose Cullender* as aforesaid.

This was the Sum and Substance of the Evidence which was given against the Prisoners concerning the Bewitching of the Children before-mentioned. At the hearing this Evidence there were divers known Persons, as Mr Serjeant *Keeling*, Mr Serjeant *Earl*, and Mr Serjeant *Barnard*, present. Mr Serjeant *Keeling* seemed much unsatisfied with it, and thought it not sufficient to Convict the Prisoners: For admitting that the Children were in truth Bewitched, yet, said he, it can never be applied to the Prisoners, upon the Imagination only of the Parties Afflicted: For if that might be allowed, no Person whatsoever can be in safety, for perhaps they might fancy another Person, who might altogether be Innocent in such matters. There

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There was also Dr *Brown* of *Norwich*, a Person of great knowledge; who after this Evidence given, and upon view of the three Persons in Court, was desired to give his Opinion. what he did conceive of them: And he was clearly of Opinion, that the Persons were bewitched; and said, that in *Denmark* there had been lately a great Discovery of Witches, who used the very same way of Afflicting Persons, by conveying Pins into them, and crooked as these Pins were, with Needles and Nails. And his Opinion was, That the Devil in such cases did work upon the Bodies of Men and Women, upon a Natural Foundation, (that is) to stir up, and excite such Humours super-abounding in their Bodies to a great excess, whereby he did in an extraordinary manner afflict them with such Distempers as their Bodies were most subject to, as particularly appeared in these Children; for he conceived, that these swooning Fits were Natural, and nothing else but that they call the Mother, but only heightened to a great excess by the subtilty of the Devil, co-operating with the Malice of these which we term Witches, at whose Instance he doth these Villanies.

Besides the Particulars above-mentioned touching the said Persons Bewitched, there were many other things objected against them for a farther proof and manifestation that the said Children were Bewitched.

As *First*, during the time of the Tryal, there were some experiments made with the Persons Afflicted, by bringing the Persons to touch them; and it was observed, that when they

they were in the midft of their Fits, to all Mens apprehenfion wholly deprived of all fenfe and underftanding, clofing their Fifts in fuch manner, as that the ftrongeft Man in the Court could not force them open; yet by the leaft touch of one of thofe fupposed Witches, *Rofe Cullender* by Name, they would fuddenly fhriek out opening their Hands, which accident would not happen by the touch of any other Perfon.

And leaft they might privately fee when they were touched by the faid *Rofe Cullender*, they were blinded with their own Aprons, and the touching took the fame Effect as before.

There was an ingenious Perfon that objected, there might be a great fallacy in this experiment, and their ought not to be any ftrefs put upon this to Convict the Parties, for the Children might counterfeit this their Diftemper, and perceiving what was done to them, they might in fuch manner fuddenly alter the motion and gefture of their Bodies, on purpofe to induce Perfons to believe that they were not natural, but wrought ftangely by the touch of the Prifoners.

Wherefore to avoid this fcruple it was privately defired by the Judge, that the Lord *Cornwallis*, Sir *Edmund Bacon*, and Mr. Serjeant *Keeling*, and fome other Gentlemen there in Court, would attend one of the diftempered Perfons in the farther part of the Hall, whilft ſhe was in her Fits, and then to fend for one of the Witches, to try what would then happen, which they did accordingly: and *Amy Duny* was conveyed from the Bar and brought to the Maid: They put an Apron before her

## *A Tryal of Witches.*

Eyes, and then one other Person touched her Hand, which produced the same effect as the touch of the Witch did in the Court. Whereupon the Gentlemen returned, openly protesting, that they did believe the whole transaction of this business was a mere Imposture.

This put the Court and all Persons into a stand. But at length Mr *Pacy* did declare, That possibly the Maid might be deceived by a suspicion that the Witch touched her when she did not. For he had observed divers times, that although they could not speak, but were deprived of the use of their Tongues and Limbs, that their Understandings were perfect, for that they have related divers things which have been when they were in their Fits, after they were recovered out of them. This saying of Mr *Pacy* was found to be true afterwards, when his Daughter was fully recovered, (as she afterwards was) as shall in due time be related: For she was asked, whether she did hear or understand any thing that was done and acted in the Court, during the time that she lay as one deprived of her understanding? And she said, *she did*: And by the Opinions of some, this experiment, (which others would have a Fal-lacy) was rather a confirmation that the Parties were really Bewitched, than otherwise: For, say they, it is not possible that any should counterfeit such Distempers, being accompanied with such various Circumstances, much less Children; and for so long time, and yet undiscovered by their Parents and Relations: For no Man can suppose that they should all conspire together, (being out of several Families, and, as they affirm, no way related

one

one to the other, and scarce of familiar acquaintance) to do an Act of this nature, whereby no Benefit or Advantage could redound to any of the Parties, but a guilty Conscience for Perjuring themselves in taking the Lives of two poor simple Women away, and there appears no Malice in the Case: For the Prisoner themselves did scarce so much as Object it. Wherefore, say they, it is very evident that the Parties were bewitched, and that when they apprehend or understand by any means, that the Persons who have done them this wrong are near, or touch them; then their Spirits being more than ordinarily moved with rage and anger at them being present, they do use more violent gestures of their Bodies, and extend forth their Hands, as desirous to lay hold upon them; which at other times not having the same occasion, the instance there falls not out the same.

2ly. One *John Soam* of *Leystoff* aforesaid, Yeoman, a sufficient Person, Deposeth, That not long since, in Harvest-time he had three Carts which brought home his Harvest, and as they were going into the Field to load, one of the Carts wrenched the Window of *Rose Cullenders* House, whereupon she came out in a great rage and threatned this Deponent for doing that wrong; and so they passed along into the Fields and loaded all the Three Carts, the other Two Carts returned safe home, and back again, twice loaded that Day afterwards; but as to this Cart which touched *Rose Cullenders* House, after it was loaded, it was overturned twice or thrice that Day; and after that they had loaded it again the second or third time, as they

*A Tryal of Witches.*

brought it thro' the Gate which leadeth out of the Field into the Town, the Cart stuck so fast in the Gates-head, that they could not possibly get it through, but were inforced to cut down the Post of the Gate to make the Cart pass through, although they could not perceive that the Cart did of either side touch the Gate-posts. And this Deponent further saith, That after they had got it through the Gate-way, they did with much difficulty get it home into the Yard; but for all that they could do, they could not get the Cart near unto the place where they should unload the Corn, but were fain to unload it at a great distance from the place, and when they began to unload they found much difficulty therein, it being so hard a labour that they were tired that first came; and when others came to assist them, their Noses burst forth a Bleeding: So they were fain to desist and leave it until the next Morning, and then they unloaded it without any difficulty at all.

