

the Subjects of *England*, whereby they should acknowledge the King's Supremacy in all Causes, and over all Persons within his Dominions, and made it High Treason to refuse that Oath; and so the Refusal of this Oath of Supremacy, was the first Treason by Act of Parliament, added to the Treason at Common Law before expressed. This Act continu'd in Force till the first Year of *Queen Mary*, 1. Q. Mary. who receiving the Yoke of *Rome* again, did, by the Act of Repeal, abolish the Oath of Supremacy, and declared such Acts only to be High Treason, as were holden to be so in the twenty fifth Year of *Edward* the Third.

But when *Queen Elizabeth* came to the Crown, tho' she removed the Foreign Power, and again restored the ancient Jurisdiction of the Crown, and revived the Oath of Supremacy, yet she did not make it High Treason at the first to refuse that Oath. For by the Statute of *primo Eliz.* the first Refusal of the Oath 1. Eliz. of Supremacy was but a Contempt, and the Punishment only Forfeiture of his Spiritual or Temporal Promotion, or Office during Life; the second Refusal was made Premunire; and the third, High Treason: With this Moderation did *Queen Elizabeth* begin her Reign.

Afterwards, by a Statute made the 5th *Eliz.* the first Refusal of that Oath 5. Eliz.

was a Premunire, and the second High Treason. And thus it rested till the 13th Year of her Reign, without the Additions of any other Treasons to those at the Common Law. But then, indeed, the Disloyalty of some of her own Subjects, and the Malice of the Bishop of *Rome*, by setting abroad new Treasons never heard of before, did enforce her to make new Laws to meet with those traitorous Conspirators against her Person and Crown: For the Pope, by the Solicitation of some of her own disloyal Subjects, had sent over a Bull of Excommunication against the Queen herself: To depose and deprive her of her Crown and Dignity, withal he sent over other Bulls by the Hands of *English* Priests and Jesuits, authorizing them to absolve and discharge all the Queen's Subjects from their Allegiance and Obedience unto her, and to reconcile them to the See of *Rome*.

13 Eliz.

Whereupon followed a dangerous Rebellion raised by two great Earls in the Northern Parts, and divers other perilous Practices were discovered in other Parts of this Kingdom, which did forcibly move the Parliament in the 13th, to make it High Treason, to bring in and publish any such Bulls of absolving or reconciling the Queen's Subjects, as also
to

to be absolved or reconciled, by Vertue of those Bulls.

Here was another Cause of High Treason, added to the Treasons of the Common Law. But this Law of the 13th of *Eliz.* did only restrain the bringing in of Bulls, and not the coming in of Priests and Jesuits; and therefore, about the 20th of *Q. Eliz. Campion*, with other Jesuits and Seminary Priests, came boldly into *England* to strengthen the Catholick Party, as themselves professed, and here they practised by Preaching, private Persuasions, and spreading of Books and Pamphlets, to withdraw the Subjects from their Obedience, and to reconcile them to the See of *Rome*.

Therefore, in the 23d of Queen *Eliz.* *Elizabeth*, another Act was made, whereby it was made High Treason, to endeavour by any other Means, besides Bulls and other Instruments sent from *Rome*, so to withdraw and reconcile the Subjects, and it was likewise made Treason in every Subject that should be so withdrawn or reconciled.

After this again, because this Work of stealing the Hearts of the Subjects from their Sovereign was *Opus Tenebrarum*, and wrought by secret Means impossible to be prov'd, for that it was done by Jesuits and Seminary Priests, who distill'd their Poison in the Ears of

the People in Corners, as the envious Man sow'd his Tares in the Night.

Therefore, in the 28th Year of *Queen Elizabeth*, all Jesuits, Seminary Priests, and other Priests ordained by Foreign Authority, were banish'd out of the Realm by the same Act of Parliament; and by the same Act it was made High Treason for any such Priest or Jesuit, being born in *England*, after forty Days next ensuing that Sessions of Parliament, to come into, or remain in *England*. The Makers of that Law knew their Errands to be Treason, and therefore they set a Mark or Character of Treason upon their very Persons, though no other Act of Treason be proved against them.

These are some of those excellent Penal Laws, which are the Bulwark of the Protestant Religion against Popery; these are the Laws which the late bigotted King, by closetting Men in Office, cajoling unwary Dissenters, and all other indirect Means imaginable, strove to abolish; in hopes, no doubt, in process of Time, to revive that comfortable Act, *De Hæretico comburendo* against us.

Although the *counterfeiting* the King's Coin was Treason at Common Law, as before I mention'd, yet the Judgment was only as in Case of Petit Treason; but by a Statute in the 5th of *Queen Elizabeth*, Clipping, Washing, Filing of Money

Money for Lucre or Gain, any of the proper Money of the Realm, or of other Realms, allow'd to be Current by Proclamation, is made High Treason; and in the 18th of the same Queen, Impair-^{ing}, Diminishing, Falsifying, Scaling or Lightening the proper Money of this Realm, or of any other made Current by Proclamation, is made High Treason, and the Judgment is, to be hang'd, drawn and quarter'd, but without Corruption of Blood, or Loss of Dower.

By the *Stat. 8 and 9. W. 3. cap. 26.* For preventing the Counterfeiting the Coin, it is enacted, That no *Smith, Engraver, Founder*, or other Person whatsoever (except such as are employ'd in his Majesty's *Mints*, for the Use of the said *Mints* only, or Persons lawfully authorized by the Lords of the Treasury) shall knowingly make or mend any *Punchion, Counterpunchion, Matrix, Stamp, Dye, Pattern, or Mold*, of Steel, Iron, Silver, or other Mettal, or of Spaud or fine Founders Earth, or Sand, or other Materials whatsoever, by which shall be made or impressed, the Figure, Stamp, or Similitude of both or either Side, of any Gold, or Silver Coin, Current within this Kingdom; or make or mend any *Edger, Instrument or Engine*, contriv'd for the Marking of Money round the Edges, with Letters, Grainings or other
 Marks,

Marks, resembling those on the Edges of Money coin'd in the King's *Mint*, nor any Prefs for Coinage, or Cutting-Engine for cutting round Blanks ; nor knowingly buy, sell, or hide, or without lawful Authority or Excuse, have in his House or Possession, any such Tool or Instrument before mentioned. And any Person whatsoever (except as before) who shall offend in any the Matters aforesaid, shall be guilty of High-Treason.

Now, Gentlemen, to shew you that our Laws are neither cruel nor unjust in this Affair, it is sufficient to say, That they agree with the Laws of almost all Nations ; which seldom do conspire in bloody and inhuman Executions.

