CHAP. XVII.

PIRACY.

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Piracy.

§ 1. *Special juriſdiction.*

BY the civil law, the puniſhment of piracy was capital; of which the admiral took cogniſance: but it does not fall within the ſcope of this work to conſider the offence otherwiſe than as it is a *marine* felony, triable under the King's ſpecial commiſſion by virtue of the ſtat. 28 H. 8. c. 15. ſince followed by other ſtatutes, which proceeds according to the courſe of the common law; and in which commiſſion two common law Judges are conſtantly included, by whom in effect the priſoners are tried, though the Judge of the Admiralty ſtill preſides.

13 Co. 54.

4 Inſt. 147. 2 Hale, 17.

4 Blac. Com. 265.

I ſhall poſtpone for the preſent the conſideration of the ſtat. of H. 8. together with the ſubſequent ſtatutes relating to the trial of this offence, till I come regularly to ſpeak of that branch of the ſubject; remarking by the way what Lord Hale obſerves, that beſides the commiſſion founded on the firſt-mentioned ſtatute, there had then been for a century paſt in the ſame commiſſions common law commiſſions of oyer and terminer, gaol delivery, and of the peace, for all offences againſt any penal laws, ſuper mare vel infra fluxum maris ad plenitudinem maris; and alſo of all treaſons, murders, &c. ſuper

Poſt. f. 13.

2 Hale, 18.

ſuper mare vel in aliquo rivo, portu, aquâ dulci, crecâ, ſeu infra fluxum maris ad plenitudinem maris, a quibuſcunque primis pontibus verſus mare, et ſuper littus maris, &c. ſecundum ſtylum et conſuetudinem regni Angliæ et Curiæ Admiralitatis: and limiting the county of their ſeſſion and inquiry.

Ch. XVII. § 1. *Special juriſdiction.*

§ 2. *Form of commiſſion.*

The commiſſion under which ſuch ſeſſions of admiralty are holden has exiſted in nearly the ſame form for a conſiderable period, with the inſertion only from time to time of a general reference to ſuch ſtatutes as have been made for the regulation of this tribunal. It begins by reciting the ſtatutes of the 28 H. 8. c. 15. and 27 H. 8. c. 4.; and then appoints certain perſons, amongſt others before-mentioned, to be of the quorum, to inquire concerning all treaſons, piracies, felonies, robberies, murders, and conſpiracies done or committed upon the ſea, or in any river, haven, creek, or place, where the admiral has, or pretends to have any power, authority, or juriſdiction; and alſo concerning other miſdemeanors, offences, and injuries whatſoever committed againſt the form of the ſaid recited ſtatutes of H. 8. or againſt the form of the 11 & 12 W. 3. c. 7. 4 G. 1. c. 11. 1 Ann, ſt. 2. c. 9. 12 Ann, ſt. 2. c. 18. 11 G. 1. c. 29. 8 G. 1. c. 24. 1 G. 2. ſt. 2. c. 25. 5 Eliz. c. 5. ſ. 30. 13 G. 2. c. 4. 17 G. 2. c. 24. 18 G. 2. c. 30. or 29 G. 2. c. 34. (*a*) and to hear and determine all the ſaid treaſons and other the premiſes, and to make gaol delivery, according to the laws and cuſtoms of Great Britain, and the ſtatutes aforeſaid; and alſo to inquire of all other crimes and offences whatſoever, and acceſſaries thereto whomſoever or howſoever, had, done or committed upon the high ſea, or in any haven, river, creek, or place where the admiral has or pretends to have power, authority, or juriſdiction; and to hear and determine all ſuch crimes and offences, according to the laws and cuſtoms of Great Britain, and the ſtatutes aforeſaid, or other ſtatutes in that behalf made; as by the laws and ſtatutes of the kingdom, may or ought to be heard, or determined by any commiſſioners or juſtices appointed by the crown. It then commands the quorum commiſſioners, or one of them, to make inquiry concerning the premiſes, and to hear and determine

(*a*) And *vide* ſt. 32 G. 2. c. 25. and 39 G. 3. c. 37.

the

Ch. XVII. § 1. *Commiſſion under ſt. 28 H. 8. c. 15.*

the ſame, and to do and perform all things to be done thereupon, as appertains to juſtice, according to the laws and cuſtoms of the kingdom, and the ſtatutes aforeſaid, or other ſtatutes in that behalf made: and then concludes with the command to all ſheriffs, &c. in the uſual form of the commiſſion of oyer and terminer.

I ſhall now conſider,

1. *What is Piracy.*
2. *Of the Place where the Fact is committed.*
3. *Of Principals and Acceſſaries.*
4. *Of the Indictment and Evidence.*
5. *Of the Trial and Judgment.*

§ 3. *What is piracy.* Co. Lit. 391. 4 Blac. Com. 72. 2 MS. Sum. 285. 3 Inſt. 112. 1 Hawk. ch. 37. ſ. 6. 8. 10. 1 Hale, 354. 2 Hale, 18. 1 Rol. R. 175. Moor, 756. Poſt. 3 Inſt. 112. Rex v. Morphes, Salk. 85. *Sed vide* Co. Lit. 391. 1 Hale, 355. 2 Hale, 12, &c. Foſt. 226. Rex v. May, Biſhop, and others, Nov. 1696. MS. Tracy, 77.

The offence of piracy by common law conſiſts in committing thoſe acts of robbery and depredation upon the high ſeas, which, if committed upon land, would have amounted to felony there. But it is no felony at common law, being out of its juriſdiction; and before the ſtatute 28 H. 8. c. 15, it was only puniſhable by the civil law. That ſtatute, however, does not alter the nature of the offence in this reſpect; and therefore a pardon of all felonies generally does not extend to it: nor does the offence extend to corruption of blood; at leaſt where the conviction is before the admiralty juriſdiction; though the contrary is holden by conſiderable authority upon attainder before commiſſioners under the ſtat. of H. 8.

Several mariners on board a ſhip called King Charles the Second, lying near the Groyne, ſeized the captain, he not agreeing with them, and after putting him on ſhore, carried away the ſhip, and afterwards committed ſeveral piracies. This force upon the captain, and carrying the ſhip away, (which was explained by their uſe of it afterwards), was adjudged piracy; and they were executed.

Maſon's caſe, O. B. 9 G. 1. on a ſpecial commiſſion. 8 Mod. 74.

But where the maſter of a veſſel loaded goods on board at Rotterdam, conſigned to Malaga, which he cauſed to be inſured, and after he had run the goods on ſhore in England, the ſhip was burned, when he proteſted both the ſhip and cargo as burned with intent to defraud the owners and inſurers; the judges of the common law, who aſſiſted the judge of the admiralty, directed an acquittal upon an indictment for piracy and ſtealing the goods; becauſe being only a breach of truſt and no felony, it could not be piracy to convert the goods in a fraudulent manner until the ſpecial truſt was determined.

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§ 4. 2 MS. Sum. 285, 289. 3 Bulſtr. 28. 4 Inſt. 154. 1 Hawk. ch. 37. ſ. 10. R. v. Golding and others, 3 St. Tr. 73. Vaughan's caſe, Salk. 635. 5 St. Tr. 24. 11 & 12 W. 3. c. 7. ſ. 8. Made perpetual by 6 G. 1. c. 19. *Acting under commiſſion of a foreign ſtate.* Poſt.

When ſtates are in open hoſtilities, the plundering of an enemy is not piracy, but lawful capture. And before the ſtat. 11 & 12 Wm 3. c. 7. which was levelled againſt commiſſions granted by James 2. after his abdication, none were deemed pirates who acted under the commiſſion of any foreign power. But that ſtatute enacts that "if any of his "Majeſty's natural born ſubjects or denizens of this king- "dom, ſhall commit any piracy or robbery, or an act of "hoſtility againſt others his Majeſty's ſubjects, upon the "ſea, under colour of any commiſſion from any foreign "prince or ſtate, or pretence of authority from any perſon "whatſoever; every ſuch offender ſhall be deemed, ad- "judged, and taken to be a pirate, felon, and robber, and "being duly convicted thereof, according to this act, or "that of Hen. 8. ſhall ſuffer death, and loſs of lands, goods, "and chattels, as pirates, &c. upon the ſeas ought to "ſuffer."

§ 5. 18 G. 2. c. 30. *Piracy committed under enemy's commiſſion.*

In addition to which, the ſtatute 18 Geo. 2. c. 30. enacts, "That all natural born ſubjects or denizens, who du- "ring any war ſhall commit any hoſtilities upon the ſea; "or in any haven, river, creek, or place, where the admiral, "&c. has power, authority, or juriſdiction, againſt his Ma- "jeſty's ſubjects, by virtue or under colour of any commiſ- "ſion from any his Majeſty's enemies, or ſhall be any "otherwiſe adherent, or giving aid or comfort to his Ma- "jeſty's enemies upon the ſea, or any haven or places where "the admiral has juriſdiction as aforeſaid, may be tried as "pirates, felons, and robbers, in the ſaid court of admiralty, "on ſhip-board or on the land, in the ſame manner as per- "ſons guilty of piracy, felony, and robbery, are by the "ſaid acts directed to be tried; and ſuch perſons being "upon ſuch trial convicted thereof, ſhall ſuffer death, loſs "of lands, &c. as any other pirates, felons, and robbers "ought by virtue of the ſtatute of the 11 W. 3. or any "other act, to ſuffer." With a proviſo (ſ. 2.), "That any "perſon

Proviſo, againſt ſubſequent trial for high treaſon.

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" perſon who ſhall be tried and acquitted, or convicted, ac-
" cording to this act, for any of the ſaid crimes, ſhall not
" be liable to be indicted, proſecuted, or tried again for the
" ſame crime or fact, as high treaſon." But this act ſhall not (by ſ. 3.) prevent any offender, who ſhall not be tried according thereto, from being tried for high treaſon, within this realm, according to the ſtat. 28 H. 8. c. 15.

Poſt. ſ. 13.

Joſeph Evans's caſe, MS. Gould J. *Adhering to the King's enemies in hoſtilely cruiſing in their ſhips triable as piracy.*

On the firſt day of Michaelmas term 1782, at a meeting of all the Judges at Serjeant's Inn, Lord C. B. Skynner ſtated to them an indictment, on which a man was convicted before him at the late ſeſſion of Admiralty, founded on the ſtat. 18 Geo. 2., whereby treaſons on the high ſeas in time of war, by adhering to the King's enemies, are to be tried in like manner as piracies, &c. The indictment, after ſetting forth that there was a war between England and France, charged that the priſoner did adhere to the King's enemies; and in proſecution of ſuch adherence did, in a certain armed veſſel called the Eſcamatour, with certain perſons unknown, hoſtilely go a cruizing, with intent in maritime places to ſeize and take the ſhips, goods, &c. of our ſovereign lord the King and his ſubjects. A difficulty firſt occurred, whether the overt act were ſufficiently charged; for it was ſaid that it ſtood in an equivocal light, whether the intent might not be to commit acts of piracy: but Lord Loughborough obſerving that it was laid to take ſhips of the King, as well as of the ſubjects, it made it clear that it was an adherence to the enemy; in which opinion all concurred. In this reſpect it was compared to laying as an overt act of compaſſing the King's death, that the priſoners conſpired or agreed to ſeize the King's guards. But the principal doubt was as to the legality of the trial: as to which the caſe ſtands thus: the ſtatute of the 28 H. 8. c. 15. expreſsly includes treaſons. The 11 & 12 W. 3. c. 7. had in view, principally at leaſt, the trial of pirates, robbers, and felons on the ſea, &c. near his Majeſty's colonies, or in remote places; omitting *treaſon* as a general term; and provides that they may be tried by commiſſions of admiralty directed by that act. The 8th ſection directs, that *ſubjects committing hoſtilities againſt other ſubjects, under colour of a commiſſion from any foreign prince*, &c. ſhall be deemed pirates, felons, and robbers, and may be tried according to that act, or the ſtatute of

Allegation of a cruiſing againſt the King's ſhips, as well as thoſe of the ſubjects, ſhews the intent to be traitorous, and not merely piratical.

of H. 8.: but this is reſtrained, except as to that particular ſpecies of adherence, to piracies, robberies, and felonies, in their ordinary acceptation. By ſ. 14. the commiſſioners under the ſtatute of H. 8. or that act, may iſſue warrants to apprehend pirates, felons, or robbers, or their acceſſaries, being within any of the colonies, &c. in order to be brought to trial in any plantation in America, *according to that act* of Will., or to be ſent to England to be tried there. Then the ſtat. 18 Geo. 2. reciting the doubt whether ſubjects entering into the ſervice of the King's enemies, on board privateers and other ſhips having commiſſions from France and Spain, and having by ſuch adherence been guilty of high treaſon, can be deemed guilty of felony within the meaning of the act of King William, and be triable by the court of Admiralty appointed by virtue of the ſaid act; in the enacting part, after particularizing that ſpecific adherence, adds, *or ſhall be any otherwiſe adherent*, may be tried *as pirates, felons, and robbers*, by the ſaid court of Admiralty, &c. concluding with the proviſos before-mentioned.

Ch. XVII. §5. *What is ſuch.*

(Not ſaying " ſhall be deemed pirates," as in ſt. 11 & 12 W. 3. c. 7. ſ. 8.)

Wedneſday, Nov. 11, 1782.

At a ſubſequent meeting of the Judges, at which were preſent Lord Loughborough, Lord C. B. Skynner, Gould J., Willes J., Aſhhurſt J., Eyre B., Perryn B., and Heath J., it was agreed that the priſoner had been well tried under the uſual commiſſion under the ſtat. 28 H. 8. For that taking the two ſtatutes of 11 & 12 W. 3. and 18 Geo. 2. together, and the doubt raiſed in the latter, whether the two inſtances of high treaſon mentioned in the ſtatute of William, and in the preamble of the act of George, could be tried as piracy, and according to that ſtatute, as being high treaſon [and yet the act of King William had particularly declared that they might, and that the offenders therein ſpecified ſhould be deemed pirates;] and then enacting, that in thoſe two inſtances, and alſo that in caſe of any other adhering to the King's enemies, the parties might be tried as pirates by the court of Admiralty, according to that ſtatute; it was ſubſtantially declaring that they ſhould be deemed pirates; and that it was a juſt conſtruction in their favour to allow them to be tried *as ſuch* by a jury.

§6. 11 & 12 W. 3. c. 7. ſ. 9.

By ſect. 9. of the above ſtatute of W. 3. it is further enacted, that " if any commander or maſter of any ſhip, or " any

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Made perpetual by ſtat. 6 G. 1. c. 19.

Seamen, &c running away with ſhip or cargo, &c. Vide Maſon's caſe, 8 Mod. 74.

Yielding voluntarily to pirates.

Confederating with them.

Attempting to corrupt crew, &c.

Putting force on commander.

Stirring revolt.

Poſt.

"any ſeaman or mariner, ſhall, in any place where the admiral hath juriſdiction, betray his truſt, and turn pirate, enemy, or rebel; and piratically and felonioufly run away with his or their ſhip or ſhips, or any barge, boat, ordnance, ammunition, goods, or merchandiſe; or yield them up voluntarily to any pirate; or ſhall bring any ſeducing meſſage from any pirate, enemy, or rebel; or conſult, combine, or confederate with, or attempt or endeavour to corrupt any commander, maſter, officer, or mariner, to yield up or run away with any ſhip, goods, or merchandiſes, or turn pirates, or go over to pirates; or if any perſon ſhall lay violent hands on his commander, whereby to hinder him from fighting in defence of his ſhip and goods committed to his truſt (*a*); or ſhall confine his maſter; or make or endeavour to make a revolt in the ſhip; he ſhall be adjudged deemed and taken to be a pirate, felon, and robber; and being convicted thereof according to the directions of this act, ſhall ſuffer death and loſs of lands, goods, and chattels as pirates, felons, and robbers upon the ſeas ought to ſuffer."

