
50 Part I. *Institutes of the* Book III.

B O O K III.

Of Crimes that touch the royal Authority, Government, Peace and Welfare of the Kingdom.

SUCH Crimes are chiefly these, *viz.* High Treason, and Misprision thereof; recognizing the Authority of the Pope, or any foreign Power, and disowning that of the King or Parliament; Leaf-making; Recusancy, and Non-conformity; Vagrancy; wearing unlawful Weapons; Breaches of the publick Peace; and common Nufances.

C H A P. I.

Of High Treason, and Misprision thereof.

NOW that, for improving the Union of the two Kingdoms, the Law of *England*, and no other Law, concerning High Treason, and Misprision thereof is to take Effect in *Scotland* (a), I shall treat of these Crimes according to the Law of *England*, which is in so far become the Law of *Great Britain*.

T I T.

(a) 7 A. Cap. 21. § 1.

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T I T. I.

Of High Treason.

S E C T. I.

What is High Treason, and the several Kinds of it?

TREASON (*quasi* Trahison, from the French **Trahir**, to betray) is an Act of Treachery and Infidelity against the Security of the King or Kingdom, called High Treason, from its hainous and transcendent Nature. But this Crime of various Kinds, cannot be so properly defined, as described in the following particular Instances of it.

1. It is High Treason, to compass or imagine the Death of the King, or his Royal Consort the Queen, or the Prince their eldest Son, and Heir apparent to the Crown for the Time (*a*). By the King, we are not to understand a nominal or titular King, as the Husband of a Queen regnant, nor yet a King that is dispossessed; but only the Sovereign, whether King or Queen, regnant (*b*), for the Time being, who is in actual Possession of the Crown and Kingdom, tho' not *de jure*. Because, the King in Possession, being the only Person who either doth or can administer the Laws, and secure to us all the Advantages of Government; he only can justly

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(*a*) 25 Edw. III. St. 4. Cap. 2. (*b*) 1 Mar. Sess. 2. Cap. 1.

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claim Returns of Duty, Allegiance and Subjection. The Privilege given to the Queen Consort, is not extended to a Queen Dowager, after Dissolution of her Marriage by the Demise of the King. But that conceived in Favour of the Heir apparent, belongs to the King's second Son, after the Death of the eldest, and to the eldest Son of a Queen regnant; tho' it doth not pass to any in the collateral Line, till they be declared Heirs apparent by the Parliament.

2. It is High Treason, to levy War against the King (c). Not only those who directly rebel against the Sovereign, and take up Arms in order to dethrone him, but also in many other Cases, those who in a violent and forcible Manner withstand his lawful Authority, or endeavour to reform his Government, are said to levy War against him. *V. g.* Holding out a Fort or Castle against the King's Forces, or keeping together armed Numbers of Men against his Majesty's express Command, or making an Insurrection in order to redress a publick Grievance, and attempting unwarrantably to redress it by Force, is held to be a levying War against the King: Inasmuch as such Practices are a tearing the Government out of his Majesty's Hand, and an insolent Invasion of his Prerogative, in endeavouring to do by private Authority, what he and his Judges, by Law ought to do. A bare Conspiracy to levy War, is not this Kind of high Treason, unless War be actually

(c) d. 25 Edw. III. Cap. 2.

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ally raised: Tho' it be an overt Act of another Branch of Treason, *viz.* compassing and imagining the Death of the King. But if some only of several Persons, who agreed to levy War, do actually appear in Arms; all who were in the Plot, whether they assisted in the War or not, are equally guilty of levying War, there being no Accessories in high Treason, but all being Principals who are concerned therein. And there may be a levying War, where there is no actual Fighting.

3. It is High Treason to adhere to the King's Enemies, by giving them Aid or Comfort within or without the Kingdom (*d*); or in any Officer or Soldier in the King's Army, to correspond with, or give Advice or Intelligence by Letters, Messages, Signs, Tokens or otherwise upon Land out of *Britain*, or upon Sea, to any Rebel or Enemy of his Majesty, or to treat or enter into any Condition with them, without Licence from his Majesty, or the General, Lieutenant General, or Commander in Chief (*e*). Surrendring the King's Castles or Forts to his Enemy for Reward, &c. by his Captain thereof; or the very going to, and accepting a Commission from the Enemy, and entering his Ships of War, in order to destroy the King's Ships, or lifting themselves in any Regiment belonging to the Enemy, and marching, tho' they don't come to a Battle, is adhering to the King's Enemies.

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4. Some

(*d*) d. 25 Edw. III. Cap. 2. (*e*) 7 A. Cap. 4. § 47.

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4. Some overt or open Act must be alledged in every Indictment of High Treason, consisting in the Thought and internal Purpose, as Treason in compassing the Death of the King, &c. or levying War, or adhering to the King's Enemies. Because of these Words, *and thereof be provably attainted by open Deed*, which follow and are connected to the Treasons of compassing the King's Death, levying War and adhering to his Enemies (*f*). And as these Treasons are several and distinct Treasons, one of them cannot be made an overt Act of another. Compassing the King's Death may be manifested, not only by overt Acts of a direct Conspiracy to take away his Life, as the providing Weapons, or consulting the Means to kill him; or assembling with others, and procuring them to attempt the King's Death: But also by such overt Acts as shew a Design that cannot be executed without Hazard of his Majesty's Life, as the inciting by Letters a foreign Prince to invade the Realm; the bare consulting to levy War against the King's Person; assembling together in order to imprison or depose the King, or to compel him by Force to yield to certain Demands; printing treasonable Books or Pamphlets. But Writings kept privately in one's Closet, amount not to an overt Act of high Treason: Seeing these perhaps were only writ by Way of Amusement or Diversion, or with a Design to answer them. If, or how far Words only spoken may amount to

(*f*) d. 25 Edw. III. Cap. 2.

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to an overt Act of compassing the King's Death, I shall not take upon me here to determine, there being different Opinions about that Question. Again, an Indictment for levying War, or adhering to the King's Enemies generally, without shewing some particular Instances, is not good.

5. It is High Treason to violate, *i. e.* to know carnally the Queen Consort during her Marriage with the King, or the Wife of the Sovereign's eldest Son, and Heir apparent, while she is married to the Prince (g). For Violation of the Queen Dowager, or Princess Dowager, is not high Treason; unless the Offence be committed in such a Time after the King or Prince's Death, as there is a Possibility of the Dowager's being left *enceinte*. It is also High Treason in the Wife of the King or Prince, to consent or yield to such a Thing. Again, he is guilty of High Treason who deflowers the Sovereign's eldest Daughter unmarried at the Time of the Violation (h), tho' there was an elder Daughter than her who died without Issue. Because, failing Issue male, she succeeds to the Crown.

6. It is High Treason, maliciously, advisedly and directly to maintain and affirm, by Writing or Printing, that our King is not the lawful and rightful Sovereign of these Realms, or that the Pretender (who styles himself King James the Eighth of Scotland) hath any Right

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or

(g) d. 25 Edw. III. Cap. 2. (h) Ibid.

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or Title to the Crown, or that any other Person hath Right to the same, otherwise than according to the 1 *W.* and *M.* Sess. 2. Cap. 2, 12 and 13. *W.* III. Cap. 2. and the Acts made in *Scotland* and *England* mutually for the Union of the two Kingdoms; or that the King, with Authority of Parliament, cannot limit the Crown and Succession thereto (*i*). It is also High Treason, to correspond in Person, by Letters, Messages, or otherwise with the said Pretender to the Crown, or with any Person known to be employed by him, or to remit or pay Bills of Exchange or otherwise, any Money for his Use or Service, knowing the Money to be for such Use or Service (*k*); or to endeavour advisedly or directly to hinder any Person next in Succession to the Crown for the Time being, to succeed according to the Limitation to the Protestant Line by the Statutes aforesaid (*l*).