The *Romans* consider'd this Crime of Clipping and Coining, generally speaking, as *High Treason* : They made exact Enquiries after these Offenders : They tortured Men to confess their Accomplices : They allow'd Rewards and Priviledges to such as would impeach ; if they were Slaves, they were set at Liberty, and the Exchequer paid their Ransom to their Masters : If one of these Offenders escap'd out of Custody, his Keeper, if privy to it, certainly died for him : If the Master or Owner of the House or Place where such Offence was committed, were conscious to the thing, altho'

altho' not actually employ'd himself, he forfeited his House, Goods and Estate, and was himself transported ; and if he knew nothing of the Matter, yet he forfeited his House, unless he made himself the first Discovery to the Magistrate (to oblige them, I suppose, to greater Caution whom they trusted in their Houses.) All Servants, Helpers and Assistants, were also condemn'd to die, as well as the principal Agent : And the Death they often underwent, was, being burnt. And yet the *Romans* were as sparing of Blood, and as merciful in their Execution, as any Nation whatsoever. *L. 11. 9. Tb. Cod. Tit. 21. L. 1. Tb. Tit. 22.*

The Laws of the *Wisigoths* punish'd these kind of Offenders, if they were Slaves, with the Loss of their Right-Hand ; if they were Freemen, with the Loss of half their Estates, and being made Slaves to whom the King pleased. *Rerum Hispan. Tom. 3. pag. 957.*

The Laws of our own Country, in King *Athelstan's* Time, punish'd them (as above) with cutting off their Right-Hands, and fixing them over the Place where they committed the Offence. In King *Ethelred's* Days, they were to undergo the *Treble Ordeal*, (*i. e.* to carry a red-hot Iron of three Pound Weight in their Hands, such a determinate Space

e^f

of Ground) and if they miscarry'd, then they were to die. *Leg. Athelstani R. 7. Brempton, pag. 843. Leg. Ethelredi R. pag. 898.* In *Hen. 1.* Time, they were condemn'd to lose, some their Hands, and some their Eyes: And some (in Allusion to the Word) who were found to *adulterate* the King's Coin, were so punish'd, as if the Laws intend- ed to prevent *Adultery* itself; as appears in our Histories of those Times. These Punishments were after chang'd into the Modern Executions, and have so continued ever since, altho' 'tis probable, that Punishments of *greater Pain* and *constant Shame*, such as they heretofore were, would secure us better, than put- ting Men to a short and easy Death.

'Tis likewise Treason during War with *France*, to send or load, or trans- port, or deliver, or cause to be, for the Use of the *French* King or his Subjects within his Dominions, any Arms, Ord- nance, Powder, Bullets, Pitch, Tar, Hemp, Masts, Cordage, Iron, Coals, Lead, or Salt-Peter: 'Tis also High- Treason to go or repair, or embark in any Vessel, with an Intent to go into *France*; and 'tis close Imprisonment without Bail, during their Majesties Pleasure, to come or return from *France*, or any of the *French* King's Dominions in *Europe* into *England*, or any of their Majesties

Majesties Dominions in *Europe*. Stat. 3
and 4 *W. and M.*

It is made Treason for any Officer or ^{2 & 3}
Soldier of the Realm, to hold Correspondence ^{Ann.}
with any Rebel, or Enemy to the _{12 A.}
King; or to give them any Advice, or
Information, by Letter, Message, &c.
And if any Subject within *Great-Britain*
or *Ireland*, or without the same, shall
inlist himself, or promote any Person
to list, with Intent to go beyond Sea,
to serve any Foreign Prince, State, &c.
as a Soldier, without the King's Leave,
he shall suffer and forfeit as in Cases of
Treason.

Hindering, or endeavouring to set a-_{1 A. c. 2.}
side any Person, who shall be next in
Succession to the Crown, for the Time
being, from coming to the Crown, is
made High-Treason, by Statute.

And if any Person shall maliciously, ^{4 & 5}
advisedly, or directly, by Writing or ^{Ann.}
Printing, declare or affirm, that the
King is not lawful King, or that the
Pretended Prince of *Wales* hath any Ti-
tle to the Crown, or that any other Per-
son hath a Right to it, otherwise than
according to the Act of Settlement; or
that the Kings and Queens of *England*
are not able, by the Authority of their
Parliaments, to make Laws sufficient to
limit and bind the Crown, he will be
guilty of High-Treason: And Preach-
ing,

ing, Teaching, or advisedly Speaking, incurs the Penalty of a *Præmunire*.

And the Penalty of a *Præmunire*, is to be out of the King's Protection, to forfeit all Lands and Goods, and be imprisoned and ransomed at the King's Pleasure.

But where a Person is indicted for Treason, whereby Corruption of Blood may be made, or for Misprision of such Treason, he shall be permitted to have a Copy of the whole Indictment five Days before his Trial, to advise with Counsel, &c. And shall be allowed to make a full Defence, by Counsel learned in the Law, and his Witnesses shall be examined fully on Oath ; and he shall not be tried or attainted but by the Oaths of Two lawful Witnesses to the same Overt-Act, to be produc'd Face to Face.

This is by *Stat. 7. W. 3.* For before that Act, when Men were committed for Treason, their Friends were not admitted to come near them ; nor were they allow'd Pen, Ink, or Paper, or inform'd for what Treason they were committed, or by whom accus'd : And tho' they had Liberty to except against any of the Jury, they were never allowed to have a Copy of the Panel, to make any Advantage of it. So that our
Law

Law is alter'd very much for the better, in this Particular.

Misprision of Treason, is, where a *Misprision* Man knoweth of any Treason, and conceals the same; but it must be a bare Knowledge only; and in Treason there are no Accessaries.

When any one doth know, that another hath committed any Sort of Treason, and doth not discover the same to the King, his Privy-Council, or to some Magistrate, that the Offender may be secured and brought to Justice; this bare Knowledge and Concealment was High-Treason at Common Law. But a Man must now assent to some outward Act, that shews an Approbation of it, to make it Treason; as, where one having Notice of a Meeting of Conspirators against the Government, goes into their Company, and hears their treasonable Consultation, and conceals it, &c. ^{3 Inst. 138.}

But one that is only told in general, there will be a Rebellion, without knowing the Persons concerned in it, or the Place where, &c. may conceal it, and not be guilty of Treason.

Petit-Treason.

Petit-Treason is an inferior Degree of Treason, and it is committed against a Subject, between whom and the Offender, the Law presumes there is a special Obedience and Subjection.

25 Edw. 3. Therefore, if the Wife murder the Husband; the Servant his Master; or any inferior Clerk his Bishop or Diocesan; this is Petit-Treason by the Common Law, and the Judgment herein, is, for a Man to be hang'd and drawn, and a Woman to be burnt.

If a Servant kills his Mistress, that is a single Woman, or his Master's Wife; or if a Servant, upon Malice taken during his Service, kills his Master after Departure from his Service; these are Petit Treason.

Dyer 128. Where a Wife or Servant procures a Stranger to kill the Husband or Master, in the Absence of such Wife or Servant, neither the Procurer or Actor are guilty of Petit-Treason, but of Murder only: But if the Wife or Servant, be either actually present when the Crime is committed, or present only in Judgment of Law, as being in the same House, tho' not in the same Room, such Wife or Servant are guilty of Petit-Treason, and the Stranger of Murder.

A Maid Servant, and a Stranger, conspired to rob the Mistress, and in the Night the Servant opened the Door, and let the Stranger into the House, who killed her Mistress, she lighting him to her Bed, but saying nor doing any thing, only holding the Candle; this has been adjudg'd Murder in the Stranger, and Petit-Treason in the Servant.

Aiders, Abettors and Procurors, are within the Statute against Petit-Treason.

Murder.

MURDER is a wilful and felonious Killing of another, upon premeditated Malice: And if the Death of the Party happen within a Year and a Day after the Wound given, it is Murder.

But tho' every Killing of a Man is *Style 467.* Homicide, yet every Homicide is not Murder: For if two Men quarrel, and presently go out and fight, and one kills the other, this by our Law is called Manslaughter; and the Party hath his Benefit of Clergy. But if they sleep upon it, and fight the next Day, after the Passion hath had Time to cool, it is Murder.

3 *Inst.* 56. An unlawful Act, with an ill Intent, is Murder; and without an ill Intent, Manlaughter. If one throw a Stone over a Wall, in a Place where People often resort, or at another in Play, and kill a Person; it is Murder, if done with an evil Intention to hurt. And if a Man shoot off a Gun in a City, or Highway, &c. which must of Consequence put the Life of a Man in Peril, and one is kill'd, it is Manlaughter. If a Man shooting at the tame Fowl of another, which is an unlawful Act, kill a Stand-er-by, it will be Murder: If he be shooting at wild Fowl, &c. and he is not qualified to keep a Gun, it is Manlaughter; and if he be qualified to keep a Gun, which makes the intended Act lawful, 'tis only Chance-medley.