*Robert Sherringham* also Deposeth against *Rose Cullender*, That about Two Years since, passing along the Street with his Cart and Horses, the Axletree of his Cart touched her House, and broke down some part of it, at which she was very much displeas'd, threatening him, that his Horses should suffer for it; and so it happen'd, for all those Horses, being Four in Number, died within a short time after. Since that time he hath had great Losses by the sudden dying of his other Cattle; so soon as his Sows pigged, the Pigs would leap and caper, and immediately fall down and die. Also, not long after, he was taken with

a Lameness in his Limbs that he could neither go nor stand for some Days. After all this, he was very much vexed with great Number of Lice of an extraordinary bigness, and altho' he many times shifted himself, yet he was not any thing the better, but would swarm again with them; so that in the Conclusion he was forc'd to burn all his Cloaths, being two Suits of Apparel, and then was clean from them.

As concerning *Amy Duny*, one *Richard Spencer* Deposeth, That about the first of *September* last, he heard her say at his House, *That the Devil would not let her rest until she were revenged on one Cornelius Sandeswell's Wife.*

*Ann Sandeswell*, Wife unto the above-said *Cornelius*, Deposeth, That about Seven or Eight Years since, she having bought a certain number of Geese, meeting with *Amy Duny*, she told her, *If she did not fetch her Geese home, they would all be destroyed*: Which in a few Days after came to pass.

Afterwards the said *Amy* became Tenant to this Deponent's Husband for a House, who told her, *That if she looked not well to such a Chimney in her House, that the same would fall*: Whereupon this Deponent replyed, That it was a new one; but not minding much her Words, at that time they parted. But in a short time the Chimney fell down according as the said *Amy* had said.

Also this Deponent farther saith, That her Brother being a Fisherman, and using to go into the *Northern Seas*, she desired him to send her a Firkin of Fish, which he did accordingly; and she having notice that the

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said Firkin was brought into *Leystoff-Road*, she desired a Boatman to bring it ashore with the other Goods they were to bring; and she going down to meet the Boat-man to receive her Fish, desired the said *Amy* to go along with her to help her home with it; *Amy* replied, *She would go when she had it.* And thereupon this Deponent went to the Shoar without her, and demanded of the Boat-man the Firkin; they told her, That they could not keep it in the Boat from falling into the Sea, and they thought it was gone to the Devil, for they never saw the like before. And being demanded by this Deponent, whether any Goods in the Boat were likewise lost as well as hers? They answered, *Not any.*

This was the Substance of the whole Evidence given against the Prisoners at the Bar; who being demanded, what they had to say for themselves? They replied, *Nothing material to any thing that was proved against them.* Whereupon, the Judge in giving his direction to the Jury, told them, that he would not repeat the Evidence unto them, least by so doing he should wrong the Evidence on the one side or on the other. Only this acquainted them, That they had Two things to enquire after. *First*, Whether or no these Children were Bewitched? *Secondly*, Whether the Prisoners at the Bar were Guilty of it?

That there were such Creatures as *Witches* he made no doubt at all; For *First*, the Scriptures had affirmed so much. *Secondly*, The wisdom of all Nations had provided Laws against such Persons, which is an Argument of their confidence of such a Crime. And such hath been

the Judgment of this Kingdom, as appears by that Act of Parliament which hath proved Punishments proportionable to the quality of the Offence. And desired them, strictly to observe their Evidence; and desired the great God of Heaven to direct their Hearts in this weighty thing they had in Hand: *For to Condemn the Innocent, and to let the Guilty go free, were both an Abomination to the Lord.*

With this short Direction the Jury departed from the Bar, and within the space of half an hour returned, and brought them in both *Guilty* upon the several Indictments, which were Thirteen in Number, whereupon they stood Indicted.

This was upon *Thursday* in the Afternoon, *March 13. 1662.*

The next Morning, the Three Children with their Parents came to the Lord Chief Baron *Hales's* Lodging, who all of them spake perfectly, and were in as good Health as ever they were; only *Susan Chandler*, by reason of her very much Affliction, did look very thin and wan. And their Friends were asked, At what time they were restored thus to their Speech and Health? And Mr. *Pacy* did affirm, that within less than half an hour after the *Witches* were Convicted, they were all of them restored, and slept well that Night, feeling no pain: only *Susan Chandler* felt a pain like pricking of Pins in her Stomach.

After, they were all of them brought down to the Court, but *Ann Durent* was so fearful to behold them, that she desired she might

## A Tryal of *Witches*.

not see them. The other Two continued in the Court, and they Affirmed in the face of the Country, and before the *Witches* themselves, what before hath been Deposed by their Friends and Relations; the Prisoners not much contradicting them. In Conclusion, the Judge and all the Court were fully satisfied with the Verdict, and thereupon gave Judgment againstt the *Witches* that they should be Hanged.

They were much urged to confess, but would not.

That Morning we departed for *Cambridge*, but no Reprieve was granted: And they were Executed on *Monday*, the Seventeenth of *March* following; but they Confessed nothing.

F I N I S.



A  
DISCOURSE  
TOUCHING  
PROVISION  
FOR THE  
POOR.

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Written by  
Sir *MATTHEW HALE*, K<sup>t</sup>.  
Late Lord Chief Justice of the  
*King's-Bench.*

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L O N D O N,  
Printed for *D. Brown, J. Walthoe,* and  
*M. Wotton.* 1716,





THE  
P R E F A C E.



*Due Care for the Relief of the Poor is an Act, 1. of great Piety towards Almighty God, who requires it of us: He hath left the Poor as his Pupils, and the Rich as his Stewards to provide for them: It is one of those great Tributes that he justly requires from the rest of Mankind; which, because they cannot pay to him, he hath scattered the Poor among the rest of Mankind, as his Substitutes and Receivers.*

*2. It is an Act of greatest Humanity among Men. Mercy and Benignity is due to the very Beasts that serve us, much more  
to*

## The Preface.

to those that are Partakers of the same common Nature with us.

3. It is an Act of great Civil Prudence and Political Wisdom: for Poverty in it self is apt to emasculate the Minds of Men, or at least it makes Men tumultuous and unquiet. Where there are many very Poor, the Rich cannot long or safely continue such; Necessity renders Men of Phlegmatick and dull Natures, stupid and indisciplinable; And Men of more fiery or active Constitutions, rapacious and desperate.

At this Day it seems to me that the English Nation is more deficient in their prudent Provision for the Poor than any other cultivated and Christian State; at least that have so many Opportunities and Advantages to supply them.