A reward is given to the diſcoverer of any combination for running away with the ſhip, &c.

(*a*) This laſt proviſion follows verbatim a ſimilar one in the ſtat. 22 & 23 Car. 2. c. 11, ſ. 9. which enacts generally that ſuch an offender ſhall ſuffer death as a felon; without ſpecifying how he ſhall be tried. And by the ſame act, ſ. 2. where goods ſhall be laden on board any Engliſh ſhip of 200 tons and upwards, and mounted with 16 guns or more, if the maſter ſhall yield up ſuch goods to any Turkiſh ſhips or veſſels, or to any pirates, or ſea rovers whatſoever, without fighting; on proof thereof in the High Court of Admiralty, he ſhall be incapable of taking charge of any Engliſh ſhip as maſter or commander; and if he do, he ſhall be impriſoned by warrant from the ſaid court for ſix months for every ſuch offence. And in caſe the perſons ſo taking the ſaid goods ſhall releaſe, &c. the ſhip, ſhall pay to the maſter any money or goods in lieu thereof for freight or other reward or gift; the ſaid goods or money ſo given, or the value thereof, as alſo the maſter's part of the ſhip, &c. ſo releaſed, &c. out of which the ſaid goods were taken, ſhall be liable to repair the owners of the goods ſo delivered or taken by action in the ſaid court; and the damages to be recovered in the manner there ſtated. By ſ. 4. if the ſhip be of leſs burthen or force, and the maſter ſhall yield it to ſuch perſons not having at leaſt his double number of guns, without fighting, he ſhall be liable to all the penalties in the act. By ſ. 7. mariners declining or refuſing to fight and defend the ſhip when ſo commanded by the maſter, or uttering any words to diſcourage other mariners from doing ſo, and found guilty thereof, ſhall loſe all their wages due, and all goods which they have on board the ſhip, and ſuffer impriſonment not exceeding ſix months, and be kept to hard labour during ſuch impriſonment. Alſo by that and ſtat. 8 G. 1. c. 24. certain benefits are held out to the maſter and mariners to reſiſt pirates.

By

Ch. XVII. § 7. *What is ſuch.*

§ 7.

8 G. 1. c. 24. made perpetual by 2 G. 2. c. 28. ſ. 7.

Trading or correſponding, &c. with pirates.

By ſtat. 8 Geo. 1. c. 24. ſ. 1. "If any commander or maſter of any ſhip or veſſel, or any other perſon, ſhall anywiſe trade with any pirate, by truck, barter, exchange, or in any other manner, or ſhall furniſh any pirate, felon, or robber upon the ſeas with any ammunition, proviſion, or ſtores of any kind; or ſhall fit out any ſhip or veſſel knowingly and with a deſign to trade with or ſupply or correſpond with any pirate, felon, or robber on the ſeas; or if any perſon ſhall anywiſe conſult, combine, confederate, or correſpond with any pirate, felon, or robber on the ſeas, knowing him to be guilty of any ſuch piracy, felony, or robbery; every ſuch offender ſhall be deemed and adjudged guilty of piracy, felony, and robbery: and being convicted ſhall ſuffer death (by ſ. 4. without benefit of clergy) and loſs of lands, goods, and chattels, as pirates upon the ſeas." And the offenders ſhall be tried according to the ſtat. 28 H. 8. and 11 & 12 W. 3. By ſ. 2. every veſſel ſo fitted out to trade, &c. with pirates, and the goods, ſhall be forfeited, half to the crown and half to the informer.

§ 8.

Forcibly entering merchant ſhips, and deſtroying goods.

8 G. 1. c. 24. ſ. 1.

And by the ſame act, 8 Geo. 1. (ſ. 1.) "In caſe any perſon or perſons belonging to any ſhip or veſſel whatſoever, upon meeting any merchant ſhip or veſſel on the high ſeas, or in any port, haven, or creek whatſoever, ſhall forcibly board or enter into ſuch ſhip or veſſel, and though they do not ſeize or carry off ſuch ſhip or veſſel, ſhall throw overboard, or deſtroy any part of the goods or merchandiſes belonging to ſuch ſhip or veſſel; the perſon or perſons guilty thereof ſhall in all reſpects be deemed and puniſhed as pirates as aforeſaid."

The burning or deſtroying of ſhips, againſt which proviſion is made by the ſtat. 1 Ann. ſt. 2. c. 9. and other acts, will be conſidered hereafter.

Vide tit. Malicious Miſchief.

§ 9.

12 G. 2. c. 25.

Illegal ranſoming of neutral veſſels made prize.

And by ſtat. 32 Geo. 2. c. 25. ſ. 12. (*a*) "In caſe any commander or commanders of any private ſhip or veſſel of war, duly commiſſioned by virtue of the ſtat. 29 Geo. 2. c. 34. or this act, ſhall agree with the commander or other perſon of or belonging to any neutral or other ſhip or veſſel

(*a*) This act was only to continue in force during the then war with France. The ſame clauſes were re-enacted by ſt. 2 G. 3. c. 16. to continue during the then war with Spain. But *Qu.* Whether ſtill continuing, though retained in the ſubſequent edition of the Statutes?

Ch. XVII. § 9. *What is ſuch.*

" (except thoſe of his majeſty's declared enemies), for the " ranſom of any ſuch neutral or other ſhip or veſſel, or the " cargo or any part thereof, after the ſame has been taken " as a prize; and ſhall, in purſuance of any ſuch agreement " or agreements, actually quit, ſet at liberty, or diſcharge " any ſuch prize, inſtead of bringing the ſame into ſome " port of his majeſty's dominions; that then every ſuch com- " mander of any ſuch private ſhip or veſſel of war, who ſhall " ſo agree for ſuch ranſom, (except as aforeſaid,) and ſhall " quit, ſet at liberty, or diſcharge any ſuch prize in manner " aforeſaid, ſhall be deemed and adjudged guilty of piracy, " felony, and robbery; and being duly convicted thereof in " manner before mentioned, ſhall ſuffer death, loſs of lands, " &c. as pirates, felons, and robbers upon the ſeas ought to " ſuffer according to the laws now in being." Provided (ſ. 13.) " That it ſhall be lawful for the commander of any private " ſhip of war upon the capture of any neutral veſſel, which " by any law or treaty ſhall be liable only to the forfeiture " of ſuch contraband goods as ſhall be on board thereof, to " receive ſuch goods from ſuch veſſel, in caſe the com- " mander thereof is willing to deliver them; and the com- " mander of ſuch private ſhip of war may thereupon quit, " ſet at liberty, or diſcharge ſuch neutral veſſel" (*a*), &c. " and if any perſon ſhall purloin or embezzle any ſuch " contraband goods before condemnation thereof, he ſhall " be ſubject to ſuch pains and forfeitures as are inflicted by " law upon perſons purloining or embezzling goods out of " any captured ſhip."

Vi. ſt. 17 (& 29) G. 2. c. 34. ſ. 11. giving the treble value of the goods ſo embezzled by any officer, ſeaman, &c.

2. *As to the Place where the Fact is committed.*

§ 10. *As to the place.* 2 Hale, 13, &c. *Vide* poſt. ſ. 12.

Lord Hale ſays, that before the latter end of the reign of Edw. 3. the court of K. B. not only had, but exerciſed, a concurrent juriſdiction with the Admiralty over felonies committed upon the narrow ſeas, and on the coaſt, though on

(*a*) By the ſtat. 22 G. 3. c. 25. and 33 G. 3. c. 66. ſ. 37, &c. " it ſhall " not be lawful for any ſubject to ranſom or to enter into any contract or agree- " ment for ranſoming any ſhip or veſſel belonging to any ſubject of his majeſty, or " any merchandize or goods on board the ſame, which ſhall be captured by the " ſubjects of any ſtate at war with his majeſty, or by any perſons committing " hoſtilities againſt his majeſty's ſubjects." Sect. 2. of the firſt act and ſ. 38. of the laſt avoid all ſuch contracts and ſecurities given for the ſame; and ſ. 3. of the one and 39 of the other inflict a penalty of 500*l.* on any perſon entering into ſuch contract, to be recovered by action of debt by the informer. This latter act expired with the late war with France.

the

Ch. XVII. § 10. *As to place.*

the high ſea, being conſidered within the realm of England, though out of the bodies of counties: and the fact was preſented and tried by men of the adjacent counties. But it is agreed on all hands that the admiral never had juriſdiction in any river, creek, or port within the body of a county: and that the ſtat. of the 28 H. 8. c. 15. extends not to offences done in ſuch places; becauſe they are and always were cognizable by the common law. And the words of that ſtatute, " where the admiral *pretends* to have power," &c. are not to be extended to ſuch a pretence as is without any right at all: and the firſt ſtatute which gave the admiral concurrent juriſdiction in any river or creek within the land was the 15 Ric. 2. c. 3. concerning the death or mayhem of a man; which has been conſidered in another place.

1 Hawk. ch. 37. ſ. 11. 2 Hale, 15, 16. 4 Inſt. 137.

Ante, tit. Homicide, ſ. 132. p. 368.

But it ſeems that the only queſtion of juriſdiction generally conſidered at this day upon the ſtatute 28 H. 8. c. 15. is, Whether the fact happened at any place within the body of a county? in which caſe the trial muſt be had before the ordinary juriſdiction; for then it does not fall within the miſchief or purview of the act. And the ſtat. 11 & 12 W. 3. c. 7. and 32 Geo. 2. c. 25. ſeem to be legiſlative interpretations of the firſt mentioned ſtatute, being paſſed in pari materiâ and with reference to it: and theſe laſt are confined to *any place where the admiral has juriſdiction*; which as I have before ſhewn cannot be within the body of a county, unleſs by poſitive ſtatute.

Vide 1 Hawk. ch. 37. ſ. 11.

3 Inſt. 113.

4 Inſt. 137.

The only difficulty which ever occurs is with reſpect to what ſhall be conſidered as the line of demarcation between the county and the high ſea. Upon the open ſea-ſhore it is paſt diſpute that the common law and the admiralty have alternate juriſdiction between high and low water mark. But in harbours or below the bridges in great rivers near the ſea, which are partly incloſed by the land, the queſtion is often more a matter of fact than of law, and determinable by local evidence. There are, however, ſome general rules laid down upon this point, which it would be improper altogether to omit. It is plain that the admiral can have no juriſdiction in any rivers or arms or creeks of the ſea within the bodies of counties, though within the flux and reflux of the tide: except in the particular inſtances before ſhewn, of mayhem and homicide done in great rivers beneath the bridges near the ſea; which depend on the ſtat. 15 Ric. 2.

2 Hale, 17. 3 Inſt. 113. 2 Hawk. ch. 9. ſ. 14. 1 Bac. Abr. 751. *Vide* Rex v. Solegard, Andr. 232.

3 Inſt. 113. 1 Hawk. ch. 37. ſ. 11.

Ch. XVII. § 10. *As to place.*

c. 3. In general, it is ſaid that ſuch parts of the rivers, arms, or creeks, are deemed to be within the bodies of counties, *where perſons can ſee from one ſide to the other.* Ld. Hale, in his treatiſe De Jure Maris, ſays, "That arm or branch of the ſea which lies within the *fauces terræ*, where a man may *reaſonably* diſcern between ſhore and ſhore, is, or at leaſt may be, within the body of a county." Hawkins, however, conſiders the line more accurately confined by other authorities to ſuch parts of the ſea where a man ſtanding on the ſide of the land *may ſee what is done on the other*, and the reaſon aſſigned by Lord Coke in the Admiralty caſe in ſupport of the county coroner's juriſdiction, where a man is killed in ſuch places, *becauſe that the county may well know it*, ſeems rather to ſupport the more limited conſtruction. But, at leaſt where there is any doubt, the juriſdiction of the common law ought to have the preference.

2 Hale, 16. 54. 4 Inſt. 141. 13 Co. 52. Hargrave's Tracts, p. 10.

2 Hawk. ch. 9. ſ. 14. 13 Co. 52 2 Roll. Abr 169. b Ed. 2. coron. 390. 4 Inſt. 140. 12 Co. 81.

3. *Of Principals and Acceſſaries.*

§ 11. *Principals and acceſſaries.*

As piracy was no felony by the common law, nor made ſo generally by any ſtatute, whereby all thoſe would incidentally have been made acceſſaries in the like caſes in which they would have been ſuch at common law; and as they were neither included by expreſs words nor by conſtruction in the ſtat. 28 H. 8. c. 15. they remained as they were before triable by the civil law only if their offence were committed on the ſea; but if on the land, by no law till the ſtat. 11 & 12 W. 3. c. 7. By ſect. 10. of which it is enacted, "That every perſon whatſoever who ſhall either on "the land or on the ſeas, knowingly or wittingly, ſet forth any "pirate; or aid and aſſiſt, or maintain, procure, command, "counſel, or adviſe any perſon or perſons to do or commit "any piracies or robberies upon the ſeas; and ſuch perſon "or perſons ſhall thereupon do or commit any ſuch piracy "or robbery; then every ſuch perſon ſhall be and are here- "by declared and ſhall be deemed and adjudged to be ac- "ceſſary to ſuch piracy and robbery done and committed. "And further, that after any piracy or robbery is or ſhall "be committed by any pirate or robber whatſoever, every "perſon and perſons who, knowing that ſuch pirate or "robber has done or committed ſuch piracy and robbery, "ſhall on land or upon ſea receive, entertain, or conceal "any ſuch pirate or robber; or receive or take into his "cuſtody

1 Hawk. ch. 37. ſ. 7. Sum. 77. 3 Inſt. 112.

2 Hale, 17. *Vide* MS. Sum. 449. 11 & 12 W. 3. c. 7. ſ. 10.

"cuſtody any ſhip, veſſel, goods, or chattels which have "been by any ſuch pirate or robber piratically and feloni- "ouſly taken; ſhall be and are hereby likewiſe declared, "deemed, and adjudged to be acceſſaries to ſuch piracy and "robbery." And then it directs, that "all ſuch acceſſaries "ſhall be inquired of, tried, &c. and adjudged after the courſe "of the common law, according to the ſtat. 28 H. 8. as the "principals of ſuch piracies and robberies may and ought to "be, and no otherwiſe: and being thereupon attainted ſhall "ſuffer death and loſs of lands, goods, and chattels, in like "manner as ſuch principals, according to the ſtat. 28 H. 8. "which is thereby declared to continue in full force."

Ch. XVII. § 11. *Principals and acceſſaries.*

But all perſons made acceſſaries by this ſtatute are by the ſtat. 8 Geo. 1. c. 24. declared to be principal pirates, felons, and robbers, and are to be tried as ſuch accordingly.

8 G. 1. c. 24. *Vide* poſt. ſ. 14.

4. *Of the Indictment and Evidence.*

§ 12. *Indictment and evidence.*

The indictment for this offence muſt allege the fact upon the ſea to have been committed within the juriſdiction of the Admiralty, and lay it to be done felonioufly and piratically. And if it turn out that the goods were taken any where within the body of a county, the commiſſioners under the ſtatute of Hen. 8. can have no juriſdiction to inquire of it. As, on the other hand, if the goods were taken at ſea, and afterwards brought on ſhore, the offender cannot be indicted as for a larceny in that county into which they were carried: becauſe the original felony was no taking whereof the common law takes cognizance. Lord Hale indeed thinks that an indictment of piracy before ſuch commiſſioners may be formed as an indictment of robbery at common law, namely, vi et armis et felonice, &c.; for that piracy upon the ſtatute is robbery; and that offenders have been indicted, convicted, and executed for it in the King's Bench as for a robbery. But however this might have been formerly, there appears to be no inſtance of any ſuch proceeding for ſeveral centuries: and the boundary line between the two juriſdictions ſeems now ſufficiently ſettled in the manner before deſcribed.