These are very nice and just Distinctions which the Law makes in these Cases: And in Chance-medley, and *Se Defendendo*, the Offender is pardoned; tho' such a Regard is had to the Life of another Person, that a Forfeiture of Goods is incurred.

Cr. Car.
594.

But there is a justifiable Homicide, which is liable to no Forfeiture; as, if a Man comes to burn my House, or to rob me, &c. I or my Servant may kill him, without being guilty of Felony. So, if a Woman kills one that attempts

to ravish her, it is no Felony in her ; nor shall any thing be forfeited.

So strictly is the Guilt of Murder construed, that no Words or Gestures, tho' never so reproachful, are a sufficient Provocation to extenuate the Crime ; nor is it, in the Common Law, of any Signification who begins the Quarrel, or gives the first Stroke. If two or more assemble to do an unlawful Act, as to beat a Man, commit a Riot, rob a Park, &c. and one of them kills a Person, this is Murder in all.

H. P. C. 31
Kel. 87.

And by our Law, all that are present, aiding and abetting him that doth a Murder, are principal Offenders, tho' they give no Stroke.

Felonies.

TH E Capital Offences, called Felonies, are of Two Sorts, publick and private.

First, Publick Felonies are such as are hurtful to the Common-Weal, or a Multitude of Subjects.

Secondly, Private Felonies are such as are hurtful to this or that private Person. Publick Felonies are of Three Kinds, and do tend either to the Disturbance of the publick Peace, or to the

Hindrance of the publick Profit, or to the Destruction of a great Number of Subjects in their Persons.

Stat. 27.
Eliz. cap.
12.

For the first Kind of *publick* Offences. To relieve or receive a Jesuit or Seminary Priest, which comes to trouble the Peace of the Realm, (if the Reliever or Receiver know him to be a Jesuit or Seminary Priest) 'tis Felony, by the Statute of 27th *Eliz. cap. 12.*

Secondly, A convicted Popish Recusant of small Ability (not having 20 Marks of Freehold *per Ann.* or 40 Pounds in Goods, nor being a *Feme Covert*) that shall not repair to his Place of usual Dwelling or Place of Birth, or where his Father or Mother is dwelling, and there notify himself to the Minister and Constable, according to the Statute of 35
35 *Eliz. 1. Eliz. 1.* If after he be apprehended, and shall not conform himself within three Months, as the Statute appoints, any two Justices of the Peace, or the Coroner may require such Offender to abjure the Realm. And if such Popish Recusant, depart not the Realm within the Time limited, or return without the King's Licence, he shall be adjudg'd a Felon, without Clergy.

Thirdly, If any Man go beyond Sea, to serve any Foreign Prince, without taking the Oath of Allegiance before his Departure; or if any Man that hath serv'd

serv'd any Foreign Prince, before he be bound with Sureties, not to be reconcil'd to the See of Rome, nor to consent to any Conspiracy against the King; this is Felony, by the Stat. 3 Jac. cap. 4. ^{3 Jac. cap. 4.}

Fourthly, If a Multitude of Subjects be assembled together in a rebellious Manner, and do refuse to disperse themselves, after Proclamation made by a Justice of Peace, commanding them to depart in a peaceable Manner; they are all Felons by the Statute of 1 Mar. ^{1 Mar.}

Fifthly, Counterfeit Rogues, if they shall call themselves *Egyptians*, and be found Wandring in any Part of the Realm, are Felons by the Statute, 1 & 2 Ph. & Ma. cap. 4. ^{1 & 2 Ph. & Ma. c. 4.}

Sixthly, Incorrigible Rogues, branded with an Iron, being found Begging or Wandring; and such as wander under the Names of Mariners or Soldiers, with counterfeit'd Passes, are Felons by the Statute of the 36 Eliz. cap. 4. and 1 Jac. cap. 7. ^{36 Eliz. c. 4. 1 Jac. c. 7.} But these Statutes are repeal'd.

Seventhly, If a Soldier who is retain'd, or hath taken Prest Money, shall depart out of the King's Service without Licence; 'tis Felony by the Statutes of 7 Hen. 7. cap. 1. & 3 Hen. 8. 5. ^{7 Hen. 7. cap. 1. 3 Hen. 8. cap. 5.} And these I call *publick* Felonies, tending to the Disturbance of the publick Peace.

For the second Kind of *publick* Felonies, Imbezelling his Majesty's Ordnance,

nance, Shot, Powder, or other Habili-
ments of War, or Victuals provided for
Soldiers, if it be by any Person having
the Charge or Custody thereof, and to
the Value of Twenty Shillings, tho' at
several Times, 'tis Felony.

21. Eliz. 4.

Imbezelling of any Record or Parcel
thereof, *Writ, Return, Pannel, Process,*
or Warrant of Attorney in the *Chancery,*
Exchequer, King's Bench, Common Pleas,
or *Treasury*, by Reason whereof Judg-
ment shall be revers'd, it is Felony in
the Parties, and in their Counsellors,
Aiders and Abettors.

8. Hen.
6. 12.

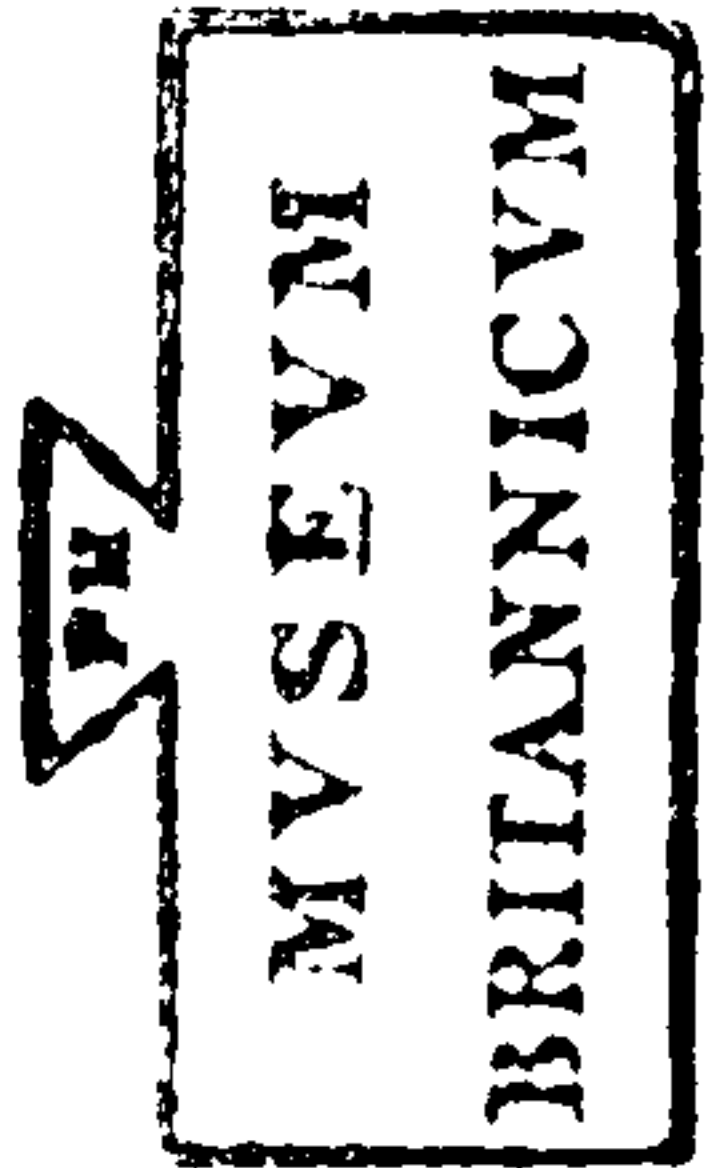
Transporting any live Sheep out of
the King's Dominions, is likewise Felo-
ny, by the 8th of *Eliz. c. 3.*

Purveyors likewise, if they take the
Subjects Goods without Warranty, or
without just Apprizement, and giving
ready Money, or Tallies, for the Goods
taken, do become Felons by the Statute
of the 5th of *Ed. 3.* and divers other
Statutes.