In some other Countries a Beggar is a rare Sight; Those that are unable to maintain themselves by Age or Impotency, are relieved. And those that are able to supply their Wants by their Labour, are furnished with Employments suitable to their Condition.

And by this Means there is not only a good and orderly Education, and a decent  
Face

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*Face of the Publick; but the more Populous the State or Country is, the Richer and the more Wealthy it is.*

*But with us in England, for want of a due Regulation of Things, the more Populous we are, the Poorer we are; so that, that wherein the Strength and Wealth of a Kingdom consists, renders us the weaker and the poorer.*

*And, which is yet worse, Poor Families which daily multiply in the Kingdom for want of a due Order for their Employment in an honest Course of Life, whereby they may gain Subsistence for them and their Children, do unavoidably bring up their Children either in a Trade of Begging or Stealing, or such other Idle Course, which again they propagate over to their Children, and so there is a successive Multiplication of hurtful or at least unprofitable People, neither capable of Discipline nor, beneficial Employment.*

*It is true, we have very severe Laws against Begging, the very Giver being in some Cases subject to a Penalty by the Statute of 1 Jac. cap. 17. But it takes little Effect. And indeed as the Case stands with us, it is no reason it should: for what*  
Man

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*Man that is of Ability can have the Conscience to deny an Alms, or to bring a Wanderer to the Punishment directed by that Statute and the Statute of 39 Eliz. when he cannot choose but know that there is not that due course provided, or at least used, that Persons necessitous, and able to work, may have it: Indeed were there a clear means practised for the Employing of poor Persons, It were an uncharitable Action to relieve them in a Course of Idleness. But when I do not know that there is such a Provision, I dare not deny my Relief, because I know not whether without it he may be starved with hunger, without his own Default.*

*We have also very severe Laws against Theft, possibly more severe than most other Nations, yea, and than the Offence in it self simply considered deserves; And there is little to be said in the Defense of the severity of the Law herein, but the multitude of the Offenders, and the design of the Law rather to terrify than to punish, ut metus in omnes, poena in paucos: But it is most apparent that the Law is frustrated of its Design therein; for although more suffer at one Sessions at Newgate for Stealing and Breaking up Houses, and Picking of Pockets, and such other Larcenies out of the Protection of Clergy, than suffer in  
some*

## The Preface.

*Some other Countries for all Offences in three Years, yet the Goals are never the Emptier: Necessity, and Poverty, and want of a due Provision for the Employment of Indigent Persons, and the Custom of a loose and Idle Life, daily supply with Advantage the number of those who are taken off by the Sentence of the Law: And doubtless as the multitude of Poor, and necessitous, and uneducated Persons increase, the multitude of Malefactors will increase, notwithstanding the Examples of Severity.*

*So that upon the whole Account, the Prudence of Prevention, as it is more Christian, so it will be more Effectual than the Prudence of Remedy: The Prevention of Poverty, Idleness and disorderly Education, even of poor Children, would do more good to this Kingdom than all the Gibbets, and Cauterizations, and Whipping-Posts, and Goals in this Kingdom, and would render these kind of Disciplines less necessary and less frequent.*

*But hitherto I am in Generals, which rarely prosper into Action or Conviction: I therefore shall consider principally these things:*

*1. What Provisions there are already settled by the Laws in force for the Relief and Employment of the Poor.*

*2 Wherein*

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2. *Wherein the Defects are, in relation to those Laws or Provisions, and the Consequences thereof.*

3. *What may be thought a convenient Supply of those Defects, and the Consequences of such Supplies.*





## C H A P. I.

### *Touching the Laws at Present in force for the Relief and Employment of the Poor.*



THE Laws relating to the Poor are of two kinds, *viz.*

1. Such as concern the relief of the Aged, and Impotent, that are not able by their Labour to maintain themselves. 2. Such as concern the employment and setting of Work, of such as are able. And this latter, as shall be shewn, is the more comprehensive and beneficial Charity, although both are necessary and become us, both as Men and Christians; much more touching the former of these, *viz.* the relief of the impotent Poor, the Laws of *England* have provided a double Remedy. First, by giving great encouragement to voluntary Undertakings of good and liberal Minds in this kind. 2. By Compulsary means upon all.

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Again, as touching the former of these, the Statute of 29 *Eliz. Cap. 5.* hath given a great Incouragement to such as shall erect Hospitals, Houses of Correction and *Maisons de Dieu.* And the Statutes of 39 *Eliz. Cap. 6.* and 43 *Eliz. Cap. 4.* have taken special care for the due employment of Gifts to charitable uses. And certainly such voluntary Assignations argue an excellent and charitable Mind in those that shall so voluntarily give; And the Statutes have given a fair Incouragement to the Charities of Men in this kind. But this Provision doth but little in order to Relief: For 1. for the most part such Hospitals, extend but to a few aged Persons limited to some particular Town, unless it be in the large Hospitals, in *London*, where there is some Provision more Extensive in respect both of number and age, as *St. Thomas's Hospital*, *Christ-Church Hospital*, and some others. 2. But besides this, those are but Voluntary, and not Compulsary; although there may be some that may be charitably minded, yet for the most part Men are backward in Works of Charity; Self-love, Covetousness, distrust of the Truth and Providence of God keeps most from overflowing Charity, or Building or Endowing Hospitals.

2. Therefore there was a Compulsary laid upon Men for the Relief of the Poor within their respective Parishes, viz. the Statute of 43 *Eliz. Cap. 2.* being the first Compulsary Law that I remember of that kind: And indeed it now became necessary to be done by a Compulsary Means, which before that time was left more arbitrary, because the Kingdom became then  
much

## *the Relief of the Poor.*

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much more populous than in former time, and with it the Poor also greatly increased, and besides many of those methods of their voluntary Relief was then much abated; which Statute Enables the Church-Wardens and Overseers, &c. to do these things.

1. To take order for setting to work the Children of those whose Parents, are not able to maintain their Children.

2. To take order to set those to work as such, having no Means to maintain themselves, use no ordinary Trade. But provides not sufficient Compulsaries to make them work.

3. To raise weekly by Taxation a convenient stock of Flax, Hemp, &c. to set the Poor on Work: But no Means at the first, before the return of the Manufacture to pay them wages in exprefs words, but is supplied by the latter general Clause. (*And to do and execute all other Things, as well for the disposing of the said Stock, or otherwise concerning the Premises as to them shall seem convenient.*)

4. To raise competent Sums of Money for the impotent Poor not able to Work.

5. Also for the putting of Poor Children Apprentices, but no Compulsary for any to receive them.

Among all these Provisions the 4th concerns the Relief of the Poor by Taxation, and Contributions to such as are impotent; the four other Particulars concern their Employment, and of such as are able to Work, which is the far greater number. And although the Relief of the Impotent Poor seems to be a Charity of more immediate Exigence, yet the Employment of the Poor is a Charity of greater Extent,

## A Discourse touching

and of very great and important Consequence to the publick Wealth and Peace of the Kingdom, as also to the Benefit and Advantage of the Poor.