1 Hawk. ch. 37 ſ. 6. 10.

3 Inſt. 113.

1 Hale, 355. 2 Hale, 12, &c.

Ante, 802.

Ch. XVII. § 13. *Trial and judgment.*

5. *Of the Trial and Judgment.*

§ 13. Stat. 28 H. 8. c. 15. *Vide* 35 H. 8. c. 2. For the trial of foreign treasons, ante, p. 103.

By the ſtat. 28 H. 8. c. 15. it is enacted, "That all treaſons, felonies, robberies, murders, and confederacies committed in or upon the ſea, or in any other haven, river, creek, or place, where the admiral has or pretends to have power, authority, or juriſdiction, ſhall be inquired, tried, heard, determined, and judged in ſuch ſhires and places in the realm as ſhall be limited by the king's commiſſion or commiſſions to be directed for the ſame in like form and condition as if any ſuch offences had been committed or done in or upon the land. And ſuch commiſſions ſhall be had under the great ſeal, directed to the admiral or his lieutenant, deputy and deputies, and to three or four ſuch other ſubſtantial perſons as ſhall be named or appointed by the Lord Chancellor of England, to hear and determine ſuch offences after the common courſe of the law of this realm uſed for treaſons, felonies, murders, robberies, &c. done and committed upon the land within this realm."

Ante, p. 794.

How the court is conſtituted I have before ſhewn. And by ſection 2. "ſuch perſons to whom ſuch commiſſion ſhall be directed, or four of them at leaſt, ſhall have full power and authority to inquire of ſuch offences by the oaths of 12 good and lawful inhabitants in the ſhire limited in their commiſſion in ſuch like manner and form as if ſuch offences had been committed upon the land within the ſame ſhire. And that every indictment found and preſented before ſuch commiſſioners for any treaſons, felonies, robberies, murders, manſlaughters, or ſuch other offences, being committed upon the ſeas or in any other haven, river, or creek, ſhall be good and effectual in law. And if any perſon happen to be indicted for any ſuch offence done upon the ſeas or in any other place above limited, that then ſuch order, proceſs, judgment, and execution ſhall be had, &c. as againſt traitors, felons, &c. for treaſon, felony, &c. done upon the land, as by law is accuſtomed. And that the trial of ſuch offences, if denied by the offenders, ſhall be had by 12 lawful men inhabiting in the ſhire within ſuch commiſſion which ſhall be directed as aforeſaid. And no challenge to be had for the hundred. And ſuch as ſhall be convict of any ſuch offence by verdict, confeſſion, or proceſs by authority of any ſuch commiſſion, ſhall have and ſuffer ſuch pains of death, loſs of lands, goods, and chattels as if they had been attainted and convicted of ſuch offence done upon the land, and (by ſ. 3.) ſhall be excluded from the benefit of clergy."

Ch. XVII. § 13. *Trial and judgment.*

Rex v. Snape and Aires, Seſſ. after Trin. T. 1702. MS. Tracy, 78.

At a ſeſſion of Admiralty under a commiſſion by virtue of the ſtat. 28 H. 8. c. 15. Snape and Aires had two indictments found againſt them; one was general, for maliciouſly burning a ſhip called the Cloudeſly Galley; which was done to defraud the inſurers: and this the civilians ſaid was a capital offence by their law: the other indictment was founded upon the ſtat. 22 & 23 Car. 2. c. 11. which makes ſuch offence felony; but does not direct how it ſhall be tried. But Tracy and Powell Js., who were preſent, doubted if either of the indictments could be tried by the commiſſioners: and upon a ſubſequent conference of the Judges, met to conſider this matter, Holt C. J. Ward C. B. and others were of opinion, as to the firſt indictment, that the ſtat. 28 H. 8. c. 15. extends only to ſuch offences as would be felony if committed upon land. Powell J. was of a different opinion, to which Tracy J. inclined. Upon the other indictment Holt C. J. and Tracy J. thought that this was triable under the commiſſion, and that the ſtat. 28 H. 8. extended to the trial of an offence made felony by a ſubſequent ſtatute: but the other Judges being of a different opinion, it was agreed that it was not proper to try the priſoners upon either of the indictments. The particular doubt, however, in that caſe is cleared up by the ſtat. 1 Ann. ſt. 2. c. 9. ſ. 4.; and to obviate the like doubt particular proviſion has been made in other ſtatutes relative to the trial of other offences committed at ſea.

Vide 2 Hale, 368.

But doubts having ariſen, Whether the ſtat. of Hen. 8. had not taken away the juriſdiction of the admiral in the trial of theſe offences? the ſtat. 11 & 12 W. 3. c. 7. ſ. 1. provides "that all piracies, felonies, and robberies committed in or upon the ſea, or in any haven, river, creek, or place where the admiral has juriſdiction, &c. may be examined, inquired of, tried, heard, and determined in any place at ſea or upon the land in any of his majeſty's iſlands, plantations, colonies, dominions, forts, or factories,

11 & 12 W. 3. c. 7. ſ. 1. made perpetual by 6 G. 1. c. 19. This ſtat directs in what manner courts of admiralty abroad authoriſed to try pirates ſhall be aſſembled and proceed.

Ch. XVII. § 13. *Trial and judgment.*

" ries, to be appointed for that purpoſe by the king's com-
" miſſion under the great ſeal, or the ſeal of the Admiralty,
" directed to any of the admirals, &c. and ſuch other per-
" ſons as his majeſty ſhall think fit, who ſhall have power
" jointly or ſeverally to commit, by warrant under the hand
" and ſeal of them or any one of them, to ſafe cuſtody, any
" perſon againſt whom information of piracy, robbery, or
" felony upon the ſea ſhall be given upon oath: (which oath
" they or one of them ſhall have power and are required to
" adminiſter), and to call and aſſemble a court of Admi-
" ralty on ſhipboard or upon the land, as occaſion may re-
" quire, which court ſhall conſiſt of ſeven perſons at leaſt."
And they ſhall proceed in the trial of ſuch offenders in manner as ſet forth in the ſtatute; and ſ. 10. declares that the ſtat. 28 H. 8. c. 15. ſhall continue in full force, any thing in the preſent act contained to the contrary notwithſtanding.

and *vide* Beawes Lex Merc. fo. 243. and Molloy, b. 1. c 4. ſ. 12, 13 where captors of pirates may execute juſtice on them.

This was calculated to ſave the trouble, expence, and delay of bringing offenders from remote places abroad to be tried in England.

Vi. ante, ſ. 4 6. 11 & 12 W. 3. c. 7. ſ. 8.

The ſame ſtatute, after ſetting forth (ſ. 8.) that ſubjects committing piracies on other ſubjects under colour of foreign commiſſions ſhall be adjudged pirates, felons, and robbers; directs that on conviction according to the ſame act, or the ſaid ſtatute of Hen. 8. they ſhall ſuffer death and forfeiture of lands and goods. The ſame puniſhment is inflicted on all ſuch as are directed to be adjudged pirates by the 9th ſection on conviction, according to the directions of the ſame act.

4 G. 1. c. 11. ſ. 7.

By ſtat. 4 Geo. 1. c. 11. ſ. 7. (*a*) " All and every perſon or
" perſons who ſhall commit any offence for which they ought
" to be adjudged pirates, felons, and robbers by ſtat. 11 &
" 12 W. 3. may be tried and judged for every ſuch offence
" according to the form directed by the ſtat. 28 H. 8., and
" ſhall be excluded from their clergy."

8 G. 1. c. 24. ſ. 1. made perpetual by 2 G. 2. c. 28. ſ. 7. Ante,

And again, ſuch as are declared pirates by ſt. 8 G. 1. c. 24. ſ. 1. are directed to be " tried, &c. according to the ſtat.
" 28 H. 8. c. 11. and 11 & 12 W. 3. and being convicted ſhall
" ſuffer ſuch pains of death, loſs of lands, goods, and chat-
" tels, as pirates, felons, and robbers on the ſeas ought to

(*a*) By ſ. 8. the act is not to extend to ſuch as are convicted or attainted in Scotland; but by ſ. 9. it is to extend to all the King's dominions in America.

" ſuffer."

" ſuffer." And all offenders under the act are (by ſ. 4.) excluded clergy. Ch. XVII. § 13. *Trial and judgment.*

By ſtat. 18 Geo. 2. c. 30. the offenders therein mentioned
" may be tried as pirates, felons, and robbers in the ſaid
" court of Admiralty, on ſhipboard, or upon the land, in
" the ſame manner as perſons guilty of piracy, felony, and
" robbery are by the ſtat. 11 & 12 W. 3. c. 7. directed to be
" tried; and on conviction ſhall ſuffer death and loſs of lands,
" &c. as any other pirates, felons, and robbers ought to ſuffer
" by virtue of the ſtat. 11 & 12 W. 3. or any other act." 18 G. 2. c. 30. Ante, ſ. 5.

Thoſe who were deemed pirates by the ſtat. 32 Geo. 2. c. 25. are on conviction to ſuffer death and loſs of lands, goods, and chattels as pirates, &c. according to the laws then in being. Ante, ſ. 9.

§ 14. *Trial of acceſſaries.*

In regard to the trial of acceſſaries, the ſtat. 11 & 12 W. 3. c. 7. before referred to, after ſetting forth who ſhould be adjudged acceſſaries to piracy, enacts, "That ſuch acceſ-
ſaries ſhall and may be inquired of, tried, heard, determined, and adjudged, after the common courſe of the laws of this land, according to the ſtat. 28 H. 8. c. 15. as the principals of ſuch piracies and robberies, may and ought to be, and no otherwiſe; and being thereupon attainted, ſhall ſuffer ſuch pains of death, loſs of lands, goods, and chattels, and in like manner as the principals of ſuch piracies, robberies and felonies ought to ſuffer, according to the ſaid ſtat. 28 H. 8. which is hereby declared to be in full force; any thing in this act to the contrary notwithſtanding." But the ſtat. 8 Geo. 1. c. 24. ſ. 3. reciting that " whereas there are ſome
" defects in the laws for bringing perſons who are acceſ-
" ſaries to piracy and robbery upon the ſeas to condign pu-
" niſhment, if the principal who committed ſuch piracy or
" robbery is not or cannot be apprehended and brought to
" juſtice; enacts, that all perſon or perſons whatſoever who
" by ſtat. 11 & 12 W. 3. are declared to be acceſſary or ac-
" ceſſaries to any piracy or robbery therein mentioned, are
" hereby declared to be principal pirates, felons, and rob-
" bers, and ſhall and may be inquired of, heard, deter-
" mined, and adjudged in the ſame manner as perſons
" guilty of piracy and robbery may, according to that ſta-
" tute, and being thereupon attainted and convicted, ſhall
" ſuffer

11 & 12 W. 3. c. 7. ſ. 10. Ante, ſ. 11.

8 G. 1. c. 24. ſ. 3. *Acceſſaries may be tried as principals.*

Ch. XVII. § 14. *Trial and judgment.*

" ſuffer death and loſs of lands, &c. in like manner as pi-
" rates and robbers ought by the ſaid act to ſuffer." And by ſ. 4. " all ſuch offenders are excluded the benefit of " clergy."

Scadding's caſe, M 6 Jac. 1. Yelv. 134. and *vide* Cro. Eliz. 685.

On return to an habeas corpus, in the caſe of one Scadding, who had been committed to the Marſhalſea by the court of Admiralty, the cauſe appeared to be for aiding and abetting one Exon, who was indicted for piracy, to eſcape out of priſon; whereupon all the court held that though the fact were committed by Scadding within the body of the county, yet becauſe it depended on the piracy committed by Exon, of which the temporal judges had no cognizance, and was as it were an acceſſorial offence to the firſt piracy, which was determinable by the admiral, they remanded the priſoner. And it was ſoon after fully ſettled in the Admiralty caſe, that one who knowingly receives and abets a pirate within the body of a county was not triable by the common law, the original offence being cognizable alone by another juriſdiction.

12 Co. 53.

§ 15. *Clergy.* 1 Hale, 664. 2 Hale, 369, 370. 3 Inſt. 113.

Clergy being expreſsly taken away in caſe of piracy by the ſtat. 28 H. 8. c. 15. is not reſtored by the ſtat. 1 Ed. 6. c. 12. for no clergy was allowable for this offence at common law before the 1 H. 8. and conſequently it is not touched by the ſtat. of Ed. 6. (*a*) But even if clergy were firſt taken away from it by ſtat. 28 H. 8. c. 15, yet as the ſtat. 1 Ed. 6. reſtores it only in " all other caſes of *felony*," than thoſe therein mentioned; and as piracy is not felony, nor noticed as ſuch by the common law, the ſtat. 28 H. 8. ſtill remains in force as to that offence: although in other reſpects as to felonies committed upon the high ſea, in which clergy was reſtored by the ſtat. 1 Ed. 6. if committed upon the land, the party ſhall have the ſame benefit, though the proceeding be upon the ſtatute 28 H. 8.; and therefore with regard to all other offences than piracy (which includes all acts made piracy by ſubſequent ſtatutes, and thereby ouſted of clergy),

(*a*) *Vide* 2 Hawk. ch. 33. ſ. 41. which diſtinguiſhes between ſuch piracies as are committed on the high ſea and thoſe committed in creeks and rivers within the body of a county, the latter of which he thinks within the reſtoring clauſe of the ſtat. 1 Ed. 6. which diſtinction he intimates will reconcile 11 Rep. 31. b. with the other authorities.

triable

triable by the ſpecial commiſſioners under that ſtatute, in as much as the marine law does not allow of clergy in any caſe, if it appeared upon the evidence that the fact would, if done upon land, have amounted to no more than felony within clergy, the practice till of late was for the Judges, in favour of life, to direct the jury to acquit the priſoner. But now this is otherwiſe ordered by the ſtat. 39 Geo. 3. c. 37. which, reciting the ſtat. 28 H. 8. c. 15., and the offences thereby directed to be tried under the King's commiſſion, and that it would be " expedient to declare that other offences committed on the ſeas may be inquired of, tried, and determined, in like manner," " enacts and declares, that all " and every offence and offences, which after the paſſing of " the act (10th of May 1799) ſhall be committed upon the " high ſeas, out of the body of any county of this realm, " ſhall be, and are hereby declared to be offences of the " ſame nature reſpectively, and to be liable to the ſame pu-" niſhments reſpectively, as if they had been committed " upon the ſhore; and ſhall be inquired of, heard, tried, " and determined and adjudged in the ſame manner as " treaſons, felonies, murders, and confederacies are direct-" ed to be by the ſame act."

Ch. XVII. § 15. *Clergy.*

Foſt. 288. 2 MS. Sum. 294.

39 G. 3. c. 37.

Vide ante, 218. tit. Homicide, ſ. 4.

§ 16. *Trial, when and where.*

The ſtat. 32 Geo. 2. c. 25. ſ. 20. " for the more ſpeedy bringing of offenders to juſtice," &c. enacts, that " a ſeſſion " of oyer and terminer and gaol delivery for the trial of of-" fences committed upon the high ſeas, within the juriſdic-" tion of the Admiralty of England, ſhall be holden twice at " leaſt in every year, viz. in March and October at the Old " Bailey, (except when the ſeſſions of oyer and terminer and " gaol delivery for London and Middleſex ſhall be there " holden;) or in ſuch other places in England as the lord " high admiral, &c. ſhall, in writing under his hand, directed " to the Judge of the court of Admiralty, appoint."

Vide ante, ſ. 9. note *a*.

Commiſſioners and juſtices of peace to take informations of witneſſes, and commit pirates.

By ſ. 21. any of the commiſſioners named for the time being, and every juſtice of peace within England, are empowered to take informations of witneſſes in writing upon oath, touching any piracy, felony, or robbery done upon the ſea, &c. or place where the admiral has juriſdiction; and, by warrant under his hand and ſeal, to cauſe the parties accuſed to be apprehended and committed to the gaol of the

Vide ante, ſ. 9. note *a*.