7. It is High Treason, to kill the Lord Chancellor, Treasurer, a Justice of either Bench, Justice of Assize, or any other Justice assigned to hear and determine, sitting in Judgment in *England* (*m*); or to slay any Lord of Session or Justiciary, sitting in Judgment within *Scotland* (*n*): Because those Officers of Justice, in the Exercise of their Duty, do represent the King's Person, who, by the Coronation Oath, is bound to see Justice done.

8. It

(*i*) 6 A. Cap. 7. § 1. (*k*) 13 & 14 W. III. Cap. 3. (*l*) 1 A. Cap. 17. § 3. (*m*) d. 25 Edw. III. Cap. 2. (*n*) 7 A. Cap. 23. § 8.

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8. It is High Treason to counterfeit or forge the King's great or privy Seal (*o*), or Sign manual, or privy Signet or Seal (*p*); or to counterfeit his Majesty's Seals appointed, by the 24 Article of the Union, to be kept in *Scotland*, viz. the great Seal, privy Seal, Casset, Signet of the Justiciary Court, Quarter Seal, or Seals of Courts (*q*).

9. It is High Treason to forge the King's Coin; or to import from any foreign Nation the counterfeit Coin of this Kingdom (knowing it to be false Money) for Merchandize or making Payments (*r*), tho' such false Money be not actually paid away or merchandiz'd withal. But bringing the counterfeit Coin of this Kingdom from *Ireland*, or other Place subject to the Crown of *Britain*, is not Treason. It is also High Treason to counterfeit foreign Coin of Gold or Silver that is current here (*s*); or to import such false Money to merchandize with here (*t*). But uttering false Money here, by one who did not bring it from abroad, is not High Treason. It is High Treason, for Gain to clip, wash, round or file (*u*), or any way impair, diminish, falsify, scale or lighten the proper Coin of this Kingdom, or any foreign Coin current here (*x*); or for any Person (except such as are employed in the Mint) knowingly

(*o*) d. 25 Edw. III. Cap. 2. (*p*) 1 M. Seff. 2. Cap. 6. (*q*) 7 A. Cap. 21. § 9. (*r*) d. 25 Edw. III. Cap. 2. (*s*) 1 M. Seff. 2. Cap. 6. (*t*) 1 & 2 Ph. & M. Cap. 11. (*u*) 5 Eliz. Cap. 11. (*x*) 18 Eliz. Cap. 1.

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ingly to make or mend, or assist in the making or mending of, any Punchion, Counter-punchion, Matrix, Stamp, Die, Pattern or Mould, whereby the Figure, Stamp or Similitude of both, or either Side of current Gold or Silver Coin shall be made; or to make or mend, or assist in the making or mending of any Edge for rounding the Edges of Money, with Letters, Grainings or other Marks, like those on the Edges of the King's Coin, or any Prefs for Coinage; or Instrument for cutting Blanks of Metal, or to mark the Edges of any of the current Coin, or diminished Coin of this Kingdom, or any counterfeit Coin resembling it, with Letters, Grainings or other Marks like those on the Edges of Money coined in the King's Mint. It is also High Treason for any Person to colour, gild, or case over with Gold or Silver, or any Wash or Materials producing the Colour of Gold or Silver, any Coin resembling the current Coin of this Kingdom, or any round Blanks of base Metal or course Gold or Silver of the Size of milled Money, or to gild over Silver Blanks to be coined into Pieces resembling the current Coin of this Kingdom. It is also High Treason, knowingly to buy, sell, hide or conceal, or to have in his House or Possession, without lawful Authority or Excuse, any of the Tools or Instruments before-mentioned; or to convey or assist to convey out of any of the King's Mints, any of the said or other Tools, Instruments or Engines used about
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coining Money, or any useful Part of such Instruments, or to receive, hide or conceal the same(y).

10. For preserving the Sovereign, and the Dignity of the imperial Crown from Danger, by lawless Incroachment and Usurpation of the Pope of *Rome*, and the tampering of his cunning Agents and Missionaries ; it is High Treason to execute or publish, within his Majesty's Dominions, any Bull or Instrument obtained from the Bishop or See of *Rome* ; or to promise, or willingly accept of, Absolution from thence (z); or to withdraw any from the Protestant to the *Romish* Religion, or move them to promise Obedience to the See of *Rome*, or any other Prince, State or Potentate ; or for any to be so seduced from their natural Obedience to his Majesty (aa). Absolving or withdrawing any from their natural Obedience to the Sovereign, or reconciling them to the Pope, or the being so withdrawn or reconciled either on the Sea or beyond Sea, or within any of his Majesty's Dominions, is High Treason. But such as are guilty only of being reconciled to the Pope, are free by returning into the Realm, and taking the Oaths of the Government within Six Days after their Return (bb). A Jesuit, seminary Priest or other Popish Ecclesiastick in Orders, who is a native Subject to the King, coming into, or remaining in the Realm, and not submitting to some Bishop or Justice of Peace, with-

(y) 8 & 9 W. III. Cap. 25. junct. 7 A. Cap. 25. (z) 13 Eliz. Cap. 2. (aa) 23 Eliz. Cap. 1. (bb) 3 Jam. I. Cap. 4.

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within Three Days, and taking the Oaths, &c. is guilty of high Treason. And any Student in a Popish College, or Seminary beyond Sea, not returning into the Realm within Six Months after Proclamation made in *London* for that Effect, and submitting to take the Oaths, is also guilty of High Treason (cc).

I I. High Treason is incurred by the aggravating Circumstance of Relapsing, after a former Conviction, into Crimes which of their own Nature are not treasonable. Thus, it is high Treason to maintain or defend advisedly a second Time by Writing, Cyphering, Printing, Teaching, Preaching, the Authority, Jurisdiction and Power of the Bishop or See of *Rome*, within any of the King's Dominions; or to abet, procure, assist or advise the maintaining or defending of it (dd).

S E C T. II.

The distinguishing Severities used towards those who are guilty of High Treason.

I. HIGH Treason is not bailable (a). Standing mute upon an Arraignment for this Crime, is equivalent to a Conviction by Verdict or Confession, and consequently subjects the Criminal to the same Kind of Judgment and Execution, as such a Conviction would do.
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(cc) 27 Eliz. Cap. 2. (dd) 5 Eliz. Cap. 10. (a) 3 Edw. 1. Cap. 15.

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An Alien or Stranger indicted of high Treason, is not allowed the Advantage of Trial *per medietatem linguæ*, that is, by a Jury, whereof the one Half consists of Natives, and the other of Strangers or Aliens; which Strangers may, by the Law of *England*, in their Trial for other Crimes, pray the Court to allow them, and get. Nor are there in high Treason any Accessories, but all are Principals, who contribute towards it, by Action or Approbation: And whatever makes an Accessory in Felony, makes a Principal in Treason.

2. Altho' some High Treasons be more heinous and odious than others, yet the Judgment upon a Man, whether Peer or Commoner, in all Cases of High Treason, not relating to the Coin, is the same, and given thus: *You A. B. are to be led to the Goal from whence you came, and from thence you are to be drawn upon a Hurdle to the Place of Execution, and there you are to be hanged by the Neck, and being alive, to be cut down, and your privy Members to be cut off, and your Bowels to be taken out of your Belly, and there burnt, you being alive; and your Head to be cut off, and your Body to be divided in four Quarters, and your Head and Quarters disposed of where his Majesty shall think fit.* And the LORD be merciful to your Soul. But when such a terrible Sentence of the Law is given against a Peer, the King usually remits the most ignominious and painful Parts of it, and pardons all of them except Beheading, which is a Part of the Judgment.