I therefore come to that second Business relating to the Poor, *viz.* the setting the Poor on Work.

The Laws that concern that Business of the *Employment* of the Poor are of two kinds; *viz.* that which contains a Compulsary Means of providing Work for the Poor, which is the Statute of 43 *Eliz.* And secondly, those Laws which are in some kind Compulsary to force Persons to Work; and these are of two kinds, *viz.*

1. Those that concern Children and the Binding of them Apprentices, *viz.* the Clause of the Statute 43 *Eliz. Cap. 4.* before-mentioned and the Statute 7 *Jac. Cap. 1.* which makes fair Provision for the raising of Money to bind them, and directs the manner of its *Employment.* But as before is observed, hath not any sufficient Compulsary for Persons to take them, and perchance there might be fit to have some such qualifications in that Compulsary which might not leave it too arbitrary in the Justices of Peace to compel whom they please, to take whom they please: But this is not the Business I drive at, perchance the general Provision which I design, may make this at least not so frequently necessary.

2. In reference to Rogues, Vagabonds and idle and disorderly Persons, the Statute 7 *Jac. Cap. 4.* gives Power to the Justices of Peace to send them to the House of Correction, which they are thereby required to cause to be Erected.

Erected. 2. Power to the Master of such House of Correction to keep them to work.

But even in this particular there are defects.

1. It is not general for all Persons, but at most idle and disorderly Persons. 2. That description is very uncertain in reference to such Persons, and leaves the Justices either too great or too little power. 3. For want of a convenient Stock to be raised for such Houses of Correction, and advantageous ways for such work, it either leaves such as are sent without an Employment, or renders their Employment ungrateful in respect of the smallness of the wages, and rather makes People hate Employment as a Hell than to entertain it as a means of a comfortable support; which though it may be well enough as a Punishment for disorderly persons that refuse to work, yet it is not applicable to those that are only idle, it may be, because they have no work. 4. It is a difficult thing to determine who shall be said an idle Person; it is a reasonable answer to that, they are Idle for want of such work as they are able to do, or for want of such wages as might give them a reasonable support: For there is no power given, nor is it reasonable it should, to compel Persons to set them on work, or to set them on work at convenient Wages. 5. And lastly, it is not universal; many Persons are not within that Law which would work if they might; or if they might at reasonable rates, whereby they might live. There is need, therefore, of some such provision that might be as ample as the occasion, and without which indeed all the Laws already made are either weak and ineffectual

to their Ends, and the generality of the Poor left destitute of a convenient support and provision.

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## C H A P. II.

### *Touching the Power by the Law settled for the general Provision for the Poor, and their defects.*

**U**Pon the consideration of the Statutes for the Poor, the only Statute that provides universally is that of 43 *Eliz.* which generally makes two Provisions.

1. For the Impotent Poor, that are not able to work: And it is true is a good and effectual Provision for such, if duly executed. But as I said before, the Plaister is not so large as the Sore; there are many Poor that are able to work if they had it, and had it at reasonable wages whereby they might support themselves and their Families, which oftentimes are many. These are not within the Provision of the Law, and if they come for Exhibitions, they are denyed, or at least have but very small, and such as cannot support them and their Families. And indeed if they should have sufficient Exhibition for the support of them and their Families, the Parishes where they live were not able to supply them in a proportion answerable to their necessities, or answerable to that supply which a  
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full Employment would afford them: For instance, a Poor Man and his Wife though able to work, may have four Children, two of them possibly able to work, two not able: The Father and the Mother are not able to maintain themselves and their Family in Meat, Drink, Cloathing and House-rent under ten Shillings *per Week*, and so much they might probably get if imployed: This amounts to 26*l.* *per Annum*; if there were forty such Families in a great Parish, and they lived upon this Exhibition colleited by rates, it would arise to above 800*l.* *per Annum*, which in many Parishes exceeds the yearly Value of their Lands or Rents, yet when these Persons are kept on work thus much must be gotten by them, and without a supply Equivalent to this they must live by Begging, or Stealing, or Starve: Therefore the Second Provision is,

2. For those Poor that are able to work, and in reference to them it gives power to raise Stocks by rating the Parishioners, and setting the Poor on work.

The defects of this Provision are,

1. In the Execution of the Law already made; for let any Man look over most of the Populous Parishes in *England*; indeed there are rates made for the relief of the Impotent Poor, and it may be the same relief is also given in a narrow measure unto some others, that have great Families, and upon this they live miserably, and at best from Hand to Mouth, and if they cannot get work to make out their livelyhood, they and their Children set up a trade of Begging at best. But it is rare to see

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any Provision of a Stock in any Parish for the relief of the Poor. And the reasons are principally these: 1. The Generality of People that are able, yet unwilling, to exceed the present necessary charge, they do choose to live for an hour rather than project for the future; and although possibly trebling their Exhibition in one gross sum at the beginning of the year, to raise a Stock, might in all probability render their future yearly payments for seven years together less by half or two thirds, than what must be without it, yet they had rather continue on their yearly Payments, year after year, though it exhaust them in time, and make the Poor nothing the better at the years End. 2. Because those places, where there are most Poor, consists for the most part of Trades-men, whose Estates lye principally in their Stocks, which they will not endure to be searched into to make them contributory to raise any considerable Stock for the Poor, nor indeed so much as to the ordinary Contributions: But they lay all the rates to the Poor upon the Rents of Lands and Houses, which alone, without the help of the Stocks, are not able to raise a Stock for the Poor, altho' it is very plain that Stocks are as well by Law rateable as Lands, both to the relief, and raising a Stock for the Poor: 3. Because the Church-Wardens and Overseers, to whom this power is given, are Inhabitants of the same Parish, and are either unwilling to charge themselves or to displease their Neighbours in charging more than they needs must towards the Poor: And although it were to be wished and hoped that the Justices of Peace would

be forwardly to enforce them if they might, though it may concern them also in point of present profit; yet if they would do any thing herein, they are not impowered to compel the Church Wardens and Overseers to do it, who most certainly will never go about it to burden, as they think, themselves, and displease their Neighbours, unless some Compulsary power were not only lodged by Law, but also executed in some that may have a power over them to enforce it, or to do it, if they do it not, and to do it effectually, if they do it either partially, or too sparingly: 4. Because People do not consider the inconvenience that will in time grow to themselves by this neglect, and the benefit that would in a little time accrue to them by putting it in practise if they would have but a little patience, as shall be shewn hereafter.