Ch. XVII. §16. *Trial, &c.*

county or place where the information ſhall be taken, till diſcharged by due courſe of law. And by ſ. 22. ſuch commiſſioner or juſtice may oblige every perſon, whom he ſhall judge neceſſary, to proſecute and give evidence againſt the party ſo committed, to enter into recognizance in a ſufficient penalty to appear at the then next ſeſſion of oyer and terminer and gaol delivery to be held for the juriſdiction of the admiralty of England, there to proſecute and give evidence &c.; and he may commit any perſon refuſing to enter into ſuch recognizance until ſuch next ſeſſions, or till he ſhall enter into ſuch recognizance: and ſuch recognizance ſhall be returned to the regiſter of the court of Admiralty.

Finding bill.
4 Blac. Com. 269.
3 Inſt. 114.

In proſecutions of this ſort, the indictment is firſt found by a grand jury of 12 men, and afterwards tried by another jury, as at common law. The ſtat. 28 H. 8. c. 15. and other ſtatutes declare, that "the offence ſhall be heard and "determined after the common courſe of law uſed for ſe- "lonies and robberies upon the land," and that there ſhall be no challenge for the want of hundredors.

Standing mute.
1 Hawk. ch. 37. ſ. 9.
3 Inſt. 114.

It was ſettled that an offender ſtanding mute on an arraignment under the ſtatute 28 H. 8. ſhould have judgment of pain, *forte et dure*, the offence being to be heard and determined *after the common courſe of the law*, &c. But now by

12 G. 3. c. 20.

the ſtat. 12 Geo. 3. c. 20. "if any perſon, being arraigned "on any indictment for piracy, ſhall, upon ſuch arraign- "ment, ſtand mute, or will not directly anſwer to the pi- "racy, he ſhall be convicted of the ſame; and the court, "before whom he ſhall be ſo arraigned, ſhall thereupon "award judgment and execution againſt ſuch perſon in the "ſame manner (and attended with the ſame conſequences) "as if he had been convicted, by verdict or confeſſion, of "ſuch piracy." This, by ſ. 2., ſhall extend to the colonies

2 MS. Sum. 286.

and plantations in America. And ſuch is the courſe of proceeding under the commiſſion.

Form of judgment.
1 Hale, 108.
3 Inſt. 113.
1 Hawk. ch. 37. ſ. 2.

Since the ſtat. of treaſons 25 Ed. 3. the ſame judgment is given in piracy as in other caſes of felony; though before that, it was (in the caſe of a ſubject,) to be drawn and hanged, as for petit treaſon. And a forfeiture is incurred of lands and goods.

Forfeiture.
Vide ante, ſ. 3.

CHAP. XVIII.

CHEATS.

Diſtinction between *Cheats* and *Larceny*. - §1.

I. *Cheats at Common Law*. - - §2.

Are either Frauds relating to ſome Matter of *public* Concern; or in regard to *private* Concerns, ſuch as are effected by *Conſpiracy*, *Forgery*, or *falſe Tokens* calculated to deceive the Public in general. *ib.*

But defrauding one in a private Contract, by falſely affirming a Thing to be of a ſuperior Quantity or Quality than it is, not indictable. *ib.*

Nor giving the Party's own Order in Writing (of no Value) for Payment of Money: nor putting his own Mark on Goods: theſe reſolving themſelves into no more than his own Aſſertion. *ib.*

But cheating by means of falſe *public Tokens or Marks* indictable. - - - - §3.

As by falſe Weights or Meaſures: ſelling Cloth marked with a counterfeit Alneager's Seal; or other known general Mark in the Trade. *ib.*

So playing with falſe Dice, &c.

So Cheats committed in *Matters of public Concern*. §4.

As doing judicial Acts in the Names of others. *ib.*

Supplying Priſoners of War with unwholeſome Food. *ib.*

Obtaining the King's Bounty, under Pretence of enliſting as a Soldier, by an Apprentice liable to be reclaimed by his Maſter. *ib.*

Private Cheats effected by *Conſpiracy* or *Forgery* indictable. - - - - §5.

As conſpiring to ſuppreſs a Will; to read over a Deed wrongly which was about to be executed; to run a

colluſive Race to cheat a third Perſon; for pretending to be the one a Wine Merchant the other a Broker, and bartering pretended Wine for other Goods. - - - §5.

Pretending to be and obtaining Credit as a Merchant by Means of *forged* Letters and Commiſſions. §6.

But Forgery not indictable as a Cheat without actual Prejudice enſuing. *ib.*

II. *By Statute.* - - - - §7.

1. By Stat. 33 H. 8. c. 1. falſely and deceitfully obtaining *Money*, *Goods*, &c. or other Things, by Colour and Means of any *privy Token* or *counterfeit Letter* in *other Men's Names*, &c. puniſhable by Impriſonment, Pillory, or other corporal Pain. *ib.*

What are to be defined *Tokens* within the Statute. *ib.*

2. By Stat. 30 Geo. 2. c. 24. Perſons knowingly and deſignedly *by falſe Pretence* obtaining *Money*, *Goods*, &c. with Intent to cheat, deemed Offenders againſt Law and the public Peace, and on Conviction fined and impriſoned, or put in the Pillory, or publicly whipped, or tranſported for 7 Years. - §8.

What are falſe *Pretences* within the Statute. *ib.*

Obtaining Money under falſe Pretence of ſharing a ſuppoſed Bet before made, and which was to be decided the next Day. *ib.*

Or under Pretence of having been entruſted by one to take his Horſes from Ireland to London, and detained till his Money was expended. *ib.*

Or under Pretence by one employed to keep an Account of Work done by others, and receive the Amount, that more Work had been done than really was, and delivering a ſurcharged Account accordingly; for the falſe Pretence created the Credit. *ib.*

So obtaining the Price of the Carriage of Goods under Pretence he had loſt the Receipt for the Delivery of them. *ib.*

How far the Stats. of Hen. 8. and Geo. 2. vary from the common Law, or each other. - - §9.

They are confined to obtaining *Money* or *Goods*. *ib.*

Q. As

Q. As to *Choſes in Action* ſince Stat. 2 G. 2. c. 25. §9.

Stat. 33 H. 8. confined to *Tokens* and *Letters* in the Name of a *third* Perſon. Q. Whether 30 Geo. 2. ſo confined. *ib.*

Stat. 33 H. 8. extending to *privy* Tokens ſeems an Enlargement of the common Law, which required Tokens having Semblance of *public* Authenticity, and thereby calculated to deceive People in general. *ib.*

Yet general Authorities do not diſtinguiſh. *ib.*

Statutable Proviſions againſt Frauds by particular Perſons conſidered before. - - - §10.

Frauds by Bankrupts poſtponed. *ib.*

South-Sea and other Bubbles, &c. *ib.*

Retailers having in Poſſeſſion falſe Weights and Balances puniſhable ſummarily by Stat. 37 Geo. 3. c. 143. *ib.*

3. By Stat. 13 Eliz. c. 5. Parties to fraudulent Deeds, Alienations, Judgments, and Executions, ſhall, beſides a Penalty to the Party grieved, ſuffer Impriſonment for half a Year on Conviction. - §11.

Extended to Conveyances, &c. to deceive Purchaſers by Stat. 27 Eliz. c. 4. *ib.*

4. By Stat. 9 Ann. c. 14. cheating at or with Dice, Cards, &c. liable to Forfeiture, Infamy, and corporal Puniſhment. - - - - - §12.

III. *Form of Indictment.* - - §13.

Indictment at common Law, or on Stats. 33 H. 8. and 30 Geo. 2. muſt ſhew what falſe Tokens or Pretences were uſed, and aver that they were falſe, but no technical Form of Words is neceſſary. *ib.*

All preſent and concurring may be charged with the ſame Cheat. *ib.*

IV. *Puniſhment.* - - - §14.

At common Law, by Fine, Impriſonment, and other corporal Puniſhment. By Stat. 33 H. 8. c. 1. by corporal Puniſhment only. By Stat. 30 Geo. 2. c. 24. by Fine, corporal Puniſhment, or Tranſportation for 7 Years.

No Reſtitution of Goods in any Caſe.

Cheats.

Cheats.

§ 1. *Diſtinction between cheats and larceny.*

IN treating of the ſubject of Larceny in a prior chapter I had occaſion to enter at large into the diſtinction between ſuch fraudulent taking of the property of another as the law denominates *felonious*, and ſuch as wanting that ingredient amounts only to miſdemeanor. Upon reviewing the authorities there collected it will appear that the diſtinction ſo far as regards the ſubject of the preſent inquiry turns mainly upon the conſideration whether or not the owner deceived by appearances intended to part with the abſolute *property*, and not barely with the *poſſeſſion* or *temporary uſe* of the thing at the time of the delivery, rather than upon any actual difference in the degree of fraud meditated by the taker, the intent in both inſtances being diſhoneſtly to acquire and convert to his own uſe the property of another without any or an adequate conſideration. If the abſolute property were intended to be paſſed by the delivery, but ſuch delivery were obtained by means of a *falſe token* or *pretence*, the caſe can only be reached in the firſt inſtance by a proſecution for a cheat either at common law or by help of the ſtat. 33 H. 8. after-mentioned, or in the inſtance of a falſe pretence by the ſtat. 30 G. 2. Where indeed the poſſeſſion is honeſtly obtained upon a contract or truſt in the firſt inſtance, the ſubſequent diſhoneſt converſion of it, (except in caſes where the privity of contract is determined) is no other than a breach of truſt, for which the party injured has a civil remedy.

Vide ante, 665. 8.

Ante, 655.

Ante, 693.

The diſtinction above mentioned was particularly adverted to by Eyre B. in the debate on Pear's caſe in 1779, and ſeems to have been the ground of the reſolution in Atkinſon's caſe in the ſame year, and in Coleman's caſe in 1785, and in other caſes claſſed with thoſe.

Ante, 686-9.

Ante, 673.

§ 2. *Cheats at common law.*

It is not however every ſpecies of fraud or diſhoneſty in tranſactions between individuals which is the ſubject matter of a criminal charge at common law; but in order to conſtitute it ſuch, according to the doctrine in Wheatly's caſe, Young's caſe, and other authorities, it muſt be ſuch as affects the public; ſuch as is public in its nature, calculated

Rex v. Wheatly, 2 Burr. 1125. R. v. Young, 3 Term Rep. 104. 6 Mod. 42.

calculated to defraud numbers, to deceive the people in general. And this is inſtanced not only by precedents of cheats effected by conſpiracy, to which may be added forgery (*a*), which are in themſelves ſubſtantive offences, though the cheats thereby intended be not fully carried into effect; but alſo, as it is ſtated generally, by ſuch as are effected by means of falſe tokens. Yet theſe latter, being alſo put by way of example, muſt ſtill, as it ſeems, be underſtood of ſuch falſe tokens as affect the public at large, ſuch as are calculated to defraud numbers, to deceive the people in general; of which the common inſtance referred to is the cheating by means of falſe weights and meaſures, againſt which it is ſaid that ordinary care or prudence is not ſufficient to guard. It does not diſtinctly appear that the inſtances ſo put in argument, of cheats effected by means of falſe tokens generally, were intended to be applied indiſcriminately to offences at common law (*b*) as well as by ſtatute; but ſuch expreſſions ſeem rather to have been uſed concerning cheats in general which were the ſubject matter of an indictment, which would of courſe comprehend thoſe included in the ſtat. 33 H. 8. And in R. v. Young and others, Buller J. diſtinguiſhing between cheats at common law and by ſtatute, refers thoſe which are effected by means of *falſe tokens* in general to the ſtat. 33 H. 8. to which it ſhould ſeem from the expreſs wording of the preamble and the neceſſary inference therefrom that they peculiarly belong. It may therefore be doubted whether the deſcription given by Hawkins of this offence, that it conſiſts in "deceitful practices in defrauding or *endeavouring* to "defraud another of his known right by means of ſome *artful* "*device* contrary to the plain rules of common honeſty," be ſufficiently accurate or diſtinct to be taken as a definition of

Vide poſt. ſ. 4. and ſeveral precedents of indictments for public cheats in Crown Circ. Comp. 73, &c.

Vide poſt. ſ. 9. *Vi.* R. v. Wheatly, 2 Burr. 1127. 1 Hale, 506. R. v. Young and others, 3 T. Rep. 104.

Vi. poſt. ſ. 9.

Vide 1 Hawk. ch. 71. ſ. 1.

(*a*) *Vide* poſt. ſ. 6. and Crown Cir. Comp. 37. tit. Deceit; et ib. 78. and R. v. Baker, Trem. P. C. 96. and R. v. Saunders, ib. 100. R. v. Poulſon, ib. 103. and R. v. Farmer, ib. 109.

(*b*) There is however a dictum in R. v. Wood, M. 24 Car. in Sty. 145. to this effect. It was an indictment for getting another's horſe into his poſſeſſion by uſing another man's name and *a falſe token*. It was objected, 1. that it was not laid contra ſtatutum; but to this the Court anſwered that it was an offence at the common law. 2. That it did not ſhew what the falſe token was, nor in whoſe name it was uſed. It was not, however, quaſhed for theſe defects, but for another which Rolle C. J. took, viz. that it was only laid that the defendant did the fact *nuper*. Little ſtreſs can be laid upon ſuch an authority; for it is now clearly ſettled that the falſe token muſt be ſhewn. *Vide* alſo R. v. Wanſbrough, Trem. P. C. 104. where there was merely a falſe affirmation. Et quære.

Ch. XVIII § 2. *At common law.*

the offence at common law. I ſhould rather ſay that it conſiſts in the fraudulent obtaining the property of another by any deceitful and illegal practice or token (ſhort of felony) which affects or may affect the public. But the offence is now enlarged by the ſtatutes 33 H. 8. and 31 Geo. 2. after mentioned.

Wheatly's caſe, ante, 817.

In Wheatly's caſe the indictment, which was at common law, was againſt a brewer, for that he intending to deceive and defraud R. W. of his money, falſely fraudulently and deceitfully ſold and delivered to him 16 gallons of amber for and as 18 gallons of the ſame liquor, and received 15s. as for the 18 gallons, knowing there were only 16 gallons. This the Court were clearly of opinion was not an indictable offence, but only a civil injury for which an action lay to recover damages (*a*). Lord Mansfield C. J. ſaid, "it amounts only to an unfair dealing and an impoſition on this particular man by which he could not have ſuffered but from his own careleſſneſs in not meaſuring it; whereas fraud to be the object of criminal proſecution muſt be of that kind which in its nature is calculated to defraud numbers, as falſe weights or meaſures, falſe tokens, or where there is a conſpiracy."

MS. Dunning.

R. v. Channell, H. 1 G. 2. 2 Stra. 793. 1 Seſſ. Caſ. 365. *Vide* Lawe v. King, 2 Saund. 81.

So where an indictment charged Channell for that he keeping a common griſt mill, and being employed by W. B. to grind three buſhels of wheat, did with force and arms unlawfully take and detain forty-two pounds weight of the wheat: upon demurrer (*b*) it was adjudged for the defendant; there being no actual force laid; nor any charge of taking, as for unreaſonable toll; but being a private matter for which trover would lie.

1 Hawk. ch. 71. ſ. 2. Pinkney's caſe, E. 6 G. 2. B. R. Maſterman's Notes, and 1 Seſſ. Caſ. 191. cited by Willmot J. in 2 Burr. 1129. R. v. Duffield, Sayer, 146. S. P.

It is equally clear that ſuch a private cheat is not indictable, though it be accompanied by a falſe aſſertion to give it efficacy. As in Pinkney's caſe, where an indictment for ſelling a ſack of corn at Rippon market, which the defendant falſely affirmed to be a Wincheſter buſhel, whereas it was greatly deficient, was quaſhed upon motion; being, as

(*a*) The ſame was ruled by Lord Raymond C. J. in R. v. Nicholſon at the ſittings M. 4 Geo. 2. upon an indictment for the defendant's having delivered ſo many buſhels leſs than he had contracted for, for which he ſaid the party had his remedy by action. Maſterman's notes.