This

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This Judgment implies, tho' not expressed, that;
1mo. The Delinquent shall forfeit to the King
 all his Lands, Tenements, and Hereditaments,
 in Fie simple, or Fie Tail, Conditions, Entries,
 &c. (not Right of Actions) which he had at
 the Time of the Treason committed; or after-
 wards, the Rights of all others than the Offen-
 der and his Heirs being saved (*b*). 2. His
 Wife shall lose her Dower, (not her Jointure.)
 3. His Blood shall be corrupted, by becoming
 base as to his Birth, and he can neither inherit
 as Heir to any Ancestor, nor have an Heir. 4.
 All his Goods and Chattels are forfeited from
 the Time of the Conviction. But any Person
 married and seised before the first of *July 1709.*
 of any Estate Tail in *Scotland*, affected with ir-
 ritant or resolute and prohibitory Clauses,
 committing high Treason, while he hath Issue
 of that Marriage, living, or a Possibility of such
 Issue, forfeits, upon his Attainder, the said E-
 state during his own Life only. And after De-
 cease of the Pretender, no Attainder for High
 Treason shall disinherit any Heir, nor prejudice
 the Right or Title of any other Person, than
 the Offender during his natural Life (*c*).

3 Judgment against a Man in Cases of high
 Treason relating to the Coin, is given thus:
*You C. D. are to be led to the Goal from whence
 you came, and from thence you are to be drawn upon*

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(*b*) 25 Edw. III. St. 5. Cap. 2. 26 H. VIII. Cap. 13. § 4.
 33 H. VIII. Cap. 20. § 5 & 6 Edw. VI. Cap. 11. § 5. (*c*) 7 A.
 Cap. 21. Vid. 1. Geo. I. Cap. 20. § 5.

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a Hurdle to the Place of Execution, and there you are to be hanged by your Neck, until you be dead. The Person attainted of this Kind of high Treason, doth forfeit his real and personal Estate; but neither doth his Wife lose her Dower, nor doth it work Corruption of the Blood (*d*).

4. Judgment against a Woman in all Cases of high Treason, is given thus: *You E. F. are to be led to the Goal from whence you came, and from thence you are to be drawn upon a Hurdle to the Place of Execution, and there you are to be burned with Fire until you be dead.* But the Judgment is usually mitigated in the Execution, by strangling the condemned Woman at the Stake before the Fire takes hold of her.

T I T. II.

Concerning Misprison of High Treason.

1. **M**isprison in a large Sense is applied to all such high Offences as are under the Degree of capital, and nearly border upon it. 'Tis either negative and passive, consisting in the Omission of some Thing that ought to be done; or positive and active, that consists in some Misdemeanour actually committed.

2. Negative Misprison of High Treason, is, an Offence consisting in the bare Knowledge and Concealment of High Treason, without any Degree

(*d*) 5 Eliz. Cap. 11. 18 Eliz. Cap. 1, 8 & 9 W. III. Cap. 25. junct. 7 A. Cap. 25.

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Degree of Assent thereto. For the Term *Misprision* from the *French* Word *Mespris*, doth properly signify a Neglect or Oversight. To make one guilty of this negative Misprision of high Treason, by not discovering it, he must know the Traitors, or some of them, and know the Particulars of their Design: For one who is only told in general, that there will be a Rising, without knowing any of the Persons, or what they design, is not bound to make any Discovery at all. A Person, who has Knowledge of a Treason, is not secure from the Guilt of Misprision thereof, by discovering in general, that there will be a Rising in Arms, unless he disclose the Plot and Plotters; nor even by a full Discovery of these to a private Person, who is no Magistrate, or hath no Authority to take Examinations. If the Concealment of High Treason be accompanied with any Circumstances which shew an Approbation thereof, it amounts to High Treason.

3. Under active or positive Misprision of high Treason, is comprehended the forging foreign Coin of Gold or Silver, not current within the Kingdom; or the procuring, aiding and abetting the Offence (a).

4. One guilty of Misprision of high Treason, is adjudged to suffer Imprisonment while he lives, and to forfeit all his Goods, and the Profits of his Lands during his Life.

C H A P.

(a) 14 Eliz. Cap. 3.

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C H A P. II.

*Recognizing the Authority of the Pope,
or any foreign Power; and disowning
that of the King, or Parliament.*

I. **A**LL Subjects are ordained to live and be governed by the King's Laws, and by no Laws of other Countries (*a*). All Jurisdictions not authorized by King and Parliament are discharged, and the Exercisers and Obeyers thereof declared punishable, as Usurpers of his Majesty's Authority (*b*). All Application to the *Pope*, for Title or Right to any Thing in *Scotland*, is discharged under the pains of Baratry, that is, Banishment and Incapacity of Honour or Office (*c*). And all Appeals to *Rome* are forbidden (*d*). Notaries are not to be made by the Emperor's Authority, but only by that of the King (*e*).

2. Any Person who maliciously and directly by Preaching, Teaching, or advised Speaking, impugns the King's Title to the Crown, or asserts any pretended Right thereto, otherwise than according to the 1 *W.* and *M.* Sess. 2. *Cap.* 2, 12 and 13. *W.* III. *Cap.* 2. and the Acts made in *Scotland* and *England* mutual-
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(*a*) Act 48. Par. 3; Jam. I. Act 79. Par. 6. Jam. IV. (*b*) Act 131. Par. 8. Jam. VI. (*c*) Act 2. Par. 1. Jam. VI. (*d*) Act 215. Par. 7. Jam. VI. (*e*) Act 31. Par. 5. Jam. III.

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ly for the Union of the two Kingdoms; or that the King and Parliament cannot limit the Crown and Succession thereto; incurs a *præmunire* (*f*). Which is punishable by being put out of the King's Protection, Forfeiture of Lands, Tenements, Goods and Chattels to his Majesty, and Imprisonment during the King's Pleasure (*g*): Provided Information of such Words be given upon Oath, before one or more Justices of Peace, within three Days after they were spoken; and the Offence be prosecuted within three Months after the Information, and the Person be convicted by the Oaths of two credible Witnesses (*h*).

C H A P. III.

Of Leasing-making.

I. **L**EASING-MAKERS, and Tellers of Leasings (*i. e.* Lies) whether to the King of his Subjects, or to the Subjects of his Majesty, to the engendering of Discord betwixt the King and his People (*a*); or the depraving of his Majesty's Laws, or misconstruing his Proceedings (*b*), thereby to reproach the King or his Government; or the uttering slanderous Speeches to the Dishonour or Hurt of his Majesty, his Parents or Progenitors; or the Hearers, who did not apprehend such Offenders, if in their
Power

(*f*) 6 A. Cap. 7. § 2. (*g*) 16 R. II. Cap. 5. (*h*) 6 A. Cap. 7. § 3.

(*a*) Act 43. Par. 2. Jam. I. junct. Act 83. Par. 6. Jam. V.
(*b*) Act 19. Part 10. Jam. VI.

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Power ; or the Concealers, and not Revealers of them (*c*), were formerly punished with Death, and Escheat of Moveables to the Sovereign. But now Leasing-makers and Tellers, and Depravers of the King's Laws, or who misconstrue his Majesty's Proceedings, are liable only to an arbitrary Punishment by Fining, Imprisonment, Banishment, or, if they be poor, by corporal Punishment, not extending to Life or Limb (*d*).