2. The second defect is in the Law itself; which are these:

1. No power from the Justices of Peace, or some superintendent power to compel the raising of a Stock where the Church-Wardens and Overseers neglect it.

2. The Act chargeth every Parish apart where it may be they are able to do little towards it; neither would it be so effectual as if three, four, five or more contiguous Parishes did contribute towards the raising of a Stock proportionable to their Poor respectively.

3. There is no power for hiring or erecting a Common House, or place for their common Work-house, which may be in some respects, and upon some occasions, useful and necessary, as shall be shewn.

## C H A P. III.

*The Remedy propounded.*

1. **T**HAT the Justices of the Peace at the Quarter Sessions do set out and distribute the Parishes in their several Counties into several Divisions, in each of which there may be a Work-House for the common use of the respective Divisions, wherein they are respectively placed, *viz.* one, two, three, four, five or six Parishes to a Work-House, according to the greatness or smallness, and accommodation of the several Parishes.

2. That at that Sessions the Church-Wardens and Overseers of the Poor of the respective Parishes, bring in their several rates for their Relief of their respective Poor upon Oath. And that the said Justices do assess three, four or five yearly Pays to be levied and collected at one or two entire Sums within the time prefixed by them for the raising of a Stock to set the Poor within those Precincts on Work, and to build or procure a convenient Work-House for employing the Poor, if need be, in it, and for lodging Materials, and for instructing Children in the Trade or Work.

3. That there be yearly chose by the said Justices a Master for each Work-House, with a convenient Salary out of the said Stock, or the proceed thereof, to continue for 3 Years, and two Overseers to see the Issuing and Return of the said Stock, and to take the Accounts  
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Quarterly or Monthly of the Master as they shall think fit.

4. That the Stock be delivered to the Overseers, and by them Issued to the Master, as there shall be occasion, and that they also from time to time receive the proceed of the said Stock and the Accompts for the same.

5. That at the end of every Year the Master and Overseers give up their Accounts to the two next Justices of the Peace at times by them prefixed, and publickly notified to the Inhabitants of each Precinct, to the end that they may take any exceptions to such Accounts, if there be cause.

6. That the Master and Overseers of every respective Work-House stand, and be incorporate by the name of Master and Overseers of their respective Precincts, and capable to take in Succession by will or otherwise, Lands, Goods, or Money, or other Legacies or Gifts for the Benefit of the Poor, within their respective Precincts.

7. That they also be accomptable, as well to their respective Successours, and also to the Justices of the Peace at their Quarter Sessions for the Benefit and Proceed and Imployment of such Gifts and Bequests.

8. That they be disabled to grant any Lands to them given or bequeathed for any longer term than one Year, and at an improved Rent.

9. That if any Person that is able to work, and not able to maintain himself, shall refuse to do so, he may be forced thereunto by Warrant of two Justices of Peace by Imprisonment,

ment, and moderate correction in such Work-House.

10. If any Person employed by the Master, shall imbezel or wilfully prejudice, or spoil his Work, he shall upon complaint and proof thereof by the Party grieved to any Justice of Peace, and by Warrant from him, receive Imprisonment or moderate correction by Warrant of such Justice.

These be the heads of that Provision, I could wish for the setting the Poor on Work, which is but an Essay and may receive Alterations or Additions upon consideration.

*The Benefits*, that would come by this Method would be very many and great: I shall set down some of them that occur to me.

1. By Incorporating of these Work-Houses, which are the best kind of Hospitals, charitable-minded Persons would have as it were a Pillar whereunto to fasten their Charity, which would prevent many Difficulties in the faithful Administrations thereof, and would invite Benefactors.

2. Whereas Hospitals provide for some few Poor Impotent People, this would prevent Poverty, and in a little tract of time bring up hundreds to be able to gain their Livelihoods.

3. Whereas in that State that things are, our Populoufness, which is the greatest Blessing a Kingdom can have, becomes the burden of the Kingdom, by breeding up whole Races and Families, and successive Generations in a mere Trade of Idleness, Thieving, and Begging, and a barbarous kind of Life, which must in time prodigiously increase and overgrow the  
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the whole Face of the Kingdom, and eat out the Heart of it: This course within one seven Years alters the whole State of this Disorder, and brings People and their Children after them into a Regular, Orderly and Industrious course of Life, which will be as natural to them as now Idleness, and Begging, and Thieving is.

For no Person will have need to Beg or Steal, because he may gain his living better by Working.

And no Man will be so vain, and indeed hurtful to the Publick, as to give to such as Beg, and thereby to encourage them, when he is sure they may gain their living by Working. And all the Laws against Vagrants, Beggars and Wanderers, will be then Effectually put in Execution, when we may be sure they may be employed if they will: But till that, the interdicting and Punishing of the Beggars and Givers seems to me a most unreasonable piece of Imprudence, as well as Uncharitableness.

4. By this means the Wealth of the Nation will be increased, Manufactures advanced, and every Body put into a capacity of Eating his own Bread; for upon what imaginable account can we think, that we should not be as able to improve our Populoufness to our Wealth, as well as *Holland*, and *Flanders*, and *Barbadoes*, if we had but their Industry and orderly Management? If it be said, their Disposition is more Industrious than ours: It is true in that condition that matters are ordered; but if we had the same Industrious Education, we should have the same Industrious Disposition: Let a  
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Man, one that hath been bred up in the trade of Begging, he will never, unless compelled, fall to Industry; and on the other side, it is a wonderful Necessity indeed that shall bring one bred up in Civility, and Industry, to Beg, as is easily observable in many poor Places and Families.

And were there no other Benefit to the Kingdom in general, nor to the particular Places, where such Work-Houses shall be settled, but this, although the Stock were wholly lost in four Years, it would be an abundant Recompence by the accustoming the poor sort to a Civil and Industrious course of Life, whereby they would soon become, not only not burthensom, but profitable to the Kingdom, and the places where they live.