Acknowledging any Fine, Deed in-
roll'd, Statute, &c. in the Name of
another, is Felony without Benefit of
Clergy: As is also Personating Bail, by

21. Jac. 1. 21 Jac. 1. c. 26.

Persons maliciously burning any Ricks
of Corn, Hay, Barns, or other Buildings,
&c. are guilty of Felony: And if a
Servant, thro' Negligence or Careless-
ness,



ness, set on Fire any Dwelling-house or Out-house, he shall forfeit 100 l. to be distributed among the Sufferers; or shall be sent to the House of Correction, and there be kept to hard Labour for Eighteen Months. *Statutes 22 Car. 2. 6 Ann.*

To pull down any Dwelling-house, or Out-house, Church or Chappel, &c. is Felony without Benefit of Clergy, by 1 *Geo.* And to cast away a Ship wilfully, or cause the same to be done, is Felony. 1 *Ann.* Also by a late Statute, if any Persons shall maliciously set on Fire, or burn any Wood standing, belonging to another, Underwood or Coppice, they shall be guilty of Felony. *1 Geo. c. 6. c. 48. &c.*

Bankrupts, removing, concealing, or imbezelling any Money, Effects, &c. to the Value of 20 l. are guilty of Felony. Servants purloining or imbezelling their Masters Goods, &c. to the Value of 40 s. is likewise Felony, by the Statutes 5 and 12 *Ann.*

The 8 and 9, *W. 3.* makes Forgery of Bank Bills, Felony without Clergy. The 7 *Ann.* enacts, That Forging and Counterfeiting *Exchequer* Bills, or any Indorsements thereupon, and tendring such Bills in Payment, knowing the Forgery, shall be Felony, excluded of Clergy. Forging Lottery Orders, or altering the Number, or principal Sum of any Order, is also Felony.

These, and many others, are publick Felonies against the Profit of the King's People.

Lastly, touching the Third Kind of *publick* Felonies.

If any Person infected with the Plague, and having the Sore upon him uncured, do wilfully walk abroad, and converse with Company, this is Felony by the *1 Jac. c. 31.* Statute of the *1 Jac. ca. 31.* And because it may tend to the Destruction of a Multitude of the King's Subjects, I number it amongst the *publick* Felonies.

Secondly, Private Felonies, which are hurtful to particular Persons, are of Three Kinds, and do consist either in taking away the Life of a Subject, or violating the Person of a Subject, without taking away his Life, or in taking away the Goods of a Subject. The Offence of taking away the Life of a Subject, is divers, according to the Diversity of the Circumstance: As in Case of Poisoning, Stabbing, &c. if upon a sudden Falling-out, 'tis Manslaughter; and these are Felonies punish'd by Death.

If one do enter, or attempt to break another Man's House, with an Intent to rob or kill the Owner of the House, if the Malefactor be slain in his Attempts, it is no Offence; for a Man's House is his Castle, for the Safety of his Person and

and Goods, wherein if he be assay'd, the Law doth allow him to make his Defence by all Means possible.

So, if a Man be assaulted in the King's Highway, which by the ancient Law of this Land had the Privilege of a Sanctuary, if the Assault be made with a Purpose to rob or kill, it is no Felony, but justifiable by the Statute of 21 21 Edw. 3. *Edw. 3.*

To make Killing excusable, requires these Things, 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 executing an Arrest, the Party need not give back to the Wall. But in Killing *se defendendo*, the Party that is assaulted is not excused, unless he give back to the Wall. 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. 2. It must be in his Defence. If *A.* be assaulted by *B.* and before a mortal Wound given, *A.* gives back till he come to the Wall, and then in his Defence kills *B.* this is *se defendendo*. But if the mortal Wound be first given, then 'tis *Man-slaughter*. If *A.* upon Malice *præpense* strike *B.* and then fly to the Wall, and there in his own Defence kills *B.* this is Murther. But if there be Malice between *A.* and *B.* and

B. and *A.* strike first, *B.* retreats to the Wall, and in his own Defence kills *A.*, this is *se defendendo*.

I have already observ'd, that *se defendendo* incurs Forfeiture of Goods : For Murther, Lands, and Tenements, as well as Goods, are forfeited ; and for Manslaughter, Goods and Chattels. But if Felons stand mute out of Stubbornness, and will not put themselves upon Trial by their Country, they save the Forfeiture of their Estates, because in such Case they may not legally be convicted, but they shall have Judgment of *Paine fort & dure*, which is the severest Judgment our Law passes upon any Offender ; and the Sentence is as follows :

4 Ed. 4. 11.

14 Ed. 4. 7.

6 H 4. 2.

‘ That the Prisoner shall be sent to
 ‘ the Prison from whence he came, and
 ‘ put into a dark Room, stopped up from
 ‘ Light, and there shall be laid upon
 ‘ the bare Ground, without any Litter,
 ‘ Straw, or other Covering, and without
 ‘ any Garment about him, saving some-
 ‘ thing to cover his Privy Members, and
 ‘ that he shall lie upon his Back, and
 ‘ his Head shall be covered, and his Feet
 ‘ bare, and that one of his Arms shall
 ‘ be drawn with a Cord to one Side of
 ‘ the House, and the other Arm to the
 ‘ other Side, and that his Legs shall be
 ‘ used in like Manner, and that upon
 ‘ his

' his Body shall be laid so much Iron and
 ' Stone as he can bear, and more, and
 ' that the first Day after, he shall
 ' have three Morsels of Barley-Bread,
 ' without any Drink, and the second
 ' Day he shall drink so much as he can,
 ' three Times, of the Water which is
 ' next the Prison Door, saving running
 ' Water, without any Bread ; and this
 ' shall be his Diet until he die.

This Sentence is so very severe, that
 never *Englishman* as yet (tho' several have
 been prest to Death, to preserve their E-
 states) had the Heart to execute it accor-
 ding to the Letter : And it is sufficient to
 deter the most hardened Offenders from
 persisting in their Obstinacy, in refusing
 to be tried by the Laws of the Land.

*The Felonies which consist in violating the
 Person of a Subject, without taking away
 Life, are not by the Common Law, but
 by sundry Acts of Parliament.*

Buggery is Felony without Clergy, ^{25 Hen. 8.}
 by 25 *Hen. 8. c. 6.* reviv'd by 5th ^{c. 6.}
Eliz. c. 17. It may be committed by ^{5 Eliz. c.}
 Man with Man or Woman, or by Man
 or Woman with a Beast ; and it is a car-
 nal Knowledge of the Body of Man or
 Woman,

Woman, or of Beasts, against the Order of Nature. 12 Rep. 36.

13 Edw. 1. c. 34.
18 Eliz. c. 6. Rape, or Ravishment, is a violent deflowering of a Woman, or the Carnal Knowledge had 'of the Body of a Woman against her Will; and although she consent after, 'tis Felony without Benefit of Clergy.