2. Leasing-makers, and Tellers of Leasings to the King of his Subjects, are punishable, albeit the Subjects do not complain. It doth not excuse the Crime of Depraving his Majesty's Laws, or Misconstruing his Proceedings, that the same is done by Way of humble Petition to the King himself, wherein Reasons are offered for dissenting from them. Because, private Persons ought not to meddle in Matters of Government without their Sphere: And if a Libel, of its own Nature scandalous and seditious, could be excused under the Vail or Pretext of a Supplication, the Law might easily be disappointed, by conceiving such in the Strain of a Mock-petition. Nor is it necessary to prove, that the Offender did so, with an evil Design against the Government, which is gathered from the Effect. But a Preacher, who, in a Sermon, after King *James VII's*. general Indulgence, allowing every one the free Exercise

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(*c*) Act 134. Par. 8. junct. Act 205. Par. 14. Jam. VI. (*d*) Act 4. Sess. 1. Par. Q. A.

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cise of his Religion according to his own Profession, told his Hearers, *That they ought to be sorry, that others than they did enjoy that Freedom, and that no true Presbyterian would consent to allow Liberty of Conscience to those of any other Perswasion*; was not found guilty of Leasing-making. Because the Expressions libelled did not properly concern the State or Government, but Religion, importing only that the Preacher wished to see all Men of his Religion: And the Authors of Books printed for Toleration, when disallowed by Authority, or against it when allowed, were never quarrelled as acting against the Government, these being lookt upon as problematick Opinions.

C H A P. IV.

Of Recusancy.

RECUSANCY, in the proper Sense, is a Dissent from the established Church by *Roman* Catholicks, who own the *Pope* as supreme Head of the Church, and are called *Recusants*. Since the Reformation, our Law-givers, fearing the Pains taken by those of the *Romish* Church to imbroid us, more than any Danger from other Hereticks; have used exemplary Severity towards them, and taken Care to root all Dregs of Popery out of *Scotland*, and prevent its rising again, to endanger the Government.

s. *Papists,*

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1. Papists, or Persons suspected to be such, are put to the Test of publick Oaths. One reputed a Priest, Jesuit, or trafficking Papist, or who hath changed his Name, or goes under another Name, or who is found in any Meeting, where there is either Altar, Mass-book, or Vestments, or Popish Images, or other Trinkets of Superstition, may, if he refuse the *Formula* of Purgation from Popery, be banished, never to return a Papist, upon pain of Death (a). Such as refuse to communicate once a Year, when lawfully required to do it by their Pastor, may be fined according to their Quality (b).

2. They are put under many civil Incapacities. All Papists or Persons marrying Papists, are excluded from inheriting or enjoying the Crown of *Great Britain*, which, as if these were naturally dead, descends to the next Protestant Heir (c). They are farther, not only incapable of Offices and Places of Trust and Preferment in the State: But also all Papists, or those suspected to be such, cannot, till they purge themselves by taking the *Formula*, be Tutors, or Curators, Schoolmasters, Teachers of any Science, Art or Exercise, Governors, Chaplains, Pedagogues, Chamberlains or Factors; and none dare employ them in such Trusts, under the pain of a Year's valued Rent, or 1000 Merks, if the valued Rent be less, or the

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(a) A& 3. Sess. 8 and 9. Par. K. W. (b) A& 17. Par. 16. Jam. VI. (c) Art. 2. of the Union.

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the Employer no Heritor, *toties quoties*; nor can a Protestant take a *Roman* Catholick for his domestick Servant, under the pain of 500 Merks: Which Pains of a Year's valued Rent, 1000 Merks or 500 Merks, belong as a Reward to the Pursuer, if a Protestant (*d*). Popish Masters must allow their Protestant Servants free Liberty to attend divine Worship and Catechizing, under the pain of 100 Pounds; which Servants, for not using that Liberty, are to be banished the Parish: And a Protestant Servant turning *Roman* Catholick in a popish Family, is punishable as an Apostate, and the Master, when required, obliged to put him away, never more to be received by him, or any popish Master, under the pain of 100 Lib. (*e*).

3. They are subjected to several penal Laws. The Users of superstitious Popish Rites, are fined according to their Quality (*f*). Hearers and Sayers of Mass, and Concealers of the same, are liable to the pain of Death, and Confiscation of Moveables (*g*). Jesuits, Priests, and trafficking Papists are ordained to remove out of *Scotland* upon pain of Death (*h*). Refetters of them are fineable according to their Quality (*i*). The Seizer of any such Priest or Trafficker, or of their Refetters, or of any Person

(*d*) Act 8. Par. 1. Sess. 1. Ch. II. junct. Act 3. Sess. 8 and 9. Par. K. W. (*e*) Act 28. Sess. 6. Par. K. W. (*f*) Act 104. Par. 7. Jam. VI. (*g*) Act 193. Par. 14. junct. Act 1. Par. 19. and Act 50. Par. 20. Jam. VI. (*h*) Act 8. Par. 1. Sess. 1. Ch. II. (*i*) Act 18. Par. 16. Jam. VI.

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Person banished for not taking the *Formula* of Purgation from Popery, are entitled to a Reward of 500 Merks from the Treasury (*k*). Who perverts a Protestant Subject to Popery, is proceeded against, as a trafficking Papist (*l*). The Lords of Justiciary may try and punish Jesuits, Priests, and trafficking Papists (*m*).

4. Papists ly under other legal Discouragements. They are not allowed to have the Education of their own Children (*n*): But the same may be claimed by their Protestant Relations; and, in case of his Omission to do it, the King's Advocate or Solicitor may, without his Concurrence, pursue to have their Education committed to the Protestant: The Lords of Session may modify an Aliment to such Children, out of their own, or the Parents Means (*o*): Papists cannot wrong their Protestant Heirs, by any gratuitous Deeds (*p*); which can affect only the Granter's own Person and Moveables. They are incapable to receive any Dispositions in their Favour, or to succeed as Heirs, or by other Conveyance from Persons they might be Heirs to, without purging themselves of Popery; and, in case of their failing to do so, the Succession falls to the next Protestant Heirs, Deeds in Favour of Cloisters, or other Popish Societies, are void, and accrue

E 4 to

(*k*) Act 3. Sess. 8 & 9. Parl. K. W. (*l*) Act 28. Sess. 6. Parl. K. W. (*m*) 12 A. Sess. 2. Cap. 14. § 12. (*n*) Act 8. Parl. 1. Sess. 1. Ch. 11. (*o*) Act 3. Sess. 8 & 9. Parl. K. W. (*p*) Act 26. Sess. 5. Parl. K. W.

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to the Granter's next Protestant Heir. No Adjudication or other Diligence is competent to a Papist, upon any gratuitous Bond or Deed: Nor can any Adjudication expire in his Person; but an Adjudication coming from a Papist into the Person of a Protestant, after the Legal is run, expires after Year and Day. A Protestant turning Papist by Profession, or Practice, forfeits his Estate immediately to his next Protestant Heir, as if he were dead (q).

C H A P. V.

Of Non-conformity.

NON-CONFORMITY is a Protestant Dissent from the established Church, upon the Account of its Discipline and Government, by Persons called Dissenters or Non-conformists. When Prelacy swayed in our Church, those of the Presbyterian Perswasion were Dissenters. But now when the Government of the Church is settled in the Hands of Presbyterian Ministers and Elders; Persons of the Episcopal Perswasion are become Dissenters and Non-conformists. There is also another Kind of Dissenters in *Scotland*, called *Quakers*,

T I T.

(q) d. AG 1.

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T I T. I.

Concerning Non-conformists of the Episcopal Clergy.