5. By this Means there would soon be an Improvement of the several Manufactures of the Kingdom, both for the necessary Consumption of the Kingdom, and for Exportation; whereby our Trade Outward, would exceed our Trade Inward, which Outward Trade, as it is the Basis and Foundation of all our Trade Inward; and the excess and Overballance of our Trade Outward, to our Trade Inward, is the only Means not only to keep our Money at home, but to gain an increase of Money, and so advanceth the true intrinsick Wealth of the Kingdom; for as of our Hand, if our Trade Outward exceed our Trade Inward, the excess must of Necessity be returned in Money or Bullion, so if our Trade Inward exceed our Trade Outward, the excess must be made good from hence in Money, which must needs insensibly impoverish the Kingdom, and Experience makes us know it to  
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be true: Now the Advance of our Manufactures would be by this Means plainly evident, for Woollen Manufactures or Cloath, the Staple Commodity of this Kingdom, would be more, and these other Woollen Manufactures, as Kerseys, Serges, Baize, which, though now confined to several parts of the Kingdom, as *Devonshire, Norfolk, Colchester*, would be by this Means diffused over the whole Kingdom, and those Places which have little of Woollen Manufacture; as *Linconshire, Northamptonshire*, and other Counties, would soon fall into it; so likewise knitting of Stockings, Caps, Waist-Coats and the like. 2. Our Linnen Manufactures, as Linnen Cloath, Laces of all sorts, Nets, Sails, &c. would become native, and supply the Want of the Kingdom, and prevent the necessity of Importation of Linnen Cloath from *Holland and France*, of Laces from *Flanders*: And as this Trade is in some degree used in *Lancashire, Leicestershire*, and some other Places, so it would be communicated to other Places of the Kingdom. And it is very considerable the numbers of Poor that would be by this Means employed in dressing of Hemp and Flax, Spinning, Weaving, Whitening and the like. And if any shall say, we want the Materials, and we want those that should instruct the Poor in the Ordering of them, The Answer is at hand; If once the Manufacture were begun to be put into a Method by this way, all Men would quickly sow Hemp and Flax in some Parcels of their Tillage, and possibly some Lands that were not so fit for other Tillage would be employed in this: Two Acres of Hemp and Flax in every Parish would employ

employ multitudes, which now People neglect to sow, because they have no way to vent or employ it: And for Instructors, when once the alarm is abroad of such a design, it will draw over Workmen from other Foreign Parts; and by this Means we gained, or at least recovered the Skill of making Woollen Cloath from other Parts, as appears by undeniable Evidence. And if it shall be said that this will defraud and straiten us of Labourers in our Woollen Manufactures; there can be no fear of that; for we have Poor enough to be employed in both, and it is most certain, that the Populousness of the Kingdom still increaseth, notwithstanding its great Exhaustings by Wars and Plagues, and Foreign Plantations, and consequently the Poor will be proportionably increased, so that we may reasonably suppose that in one seven Years, by the blessing of God, the very proceeds, that will be able and fit to work, of poor Families, will be more than double to what they are now, which will continually increase in a kind of Geometrical Progression, whereby there will be enough for double the employment that is now for them.

6. By the Means of these Work-Houses, there will be an Opportunity for One or Two Persons, skilled in any Manufacture, to instruct Twenty in the Trades, by common Resort, Meeting and dayly Residence of Children and young People there; and there may be Opportunity, to teach Children to read without any interruption, in the Employments of them that are able to teach them, or of them that are able to work.

7. By

7. By this means the Yearly Contributions for the necessary relief of Poor, that are able to Work, and their Families, and those kind of Contributions which in time will be impossible to support the Poor, will be changed into a supply every way more easy for them that are to pay, though at first it may require a more liberal assistance for the raising of the Stocks, and every way more beneficial and advantageous for the Poor; First, because they will hereby be educated and inured to a way of Civility and Industry. 2. They will gain a Trade, which will go along with them as the constant support of their lives. 3. The Wages that they will gain, will be a greater and better support than they can have by any Contributions that are able to be assessed for them; for they may be able to gain, Two, Three, Four, Five and Six Shillings a Week, for every Person able to Work, which is five times more than their Weekly or Yearly Contributions do or can amount unto, without exhausting more than the Revenues of the Parishes, wherein these poor are in many places: And this shall be demonstrated to the Eye of any that will consider this instance, which I have exactly tryed, and examined, and found to be true.

The ordinary Process and *timē*, and charge of making a common Course medly Cloath of our Gloucestershire Wool at this day is;

1. In every such Cloath of about 32 Yards long, there is Ninety Pounds of Wool, which will cost at this day at 12d. per Pound, four Pounds 10s, viz. ordinary in a Grey Cloath.

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54 *l.* of Abb. }  
 34 *l.* of Warp. } 4 *l.* 10 *s.*  
 2 *l.* of Mixture. }

2. The Charge of making this Cloath :

	<i>l.</i>	<i>s.</i>	<i>d.</i>
1 Parting and Picking.	0	3	0
2 Colouring	0	16	0
3 Breaking and Spinning the Abb, at two pence farthing <i>per l.</i>	}	1	7
4 Breaking and Spinning the Warp, at 5 <i>d.</i> <i>per l.</i>	}	0	18
5 Cards and Oyl	1	0	0
6 Weaving, Spooling and Warping	1	1	3
7 Milling and Burling	0	12	0
8 Shearing and Dressing	0	18	0
9 Drawing	0	1	6
10 Carriage and Facturage.	0	7	0

So the whole Charges comes to 11 *l.* 15 *s.*

Out of which deducting the Materials of Wool, and Cards, and Oil, *viz.* 5 *l.* 10 *s.*

Their remains entirely for the Expence of work amount to 6 *l.* 5 *s.*

It is true at this day this Cloath yields not above 12 *l.* to be sold, which is only 5 *s.* profit, but when Trade is quicker it may yield 13 *l.* or more.

3. The People that are employed in bringing about this Cloath to be ready are 14, *viz.* three Weavers and Spoolers, two Breakers, six Spinners, one Fuller and Burler, one Sheerman, one Parter and Picker: The Weavers supply the Office of Spooler and Warper.

4. These will bring about the first Cloath in about two Months space: But being continued in a constant tract, the Cloath will be brought about in three Weeks time, for all the other

other Workmen are at Work and fit the Cloath for the Weaver in that space that he is Weaving the first Cloath.

5. Consequently this one Loom thus imployed all the Year round, allowing two Months to the first Cloath, and three Weeks to every other, will make fourteen returns the first Year of Cloath ready for sale, and sixteen returns every Year after.

6. Consequently that which this yields for bare Wages to these 14 poor Workmen for the first Year, is Eighty seven Pounds Ten Shillings, and for the following Years, is Ninety seven Pounds; and by this Computation it is easy to see what every Workman can gain a Week being full imployed.

7. About one Hundred Pounds Stock will for ever keep this Looms work going, and maintain these fourteen Workmen, and consequently a Stock of four Hundred Pounds will keep on foot four Looms work, and keep on Work fifty six Persons, and be able to abide the ordinary delays of sale incident to the Markets.