39 Eliz. c. 9. To take any Maid, Widow, or Wife, (having Lands or Goods, or being an Heir Apparent) against their Will, and to receive any such Man, knowing thereof, and to abet the same, is Felony, and such shall be reputed Principals, and lose the Benefit of Clergy.

18 Eliz. c. 7. To know carnally any Woman-child, under the Age of Nine Years, is Felony without Clergy.

Marrying a second Husband or Wife, the former living, is Felony, except in the Cases following.

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.

2. A Man or Wife absent above seven Years, second Marriage no Felony.

3. After a Divorce, though *Mensa & Thoro* only.

4. After a Nullity declared of the former Marriage by the Ecclesiastical Court.

But in Case of Absence, the seven Years must be continually the one not knowing the other to be living during that Time.

To cut out the Tongue, or put out the Eyes of any Person, is Felony by ^{5 H. 4.} ^{22 Car. 2.} *Stat. 5 H. 4.* Before this Statute, my Lord *Coke* tells us, it was usual, when Men were robbed, beaten, or wounded, for the Offenders to put out their Eyes, or cut out their Tongues, to prevent Accusation. And by 22 & 23 *Car. 2.* If any Person shall of Malice forethought, or by lying in wait, cut or disable the Tongue, put out an Eye, slit the Nose, cut off a Nose or Lip, or cut off or disable any Member of any Person, with Intention to maim or disfigure, 'tis Felony in him and his Abettors.

And Maihem, which is a corporal ^{H. P. C.} Hurt, whereby a Man loseth a Member, ^{133.} so that he is less able to fight and defend himself, was Felony by the Common Law, but not of Death; for by our ancient Laws, if a Person was found guilty of Maihem, the Judgment against the Offender was to lose the like Member that the Plaintiff lost by his Means: But afterwards it was punished with Fine and Imprisonment, &c.

The Offence of Maihem is said to be under all Felonies deserving Death, and above all other inferior Offences.

If

Witchcraft.
1 Jac. 1.

If any Person shall use Invocation, or Conjurati^on of any evil Spirit ; or shall consult, covenant with, entertain, or employ any evil Spirit, to any Intent ; or take up any dead Person, or Part thereof, to be used in Witchcraft ; or shall have used any of the said Arts whereby any Person shall be either killed, consumed, or lamed, in his or her Body, they shall suffer as Felons, without Benefit of Clergy.

Where Persons take upon them by Witchcraft to tell where Treasure is to be found, Things lost or stoln may be had again, or to do any Thing to provoke unlawful Love ; or whereby any Cattle or Goods, &c. of any Person shall be destroy'd or injur'd, though the same be not effected ; this is punished by a Year's Imprisonment, Pillory, &c. and the second Offence is Felony.

These last are called Witchcraft in the second Degree ; but we have seldom any Prosecutions upon this Statute.

Felonies

Felonies which are hurtful to particular Persons, in their Goods or Possessions, are of divers Natures and Names, according to the Diversity of Circumstances.

THE breaking or entring into a ^{Burglary.} House by Night with Intent to commit some Felony, is call'd Burglary, whether the Felonious Intent be executed or not; some Opinions are, that after Sun Set, and before Sun Rising, it is Night; but my Lord *Coke's* Opinion ^{Coron. 239.} is, that so long as the Countenance of a Person may be discern'd, it is Day. The Night aggravates the Offence; for if it be committed in the Day time, it is call'd *House-breaking*, not Burglary.

The entring into a House by the Doors open, is a Breaking in Law; but not sufficient, without an actual breaking: Therefore if the Door be open, or Window be open, and the Thief draw out Goods thereby, 'tis 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

Key where the Door is lock'd on the Inside, is an Entry. In some Cases 'tis Burglary, without actual Breaking.

Divers come to commit Burglary, and one does it, the rest watch at the Lane's End ; 'tis Burglary in all ; for the Act of one of them is in Law the Act of all.

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

2. PC. 14. Thieves having an Intent to rob, raise Hue-and-Cry, and bring the Constable, to whom the Owner 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.

Dalt. 99. A Thief gets in by the Doors open in the Day, lies there 'till Night, then robs and goes away ; no Burglary : But if he break open the Door, Burglary.

The Servant opens the Window to let in a Thief, who comes in and steals, this is Burglary in the Stranger, but Robbery in the Servant.

If *A.* enters into a Hall by the Doors open, the Owner retires to a Chamber, and there *A.* breaks in ; this is a Breaking and Entering.

A. lies in one Part of the House, *B.* his Servant in another ; between them a Stair.

Stair-foot Door, latch'd; the Servant in the Night draws the Latch, and enters his Master's Chamber to murder him, Burglary.

The Church is 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.

And it may be committed, though all Persons be out upon Occasion. So if a Man has two Houses, and sometimes lives at one, and sometimes at another.

A Shop is Parcel of a Mansion-house.

A Chamber in an Inn of Court, where a Person usually lodgeth, is a 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 sever'd by Lease. Trin.
17 Jac.

By the Statute of 18th of *Eliz. c. 6.* Clergy is taken away in all Burglary.

By the Statute of the 10th and 11th *Shoplifting* of *W.* All Persons who, by Night and 10 & 11
W. 3. Day, shall in any Shop, Ware-house, Coach-house, or Stable, privately and feloniously steal any Goods, Wares, or Merchandizes of the Value of Five Shillings, or more, tho' such Shop, &c. be not broke open; and tho' the Owner, or any other Person, be, or be not in
F such

such Shop, &c. or that shall assist in committing such Offence, being thereof convicted, or standing mute, or challenging above twenty three of the Jury, shall lose the Benefit of Clergy. By the same Statute, among other Things, it is also enacted, That all Persons convict of Theft or Larceny, within the Benefit of Clergy, shall, instead of being burnt in the Hand, be burnt with the usual Mark in the most visible Part of the left Cheek, nearest the Nose, in open Court, in Presence of the Judge; but this is repeal'd.

By 5 *Ann.* a Reward of 40*l.* is given for apprehending a Burglar.

No Clerk of Assize, Clerk of the Peace, or other Person, shall take any Fee of Persons bound by any Justice of Peace to appear as Evidence against any Traitor or Felon, for Discharge of their Recognizance; nor shall take above two Shillings for drawing any Bill of Indictment, against any such Felon, under Penalty of five Pound to the Party aggriev'd, with full Costs of Suit.

If any Clerk of the Assize, Clerk of the Crown, Clerk of the Peace, Clerk of the Indictments, or other proper Officer, their Clerks or Deputies, draw any Bill false, they shall draw new Bills *gratis*, or forfeit five Pound, with full Costs of Suit, to be recovered by those
who

who will Sue for the same; by Action of Debt, &c. where no Effoign, &c. shall be allow'd.

Robbery, is a Felonious and Violent taking away from the Person of another Money or Goods of any Value, putting him in Fear. *Robbery: 3 Inst. 603*

If a Thief, with or without Weapon drawn, bid the Party deliver his Purse, and he does it, this is a Taking, to make it Robbery.

If a Thief command a Man to deliver his Purse, and he deliver, and the Thief finding little in it, deliver it back, this is Robbery. *H. P. C. 712*

If a Thief compel a true Man by fear, to swear to fetch him a Sum of Money, which he does accordingly, and the Thief receive it, 'tis Robbery.

If the true Man seeking to escape, casts his Purse into a Bush, or lets fall his Hat; if the Thief take it, 'tis Robbery.

Taking away any Thing in a Man's Presence, is in Law a Taking from the Person.

Taking away a Man's Horse standing by him, and against his Will, is a taking from the Person: But if one leaves his Horse ty'd at a Distance, it is not a taking from the Person, or Robbery.

If a Servant is robb'd of his Master's Goods in the Sight of his Master, it

shall be taken for a Robbery from the Person of the Master.