1. **E**PISCOPAL Assemblies for divine Worship to be performed by Pastors ordained by Protestant Bishops, are allowed to be kept in any Place with open Doors, except in the parish Churches, and such as disturb them are punishable: Provided such Pastors have first caused register their Letters of Orders in the Quarter Sessions of the Justices of Peace, held in the Place where the Episcopal Congregation meets; and Persons frequenting these Episcopal Meetings be not exempted from paying Tithes, and other Church-duties to the Minister of the Parish they belong to. Such Episcopal Ministers are tolerated not only to preach, and pray, but also to administer the Sacraments and marry: Provided that Parents, who have Children baptized by them, do cause Entry to be made of their Birth in the Register Books of the Parish where they reside; and that no Episcopal Minister do marry any save those whose Banns have been published three Sundays in the Episcopal Congregations frequented by the two Parties, and in the Churches they belong to as Parishioners by virtue of their Residence, or at least in the Episcopal Congregation, if the Minister of the Parish neglect or refuse to publish such Banns (a).

2. To

(a) 19 A. Cap. 7.

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2. To keep Nonconformists of the Episcopal Perswasion in good Order, any Minister or Preacher, intruding into a Church, Manse or Benefice in any Parish, without a lawful Call from the Parish, and Admission of the Presbytery, is, upon Complaint of the Presbytery, to be removed, and declared incapable of enjoying Church, or Stipend, or Benefice in *Scotland*, for the Space of seven Years after his Removal by any ordinary Judge or Magistrate (*b*). Any who oppose, by Rabbling, Tumult or Violence, a Minister sent to supply the Vacancy of, or exercise the Ministry in, any Parish, are liable to a Fine of 100 Pounds *Sterling*, if an Heritor or Liferenter, and of 50 Merks, if an unlanded Person, *toties quoties*, or to corporal Punishment. An Heritor or Liferenter, in whose Bounds any such Rabblers reside, failing to produce them, upon Intimation, by the injured Minister, or the Presbytery, or suffering them to haunt openly within his Bounds, for the Space of twenty Days, he is punishable as Art and Part of their Offence (*c*).

3. If Ministers of Episcopal Congregations, do not, in Time of divine Service, pray in express Words for the King and Queen and the Royal Family, they forfeit, for the first Omission, 20 Pounds *Sterling*, Half to the Informer, Half to the Poor in the Parish where the
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(*b*) Act 22. Sess. 5. Parl. K. W. (*c*) Act 2. Sess. 7. Parl. K. W.

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Offence was done ; and for the second Offence, upon Conviction before the Lords of Justiciary, lose the Benefit of Toleration, and are incapable for three Years to officiate in any Episcopal Congregation : And these Penalties must be prosecuted within two Months after the Offence (*d*). Where a Minister of any Episcopal Congregation is convicted of exercising any Part of the ministerial Function there, without having taken the Oaths of Allegiance and Abjuration, he is disabled to sue or use any Action, Bill, Plaint or Information in the Course of Law, or to prosecute any Suit in any Court of Equity, or to be Guardian of any Child, or Executor or Administrator of any Person, or capable of any Legacy or Deed of Gift, or to be in any Office ; and also forfeits the Sum of 500 Pounds *Sterling* to be recovered by the Prosecutor (*e*). Yea, if any Person presume to preach, or perform any Part of divine Service in any Episcopal Meeting-house, or Congregation where the Number of nine or more Persons are present over and besides those of the same Household, or to supply the Place of any Pastor in an Episcopal Congregation, without praying in express Words for the King and Queen and Royal Family, or without having taken the Oath of Abjuration, he is liable to six Months Imprisonment, and the Meeting-house,

(*d*) 10 A. Cap. 7. § 11 & 12. (*e*) Ibid. § 3. junct. 6 A. Cap. 14. and 13 & 14 W. III. Cap. 6.

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house, where such Offence was given, is to be shut up for six Months (f).

T I T. II.

Of Quakers.

QUAKERS who scruple to take any Oath, are now exempted from all Swearing, and required only to subscribe the Declaration in 30 *Car. II. Cap. 1.* and a Declaration of Fidelity and Loyalty to the King, and also a Profession of their Belief of the Trinity, and that the holy Scriptures of the Old and New Testament are given by divine Inspiration (a). Instead of the Form of the Abjuration Oath, they are allowed to take the Effect thereof in certain Words (b). No more is required of them when they give Evidence in civil Cases, than *solemnly, sincerely and truly to declare and affirm,* which is accepted for a judicial Oath, without mentioning these Words, *By God himself, and as I shall answer to God at the great Day,* or these Words in the first Quaker-formula, *In the Presence of Almighty God, the Witness of what I say* (c). But then they are not permitted to give Evidence in any criminal Cause, or to serve on Juries, or to bear any Office or Place of Profit in the Government. And if their solemn Affir-

(f) 5 *Geo. I. Cap. 29. § 3 & 4.*

(a) 1 *W & M. Cap. 18. § 13. junct. 8 Geo. I. Cap. 6.*

(b) *Ibid. (c) 7 & 8. W. III. Cap. 34. 1 Geo. I. Cap. 6. junct. 8 Geo. I. Cap. 6.*

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Affirmation be false, they are punished as in the Case of Perjury (*d*).

CHAP. VI.

Of Vagrancy.

1. **V**AGRANCY is, that Wandring or Rambling, and idle Course of Life led by Vagabonds, sturdy Beggars and that stroling Crew, called *Egyptians*, or *Gypsies*, who commonly go with blackned Faces, speak an unknown Gibberish or canting Language, and, under Pretence of telling Fortunes, curing Diseases, &c. abuse the common People, tricking them of their Money, and stealing all they can get into their Hands.

2. Many good Laws have been made for restraining and punishing such Rogues. Beggars betwixt fourteen and sixty Years, particularly Thiggers and gentle Beggars, wanting a Token of their being unable to win their Living, from the Sheriff in Landward, and the Bailies in Burghs, are to be burnt in the Cheek and banished (*a*). None were to be licensed to beg, except crooked, or sick, or impotent Folks (*b*), and these only in the Parish where they were born (*c*). Sheriffs and other Judges may require Surety from Vagabonds and unanswerable Men,

(*d*) 7 & 8 W. III. Cap. 34. 1 Geo. I. Cap. 6. junct. 8 Geo. I. Cap. 6.

(*a*) Act 25. Parl. 5. Act 47. Parl. 2. Jam. I. (*b*) Act 70. Parl. 6. Jam. IV. (*c*) Act 22. Parl. 4. Jam. V.

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Men, who, for not finding it, may be denounced Fugitives, and pursued with such as reset them thereafter, till they are brought to condign Punishment. Persons injured by such, have Action against Magistrates or others within whose Bounds or Jurisdiction, these Vagabonds are wittingly reset with stolen Goods (d). Vagabonds and strong idle Beggars should be searched for, taken and brought before the Judge ordinary, and by him committed to Prison or Irons without Bail, upon the common Charge of the Parish where they were apprehended, till tried by an Assize within six Days after: And, if convicted, should be scourged or burnt thro' the Ear with a hot Iron, unless a responsible Man do presently enact himself before the Judge, to take and keep the Offender in his Service a whole Year ensuing, under the Pain of 20 Pounds to the Poors Use, and, at the Year's End to present him to the Head Court of the Jurisdiction, or give Proof of his Death. If such Offender do, against his Master's Will, desert his Service within the Year, he may be adjudged, when apprehended, to the same Punishment his Master redeemed him from. If, at the End of 60 Days after receiving such Punishment, he fall again to his idle and vagabond Trade of Life, he may, when apprehended, be put to suffer the Pains of Death as a Thief. The Obstructors of Execution

(d) Act 97. Parl. 11. Jam. VI.