8. But if it could be supposed that the Cloath could be sold as soon as made (which is not I confess reasonably to be expected) then a Stock of four and twenty Pounds would by its continual return provide Materials, and pay the Workmen for one Looms work in perpetuity: But because the returns by sale cannot be as speedy as the work is done, the Stock must be near 100*l.* to abide

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the delay of a Month, two, three, four or more, in point of sale, and likewise to buy Wool seasonably for Work. And by this it appears, that although one Hundred Pounds Stock by its 16 returns yields but an inconsiderable advantage to the Master at five Shillings *per* Cloath, *viz.* but four Pounds in the Year, yet it yields a considerable advantage to the poor Workers, *viz.* near one Hundred Pounds *per Annum*; and consequently a Stock of four Hundred Pounds yields near four Hundred Pounds *per Annum*. And consequently these fifty six poor People that are kept on work with this Stock of four Hundred Pounds could not live better, if the Parish were at the Yearly Pension of four Hundred Pounds *per Annum*, to relieve them, nor indeed so well, considering they are by this means kept in a way of imployment and honest industry: And yet without some supply, either by Wages or Contribution, those fifty six poor People being destitute of Wages or Contributions to this Value or near it, must live by Stealing or Begging, or Starve.

And let it be also considered, that this Stock thus raised and set going maintains it self by a perpetual circulation and vicissitude, without any considerable help by any farther supply, and yet perpetually countervails a Contribution of near four Hundred Pounds *per Annum* for the relief of these fifty six poor Persons.

By all which it will appear, that the advantage of a Stock imployed, and once set on

on foot, doth countervail a great Contribution, and indeed greater than can be raised and Yearly continued by most places, and will at least in time render those Yearly constant Contributions lower and less needful.

9. But yet farther, by this means there will be a reasonable Gage set to Wages of Workmen. It is not unknown how that some Covetous Masters in hard times, if they are well stocked and of Abilities, will set on Work many Poor, but they must take such Wages as they are not able to live upon, and that also many times paid in Corn, Wool, Cheese, and other things at rates high enough: And indeed if they will Work upon these terms, they may; but if not, they turn them off, or not employ them, and thereupon the poor Workmen, not being able to live without Work, and having no place to resort for any, are under a necessity of Working to them at inconsiderable rates. And such Masters make greater advantage by this means when Trade is low, than when it is open. But by this means there would be a refuge for the Poor to be employed at reasonable Wages; and the reason is evident, because this being but an Expedient, not so much for gain to the Master as for Employment for the Poor, as long as the Stock makes but good it self, or be managed without considerable loss, it attains its End, and therefore may give competent Wages. But on the other Hand, the Trading Master looks for his profit, and if his Stock turns not to him for gain, he gives over, or reduceth the Workman to inconsiderable

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Wages,

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Wages, that his own gain may be the greater. And although it may be there be some honest minded and Charitable Masters that will be content for some time to imploy their Stock though without gain, yet they are but rare to be found, and such as commonly hold not out long unless they find profit, though perchance they suffer no loss.

These be some of those Considerations that shew the usefulness of this Expedient: I shall now consider some of the *Objections* that may be made against it.

1. *Obj.* It is a great business to raise for the purpose four Years pay at once to make up a Stock, and Yearly Contributions are more easy.

I answer, It is true, and yet the advantage even to the Objecters themselves is even to their sense apparently great: If a Man had a Rent of Inheritance issuing out of his Land, he would not think much of giving sixteen Years purchase to buy it in: And the charge that goes out for the Poor, as it is as much and as certain a Charge as a Rent, so it is evident to us that it hath increased Yearly, and of necessity the longer things are continued in this careless way, it must increase in an Excessive Proportion, and to give four Years purchase to abate it, or if it were but to keep it at a Stay, were good Husbandry.

2. Besides this, let a Man consider what other losses do accrue by the want of a due Provision of Work, and an Industrious Education for

for the Poor, in thieving and stealing, and ending such Malefactors to Goals at the charges of the Parish, in Prosecuting them at Assises and Sessions, in cutting and destroying of Woods, pulling of Hedges, and trespasses to Corn and Grass thereby, in Alms-giving at the door; these would be, if not altogether prevented, yet, in a great measure, they would, when that most unchristian and indeed inhumane way of Living among most ordinary indigent People is remedied by convenient Employment and Wages.

2. *Obj.* But there are a sort of Idle People, that will rather beg than work, tho' they may be employed, and so that trade of Begging and Idleness would be still continued.

I Answer, 1. That we do surmise a Compulsary Law to enforce Idle Persons to work, which would prevent it. 2. By this means the Benefit of Working would exceed the Benefit of Begging, which would cause Persons to leave it. 3. By the Educating of Children in a way of Industry there would be gradually a Disaccustomedness to that way, which would in time quite remove it. But 4. when Men were once assured by a clear Evidence that the Poor might have Work upon reasonable terms, no Man would give; the Laws against Wanderers that were able to work, and against the relievers of such, would be cheerfully put in Execution, which now Men even upon the account of common Charity cannot bring themselves to.

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2. *Obj.* But what considerable advantage would such a Stock as four hundred Pounds do, when perchance in a time of trading four or five thousand Pounds imployed by Masters in a Parish is but enough to set their Poor on Work, where it may be there are two or three hundred Persons that are thus imployed.

I answer, It would be a great help to the Poor in a time of scarcity of VVork, although it should lye still in a time of plenty of Work. The supply of Work, for a Month, or two, or three, in a Year, when Traders for Advantage give over, keeps Industry on the Wheels, and yields a considerable supply. 2. In good times, when there is no need of it, it is as capable of Increase and Improvement, being imployed as private Mens Stocks are, which would enlarge it, or at least inable it to bear some loss in times of lowness of Trade. 3. If once such a Stock were going, it would not only increase by it self, but it would have continual accession by Charitable Gifts, which would do five times the good thus imployed, than imployed as they are in Doles and little yearly Pensions, which consume and come to nothing, but are swallowed up in the present necessity of the Poor, and leave but small signs of advantage behind them: Whereas the following of the Method now propounded, will at least leave the Persons, to whom it is applied, the Advantage of an Industrious Education and Profession, which will abide by them.

4. *Obj.*

4. *Obj.* But Men, that are concerned for their own Benefit in the prosecution of their Trade, as for instance of Cloathing, and consequently more careful than Persons imployed for others, yet do lose by their Trading, and many times impair their Stocks; and therefore this, that cannot be expected to be neither so industriously nor successfully managed, may be in the same condition.

**I Answer.** 1. in general. In this way there must needs be one of these Events:

1. Either there will be *Gain*, and then it doth improve the Stock, and lays up an Advantage that may compensate a former loss and enable the bearing of a future loss. And I know no reason but that in this management there may be some times at least of Advantage as well as in private Trading. The times are not always at a stand in Trade, but some times, and most ordinarily there is some gains in it, though not so much as at other times; and then the good times make amends for the bad.