3 Inst. 60.
69.

But where any Thing is taken from the Person on the Highway, without putting in Fear by Assault or Violence, 'tis no Robbery, but a Felony, for which the Offender shall have Clergy. And if there be only an Assault to Rob, without taking any Money, &c. it is not Felony, but a Misdemeanor, punishable by Fine and Imprisonment, &c.

13 E. 1.

If a Robbery be committed on the Highway in the Day-time, of any Day except Sunday, the Hundred is chargeable, if the Robber be not taken: And immediately when a Robbery is committed, *Hue and Cry* is to be made after the Robbers from Town to Town, and County to County, by Horsemen and Footmen, to the Sea Side. The Constable, on the Person's being described, is to call upon the Parishioners to assist him in the Pursuit, in his Precinct; and if the Offender be not there, to give Notice to the next Constable, who is to do the same as the first.

Persons neglecting to make *Hue and Cry*, or who do not pursue it, may be punished by Fine and Imprisonment.

4 & 5 W.
& M.

A Reward is order'd by Law of 40*l.* for the Apprehension of a Robber on the Highway, to be paid by the Sheriff, on Certificate from the Judge, of the Conviction

viction of the Offender ; and the Apprehender is likewise entitled to the Horse, Furniture, Arms, Money, &c. of the Highwayman, saving the Right of those from whom taken.

An Offender, out of Prison, impeaching two others, so as they are convicted, shall have his Majesty's Pardon.

If a Shopkeeper deliver Goods to one who pretends to buy them, and he runneth away with them, it is Felony: If one comes on Pretence to buy a Horse, and the Owner gives him leave to ride him to try his Paces, and he rideth away with him, it is Felony. If a Guest hath Plate set before him in a Tavern or Inn, it is Felony to take it away. Stealing Goods and Chattels which Persons by Contract are to use, is Felony: And if one lends or delivers Goods to others to keep, or to Work-People, and they steal them, it is Larceny.

H.P.C.64.
Kel. 82.
6 & 7 W.3.
Larceny.

Goods stolen must not be of a base Nature, as Dogs, Cats, &c. Nor shall it be Felony to take Apes, Monkies, Bears, Squirrels, Parrots, &c. But the taking away Geese, Ducks, Poultry, &c. which are Man's Food, is Felony.

The secret taking away of another Man's Goods, with an Intent to steal the same, is Theft: And if the Goods taken away, amount to the Value of Twelve-pence, it is Felony, and punish-

1 Edw. 3.
cap. 22.

able with Death; but if the Goods taken away be under the Value of Twelve-pence, it is called Petit Larceny, for which the Offender shall not die, but is to suffer some corporal Punishment, as Whipping, &c. according to the Direction of the Judges or Justices, before whom he is convicted.

It is thought by some horrible and grievous, that a Man's Life (the Life of a Christian) or any of the Members of his Body should be taken away for so small a Value as thirteen Pence. It is very plain, that the Statute of 3 Ed. 1. cap. 15. declaring what Prisoners areailable, says, amongst other Offences, (*viz.*) *or for Larceny, which amounteth not above the Value of Twelve-pence*: Nay, K. Athelstane's Laws, begin with Thieves, and speak thus, *First, that a Man spare no Thief that is in the Manner, having in his Hands taken above Eight-pence*. A Ram in the Saxons Time was worth but Four-pence: And that which was heretofore sold for Twelve-pence, would now be worth Forty Shillings.

In the Assize of Bread, (long after the Saxons) in the 51 Hen. 3. eight Bushels of Wheat are valued but at Twelve-pence. In the Time of Ed. 3. a Bushel of Wheat was but Ten-pence; a Hay-maker had but a Penny a Day, Reapers of Corn Two-pence, an Acre to be mowed

mowed for Five-pence, Threshing a Quarter of Wheat or Rye but Two-pence, a Master Carpenter Three-pence a Day, and his Man Two-pence, a Free Mason Four-pence, others Three-pence, their Boys One Penny, Plaisterers and their Knaves (so nam'd in the Act) in the same Manner, and to find themselves Meat and Drink. And by the Statute of 6th *Hen.* 8. of much later Time, the yearly Wages of a Bailiff of Husbandry was but Sixteen Shillings and Eight-pence, and for cloathing of him Five Shillings, with Meat and Drink; a chief Hind or Shepherd Twenty Shillings, and for his Cloathing Five Shillings; every common Servant Sixteen Shillings and Eight-pence, for Cloathing Four Shillings: No Woman Servant above Ten Shillings, her Cloathing Four Shillings, and no Master might have given more.

And tho' *Twelve-pence* keeps not to the old Rate, but the modern; yet Things are prized in Trials of Life, far below their Worth, and no Man loseth his Life (in a single and simple Felony) but where the Thing stolen riseth to more than many *Twelve-pences* (especially after the old Estimate) but indeed the Quality of the Offender, Circumstances of the Offence, and of the Times, are mainly considerable in our Law, where

any Life is taken away, in such a Felony.

4 Georgii. By a late Act, Persons convicted of Felony, Larceny, &c. within the Benefit of Clergy, are to be *Transported* to the Plantations for Seven Years, instead of being burnt in the Hand or whipp'd: And Criminals convicted of Capital Crimes, for which Clergy is taken away, may be pardon'd on Condition of Transportation for 14 Years, &c. *Vide* the Statute.

And it is enacted by the same Statute, That if any Person shall take a Reward for helping another to stolen Goods, and do not prosecute the Felon, he shall be guilty of Felony.

Dalt. 396. An Accessary to Felony, is he that is
Accessaries. not the chief Actor, but one concerned in the Felony, before the Fact; as where a Man encourages, advises, or abetts a Felony, but is absent when the Thing is done; for if he be present at the committing of the Felony, then he is Principal: Accessaries after the Fact, are those who willingly receive Felons, or relieve, assist, or aid them, knowing they have committed Felony.

Persons Buying or Receiving stol'n Goods knowingly, are Accessaries to the Felony committed. And if the Owner of stol'n Goods, after Complaint
Lamb. 285: to a Justice, shall compound with the
Felon,

Felon, or consent to his Escape, this may make him Accessary after the Fact; but if before Complaint made to a Justice, in Pursuit he retaketh his Goods, and suffereth the Felon to escape, this is a Misdemeanor only, for which he may be fined.

Accessaries to Felony, before and after the Fact, are in many Cases excluded the Benefit of Clergy.

Thus much for Felonies, &c. of all Sorts.

Now touching the Offenders, as well in Case of Treason, as in Case of Felonies, &c. there is this Difference.

IN Case of Treasons, such as desire or procure Treason to be committed, tho' they are not present at the Acting, they are principal Traitors; and so are such as receive and relieve a Traitor, knowing him to be so, after the Treason committed.

But in Case of Felony, there may be Accessaries.

As the Rescue of a Traitor from Arrest, and the wilful Escape of a Traitor is Treason; so the Rescue and Escape of a Felon is Felony.

And

And if a Man for Treason or Felony do break Prison, whether he be guilty or not, it is Treason or Felony in him that breaks the Prison.