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tion against Vagabonds, are to be treated as such (*e*).

3. Egyptians, Jugglers, Pretenders to the Knowledge of Charming, Prophefying, Fortune-telling, masterless Sangsters, or Minstrels, Persons using counterfeit Licences to beg, vagrant poor Scholars, and Mariners pretending to have suffered Shipwrack, without Testimonials, were reckoned and dealt with formerly as strong Beggars and Vagabonds, and the Reseters of such liable to a Fine for the Poors Use, not exceeding five Pounds (*f*). But now Egyptians are banished out of *Scotland*, never to return upon pain of Death to be executed upon them as notorious Thieves. And such as reset them are punished with the Loss of Escheat, and Imprisonment during the Judge's Pleasure (*g*).

4. The being Vagabonds, and having no settled Residence, nor honest and visible Way of living, is relevant to infer an arbitrary Punishment. And it is not sustained as a Defence for such, that they are itinerant Brasiers or Tinkers. The being commonly known, held and reputed to be Egyptians, is relevant to infer the Pain of Death (*b*). But Persons indicted upon that Head, have been allowed to produce what Evidence they could to prove themselves to be reputed honest Men, of no bad Character; that the
Jury

(*e*) Act 74. Parl. 6. Jam. VI. Act 16. Parl. 1. Sess. 3. Ch. II.
 (*f*) d. Act 74. (*g*) Act 13. Parl. 20. Jam. VI. (*b*) Ibid.

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Jury might be the better able to determine, whether they are truly known, held and reputed to be Egyptians. For proving that Persons are known, held and reputed Egyptians, our Law, besides the common Topicks of Notoriety, holds it sufficient, that they call themselves Egyptians, or ramble up and down the Country with besmeared Faces, telling Fortunes, and speaking Gibberish peculiar to that counterfeit Kind of Rogues. And such Persons are ordinarily put upon their Jury, as know their Character and Reputation in the World.

C H A P. VII.

The Wearing unlawful Weapons.

THE Lawfulness of bearing Arms in several Countries is regulated by their respective Municipal Laws. Bearing and Shooting with Culverings, Hagbuts, Pistols and other Fire-works, without a Licence from the King, was discharged, upon pain of losing the right Hand (*a*), and Confiscation of Moveables (*b*); tho no Violence were committed; And Offenders might have been convicted upon Proof by Witnesses, or Oath of Party (*c*). But Men were allowed to shoot with or wear Guns within their inner Clots for Pastime, or at Sea, or at Weapon-shawings, or in going to, or returning from them, or in the

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(*a*) Act 18. Parl. 1. Jam. VI. (*b*) Act 248. Parl. 15. Jam. VI.
 (*c*) Act 6. Parl. 16. Jam. VI.

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Detence against, or Pursuit of Thieves (*d*).
 The long prevailing Custom of the Highlands in *Scotland* of using and bearing Arms when they travel, having greatly obstructed the civilizing that People, and been the Cause of many Riots, Robberies, and even of Rebellion, and tended to disappoint the Execution of the Law; we have now Acts of Parliament for the effectual disarming Persons within the Shires of *Dumbarton* on the north Side of the Water of *Forth*, *Perth*, *Kincardin*, *Aberdeen*, *Inverness*, *Nairn*, *Cromerty*, *Argyle*, *Forfar*, *Bamff*, *Sutherland*, *Cathness*, *Elgin*, and *Ross*: With some Exceptions of Peers, or their Sons, Officers employed in the Execution of Justice, or their Assistants, Commission-officers of the Army, and Soldiers under Command, Commoners qualified to vote at Elections of Parliament-men, Magistrates of Burghs royal, Lieutenants of Counties, their Deputies, and the Militia or fencible Men under their Command when called out by lawful Authority (*e*).

CHAP. VIII.

Breaches of the publick Peace.

OUR Law-givers have made careful Provision both for preventing Breaches of the Peace, and for punishing the Peace-breakers.

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(*d*) Act 18. Parl. 1. Act 123. Parl. 7. Jam. VI. (*e*) 1 Geo. 2. Cap. 54. & 11 Geo. 1. Cap. 25.

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T I T. I.

Of the legal Precautions used for preventing Breaches of the Peace.

THese are Caution of Lawborrows, and Surety of the Peace, and for the good Behaviour.

S E C T. I.

Concerning Caution of Lawborrows.

• CAUTION of Lawborrows imports Surety according to Law: From Law, and Borrow or Burgh, Caution. Any Person, upon a common Bill presented to the Ordinary upon the Bills in the Court of Session, mentioning, that he justly fears bodily Harm from others, may obtain Letters of Lawborrows to charge those complained of to find Caution, that the Complainer, his Wife, Children, Tenants and Servants, shall be harmless, skaithless, and unmolested in their Bodies, Lands, Possessions, Goods and Gear, directly or indirectly, otherwise than by Law, and Justice (a), under the Pain of 2000 Pounds for a Peer, 1000 Pounds for a great Baron, 1000 Merks for a Free-holder, (or a Burghess having Land holden Burgage) 500 Merks for a Feuar, (or one holding Feu of a Burgh)

(a) Act 117. Parl. 7. Jam. VI.

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Burgh) 200 Merks for an unlanded Gentleman,
(or a Burghess without Land) and 100 Merks
for a Yeoman (b). Which Penalties are deter-
mined according to the Quality of the Person
charged to find Surety. The criminal Court
also exact Caution of Lawborrows in Proceses
before them. But tho' these aforefaid be the
legal Pains of Lawborrows in ordinary civil
Cases; yet in criminal Cases, because of the
Importance and Danger thereof, it is left to the
Discretion of the Judges, to cause Persons find
Caution of Lawborrows under what Penalty
they please.

S E C T. II.

*Concerning Surety of the Peace, and for the good Be-
haviour.*

1. S U R E T Y for keeping the Peace, dif-
fers from Surety for the good Behaviour, in
that the later includes the former, and some-
thing more. Any Justice of Peace may, either
ex officio, of his own proper Motion, or at the
Request of another, bind Persons to the Peace
or good Behaviour: Sometimes by Word of
Mouth, as when the Person to be bound is pre-
sent; sometimes by a Warrant or Precept in
Writ, shewing the Cause, why, and at whose
Suit it is granted, directed to Constables, or a-
ny indifferent Man, to bring a Person absent
F 2 before

(b) Act 166, Parl. 13. Jam. VI.

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before himself, or before any of his Fellow-justices of Peace, to find Surety for the Peace or good Behaviour, and, if he refuse so to do, to commit him to Prison. When a Person, against whom a Precept to find Surety for the Peace is awarded, comes before the Justice of Peace, he is caused give a Bond or Obligation with Sureties for keeping the Peace, &c. called a *Recognizance*, from the *French* *Reconnoissance*, an Acknowledgment. The Granter of such Bond is called the *Recognisor*, and he to whom it is granted *Recognisee*. It is in the Discretion of the Justice of Peace, to determine the Number and Sufficiency of the Sureties, the Largeness of the Sum for which they are to bind, and how long they are to stand bound. If the Surety given for keeping the Peace, be found insufficient, he may require and compel to give better; but cannot put any to give new Surety, upon the Death of the former. The Bond given for keeping the Peace must be certified, sent or brought to the next Sessions of the Peace, and if the Recognisor fail to appear there, his Default is recorded (a).