2. Or else, though there be *no Gain*, there will be no Loss, but it stands at a stay, and if it doth so this Design attains its End, which is the Imployment of the Poor. Tho' it yields not the Master or Trader any gain, yet it yields the Poor a subsistence in their Wages and Work. It is true a private Tradesman looks to gain so much as may at least maintain himself and his Family. And if he doth not, he gives over his Trading, as not answering  
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ing his end; and it may be in some cases reasonable to do so: But though here be little or no gain, yet the End is attained, because the Poor are imployed and paid, though the Stock increase not.

3. Or else there *is Loss*. To this I say; 1. If there be Loss, yet it is but gradual, not altogether. Suppose it be twenty, thirty, or forty Pounds in a Year, in a Stock of four hundred Pounds, and by that account, yet this Stock will not be wholly exhausted in five or six Years; and if it should be so, yet the Loss to the Parish would not be more than it would be of its old course of contribution at the height that it would have been during the spending of that Stock which is thereby, as before is observed, in a great measure remedied. 2. These decays may possibly be repaired by Charitable Gifts and Bequests. 3. But if it were not, yet such gradual decays may be supplied by the Parishes with the same Ease that their Contribution would have been, all things considered, and possibly better times of Trade may happen at least once in two or three Years, which may repair the loss, or at least keep the Stock at its full gage with small helps. 4. But suppose the worst, and that in the Compass of three or four Years the whole Stock were wholly drawn dry; I say confidently, that the Advantage the Country would have by a course of industrious Education of the Poor continued but one three or four Years, will more than countervail the loss of a very considerable Stock, in preventing that Trade of Idleness which

which grows up in Poor Families, which will daily infinitely increase, and will receive a very great check, and possibly such as will for ever prevent the return of such a course of Life by the interruption of a tract of three or four Years of Employment, and will put thousands in that tract of time into a course of trade and livelyhood, which they will carry with them all their lives after. 5. And besides all this, it is not likely the trade will suffer a perpetual interruption, but even while this Stock is in this wane and declination, private Men will be trading, and then in this decay and declination of the Stock (if it should be unsupplied) there will be work at private Hands, and Persons instructed and fitted and able to do it, which may prevent a total interruption of an industrious Education, and may give some intervals of relaxation of the Employment of the common Stock, at least in that fullness as formerly, till it be recruited by new supplies. 6. But yet farther, the Method of the proposed Employment, though it be principally bot-tomed upon the trade of Woollen Cloathing, yet it will have other supplies, as is propounded, as making of Kerseys, Baize, Knitting of Stockings, dressing and ordering of Hemp and Flax, and Spinning and Weaving it. And though there were no other but the Woollen Manufacture, yet if it should please our Superiors to interdict the Wearing of foreign Manufactures, our own consumption at home, and the necessity that they have in foreign parts of our Woollen Manufactures, would double the Trade of Woollen Manufactures.

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5. *Obj.* The Poor have Work already if they will work, and the setting up of such a publick Trade will but make Workmen the more independent, and decline the Imployment of private Traders, which will tend to the decay of Trade.

I Answer. 1. It is true when Trading is quick, possibly they may have Work enough, but upon any check in Trade they are oftentimes turned off, unless they will work at extream low Wages and ill paid. 2. When work is so plenteous at private Hands, there may be an intermission or relaxation of the Imployment of the common Stock: Especially if they can have better Wages at private Hands; for it will be enough for this to be supplemental of the defects of work at others Hands, and it sufficiently attains its End if it may be a refuge at the time of need for those that would work and cannot get it, and an Expedient to enforce those to work that can and will not.

6. *Objection.* Poor that do their work well, and are honest, and industrious, cannot want work when any is to be had in the Country, and those that are not imployed, are either such as will not work, or cannot tell how to work, or will steal and purloin the Work: These will undo the Work-House.

I answer 1. Some times there are when the honestest Workmen cannot get Work, and this will be a reserve for them. 2. But as for others, here will be an Expedient to teach them to work that cannot, and to compell them

them to work, that can, and to punish them, that are Dishonest in their Work.

3. And if there were no punishment, yet when a Work-House and Stock is once settled, that would be sufficient to make them work: For when every Man were once sure that they that would honestly Work might have it, and reasonable Wages, every Wanderer and Beggar would be esteemed such a person as will not work, or will be dishonest in it, and not fit to be relieved, but the Laws to be severely put in Execution against them.

7. *Obj.* But where shall we have Men that will undertake the employment, and be faithful and trusty in it?

I answer. 1. There be many poor and honest Men, who for a small Salary and a Room or two to work and lodge in the Work-House, would be fit enough to undertake the Employment of a Master, and yet he would have no great trust upon him; for the Stock would be lodged in the Hands of the Overseers, and they to deliver it out, and take Weekly or Monthly Accounts: Which Overseers may be substantial Men, and at no great trouble, and eligible either by the Justices of Peace, or Parishioners, yearly, or once in three Years, and their trouble would be no greater than the trouble of Overseers of the Poor, or Churchwardens in any Parish.

And thus I have hastily and cursorily gone through the Methods, Reasons and Objections

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tions of this Proposal, which I am sure, if it can be brought to a due accomplishment, is,

1. A Work of great Humanity, and such as we owe to those of our own Nature as we are Men. The wise God did tell his ancient People, that the Poor should be always among them; which was, 1. To exercise their Liberality and Charity in supplying the wants of some by the abundance of others. And 2. To exercise their discretion and industry, to think of and set on foot such means as might put them in a course of honest Employment, and encourage them in it. They that are Rich are Stewards of their Wealth, and they that are wise are Stewards of their Wisdom, unto that great Master of the Family of Heaven and Earth, to whom they must give an account of both; and one, I am sure, of the best accounts they can give of both, is to imploy them in the Reformation and Relief of those that want both or either. *Am I my Brother's Keeper*, was the answer of one of the worst of Men.

2. A Work that as well becomes a Christian as any, Christianity recommending Charity, as one of the principal Christian Virtues. And indeed the ill Provision for the Poor in *England*, is one of the greatest reproaches to us in relation to our Christian Profession.

3. A Work for a good *English* Man. The want of a due Provision for Education and Relief

Relief of the Poor in a way of Industry, is that which fills the Goals with Malefactors, and fills the Kingdom with idle and unprofitable Persons that consume the Stock of the Kingdom without improving it, and that will daily increase even to a desolation in time. And this Error in the first Concoction, is never remediable but by Gibbets and Whipping. But there must be a sound, prudent and resolved Method for an Industrious Education of the Poor, and that will give better Remedy against these Corruptions than the after-gain of Penalties can.

F I N I S.



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