Having now given you a brief Account of every Capital Offence, for which the Offender is to suffer Death by the Law: I shall proceed to the second main Branch of Offences: Namely,

*Offences
Fineable.*

Offences Fineable, or Contempts against the Law, for which the Offenders are not to suffer Death, but are to be punished for the most Part with Fine and Imprisonment. And these Offences are of three Kinds, either against the temporal Laws made for the Maintenance of the Honour and Service of God; or against the Crown and Dignity Royal, immediately and especially; or against the Common-wealth in general. The principal Offenders against the Temporal Laws which are in Force in this Realm, for the Maintenance of God's Holy Religion and Service; are against such as are guilty of any Immorality and Prophaneness whatsoever; and these Laws we are earnestly exhorted to put in vigorous Execution; and are these which follow:

If any Person having been educated in, or at any Time having made Profession of the Christian Religion within this Realm, shall by Writing, Printing, Teaching,

Teaching, or advisedly Speaking, deny any one of the Persons in the Holy Tri-^{Blasphemy} nity to be God, or shall assert or main-^{9 & 10. Cal. 3.} tain there are more Gods than One, or shall deny the Christian Religion to be true, or the Holy Scriptures of the Old and New Testament to be of Divine Authority, and shall be lawfully convicted thereof, by the Oath of Two credible Witnesses, such Offender shall for the first Offence, be adjudg'd incapable, and disabled in Law to all Intents and Purposes, to have or enjoy any Office or Employment, Ecclesiastical, Civil or Military whatsoever; and if at the Time of Conviction he is possesst, &c. such Office, Place, or Employment shall be void. On the second Conviction, shall be disabled to sue, prosecute, plead, or use any Action, or Information in any Court of Law or Equity; to be a Guardian, Executor or Administrator, or capable of any Legacy or Deed of Gift, or of any Office, Civil or Military, or Benefice Ecclesiastical, and shall suffer Three Years Imprisonment, without Bail, from the Time of the Conviction. And Books and Pamphlets against our Religion, as well as Libels against the Government, are also presentable and punishable.

If any Persons shall profanely swear ^{Swearing,} or curse, they are punishable by the ^{21 Jac. 1. 6 & 7 W. 3.} Laws

Laws and Statutes of the Realm ; if they are Servants, Labourers, common Soldiers, Seamen, &c. the Penalty is 1 s. for the first Offence, for the second double, and for the third Offence treble ; leviabie by Distress, by a Justice's Warrant ; and every other Person, not being a Servant, Labourer, Soldier, &c. shall forfeit for the first Offence 2 s. for the second double, and for the third treble ; to be levied by Distress ; and if there be no Distress, the Offender is to be set in the Stocks One Hour, &c. but if the Offender be under 16 Years of Age, then he is to be punished with Whipping. If a Justice of Peace neglects his Duty in putting the Laws in Execution against profane Swearers, he shall forfeit 5 l.

This Sin (which is as it were a Defiance of God) is of all others the most unaccountable, as having no Profit or Advantage attending it, which most others have for their Countenance and Encouragement.

Lord's Day.
29 Car. 2.
cap. 7.

All Laws in Force concerning the Observation of the *Lord's Day*, shall be put in Execution: This Day is by every one to be sanctified and kept holy ; and all Persons must be careful herein, to exercise themselves in the Duties of Piety and true Religion, publickly and privately ; and every one on this Day (not having

having a reasonable Excuse) must diligently resort to some publick Place, where the Service of God is exercised, or be present at some other Place (allow'd by Law) in the Practice of some Religious Duty, either of Prayer, Preaching, Reading or Expounding of the Scripture, or Conference upon the same. Now tho' his Majesty's Protestant Subjects dissenting from the Church of *England*, and qualified according to the Statute of Indulgence, are exempted from the Penalties of the Statutes, 3 *Jac.* 1 *Eliz.* 23. 29 *Eliz.* and some other Statutes. This Indulgence extends not to such prophane Persons, who nowhere attend on the publick Worship of God establish'd, or allow'd by Law; nor to any that in Preaching or Writing deny the Trinity. 1 *W. & M.*
cap. 18.

If any Person therefore (except Dissenters before mention'd) do not repair to Church on *Sundays* and *Holy Days*, he shall forfeit Twelve-pence for every *Sunday*; and Twenty Pound *per Month* by the 23 *Eliz. cap. 1.* 1 *Eliz. c. 2.*
3 *Jac. c. 4.*

If any come not to the Sacrament of the Lord's Supper once a Year, they shall forfeit Forty Shillings to such as present them. 3 *Jac. c. 4.*

None shall speak or do any thing in Contempt of the most Holy Sacrament. 1 *Ed. 6. c.*

Under

Under this Head may be included all those Laws, which are made for the Observation of the Lord's Day.

Such as meet or assemble out of their own Parish upon the Lord's Day, for any Sports or Pastimes whatsoever: Or such as shall use any unlawful Exercise or Pastime in their own Parish upon the Lord's Day, shall forfeit Three Shillings and Four Pence to the Poor for every Offence.

3 Car. c. 1. If any Butcher, or any other for him, shall kill or sell any Victuals upon the *Sunday*, he forfeits Six Shillings and Eight Pence.

1 Jac. c. 22 If any Shoemaker shall shew, with Intent to sell, any Boots, Shoes, &c. on a *Sunday*, he shall forfeit the Value of every Pair, and also Three Shillings and Four Pence for every Pair.

29 Car. 2. cap. 7. If any Person of the Age of Fourteen Years, shall on the Lord's Day, or any Part thereof, do any worldly Business, Labour or Work, &c. except Works of Necessity and Charity, he shall forfeit Five Shillings.

1514. If any Person shall cry, shew forth, or put to Sale, any Wares, Fruits, Goods, &c. (except Milk only) he shall forfeit the said Ware, Fruit, Goods, &c. to the Use of the Poor.

No Drover, Horse-courser, Waggoner, Butcher, Higler, or any of their Servants

vants shall travel or come to their Inns on the Lord's Day, under the 29 Car. 2. Penalty of Twenty Shillings for every cap. 7. Offence.

No Person shall use to travel on the Lord's Day with any Boat, Wherry, &c. unless he be licensed by a Justice, under Penalty of Five Shillings.

1 H. & M.

Whosoever shall disturb any Preacher allow'd in his open Sermon or Collation, or be procuring or abetting thereunto, he shall suffer three Months Imprisonment without Bail.

cap. 18.

Moreover, for the Honour which Men ought to bear to the Places of religious Exercises, by the ancient Statute of *Winchester*: If any Man do keep any Fair or Market in the Church-yard, he is to be punish'd with Fine and Imprisonment: Or if any Man do fight, or strike another in the Church or Church-yard, he is to be punish'd with the Loss of one of his Ears.

1 Ed. 5. c. 4.

Contempts.

Misprison:

The Contempts immediate against the Crown, are of a higher Nature, and are known by the Names of Misprison and Premunire. *Misprison* is either of Treason or Felony.

All Treason includes Misprison: The concealing of any Treason is declared Misprison only by the Statute *1 & 2 M. cap. 10.* But this is in Case of bare Knowledge

ledge

ledge; for if there be Knowledge and Assent, it is Treason.

G.P. l.c. 64. He that receives and comforts a Traitor knowingly, be it Counterfeitor of Coin, or other, is a Principal Traytor, and not only guilty of Misprision. *Abingdon's Case* against the Opinion in *Dyer* 269. *Conier's Case*.

Discovery by one of the Grand Inquest of the Persons indicted, or Evidence against them, is Misprision punishable by Fine and Imprisonment.

A Person dissuading Witnesses from bringing in Evidence against a Felon is no Accessary, but a great Misprision and punishable by Fine and Imprisonment. Reproaching a Judge, assaulting an Attorney against him, or abusing a Juror that gave Verdict against him, is great Misprision, and punishable by Fine and Imprisonment.

Rescuing a Prisoner from the Bar of *King's Bench*, *Chancery*, *Common Pleas*, or *Exchequer*, is a Misprision; for which the Offender shall lose his Hand, Goods, Profits of Lands, during Life, and suffer perpetual Imprisonment.