2. A Justice of Peace may, *ex officio*, bind all those to the Peace, who are like to break it, or do what hath a probable Tendency to a Breach thereof. He may, at the Request of any Person under the King's Protection, whether Native or Alien, grant the Peace against any Person found in Mind, under the Degree of

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(a) 3 H. VII, Cap. 7.

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Nobility, whether he be of full Age, or under Age, and whether he be a Magistrate or private Person; nay, may grant it even against his own Wife. A Wife may demand it against her Husband, threatening to beat her outrageously, and a Husband may have it against his Wife. When the Peace is granted at the Suit of another, the Justice must take that other's Oath, that he is actually, and has just Cause to be, under Fear, that the Person from whom he demands the Peace, will do, or cause others do him bodily Harm, or burn his House, &c. Any Justice of Peace hath a discretionary Power to bind to the good Behaviour, such as are guilty or like to be guilty of any Misbehaviour. But that is mostly done in open Sessions, or by two or three Justices of Peace. And tho' if a Justice of Peace give just Ground to any Person to demand the Surety of the Peace against him, he may be compelled by any other Justice to find such Security, the publick Peace requiring an immediate Remedy in all such Cases: Yet if one Justice of Peace at the Sessions of the Peace, shall use such Expressions towards another, for which, if he were a private Person, he might be committed or bound to his good Behaviour; the Sessions have no Authority to commit him, or bind him to his good Behaviour.

3. A Bond for the Peace is not forfeited by bare Words of Heat or Choler, as by calling a Man Knave, Rascal, Teller of Lies, Drunkard. But it may be forfeited by any Act of Vi-

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olence done, or procured to be done to him by the Recognisor ; and even by Words tending directly to a Breach of the Peace, as by challenging the Recognisee to fight, or in his Presence threatening to beat him. But a Bond to keep the Peace, is not forfeited by moderate Chastisement of a Child under Age by his Parent, of a Servant or Apprentice by his Master at the Time ; or Scholar, by his Schoolmaster ; or of an untoward Wife by her Husband ; or by binding and beating a Friend who is mad in such a Manner, as is proper in such Circumstances. A Bond for the good Behaviour is forfeited not only by such actual Breaches of the Peace, but also by some others, by which a Recognizance for the Peace is not forfeited, as by going arm'd with great Numbers to the Terror of the People, or speaking Words tending to Sedition, &c. A Bond for the Peace, or good Behaviour, may be discharged by the Demise of the King, or Death of the principal Party bound thereby, if it was not forfeited before ; but may not be discharged by the Party at whose Complaint it was taken, tho' such a Release by the Complainer, or his Non-appearance to pray Continuance of the Bond, will be a good Inducement to the Court, to which it is certified, to discharge it.

T I T;

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T I T. II.

Of several Kinds of Breaches of the publick Peace.

Direct Breaches of the publick Peace, punishable by our Law, are Sedition, Affrays or Frays, and Riots.

S E C T. I.

Of Sedition.

S E D I T I O N is, a Commotion or Rising of the People without Authority, in order to do any Thing tending to a Disturbance of the publick Peace, tho' the Design be not executed, which is raised upon a publick or private Account.

1. Sedition upon a publick Account, is a Rising of People against the publick Order and Discipline for redressing publick Grievances, or for reforming Religion, or for removing evil Counsellors from the King, &c. The making Leagues or Bands, or the convocating or raising of Commons in Boroughs, to the hindring of the common Law, without Command of the head Officer, is punishable with Confiscation of the Offender's Moveables, and their Lives to be at the King's Will (a). Making privy

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(a) A& 77. Parl. 14. Jam. II. A& 34. Parl. 3. Jam. IV. A& 17. Parl. 18. Jam. VI.

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Conventions, putting on Armour, displaying Banners or sounding Trumpets, or using bellical Instruments, without Licence from the King and the Magistrate, is punishable with Death (b). Raising Bands of Men of War for daily, weekly, or monthly Wages, without special Licence in Writ from the Sovereign, is discharged under the pain of Death, to be executed, both upon the Raiser, and those, that rise, and convene in such Bands (c). Convocating, convening or assembling for holding of Councils, Conventions or Assemblies, to treat, consult and determine in any Matter of State, civil or ecclesiastick, except in the ordinary Judgments, without the King's Command or express Licence, is forbid under the pain of unlawful Convocation (d): Which is incurred even by those who hold such Leagues, Councils or Meetings, for Preservation of the King's Religion, Laws and Liberties, or for the publick Good of Church or State (e).

2. Sedition upon a private Account (called a Convocation of the Lieges) is, where great Numbers of People complaining of a Grievance they ly under, meet in order to consult together concerning the most proper Means for the Recovery of their Interests: Which is punishable only with arbitrary Punishment. But this is seldom tried as a distinct Crime, but ordinarily

(b) Act 83 Parl. 9. Q. M. (c) Act 75. Parl. 9. Q. M. Act 12. Parl. 10. Jam. VI. (d) Act 131. Parl. 8. Jam. VI. (e) Act 4. Parl. 1. Sess. 1. Ch. 11.

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ordinarily as the aggravating Circumstance or Quality of a Riot or other Crime.

3. As the assembling for a Time irregularly those, in whom the Person who convenes them, has no Interest, is discharged : So the bringing many Persons together, under Pretext of a Retinue, is prohibited. For those who ride or go in the Country with more Men than they can sustain, are to be arrested, and put under sicker Burrows (*i. e.* Surety) till the King declare his Will (*f*); that is, those who travel with more than their ordinary Household, are liable to an arbitrary Punishment. Which is not so to be understood, as if it were unlawful for one at solemn Occasions to ride with his Friends and Followers; but only that one ought not to ride ordinarily with great Trains, which might argue that they gather or keep Men together upon some sinister Design against the Government or their Neighbours.

4. Convocations of the Lieges are allowed in some Cases, as for punishing Thieves and Sorners (*g*); or when they assemble in Obedience to the Sheriff, Lord of Regality or other proper Magistrate (*h*); as when a Sheriff or Justice of Peace raises the *posse comitatus*, in order to suppress Rebels or Rioters, or when resisted in executing the King's Writs.

S E C T.

(*f*) A& 5. Parl. 1. Jam. I. (*g*) A& 227. Parl. 14. Jam. VI.
(*h*) A& 77. Parl. 14. Jam. II. A& 83. Parl. 9. Q. M.

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S E C T. II.

Of Affrays or Frays, and Riots.

1. AN Affray or Fray, is a publick Offence to the Terror of People. Quarrellom or threatening Words do not, in the Judgment of the Law, amount to an Affray. But an Affray may be without a Word spoke, or Blow struck, as where a Man shews himself unusually armed, or brandisheth a Weapon, and thereby strikes a Fear into those unarmed. All Affrays in general are punishable by Fine and Imprisonment, the Measure of which is to be regulated by the Discretion of the Judges, according to the Circumstances of the Case, which do much vary the Nature of this Crime. Raisers of any Fray in the Church or Church-yard the Time of divine Service, are punished with Escheat of all their Moveables to the King (a). Such as disturb Episcopal Congregations of religious Worship tolerated by Law, may by two Justices of Peace be put to find Sureties under the Penalty of 100 Pounds *Sterling*, to appear at the next general or Quarter-sessions, or before the Court of Justiciary, or other Judges competent, or committed to Prison, and upon Conviction there, of the said Offence, shall forfeit 100 Pounds *Sterling*, Half to the Informer, and Half to the Poor of the Parish where the Offence was com-

(a) Act 27. Parl. II. Jam. VI.