(*b*) No ſtreſs can be laid on ſeveral caſes to be found in the books, particularly in Mod Reports, where ſimilar indictments were refuſed to be quaſhed on motion, becauſe it was the practice of the Court, as often declared, not to quaſh, on motion, indictments for offences founded in fraud or oppreſſion, but leave the defendants to plead. 5 Mod. 13. 6 Mod. 42. 12 Mod. 499.

the

the Court ſaid, no more than telling a lie: or as where Lewis was indicted at common law for a cheat in depoſiting as a ſecurity for money advanced a quantity of gum, inſtead of and affirming it to be gum ſeneca, and afterwards ſelling the ſame to the proſecutor, and affirming it to be ſo, and to be worth 7l., whereas it was worth but 3l. Judgment was arreſted without cauſe ſhewn; being no more than a falſe affirmation, for which the party was not indictable unleſs he came with falſe tokens. Or where Jones obtained money of another, by pretending to come by the command of a third perſon to demand a debt or the like in his name; ſhewing no voucher or token for his authority; it was holden not indictable, for it was the party's own fault to truſt him. So in Bryan's caſe, who obtained goods from a tradeſman by pretending that ſhe was ſent by her miſtreſs who was his cuſtomer.

Ch. XVIII § 2. *At common law.*

R. v. Lewis, E. 28 Geo. 2. MS. Dunning. *Vi.* Sayer, 205.

Jones's caſe, Salk. 379. and *vide* R. v. Gibbs, 1 Leach's Rep. 185.

Bryan's caſe, 2 Stra. 866. 2 Seſſ. Caſ. 23.

Neither will the caſe differ if the defendant make uſe of an apparent token, which in reality is upon the very face of it of no more credit than his own aſſertion. As where an indictment at common law charged that Lara, deceitfully intending by crafty means and devices to obtain poſſeſſion of certain Lottery Tickets the property of A., pretended that he wanted to purchaſe them for a valuable conſideration, and delivered to A. a fictitious order for payment of money ſubſcribed by him Lara, &c. purporting to be a draft upon his banker for the amount, which he knew he had no authority to draw, and that it would not be paid; but which he falſely pretended to be a good order, and that he had money in the banker's hands, and that it would be paid; by virtue of which he obtained poſſeſſion of the tickets, and defrauded the proſecutor of the value. Judgment was arreſted, on the ground that the defendant was not charged with having uſed any falſe token to accompliſh the deceit; for the banker's check drawn by the defendant himſelf entitled him to no more credit than his bare aſſertion that the money would be paid. Of the ſame nature was the caſe of Wilders, a brewer, who was indicted for a cheat in ſending to one Hicks a publican ſo many veſſels of ale marked as containing ſuch a meaſure, and writing a letter to Hicks aſſuring him that they did contain that meaſure, when in fact they did not contain ſuch meaſure, but ſo much leſs, &c. The indictment was quaſhed upon motion, as containing no criminal charge. Yet this

Rex v. Lara, 6 Term Rep. 565.

Rex v. Wilders, M. 6 G. 1. B. R. cited by Lord Mansfield in 2 Burr. 1128.

Ch. XVIII. § 3 *At common law.*

was thought by the Court in Rex v. Wheatly a ſtrong caſe; and Mr. Juſtice Foſter doubted it, becauſe he conſidered that the veſſels, being marked as containing a greater quantity than they really did, were *falſe tokens*. Poſſibly however the Court in deciding the caſe of Wilders thought that thoſe marks not having even the ſemblance of any public authority, but being merely the private marks of the dealer, did in effect reſolve themſelves into no more than the dealer's own affirmation that the veſſels contained the quantity for which they were marked.

§ 5.
Uſing falſe public tokens.

But if in any of theſe caſes the cheat be effected by means of falſe weights or meaſures, (which are known public tokens) it is then clearly indictable; for theſe betoken a general deſign to defraud; they are inſtruments or tokens purpoſely calculated for deceit, and by which the public in general may be impoſed upon without any imputation of folly or negligence. This reaſoning applies to all caſes where any other ſpecies of falſe token having the ſemblance of public authenticity, is uſed. As in Edwards's caſe, where cloth was ſold with the Alneager's ſeal counterfeited thereon: or as in Worrel's caſe, where there was a general ſeal or mark of the trade on cloth of a certain deſcription and quality which was deceitfully counterfeited. If, ſaid the Court in Pinkney's caſe before mentioned, the defendant had meaſured the corn in a buſhel, and had put any thing into the buſhel to help to fill it up, or had meaſured it in a buſhel ſhort of the ſtatute meaſure, it might have been indictable. Yet in Bowers's caſe (*a*) the knowingly expoſing to ſale and ſelling wrought gold under the ſterling alloy as and for gold of the true ſtandard weight, (which would be indictable in goldſmiths under the ſtatute,) was holden not indictable at common law in the caſe of a common perſon, the ſale not being by any falſe weight or meaſure (*b*). To the above-mentioned principle may alſo be referred the inſtances of cheats by means of playing with falſe dice, &c.; which is further puniſhable by penalties recoverable under the ſtatute 16 Car. 2. c. 7. and 9 Ann. c. 14. by forfeiture of treble the value of the money or other thing won, to be recovered as the act directs.

3 MS. Sum 53. R. v. Burgoyne, 1 Sid. 409.

R. v. Edwards, E. 35 Car. 2. Trem. P. C. 103. Rex v. Worrel, ib. 106.

Pinkney's caſe, MS. ante, 818.

R. v. Bower, Comp. 323.

(*Vi.* R. v. Bonny, Trem. P. C. 106.)

Maddock's caſe, 2 Roll. R. 107. S. P. Cro Jac. 407. 2 Roll. Abr 78.

(*a*) The ſale there was by the ſervant of the defendant: but the Court agreed that the maſter was reſponſible for the act of the ſervant done in the courſe of his employment, and within the ſcope of his authority.

(*b*) Qu. if falſe ſtamps or marks be uſed, ſuch as are required by ſtatute on plate of a certain alloy?

There

Ch. XVIII. § 4. *At common law.*

§ 4.
Cheats in matters of public concern.

There is alſo another head of public cheats, indictable at common law, which are levelled againſt the public juſtice of the kingdom. Such as the doing judicial acts without authority in the name of another. But moſt of theſe are now made felony by the ſtatutes 21 Jac. 1. c. 26. and 4 W. & M. c. 4. There is a precedent of an indictment againſt a married woman for pretending to be a widow, and as ſuch executing a bail-bond to the ſheriff for one arreſted on a bailable writ. This perhaps was conſidered as a fraud upon a public officer in the courſe of juſtice.

Cro Eliz. 531. 1 Mod. 46. T. Jones. 64. 1 Stra. 384. *Vide* tit. *Falſe perſonating.* R. v. Blackburn, M. 36 Car. 2. Trem. P. C. 107. Cro. Cir. Comp. 78.

So all frauds affecting the crown and the public at large are indictable, though ariſing out of a particular tranſaction or contract with the party. This was admitted by the very terms of the objection in the following caſe.

Treeve's caſe, Cornwall Sum. Aſſ. 1796. MS. Buller J. & MS. Jud. *Indictment lies for wilfully deceitfully and maliciouſly ſupplying priſoners of war with unwholeſome food not fit to be eaten by man.*

The indictment charged that the defendant Treeve, a common brewer, on 27th April, 35 Geo. 3. at, &c. knowingly wilfully deceitfully and maliciouſly did provide furniſh and deliver to and for 800 French priſoners of war, whoſe names are unknown, and there being under the protection of the king, confined in a certain hoſpital called Eaſtwood hoſpital in the pariſh and county aforeſaid divers large quantities, to wit, 500lb. weight of bread to be eaten as food by the ſaid French priſoners of war, ſuch bread being then and there made and baked in an unwholſome and inſufficient manner, and then and there being made of and containing dirt, filth, and other pernicious and unwholeſome materials and ingredients not fit to be eaten by man; and the ſaid defendant then and there well knowing the ſaid bread to be baked in an unwholeſome and inſufficient manner, and to be made of and to contain dirt filth and other pernicious and unwholſome materials and ingredients, not fit to be eaten as aforeſaid; whereby the ſaid priſoners of war did then and there eat of the ſaid bread, and thereby then and there became diſtempered in their bodies and injured and endangered in their healths; to the great damage of the French priſoners, to the great diſcredit of our ſaid Lord the King, to the evil example, &c. and againſt the peace, &c. There were eight other counts in the indictment charging the offence to have been done at different times, and at different priſons.

After conviction, it was objected in arreſt of judgment that the offence as laid was not indictable; as it did not appear that what was done was in breach of any contract with

Ch. XVIII. § 4. *At common law.*

the public or of any moral or civil duty; and judgment was respited to take the opinion of the Judges. But in Michaelmas term 1796 they all held the conviction right.

The defendant in the above case was in fact a contractor with government for the supplying of provisions to the French prisoners in the neighbourhood of Plymouth in the course of the then war; though that was not stated in the indictment on which the conviction took place. Nor was it material so to state it, otherwise than as matter of aggravation if such a case wanted any: for the giving of any person unwholesome victuals not fit for man to eat, lucri causâ, or from malice or deceit, is undoubtedly in itself an indictable offence, apart from any other consideration, which entered deeply into the demerits of the defendant's conduct.

Vide 4 Blac. Com. 162.

Rex v. Jones, Coventry Lent Aff 1777. cor. Nares J. MS. Gould J. (1 Leach, 208. S. C.) *Obtaining the King's bounty for enlisting as a soldier by an apprentice recleimable by his master.*

An indictment charged that Joseph Jones was an apprentice bound by indenture to serve one William Lucas, a jobbing smith, for the then remainder of a term of 7 years commencing from, &c. and that defendant intending fraudulently and unjustly to obtain money from the paymaster of his majesty's 7th regiment of foot to defraud the King of divers sums of money, afterwards on, &c. unlawfully fraudulently and deceitfully caused and procured himself without the consent of his master W. L. to be enlisted into the said 7th regiment of foot as a soldier, by means whereof he the defendant unlawfully fraudulently and deceitfully received and obtained from the paymaster of the said regiment divers sums of money amounting in the whole to the sum of 3l. 8s.; he the defendant at the time of his enlisting into the said regiment and during his continuance therein then and there well knowing himself to be by the laws of this realm without the consent of his master the said W. L. disqualified from serving as a soldier in the said 7th regiment of foot, to the great deceit fraud and damage of the King, and against the peace, &c.

The facts were all plainly proved, except as to the indenture; and that was produced at the trial by the master, who proved the execution of it, and claimed his apprentice under it; but neither of the two subscribing witnesses were produced; which upon reference to the Judges after conviction was holden to be necessary in order to warrant the conviction.

Easter Term 1777.

In

Ch. XVIII. § 5. *At common law.*

§ 5.

Private cheats effected by conspiracy, or forgery. Vide many precedents in Trem. P. C. from p 85. to 110. & ante-817.

In addition to those above-mentioned there are also instances to be found in the books of cheats in their nature private; which have been yet adjudged to be indictable at common law: but upon examination they will either appear to be founded in conspiracy or forgery; or as in some of the instances before put to implicate considerations of public justice, public trade, or public policy. They are subsequent to the stat. 33 H. 8. but prior to that of the 30 G. 2. Thus it is said by Hawkins, that the suppression of a will is indictable as a cheat; for which he cites Noy 103. What the form of the count was in that case does not appear by the report; but as there were several persons convicted on the information filed against them by the Attorney-General, it is probable that they were charged with a conspiracy or combination. The same may be said of the case of Skirret and others, who were indicted for causing an illiterate person to execute a deed to his prejudice, by reading it over to him in words different from those in which it was written. So of Orbell's case, who was convicted upon a charge of having run a foot-race fraudulently and with a view to cheat a third person by a previous understanding with the running competitor to win.

1 Hawk. ch. 71. § 1.

Rex v. Breerton and others, Noy, 103.

Rex v. Skirret and others, 1 Sid. 212. Rex v. Parris and others, ib. 431.

Rex v. Orbell, 6 Mod. 42.

The case of Macarty and Fordenbourgh has been too generally quoted to be passed over without particular notice. The indictment charged that the defendants, falsely and deceitfully intending to defraud T. C. of divers goods, together deceitfully bargained with him to barter sell and exchange a certain quantity of pretended wine as good and true new Portugal wine of him the said F. for a certain quantity of hats of him the said T. C.; and upon such bartering, &c. the said F. pretended to be a merchant of London, and to trade as such in Portugal wines, when in fact he was no such merchant, nor traded as such in wines; and the said M. on such bartering, &c. pretended to be a broker of London, when in fact he was not: and that T. C. giving credit to the said fictitious assumptions personating and deceits did barter sell and exchange to F., and did deliver to M., as the broker between T. C. and F., for the use of F., a certain quantity of hats of such a value for so many hogsheads of the pretended new Portugal wine; and that M. and F. on such bartering, &c. affirmed that it was true new Lisbon wine of

Regina v. Macarty and Fordenbourgh, 2 Ld. Ray. 1179. and 3 Ld. Ray 467. *Two effect a cheat, by the means of the one pretending to be a merchant and the other a broker, and as such bartering pretended wine for hats*

Ch. XVIII. § 5. *At common law.*

Portugal, and was the wine of F., when in fact it was not Portugal wine, nor was it drinkable or wholesome, nor did it belong to F.; to the great deceit and damage of the said T. C. and against the peace, &c. The indictment, which was for a cheat at common law, though it did not charge that the defendants *conspired* eo nomine, yet charged that *they together, &c. did the acts* imputed to them, which might be considered to be tantamount: but it was thought to be a case of doubt and difficulty. One report of the case in Modern says that it was adjourned; and no further account is given of it. In Wheatly's case, as reported in Blac. Rep., Mr. Justice Denniſon is made to say that the indictment in Macarty's case was quashed because there was no false token; though this is not supported by the report of the same case in Burrow; for the same learned Judge is there made to say that there were false tokens, or what were considered as such. In truth, on searching the rolls it appears that judgment was at last given for the Queen in Mich. 4 Ann. (*a*) But the true ground of that judgment, which was given by Mr. Justice Denniſon in Wheatly's case (*b*), was that it was a *conspiracy*; and not the ground alluded to in the printed report of Govers's case; where speaking of Mackarty's case Lord C. J. Ryder is made to say, (borrowed probably from the report in 6 Mod.) "that *the pretending to be a merchant* was there holden to be a false token." Yet what was that but a false affirmation simply?

Vide post. tit. Conspiracy. 6 Mod. 301.

1 Blac. Rep. 275.

2 Burr. 1128.

(*a*) Ld. Raymond's Report says Trin. 4 Ann.

(*b*) MS. Dunning, and *vide* 2 Burr. 1129. and 6 Mod. 302.

§ 6. *Cheating by means of forged instruments.* Rex v Govers, E. 28 Geo. 2. Sayer. Rep. 206.