If a Man strike, during the Sitting of the Four Courts at *Westminster*, in Presence of the Court, the like Judgment.

By the Statute of 33 *Hen. 8. cap. 12.* Striking in the King's Presence, drawing
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ing Blood; Loss of Hand, and perpetual Imprisonment. 33 Hen. 8. cap. 12.

By the Statute of 14 *Eliz. cap. 3.* Forging of Money not current, Misprision of Treason.

A Stranger uttering false Money made within this Realm, knowing it to be Counterfeit, is Misprision, by 3 *Hen. 7. cap. 10.* 3 Hen. 7. cap. 10.

If any Bull of Reconcilement to the See of *Rome* have been offer'd to any Subject, if the Subject to whom it has been offer'd, do not reveal this Offer made unto him, within six Weeks, this is also Misprision of High-Treason, by the Statutes of 13 *Eliz. cap. 12.* and 23 *Eliz. cap. 1.* 13 Eliz. cap. 12. 23 Eliz. cap. 1.

Premunire, is properly and originally a Writ or Process of Summons, awarded against such as did bring in Bulls or Citations from the Church of *Rome*, either to obtain Ecclesiastical Benefices by way of Provision, before the same fell or become void, or to draw the King's Subjects by way of Appeal from the Justice of the Realm, to answer Suits in the Court of *Rome*.

These Acts were adjudged High Contempts against the Crown, in sundry Parliaments in the Time of *Ed. 1. Ed. 3. Ric. 2.* and a grievous Penalty inflicted against the Offenders in that Kind: Ed. 1. Ed. 3. Ric. 2. Namely, that they should forfeit all
G
their

their Lands and Goods, and be put out of the King's Protection, so as every Man might do with them, as with the Enemies of the King and this Realm.

This was the proper Case wherein the Proceſs of *Premunire* was awarded in ancient Time; but of later Years, the ſame heavy Penalty hath been impos'd by divers Acts of Parliaments in other Caſes of Contempt againſt the Crown, namely, in the Caſes following:

If any Man do wilfully and adviſedly extol the Authority or Jurisdiction of any Foreign Prelate, or Prince, within this Realm, he is in the Caſe of *Premunire*, by the Statute of 5 *Eliz. cap. 1.*

If any Man do wilfully, and adviſedly reſuſe the Oath of Supremacy, he is in the ſame Caſe, and by the ſame Statute.

If any Man, being above Eighteen Years, ſhall reſuſe to take the Oath of Allegiance, he incurreth the ſame Danger of *Premunire*, by the Statute of the 3 *Jac. cap. 4.* But now by the Statute of the firſt of *W. and M. cap. 8.* No Perſon ſhall be obliged to take the Oaths of Allegiance and Supremacy, or either of them, by Force of the Acts of 1 *Eliz.* or 3 *Jac.* or any other Statute, but new Oaths are by the ſaid Act appointed to be taken inſtead of the former.

And

And by the Statute of the first of *W. and M. cap. 18.* neither the Statutes *1 W. & M. cap. 2.* of 23 *Eliz.* the 29th of the said Queen, the 3d of King *James* nor any Statute made against Papists or Popish Recusants, shall be constru'd to extend to any Persons dissenting from the Church of *England*, that shall qualify themselves according as that Act directs.

If any Man do bring from *Rome*, any *Agnus Dei*, Crosses, hallow'd Beads, or such superstitious Trifles, and deliver the same to any of the King's Subjects; and if any Subject do receive the same, and do not apprehend the Bringer thereof, and within three Days disclose the same to the Bishop of the Diocess, or to some Justice of the Peace, he likewise is in the Case of Premunire, by *13 Eliz. cap. 2.* the Statute of 13 *Eliz. cap. 2.* and 23 *23 Eliz. cap. 1.* *Eliz. cap. 1.*

If any Man do send any Money, or other Relief, out of this Realm, unto a Jesuit or Popish Priest, such an Offender is likewise subject to the same Penalty, by the same Statute of 28 *Eliz. cap. 1.* *28 Eliz. cap. 1.*

Lastly, Whereas it was conceived, that a Man attainted upon a Premunire might be kill'd, or slain by any Man whatsoever, because by the Law he is without the King's Protection; It is provided by another Statute made in the said Queen's Reign, that it shall not be
G 2
lawful

lawful to kill or slay any Person attainted upon a Premunire under Pretence, or by Reason of any such Attainder, or by any Law, Statute, or Opinion to the contrary notwithstanding.

Contempts or Offences Fineable against the Common-wealth, are of Five Kinds.

Being either,

1. Against the *Publick Justice.*
2. Against the *Publick Peace.*
3. Against the *Publick Profit* of the King's People.
4. Against the *Publick Health*, and general *Easements*, or convenient *Recreations* and *Pleasures* of the King's Subjects. Or,
5. *Publick Nuisances*, to the Damage and Destruction of the King's Subjects.

The Offences against the Publick Justice, do tend to the Perverting or Abuse of Justice, or to the Scandal and Dishonour of Justice.

The several Kinds, are these :

Perjury.
C.P.c. 164.
5 Eliz. c. 9.

PERjury is a Crime committed, when a lawful Oath is ministred by any that hath Authority, to any Person in Judicial Proceedings, who sweareth absolutely

absolutely and falsely in a Matter material to the Issue, or Cause in Question, by their own Act, or by the Subornation of others.

Altho' by the Common-Law, Trial of Matters of Fact are by the Verdict of Twelve Men, &c. and Deposition of Witnesses is but Evidence to them; yet for that most commonly Juries are led by Deposition of Witnesses, Perjury of Witnesses was severely punish'd by the ancient Laws of this Realm; Perjury itself being forbidden by the Law of God, *Ye shall not swear by my Name falsely, neither shalt thou profane the Name of thy God. Levit. 19. 12. Thou shalt not for-^{Levit. 19.} swear thy self, but shalt perform to the^{12.} Lord thine Oath. Mat. 5. 33. The Pu-^{Mat. 5. 33.} nishment of Perjury in Jurors, for a false Verdict, was so severe by the Common Law, as few or no Juries were upon just Cause convicted.*

Which shews how odious Perjury was in the Eye of the Law, and this Law doth yet remain in Force: But a milder Punishment is set down, by the Statute 23 Hen. 8. wherein the Party griev'd hath Election to ground his Writ of Attaint upon this Statute, or take his Remedy at Common Law. By the Statute of the 5th of Eliz. c. 9. The Offender is to forfeit 20*l.* to suffer 6 Months Imprisonment without Bail, and be ever

after disabled to give Evidence in any Court of Record, until the Judgment given against him for that Offence be revers'd; and if he be not able to pay the Fine, he is to be set upon the Pillory in some Market Place, and to have both his Ears nail'd thereunto.

He that shall suborn a Witness to give Testimony in any Court of Record, concerning any Lands, Goods, Debt or Damage, shall forfeit 40*l.* and be for ever disabled to give Evidence, and be farther punish'd as in the Case before.

Bribery. Bribery is where any *Judicial Officer* shall take Gifts or Rewards to pervert Justice, or shall bribe the Grand Inquest to make favourable Presentment.

Extortion. And if any Officer, by Colour of his Office, exacteth and forceth any Man to pay any thing that is not due, or before the Time it is due, or above what is due, this is Extortion. In both which last Cases, the Offender shall be punish'd by Fine and Imprisonment, and render double to the Party griev'd.

Coroner. A Coroner is Fineable if he refuse to do his Office without Fee, when a Man is slain by Misadventure.

It were heartily to be wish'd, the Wisdom of the Parliament would think fit to review the Fees of all Courts and Officers; and that in the mean Time, the Reverend the Judges of the Law
would