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committed. And Magistrates of the Place, who hinder those of the Episcopal Perswasion tolerated by Law, from assembling together for divine Worship, are, upon Proof thereof before the Court of Justiciary, by two or more credible Witnesses, to forfeit 100 Pounds *Sterling* to be distributed as aforesaid (*b*). Concerning the opposing by Rabbling, Tumult, or Violence, any Minister of the established Church, *vide Supra* (*c*).

2. A Riot is the forcible executing some Enterprize of a private Nature, to the Disturbance of the Peace, by several Persons assembled together, for that Purpose, of their own Authority. If a Person seeing others engaged in a Riot, do joyn himself unto them, and assist therein, he is as much a Rioter as if he had at first assembled with them. A Master is answerable for a Riot committed by his Servants, in obedience to his Order: Nor doth such Order exempt them from the ordinary Punishment. There are petty Riots, and great Riots.

[1.] A petty Riot is, the forcible doing of some unlawful Thing by three or more Persons assembled together for that Purpose, which is liable to an arbitrary Punishment.

[2.] A great Riot is, that which is punishable with Death. Of this Offence there are two considerable Instances. 1. Where Persons to the Number of Twelve or more unlawfully assembled to the Disturbance of the publick Peace, being

(*b*) 10 A. Cap. 7. § 9. (*c*) Chap. 5. Tit. 1. N. 2,

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being required by the Sheriff, Stewart, Baily of Regality, or Deputy of any of them, or by the Magistrate of a Burgh royal, or any inferior Judge or Magistrate, where such Assembly is, by Proclamation in the King's Name, to disperse themselves, shall riotously continue together for the Space of one Hour after such Command by Proclamation, or after they knew that such Proclamation was violently hindred to be made, the Offenders are liable to the Pain of Death, and Confiscation of Moveables. Every such Sheriff, &c. within the Limits of their respective Jurisdictions on notice of such an unlawful Assembly, is to resort to the Place, and there as near to the Rioters, as he can safely come, shall, after commanding Silence, or causing it to be commanded, openly make Proclamation, or cause it to be made in these Words, or like in Effect : *Our sovereign Lord the King chargeth and commandeth all Persons assembled, immediately to disperse themselves, and peaceably to depart to their Habitations, or to their lawful Business, upon the Pains contained in the Act made in the first Year of King George I. for preventing Tumults and riotous Assemblies. GOD Save the King.* If the Rioters don't disperse themselves within an Hour after such Proclamation, or after their Knowledge of its being violently hindred, the Sheriff, &c. or any Constable or other Peace-officer, and such Persons as he shall command to assist him therein (all the King's Subjects of Age and Ability being at his Command in that Matter)

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Matter) to feize and carry them before a Justice of Peace, in order to their being proceeded against according to Law. The killing, maiming or hurting them, by reason of their resisting an Attempt to feize and disperse them, is no Way punishable. Any Person who by Force and Arms wilfully opposeth, or hindreth or hurteth those that go to make Proclamation to disperse the Rioters, so as it is not made, incurs the Pain of Death, and Confiscation of Moveables (*d*). 2. It is a great Riot, when Persons tumultuously and riotously assembled, to the Disturbance of the publick Peace, do, with unlawful Force demolish or pull down, or begin to demolish or pull down, any Church or Place for religious Worship tolerated by Law, and where his Majesty and the Royal Family are prayed for in exprefs Words; or any Dwelling-house, Barn, Stable, or other Out-house: And such Offenders incur the Pain of Death, and Confiscation of Moveables. Reparation also of Damages by so doing, may be recovered by summary Action at the Suit of the Party aggrieved, his Heirs or Executors, against the County, Stewartry, City or Borough respectively, where such Disorders happen; the Magistrates being summoned in the ordinary Form, and the severall Counties and Stewartries called by edictal Citations at the Market-crofs of the head Borough thereof generally, without mentioning their Names and Designations (*e*).

C H A P.

(*d*) 1 Geo. I. Cap. 5. § 1, 2, 3, 5, 9. (*e*) Ibid. § 4, 9 & 10.

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C H A P. IX.

Of common Nuisances.

1. **N**UISANCE, from the *French* *Nuire* to hurt, is a Thing done to the Annoyance of another. A common Nuisance is an Offence against the Publick, either by doing a Thing which tends to the Annoyance of all the King's Subjects; or by neglecting to do a Thing which the common Good requires. 'Tis termed a common Nuisance, because thereby every Man is or may be equally annoyed; to distinguish it from a private Nuisance, whereby some particular Persons are, or may be more grieved or injured than others.

2. Tho' the Name of a common Nuisance is not so much used in *Scotland*, as it is in *England*, yet our Law takes notice of and punisheth many Offences, which may properly be called common Nuisances; such are, 1. The Offences against the Rules of the Game of Hunting and Hawking, or Fowling (*a*), or for preserving the Breed of Fishes (*b*). 2. The making Muirburn between the last of *March* and *Michaelmas*, when all the Corns are shorn, which is punishable by the Payment of five Pounds for the

(*a*) Act 20. Sess. 1. Parl. Jam. VII. junct. Act 15. Sess. 7. Parl. K. W. (*b*) Act 11. Parl. 1. Jam. I. Act 74. Parl. 10. Jam. III. Act 111. Parl. 7. Jam. VI. Act 35 & 36. Parl. 14. Jam. II. Act 17. Parl. 16. Act 5. Parl. 18. Jam. VI. Act 33. Sess. 6. Act 3. Sess. 7. Parl. K. W. Act 2. Sess. 3. Parl. Q. A.

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the first Fault, ten Pounds for the second, and twenty Pounds for the third or after Offences, *toties quoties* (c): And the Master's Command doth not excuse Servants or Cottars for committing Muirburn, but both he and they are fineable (d). 3. Any Undertaking to the Prejudice of Trade, and the making or taking Subscriptions for that Purpose, or the presuming to act as corporate Bodies, without legal Authority (e); the keeping a common Bawdy-house; the diverting Part of a navigable River, whereby the Current of it is weakned, and made unable to carry Vessels of the same Burden as it could before; throwing, casting or firing of Squibs, Serpents, Rockets, or other Fireworks, in, or into any publick Street, High-way, Road or Passage; usual harbouring of Thieves or scandalous Persons by Inn-keepers; and all Injuries to any High-way, by digging, or making a Hedge overthwart it, or laying of Logs of Timber in it, &c. are deemed publick Nufances; which are punishable by Fining and Imprisonment.

3. Any one may pull down or otherwise destroy a common Nufance: And the Author of such a Nufance may have Judgment to remove it at his own Cost.

4. Having gone through the Crimes whereby the fovereign Authority, Government and publick

(c) Act 76. Parl. 10. Jam. III. junct. Act 11. Parl. 4. Jam. V. Act 84. Parl. 6. Jam. VI. (d) Act 48. Parl. 4. Jam. IV. (e) 6 Geo. I. Cap. 18. § 18 & 19.

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publick Peace of the Kingdom are more immediately struck at ; I come now to consider those which more directly touch private Persons.

B O O K IV.

Of Crimes that directly touch private Persons.

CRIMES that directly touch private Persons, are committed either against their Bodies, or against their Fame and Honour, or against their Estates, Goods and Possessions. Crimes and Offences committed against the Body, concern either the Life, or are those whereby the Body is abused, or is maim'd or dismembred. Crimes against the Life do either take it away, as Homicide ; or put it in imminent Danger, as Duelling, and the giving or accepting a Challenge to fight. The Body is abused by the several Kinds of unlawful Venery, as Sodomy or Buggery, Incest, Bigamy, Adultery, Fornication, Bawdry, and Rape. The Body is maimed or dismembred, by Offences termed Mutilation and Dismembration, of all which I shall treat in Order as they ly thus classed.

CHAP.