In the case of Govers the indictment charged that the defendant intending to cheat J. S. did deceitfully take upon himself the stile and character of a merchant, and did deceitfully affirm to J. S. that he was a merchant, and had received divers commissions from Spain; and in order to induce J. S. to believe the same and to give him credit, the defendant deceitfully *produced to J. S. several paper writings which he falsely affirmed to be letters from Spain, containing commissions for jewels, watches and other goods, to the amount of* 4,000l.; by means whereof the defendant got into his hands two watches the property of J. S.: whereas in truth the defendant was not a merchant, and the paper writings *containing such commissions* were *false and counterfeit*. Here the indictment was sustained on the ground that besides pretending to be a merchant, the defendant produced several *forged* writings

writings as tokens, in corroboration of his assertion. It does not appear that the indictment contained any distinct averment that the paper writings, which the defendant *affirmed* to be commissions from Spain for goods, did purport on the face of them to be such: but the averment at the end might perhaps be thought equivalent. The principal observation however arising on this case is, that it is not stated in the report that the indictment concluded against the form of the statute; although the false tokens made use of come directly within the words of the statute of Hen. 8. Therefore if this were sustained as an indictment at common law, the fraud being practised in a private transaction, and the false tokens mere private letters, having no semblance of public authenticity, the only ground on which the judgment can be maintained, without going the length of saying that the stat. of Hen. 8. was merely declaratory of the common law, is that the cheat was effected by means of a *forgery* (in which all are principals at common law); and that the publication of such forged instruments for the purpose of deceit was in itself a substantive offence indictable at common law.

Ch. XVIII. § 6. *At common law.*

It was not unusual formerly to prosecute forgeries, when successful, as cheats, before the various modern statutes by which in most instances they are now made capital felonies. In the report of Ward's case, in Strange, which was a case of forgery at common law of an acquittance, it was said that it could not be prosecuted *as a cheat* at common law *without an actual prejudice*; and that that was *an obtaining* on the statute 33 Hen. 8. This may serve to explain what was said in Micah Gibbs's case, where the Court held that the Quarter Sessions had no jurisdiction over the offence of forgery at common law; and that it being laid *as forgery*, they had no jurisdiction of it *as a cheat*. In that case the fraud was not successful; nothing was received by the defendant, nor any thing lost by the prosecutor. But in Hales's case, who was indicted for falsely and deceitfully *obtaining* 450l. of William Harle *by a false token*, viz. *a promissory note* (*a*) in the name of Robert Hales, payable to S. E. &c. with a *counterfeit indorsement* thereon. The Lord C. B. instructed the jury that if it appeared to be a forged indorsement, the instrument *being a false token*, the defendant must be found guilty. The

Ward's case, 2 Stra. 749. and *vide* R. v. Bryan, 2 Stra. 866. in R. v. Obrian, 13 Vin. Abr 460. 2 Seſſ. Caſ. 22. & ante, 817. n. *a.* Gibbs's case, 1 East. Rep. 173.

Wm. Hales' case, O. B. Jan. 1729, cor. Ld. C. B. Pengelly et al. Justs. 9 St. Tr. 75. and *vide* ib. 93. S. P.

(*a*) The defendant was indicted as for a misdemeanor at common law, being before the statute making the offence felony.

like

Ch. XVIII. § 6. *At common law.*

like was ruled on a similar indictment againſt the ſame defendant for defrauding another perſon. In Leander Fawcitt's caſe Eyre C. J. had no doubt that a counterfeit order (though void if genuine) which was effectual to procure a priſoner's diſcharge was indictable as a cheat; though he was not ſatisfied that the offence amounted to forgery.

Fawcett's caſe, 1793, poſt tit. Forgery, ch. 19. ſ. 7.

§ 7. *By ſtatute.*

I ſhall now proceed to ſet forth the two ſtatutes, namely, that of the 33 Hen. 8. c. 1. and 30 Geo. 2. c. 24. which have confirmed or extended the principles of the common law in regard to this offence; and alſo to obſerve on the caſes wherein indictments for cheats have been ſuſtained either at common law or by the aid of one or other of thoſe acts.

33 H. 8. c. 1. *Cheats by privy tokens or counterfeit letters.*

The ſtat. 33 Hen. 8. c. 1. after reciting that evil-diſpoſed perſons deviſing how they might unlawfully get into their poſſeſſion goods chattels and jewels of other perſons have *of late* to avoid the puniſhment of theft falſely and deceitfully contrived and deviſed "*privy tokens* and *counterfeit letters in other men's names*" unto divers perſons their ſpecial friends and acquaintances for the obtaining of money, goods, &c. of the ſame perſons their friends and acquaintances, by colour whereof they have unlawfully obtained the ſame; enacts, "that if any perſon or perſons falſely and deceitfully obtain or get into his or their hands or poſſeſſion any money goods chattels jewels or other things of any other perſon or perſons by colour and means of any ſuch falſe token, or counterfeit letter made in any other man's name, as aforeſaid; every ſuch offender being thereof lawfully convicted by witneſſes taken before the Lord Chancellor, or by examination of witneſſes, or confeſſion taken before the juſtices of aſſize in their circuits, or before juſtices of the peace in their general ſeſſions, or by action in any of the King's courts of record, ſhall ſuffer ſuch correction and puniſhment by impriſonment, ſetting upon the pillory, or other corporal pain, except pains of death, as ſhall be adjudged," &c. (ſaving by ſ. 4. to the party grieved his civil remedy); and by ſ. 3. as well the juſtices of aſſize, as alſo two juſtices of the peace (one of the quorum) may commit or bail offenders to the aſſizes in general ſeſſions to anſwer the ſame.

What tokens within the ſtatute.

A falſe "*privy token*" within the ſtatute has generally been taken to denote ſome real viſible mark or thing, as a key, a

ring, &c. A mere falſe affirmation or promiſe is certainly not ſuch; as was ruled in Munez's caſe, who perſuaded a woman who had a promiſſory note for 500l. to let him have it, under pretence that he had a friend in the houſe who would advance her money on it. How far the perſonating of another is ſuch was before conſidered. And though *writings* generally ſpeaking may be conſidered as *tokens*, yet they muſt be ſuch as are made in the names of *third* perſons; whereby ſome additional credit may be gained to the party uſing them; and not as was holden in Lara's caſe before mentioned, the mere giving of the defendant's own draft on a banker, with whom he had no credit; which was conſidered as no more than his bare aſſertion that the money would be paid. Upon the ſame principle in Wilders's caſe, his own marks on the veſſels, denoting them to contain a greater quantity of liquor than they did, and his own letters affirming the ſame fact, were holden not to be falſe tokens. It ſeems then that the falſe token muſt be ſuch as is calculated to gain the party ſome additional credit and confidence beyond his own aſſertion, or that which is reſolvable into ſuch. This inquiry however is become leſs important from the following ſtatute.

Ch. XVIII. § 7. *By ſtatute* 33 H. 8. c. 1. *Falſe tokens.*

R. v. Munez, Hil. 13 Geo. 2. MS. Tracy, 142. 2 Stra. 1127. 7 Mod. 315. S. C.

R. v. Macarty, ante, 8 3.

Lara's caſe, ante, ſ. 2.

Wilders' caſe, ante, 819.

§ 8. 30 Geo. 2. c. 24. *Cheats by falſe pretences.*

In furtherance of the proviſions of the above ſtatute it is further enacted by ſtat. 30 Geo. 2. c. 24. ſ. 1. "That all perſons who knowingly and deſignedly by falſe pretence or pretences ſhall obtain from any perſon or perſons money, goods, wares or merchandizes, with intent to cheat or defraud any perſon or perſons of the ſame, ſhall be deemed offenders againſt law and the public peace; and the Court before whom ſuch offenders ſhall be tried ſhall on conviction order them to be fined and impriſoned, or to be put in the pillory, or publicly whipped, or be tranſported according to the laws made for the tranſportation of offenders, &c. for the term of ſeven years, as the Court ſhall think fit." And by ſ. 2. any juſtice of peace, before whom any perſon charged on oath with any ſuch offence ſhall be brought, may commit or bail the party to anſwer the complaint at the next general or quarter ſeſſions of the peace, or next ſeſſions of oyer and terminer, and ſhall bind over the proſecutors by recognizance in a reaſonable ſum

to

Ch. XVIII. § 3. *By ſtatute* 30 Geo. 2. c. 24. *Falſe pretences.*

to proſecute, or in a ſum not leſs than double the amount of the money or goods fraudulently obtained if they ſhall exceed 20 l. in value; and by ſ. 20. the certiorari is taken away (*a*).

Young's caſe, infra.

The term "*falſe pretences*" is of great latitude, and was uſed, as Aſhhurſt J. remarked in Young's caſe, to protect the weaker part of mankind, becauſe all were not equally prudent: it ſeems difficult therefore to reſtrain the interpretation of it to ſuch falſe pretences only againſt which ordinary prudence cannot be ſuppoſed ſufficient to guard. But ſtill it may be a queſtion whether the ſtatute extends to every falſe pretence, either abſurd or irrational upon the face of it, or ſuch as the party has at the very time the means of detecting at hand; or whether the words which are general ſhall be conſtrued co-extenſively with the cheat actually effected by means of the falſe pretence uſed. Theſe may perhaps be matters proper for the conſideration of the jury, with the advice of the Court; and I will not attempt to draw any preciſe line on the ſubject, the difficulty of doing which has been announced from high authority; but I ſhall content myſelf with referring to a recent caſe which may ſerve as a general comment on this branch of law.

Per Lord Kenyon C. J. in R. v. Young and others, infra.

Rex v. Young, Randal, Mullins, and Oſmer, 3 Term Rep. 98. *Obtaining money under the falſe pretence of ſharing a ſuppoſed bet ſaid to have been before laid with another, and which was to be decided the next day.*

An indictment was framed on the ſtat. 30 Geo. 2. againſt Young and others, the firſt count of which ſtated, that the defendants, fraudulently intending to obtain the money of the King's ſubjects by falſe colours and pretences, unlawfully and knowingly, &c. did falſely pretend to one Thomas, that Young had made a bet of 500 guineas on each ſide with a colonel in the army then at Bath, that one W. L. would on the next day run on the high road leading from Glouceſter to Briſtol 10 miles in length within one hour; and that Young and Mullins did go 200 guineas each in the bet, and Randal did go the other 100 guineas; and that under colour and pretence of ſuch bet they obtained from Thomas as a part of ſuch pretended bet 20 guineas of the 500 guineas: by which ſaid falſe pretences the defendants unlawfully, &c. obtained from the ſaid Thomas the ſaid 20 guineas, with intent to cheat and defraud him thereof; whereas in truth no ſuch bet had been made, &c. againſt the form of the ſtatute, &c. A ſecond count ſtated the bet to have been made between Young and Oſmer. It was objected

(*a*) *Vide* Smith's caſe, Cowp. 24.

Ch. XVIII. § 8. *By ſtatute* 30 Geo. 2. c. 24. *Falſe pretences.*

jected in arreſt of judgment, firſt, that the tranſaction itſelf was not the ſubject matter of a criminal proſecution; for that it did not affect the public; and it was ſuch againſt which common prudence might have guarded; for being the repreſentation of a *future* tranſaction, the party had an opportunity of inquiring into the truth of it, and therefore it was his own fault if he were deceived. Secondly, that the offence was not charged with ſufficient certainty, inaſmuch as the colonel's name was not mentioned. *Lord Kenyon* C. J. ſaid, that the ſtat. 30 Geo. 2. c. 24. was conſidered to extend to every caſe where a party had obtained money by falſely repreſenting himſelf to be in a ſituation in which he was not, or by falſely repreſenting any occurrence that had not happened, to which perſons of ordinary caution might give credit. The ſtatute 33 H. 8. c. 1. required a falſe ſeal or token to be uſed, in order to bring defrauders into the confidence of the perſon impoſed upon. But that being found to be inſufficient the ſtat. 30 Geo. 2. c. 24. introduced another offence deſcribing it in terms extremely general. That when the criminal law was auxiliary to the law of morality he did not feel any inclination to explain it away. Now this offence was within the words of the act; for the defendants had by falſe pretences fraudulently contrived to obtain money from the proſecutor, who perhaps too credulouſly gave confidence to them. As to the ſecond objection; the charge was ſufficiently certain to enable the defendants to know what they were called upon to anſwer for. Perhaps the colonel's name with whom the wager was ſtated to have been made was not mentioned; ſo that he could not have been deſcribed with greater accuracy. But if ſuch a wager had been actually depending, it was competent to the defendants to have proved it in their defence. *Aſhhurſt* J. obſerved that the legiſlature were aware that all men were not equally prudent, and that the ſtat. 30 Geo. 2. was paſſed to protect the weaker part of mankind. The words of it were very general, and the Court could not reſtrain their operation. *Buller* J. in commenting on the operation of the ſtatute 30 Geo. 2. ſaid that it clearly extended to caſes which were not the ſubject of an indictment at common law or by the ſtat. 33 H. 8. That the ingredients of this offence were the obtaining money by falſe pretences and with an intent to defraud:

Vide ante, 817. for further obſervations on theſe ſtatutes.

Ch XVIII § 8. *By ſtatute* 30 Geo 2. c. 24. *Falſe pretences*

defraud: barely aſking another for a ſum of money was not ſufficient, but ſome pretence muſt be uſed, and that pretence falſe; and the intent was neceſſary to conſtitute the crime. He then mentioned a caſe which was tried before Morton C. J. of Cheſter and himſelf at Cheſter. The defendant applied to Sir T. Broughton, telling him that he was inſtructed by the Duke de Lauzun to take ſome horſes from Ireland to London, and that he had been detained ſo long by contrary winds that his money was ſpent. Sir T. Broughton was thereupon induced to advance ſome money to him. But it afterwards appearing that the whole ſtory was a fiction, the defendant was tried for a cheat on the ſtat. 30 Geo. 2. and convicted.

Rex v. Count Villeneuve, 1798. *Pretending to have been entruſted by one to take his horſes from Ireland to London, and to have been detained by contrary winds, till his money was expended.*

John Witchell was indicted before Lawrence Juſtice on the ſt. 30 Geo. 3. c. 24. for obtaining money from A. and H. Auſtin, by falſe pretences. It appeared in evidence that the Auſtins were clothiers at Wooton-under-Edge; that the priſoner was a ſhearman in their ſervice, and employed to ſuperintend the other ſhearmen, and to take an account of the perſons employed, and of the amount of their wages and earnings; that at the end of each week he was ſupplied with money to pay the different ſhearmen by the clerk of the proſecutors, who advanced to him ſuch ſum as according to a written account or note delivered to him by the priſoner was neceſſary to pay them. The priſoner was not authoriſed to draw from the clerk for money generally *on account*, but merely for the ſums actually earned by the ſhearmen; and the clerk was not authoriſed to pay him any ſums except what he carried in in his account or note as the amount of what was due to the ſhearmen for the work they had done. It appeared that the priſoner on the 9th September 1796 delivered to the proſecutors' clerk a note in writing in this form—"9th September 1796, ſhearmen £.44-11-0", which was the common form in which he made out his account of the amount of their week's wages. And it appeared further by a book in his hand-writing (which it was his buſineſs to keep of the men employed, of the work they had done, and their earnings) that there were in it the names of ſeveral men who had not been employed, who were entered as having earned different ſums of money, and falſe accounts of the work done by thoſe who were employed; ſo as to make

Witchell's caſe, Glouceſter Sp. Aſſ. 1798. MS. Jud. *A workman employed by clothiers was to keep an account of the number of ſhearmen employed and the amount of their earnings and wages, which he was weekly to deliver in in writing to a clerk, who paid him the amount. He delivered in a falſe account, charging for more work and of other men than done, by which he obtained a larger ſum than was due. This is obtaining money by a falſe pretence within the 30 G. 2 c 24; becauſe without the falſe pretence he would not have obtained the credit; and is not like a caſe of money paid generally on account.*

make out the ſum ſtated in the note to be due to the ſhearmen. The jury found the priſoner guilty; but ſentence was reſpited in order to take the opinion of the Judges whether this caſe were within the ſtat. 30 Geo. 2.; the priſoner's counſel contending that no caſes were within the ſtatute but thoſe where the original credit was obtained by means of the falſe pretence; and that it did not extend to caſes where there was a previous confidence, as he ſaid was the caſe here.

Ch. XVIII. § 8. *By ſtatute* 30 G. 2. c. 24. *Falſe pretences.*

The Judges firſt conferred on the caſe in Eaſter term 1798, when there was ſome diverſity of opinion on the true conſtruction of the ſtatute in this reſpect: but finally they all agreed in Trinity term following, on this principle, *that if the falſe pretence created the credit* the caſe was within the ſtatute: and they conſidered that in this caſe the defendant would not have obtained the credit but for the falſe account which he had delivered in, and therefore that he was properly convicted. The defendant, as was obſerved by one of the Judges, was not to have any ſum that he thought fit on account, but only ſo much as was worked out.

In Airey's caſe the indictment charged that one Barrow at K., &c. delivered to the defendant a common carrier certain goods to be carried by him from K. to one Leach at L., there to be delivered, &c. That the defendant received the goods under pretence of carrying and delivering them, and undertook ſo to do; but that intending to cheat Barrow of his money he afterwards unlawfully, &c. pretended to Barrow that he had carried the goods from K. to L. for the purpoſe of delivering them to Leach, and had delivered them to Leach at L., and that Leach had given him, the defendant, a receipt expreſſing ſuch delivery of the goods to him, but that he had loſt or miſlaid the ſame or had left it at home; and that the defendant thereupon demanded of Barrow 16s. for the carriage of the ſaid goods; by means of which falſe pretences he obtained the money, &c. On a writ of error after conviction the judgment was affirmed.

Rex v. Airey, M. 42 Geo. 3. 2 Eaſt's Rep. 30. poſt. t. 13. *A carrier obtains the money agreed for by pretending to have delivered the goods, and to have loſt the bailee's receipts.*

§ 9. *How far the ſtatutes of* H. 8 *and* G. 2. *vary from the common law.*

Though the ſtat. 33 H. 8. c. 1. naming *privy tokens* and *counterfeit letters* in other men's names, and the ſtat. 30 Geo. 2. c. 24. including *falſe pretences* in general may ſeem to have embraced every ſpecies of cheat not guarded againſt by the common

Ch. XVIII. § 9. *How the ſtats. of H. 8. and G. 2. vary from common law.*

common law, which without doubt included every cheat effected by means of any falſe token having the ſemblance of public authority, or in any manner touching the public intereſt, or in any other manner by conſpiracy or forgery; yet it is ſtill important to inquire how far theſe ſtatutes vary in any reſpect from the common law or from each other; for both of them are confined to cheats whereby *money* or *goods* are obtained, and therefore they would not in terms embrace *choſes in action*, as bonds, bills, or other written ſecurities for money; though theſe being now made ſubject matters of larceny of the ſame nature and in the ſame degree as if the offender had ſtolen any other goods of like value with the money due thereon, it may be queſtionable whether the fraudulent obtaining (which is included in larceny) of ſuch ſecurities by means even of a privy token or falſe pretence is not alſo indictable by help of the ſtatutes; or at leaſt whether ſuch fraudulent obtaining be not indictable at common law in every inſtance where the obtaining goods of the like value would be ſo indictable. It was alſo ſaid in Pear's caſe that the ſtatutes of Hen. 8. and Geo. 2. were confined to caſes where credit was obtained *in the name of a third perſon*, and did not extend to caſes where a man on his own account got goods *with an intention to ſteal them*. The latter branch of the dictum is undoubtedly true as to both the ſtatutes, in the ſenſe in which it was there applied, in contradiſtinguiſhing caſes of larceny from cheats. The former branch is alſo clearly founded upon the expreſs words of the ſtat. of H. 8., which ſpeaks of "privy tokens and counterfeit letters *in other men's names*." But it cannot fail to be noted that the words of the ſtatute of Geo. 2. are much more general, and have no ſuch reſtrictive words; and indeed it was purpoſely paſſed in order to ſupply the deficiencies of the former ſtatute. Beſides, ſuch an interpretation ſeems ſcarcely conſiſtent with the doctrine in Young's caſe, in Witchell's caſe, and other authorities. In the former Buller J. ſaid that the ingredients of the offence within the ſtatutes were the obtaining by falſe pretences, with intent to defraud; that if the intent were made out and the falſe pretence uſed to effect it, the caſe was brought within the ſtatute.

2 Geo. 2. c. 25. ſ. 3. ante, tit. Larceny and Robbery, 597.

Vide Dean's caſe, ante, 749.

Ante, 689.

Ante, 828. 830.

In Ward's caſe and in Obrian's caſe which will be elſewhere noticed, it was ſaid that the ſtat. 33 H. 8. c. 1. creates no new offences;

Ward's caſe, 2 Ld. Ray. 1466. & Obrian's caſe, 3 Mod. 378.

Ch. XVIII. § 9. *How the ſtats. of H. 8. and G. 2. vary from common law.*

offence; but only enhanced the puniſhment of ſuch as were offences at common law. The former part of this was undoubtedly true with reſpect to the offences then in judgment, which were *forgeries*; for ſo far the ſtat. 33 H. 8., which mentions counterfeit letters, was only in confirmation of the common law. And this may ſerve to explain other general expreſſions of the ſame tendency to be met with in ſeveral caſes which have been already referred to, from whence it might otherwiſe be collected that every caſe was ſuppoſed to fall within the ſcope of the common law where a falſe token was uſed: but other authorities mentioned ſeem to reſtrict the generality of this poſition, and to confine the operation of the common law in that reſpect to ſuch cheats in private tranſactions as are effected by means of falſe tokens of a public nature, of which falſe weights and meaſures, falſe dice, and falſe marks known and uſed in trade are given as examples. Therefore though a falſe token (other than a forgery) be uſed to accompliſh a cheat, yet it may be doubted whether to make the offence indictable at common law it muſt not be ſuch a token as is of a public nature, claiming public confidence and thereby calculated to deceive people in general, and not ſuch a *privy* token as is merely adapted to delude a credulous or incautious individual in a private tranſaction between the parties. If this be received as the true expoſition it will account for the paſſing of the ſtat. 33 Hen. 8. c. 1. and the particular wording of that law. Nothing appears either by the title or preamble of the ſtatute to ſhew that it was paſſed to obviate any doubts in the common law; neither is it ſo conſidered by Lord Coke: but rather it purports to provide for offences which had *then lately* ſprung up in order to evade the puniſhment of larceny. The title of the act is "a bill againſt them that counterfeit letters or *privy* tokens to receive money or goods *in other men's names*." The uſe of falſe *public* tokens for defrauding others was clearly puniſhable at common law as a cheat. The neceſſity then of the ſtatute was to reach frauds which were accompliſhed by means of *privy* tokens. Theſe privy tokens and counterfeit letters muſt alſo, as appears from the title, the preamble, and the enacting part, be made *in other men's names*. An argument then ariſes upon the particular wording of the ſtat. 33 H. 8. againſt the ſuppoſition that cheating by means of

Vide Rex v. Wheatley, 2 Burr. 1127. Young and others v. Rex, in Error, 3 Term Rep. 104.

3 Inſt. 133.

Ch. XVIII § 9. *How the ſt. is. of* H. 8. *and c. 2. were from common Law.*

every ſpecies of falſe token was puniſhable at common law without the aid of that ſtatute; for then ſo far from there being any neceſſity for it in ſuppreſſion of fraud, which the preamble aſſumes, it was even reſtrictive of the common law: and the reaſon given for it in Ward's and Obrian's caſe, namely, that it went only to enhance the puniſhment, is not well founded; the puniſhments inflicted by the ſtatute being no more than would be warranted by a judgment at common law for a miſdemeanor of ſuch a nature, and it does not even

Poſt. f. 14.

include the power of fining. The ſtat. 30 Geo. 2. c. 24. does indeed enhance the common law puniſhment by enabling the court to tranſport the offender: but that ſtatute extending the offence to cheating by means of *falſe pretences* is on all hands admitted to be introductive of a new law.

§ 10. *Frauds by particular perſons.*

There are various other proviſions by ſtatute for the puniſhment of particular kinds of frauds or cheats; moſt of which have been already referred to under former heads; ſuch as thoſe by goldſmiths, &c. in working up plate (*a*), embezzlements and frauds by *ſervants* (*b*), by *officers of the Bank* (*c*), and of other *public companies* (*d*), by perſons in the *poſt-office* (*e*), by *manufacturers* (*f*), by *lodgers* (*g*), by perſons entruſted with the King's *naval and military ſtores* (*h*), and by thoſe entruſted with *ſhips and goods at ſea* (*i*).

Ante, (*a*) 192. (*b*) 500. (*c*) 508. (*d*) 579. (*e*) ib. & 604. (*f*) 582. (*g*) 585. (*h*) 621. & 756. (*i*) 800. and vide p. ſt. *Malicious Miſch. f. Bankrupts.*

Frauds committed by *bankrupts* will be conſidered hereafter, together with other offences againſt public trade with which they are mingled.

Vide tit. Nuſance.

Others it is ſufficient here barely to refer to; as the ſtat. 6 Geo. 1. c. 18. againſt entering into public ſubſcriptions for certain ſchemes of commerce, &c. which is made indictable as a nuſance; and the ſtat. 37 Geo. 3. c. 143. which gives a ſummary juriſdiction to juſtices of the peace in petty ſeſſions to puniſh retailers in whoſe poſſeſſion falſe weights and balances ſhall be found.

Falſe weights and Balances.

§ 11. *Fraudulent conveyances &c. by* 13 Eliz. c. 5.

The ſtat. 13 Eliz. c. 5. againſt fraudulent deeds, aliena-
tions, &c. reciting "that feoffments, gifts, grants, aliena-
" tions, conveyances, bonds, ſuits, judgments, and execu-
" tions, are contrived of malice, fraud, covin, colluſion, or
" guile, to the end, purpoſe, and intent, to delay hinder or
" defraud creditors and others of their juſt and lawful ac-
" tions,

" tions, ſuits, debts, account, damages, penalties, forfeitures, Ch XVII. § 11. *By ſtat.* 27 Eliz. c. 4 *fraudulent conveyances, &c.*
" heriots, mortuaries, and reliefs," &c.: It therefore (ſ. 1.) declares and enacts "that all and every feoffment, gift,
" grant, alienation, bargain and conveyance of lands, tene-
" ments, hereditaments, goods and chattels, or of any of
" them, or of any leaſe, rent, common, or other profit or
" charge out of the ſame lands, &c. by writing or other-
" wiſe, and all and every bond, ſuit, judgment, and execu-
" tion, to or for any intent or purpoſe before declared and
" expreſſed, ſhall be deemed (as againſt the party grieved)
" utterly void," &c. And then it enacts (by ſ. 3.), "That
" all and every the parties to ſuch feigned, covinous, or
" fraudulent feoffment, gift, grant, alienation, bargain, con-
" veyance, bonds, ſuits, judgments, executions, and other
" things before expreſſed, (viz. for the purpoſe of delaying
" hindering or defrauding creditors and others) and being
" privy and knowing of the ſame, who ſhall wittingly and
" willingly put in ure, avow, maintain, juſtify or defend the
" ſame, as true ſimple and done had or made bonâ fide and
" upon good conſideration; or ſhall alien or aſſign any the
" lands, tenements, goods, leaſes, or other things before
" mentioned to him or them conveyed as aforeſaid, or any
" part thereof, ſhall incur the penalty and forfeiture of one
" year's value of the ſaid lands, &c. of or out of the ſame,
" and the whole value of the ſaid goods and chattels, and
" alſo ſo much money as are or ſhall be contained in any
" ſuch covinous and feigned bond; one moiety to the
" crown, the other to the party grieved, to be recovered in
" any of the Queen's courts of record by action, &c.; and
" alſo being thereof lawfully convicted ſhall ſuffer impriſon-
" ment for one half year without bail or mainprize."

Then by ſtat. 27 Eliz. c. 4. (*a*) reciting that ſubjects and corporations "after conveyances and purchaſes of lands,
" tenements, leaſes, eſtates, and hereditaments for money or
" other good conſideration may incur loſs and prejudice by
" reaſon of fraudulent and covinous conveyances, eſtates,

27 Eliz. c. 4. *Frauds ent conveyances, &c. to diſſat or prejudice purchaſers.*

(*a*) Copyholds were holden not to be within this act by Blencowe J. at Launceſton 1699. Bull N. P. 108. But in Doe d Watſon v. Routledge, B. R. M. 18 G. 3. Lord Mansfield C. J. ſaid that dictum was of no authority, and ought to be rejected. And Aſton J. remembered a caſe to the contrary: though the Court reſerved giving any deciſive opinion. Dougl. 715. a.

Ch. XVIII. § 11. *By ſtat.* 27 Eliz. c. 4 *fraudulent conveyances, &c.*

" gifts, grants, charges, and limitations of uſes, made or to " be made in or out of lands tenements or hereditaments ſo " purchaſed, which ſaid conveyances, &c. were or ſhall be " meant by the parties to be fraudulent and covinous, of " purpoſe to deceive ſuch as have or ſhall purchaſe the " ſame; or elſe by the ſecret intent of the parties the ſame " be to their own proper uſe, and at their free diſpoſition, " coloured nevertheleſs by a feigned countenance and ſhew " of words and ſentences as though the ſame were made " bonâ fide, &c. for remedy, (ſ. 2.) And for avoiding ſuch " fraudulent conveyances, &c." it enacts " that every con- " veyance, grant, charge, leaſe, eſtate, incumbrance, and " limitation of uſe or uſes, of in or out of any lands tene- " ments or other hereditaments whatſoever made heretofore, " &c. or at any time to be made for the intent and of pur- " poſe to defraud and deceive ſuch perſon or perſons, bodies " politic or corporate as have purchaſed or ſhall afterwards " purchaſe in fee ſimple, fee tail, for life lives or years, the " ſame lands, &c. or any part or parcel thereof, ſo formerly " conveyed, granted, leaſed, charged, incumbered, or li- " mited in uſe, or to defraud and deceive ſuch as have or " ſhall purchaſe any rent, profit, or commodity, in or out of " the ſame or any part thereof, ſhall (againſt the parties or " thoſe claiming under them) be utterly void," &c. And by

Sect. 3. " All and every the parties to ſuch feigned, co- " vinous and fraudulent gifts, grants, leaſes, charges, or " conveyances before expreſſed, or being privy or knowing " of the ſame or any of them, who ſhall wittingly and wil- " lingly put in ure, avow, maintain, juſtify, or defend the " ſame or any of them, as true ſimple and done, had or " made, bonâ fide, or upon good conſideration, to the diſ- " turbance or hindrance of the ſaid purchaſer or purchaſers, " leſſees, or grantees, or of their heirs, ſucceſſors, executors, " adminiſtrators or aſſigns, or ſuch as ſhall lawfully claim " any thing by from or under them or any of them, ſhall " incur the penalty and forfeiture of one year's value of the " ſaid lands tenements and hereditaments ſo purchaſed or " charged, (one moiety to the Crown, the other to the party " grieved, to be recovered by action, &c.); and alſo being " thereof lawfully convicted ſhall ſuffer impriſonment for " one half year, without bail or mainprize."

By

Ch XVIII. § 12. *By ſtat.* 9 Ann. c. 14. *cheating with dice, &c.*

§ 12. *Cheating with dice, &c.* 9 Ann. c. 14. and *vide* other proviſions in this act and 6 Car. 2. c. 7. giving actions to the party grieved to recover penalties.

By ſtat. 9 Ann. c. 14. ſ. 5. " If any perſon or perſons " ſhall by any fraud or ſhift, couſenage, circumvention, " deceit, or unlawful device, or ill practice whatſoever, in " playing at or with cards, dice, or any the games afore- " ſaid (*a*), or in or by bearing a ſhare or part in the ſtakes, " wagers, or adventures; or in or by betting on the ſides or " hands of ſuch as do or ſhall play as aforeſaid, win, obtain, " or acquire to him or themſelves, or to any other or others, " any money or other valuable thing or things whatſoever, " or ſhall at any one time or ſitting win of any one or more " perſon or perſons whatſoever above the ſum or value of " 10l.; and being convicted of any of the ſaid offences upon " an indictment or information to be exhibited againſt him " or them for that purpoſe, ſhall forfeit five times the value " of the money or other thing ſo won as aforeſaid, and in " caſe of ſuch ill practice as aforeſaid ſhall be deemed infa- " mous, and ſuffer ſuch corporal puniſhment as in caſes of " wilful perjury; and ſuch penalty to be recovered by ſuch " perſon or perſons as ſhall ſue for the ſame by ſuch action " as aforeſaid (*b*)."

Lookup's caſe, 2 Stra. 1048. 7 Term Rep. 461.

In Lookup's caſe the Court held that they had no authority on ſuch conviction to ſet a fine upon the offender; but on judgment given that he is convicted, &c. the penalty ſhall be recovered thereon by the informer.

Form of Indictment.

§ 13. *Form of indictment.* Rex v. Munoz, 7 Mod. 316. 2 Stra. 1127. and Eddy's caſe, H. 10 Ann. MS. Tracy, 142. Rex v. Maſon, 2 Term R. 581.

As to the form of the indictment, where the charge is for cheating by falſe tokens, it is neceſſary both at common law and upon the ſtat. 33 H. 8. to ſet forth what the falſe tokens are; in like manner as it is neceſſary to deſcribe the falſe pretences in an indictment founded on the ſtat. 30 Geo. 2. And in neither caſe is it enough to allege generally that the cheat was effected by means of certain falſe tokens or falſe pretences. The reaſon of which was given by Groſe J. in delivering the opinion of the Judges in Fuller's caſe, that there may be ſome falſe pretences not within the ſtatute, and therefore they muſt be ſet out, that the Court may ſee what they were. But it does not appear neceſſary to deſcribe

Fuller's caſe, MS. Jud. ante, 92. and poſt. Indictment, General Form. Rex v. Young and others, ante, 828.

(*a*) The games before mentioned are " Cards, Dice, Tables, Tennis, Bowls, " *or other game or games whatſoever.*"

(*b*) The *qui tam* actions are before mentioned.

Ch. XVIII. § 13. *Form of Indictment.*

them more particularly than they were ſhewn or deſcribed to the party at the time, and in conſequence of which he was impoſed upon. Alſo, it does not ſeem neceſſary to make any expreſs allegation that the facts ſet forth ſhew a *falſe token* or a *falſe pretence*; for in Terry's caſe, where the indictment on the ſtat. 33 H. 8. charged that he by a *falſe note* in the name of J. D. obtained into his hands a wedge of ſilver, &c.; it was holden well enough, though it were not ſaid to be a *falſe token*.

Terry's caſe, Cro. Car. 564.

Rex v. Airey, Mi. 12 G. 3. 2 Eaſt's Rep. 30. *Vide* ante, 831.

In Airey's caſe before mentioned the indictment which was framed on the ſtat. 30 G. 2. after alleging that the defendant unlawfully knowingly and deſignedly pretended ſo and ſo, proceeded thus—"by means of which ſaid *falſe* pretences the defendant unlawfully, &c. obtained from J. B. 16s. with intent to cheat the ſaid J. B. of the ſame," &c.; and then proceeded to negative the truth of the pretences uſed. This was holden to be ſufficient without alleging in expreſs terms that the pretences were falſe; or rather it was conſidered that the whole indictment taken together did amount to an expreſs allegation that the pretences were falſe; and that there was no technical form or order of words required ſo to expreſs the offence, if upon the whole it appeared that the money had been obtained by means of the pretence ſet forth, and that ſuch pretence was falſe.

Several may be charged jointly in an indictment with the ſame cheat; as if they be preſent and concurring at the time with thoſe by whom the falſe tokens or pretences are ſhewn by act or ſpeech.

Rex v. Young, and others, 3 Term Rep. 98. Ante.

§ 14. *Puniſhment.*

At common law the puniſhment for a cheat is as in other caſes of miſdemeanor by fine, impriſonment, or further by infamous corporal pain in aggravated caſes. How this has been confirmed or extended by the two ſtats. of H. 8. and Geo. 2. has been already ſhewn. Lord Coke ſays that offenders can only ſuffer corporal puniſhment, but cannot be fined by force of the ſtat. 33 H. 8. alone; though Hawkins refers to a precedent in Croke's Rep. where an offender was fined for a cheat falling within that ſtatute, on which the indictment was laid. Caſes however may occur where the offender may be fined at common law as well as corporally puniſhed under that ſtatute, which certainly was not meant to

3 Inſt. 133. 1 Hawk. ch 71. ſ. 6.

Terry's caſe, Cro. Car. 564.

to abridge but rather to extend the common law. And ſuch upon examination might well have been done there; for the falſe token there laid was a *falſe note* in the *name of another perſon*; which was a direct forgery at common law. So now there can be no offence either at common law or by the ſtatute of H. 8. which is not alſo comprehended within the act of the 30 Geo. 2. (ſubject to the obſervation before made), though the reverſe does not hold good.

Ch. XVIII. § 14. *Puniſhment*

(Ante, 832.)

Where goods have been obtained from another by mere fraud, the Court have no power of awarding reſtitution on conviction of the offender, as in caſes of felony.

Vide ante, 789. Parker v Patrick, 5 Term Rep. 175. and R. v. De Veaux and others, 2 Leach, 666.

CHAP. XIX.

FORGERY.

Definition. - - - - §1.
The falſe making or Alteration of any written Inſtrument whereby another may be prejudiced, with Intent to deceive and defraud.
Puniſhable as Miſdemeanor at Common Law. ib.
General Diviſion. - - - §2.
I. *With what Intent the Act muſt be done.* §3.
With Intent to deceive and defraud, though none be actually defrauded. *ib.*
But Q. Alteration not fraudulent may avoid a Security. *ib.*
II. *What falſe making or Alteration amounts to Forgery.* - - - - §4.
The Act alone before Publication. *ib.*
Publication with Knowledge made a ſubſtantive Offence by Statute in certain Caſes. *ib.*
Forging Deed in the Party's own Name. *ib.*
Indorſing Bill of Exchange payable to another of the ſame Name. *ib.* Or putting off a Note made in Truth in the Party's Name as the Note of another. *ib.*
Making fraudulent Inſertion, Alteration, or Eraſure, in material Part of a true Inſtrument; though executed afterwards by the true Party, not knowing thereof. *ib.*
But not a mere Omiſſion to inſert a Clauſe in it before Execution; unleſs ſuch Omiſſion alter the Senſe of what is inſerted. *ib.*
Nor a fraudulent perſonating of the true Man: but Indictment lies for the Conſpiracy and Cheat. §5.
Reſemblance of falſe to true Inſtrument need not be perfect. - - - - §6.
III. *Of*

III. *Of what Inſtruments, &c. Forgery may be committed.* - - - - §7.
1. *At Common Law.*
Of Records, and other public Inſtruments; of private Deeds, &c. under Seal, Wills, and other Inſtruments or Writings, ſuch as an Acquittance for Goods, or Order to appropriate them to the Party's Uſe, whereby any Perſon may be injured or defrauded. *ib.*
Q. As to a pretended Order or Authority to a Gaoler to releaſe a Priſoner, which if genuine was a Nullity. *ib.*
2. *By Statute;* relating - - - §8.
1. *To Records,* avoiding, rafing, or altering ſuch, Felony by Stat. 8 H. 6. c. 12. and 8 Ric. 2. c. 4. §9. *a*
2. *To the Tranſfer of public Funds, and the Stocks of public Companies.* - - - §9. *b*
The Forgery of any *Order, Aſſignment, Receipt, Diſcharge, Letter of Attorney,* or *other Authority or Inſtrument to tranſfer, &c.* any Share or Annuity of any capital Stock eſtabliſhed or to be eſtabliſhed by Parliament, or of any public Company; or to receive any ſuch Annuity or Dividend; or forging the *Name of any Proprietor,* &c. to ſuch Letter of Attorney, &c.; or *knowingly demanding* or *endeavouring* to have ſuch Share tranſferred, &c.; or ſuch Dividend received, &c.; or procuring or aſſiſting, &c. therein; Felony without Clergy, by Stat. 9 G. 1. c. 22. 31 Geo. 2. c. 22. ſ. 77. and 4 Geo. 3. c. 25. ſ. 15. *ib.*
Extended by 33 Geo. 3. c. 30. to Tranſfers of Stocks in the Names of any other than the Owners. *ib.*
Forging or aſſiſting to forge, or uttering, &c. forged *Tranſfers. ib.*
Alſo to Perſons making or aſſiſting to make *falſe Entries* in the Books of the Bank. *ib.*
Making out *falſe Dividend Warrants,* Tranſportation for 7 Years. *ib.*
Forging *Names of Witneſſes to Inſtruments* for Tranſfer or Receipt of Public Stock, or Stock of the Bank,

South-Sea, or East-India Companies, Felony by Stat. 37 Geo. 3. c. 122. - - - § 9. *b*

Extended to certain Irish Funds made payable at the Bank of England by Stats. 35 Geo. 3. c. 66. and 37 Geo. 3. c. 46.

One may be indicted for forging a Transfer of Stock of which A. was charged to be possessed of and entitled to; though he had not accepted such Transfer as directed by Statute. *ib.*

3. *Notes and other Securities of the Bank of England and other public Companies.* - - § 10.

i. *Securities of the Bank of England;* Forgery thereof, or demanding Money thereon, made Felony without Clergy by Stat. 15 Geo. 2. c. 13. - § 10.

So of *Common Seal* by several Stats. of Will. 3.

Having in Possession (except by Persons authorised) of *Instruments, &c. for making Paper* (like that used by the Bank of England in their Notes in the Respects therein mentioned); or assisting, &c. Felony without Clergy, by Stat. 13 Geo. 3. c. 79. *ib.*

Making Plates, &c. with Words (*Bank of England*, &c. or *the Sums*) in *white Letters on black Ground;* or using such Plates; or knowingly having such in Custody; or wilfully uttering such Notes, &c. Imprisonment. *ib.*

Making or *having in Possession* certain *Paper* like the Bank *with curved Lines*, &c. Felony and Transportation for 14 Years by Stat. 41 Geo. 3. c. 39. *ib.*

Knowingly receiving or *having in Possession* forged Bank Notes, &c. without lawful Excuse, Felony and Transportation for 14 Years. *ib.*

Engraving Plate, &c. like Bank Note, or *using*, or *knowingly having such in Possession*, without written Authority, or *uttering*, &c. Felony and Transportation for 7 Years. *ib.*

What a *rasing* of an *Indorsement* on a Bank Bill. § 11.

What a sufficient Resemblance to a Bank Note, &c. to be said to *purport* to be such. *ib.*

ii. *Securities of South-Sea Company.* - § 12.

Forgery

Forgery of *Common Seal, Bonds*, &c.; *offering to dispose of* or *put away* the same knowingly, &c.; *demanding Money thereon*, &c. with Intent to defraud the Company or any other; Felony without Clergy by Stat. 9 Ann. c. 21. and 6 Geo. 1. c. 4. § 12.

So forging *Indorsement* or *Assignment* of such Bond, &c. by Stat. 12 Geo. 1. c. 32. *ib.*

So forging *Receipts* for Stock and Dividend Warrants, or uttering the same, &c. by Stat. 6 Geo. 1. c. 11. *ib.*

iii. *London and Royal Exchange Assurance Company*, and *Globe Insurance Company*, protected by similar Provisions, extending also to *Policies* and *Bills.* § 13.

iv. *East-India Company* - - - § 14.

Forging *Bond. Indorsement*, or *Assignment;* or uttering or publishing such; Felony without Clergy by Stat. 12 Geo. 1. c. 32. s. 9. *ib.*

v. *Plate Glass Manufactory Company.* - § 15.

Forging *Seal*, or *Deed or Writing under Seal;* or *demanding Money* in pursuance thereof; Felony by Stats. 13 Geo. 3. c. 28. and 33 Geo. 3. (c. 17.) s. 23.

4. *Stamps.* - - - - § 16.

Forgery thereof on written *Instruments* on which *public Duties are levyable* made capital Felonies by the respective Revenue Acts. *ib.*

Fraudulently *using Stamps a second Time* by transposing them or erasing, &c., Words in the stamped Instrument; Felony and Transportation by Stat. 12 Geo. 3. c. 48. Q. Made capital in some Cases by subsequent Statutes. - - § 17.

So forging *Essay Marks* or *Duty Stamps* on *Gold* or *Silver Plate* by Stats. 31 Geo. 2. c. 32. s. 15. and 24 Geo. 3. st. 2. c. 53. s. 16. - - § 18.

But forging other Marks required by Stat. 38 Geo. 3. c. 69. only Felony and Transportation for 7 Years. *ib.*

Construction on the Stamp Acts. - - § 19.

Indictment for uttering Pieces of *Paper liable to the Receipt Duty*, held well. *ib.*

" Duties

" Duties of Excise" and " Duties under the Management of the Commissioners of Excise," are tantamount Expressions under Stat. 27 Geo. 3. c. 13. s. 35. 38. and the Penalty of forging Stamps in respect of Duties of the latter Sort revived under the former Denomination. - - - § 19.

Indictment charging the Duty to be laid " for, on and " in respect of," is good; though the Words of the Act be " for and upon." *ib.*

5. *Official Papers, Securities, and Documents.* - § 20.

i. Forging *Testimonials of Soldiers and Mariners* a capital Felony by Stat. 39 Eliz. c. 17. s. 3. *ib.*

ii. Forging, &c. *Memorials of Registry of Deeds and Wills*, and *of Bargains and Sales* in Yorkshire and Middlesex, capital Felonies by several Statutes. § 21.

iii. Forging *Documents* relating to *Suitors in Chancery*, capital Felony by Stat. 12 Geo. 1. c. 32. s. 9. § 22.

iv. Forging *Mediterranean Passes*, capital Felony by Stat. 4 Geo. 2. c. 18. - - § 23.

v. Forging *Marriage Registers and Licences*, capital Felonies by Stat. 26 Geo. 2. c. 33. s. 16. § 24.

vi. Forging *Seamen's Letters of Attorney*, &c. to receive Wages, Prize Money, &c. *Last Wills*, or *other Powers or Authority whatsoever* for such Purpose; or *uttering* or *publishing* the same: or forging *Certificate of Discharge*, &c.

Or *Certificate* to obtain *Letters of Administration* to *Seamen*, and *other Documents to receive Wages*, &c. Felony without Clergy by various Statutes. § 25.

Muster-Books of the Navy Office Evidence. *ib.*

vii. Forging *Prefines*, Felony without Clergy by Stat. 32 Geo. 2. c. 14. s. 9. - - § 26.

viii. Forging *Franks of Letters*, Felony and Transportation by Stat. 24 Geo. 3. st. 2. c. 37. s. 9. § 27.

ix. Forging, &c. of *Exchequer Bills, Orders, Assignments*, &c. capital Felonies by the several Acts. § 28.

x. So of *Lottery Tickets*. - - § 29.

xi. Re-

xi. *Receipts* for *Duties on Legacies*, altering thereof, a Penalty of 500l. Forging *Stamps* thereof capital Felony by Stat. 36 Geo. 3. c. 52. - § 30.

xii. Making or subscribing *false Certificatee of Naval or Military Stores*, a Misdemeanor. - § 31.

6. *Private Papers, Securities, and Documents.* § 32.

i. Forging *Deeds, Charters, Writing sealed, Court Roll, or Will*, to molest, defeat, charge, &c. the Estate of Freehold or Inheritance of any Person; or knowingly publishing or shewing in Evidence any such (except by Attornies, &c. for Clients); Misdemeanor, and subjected to infamous Punishment by Stat. 5 Eliz. c. 14. *ib.*

Forging the like Deeds, &c. with Intent for any to claim Estate for Term of Years, &c. Or

Forging any *Obligation, Acquittance, Release, or Discharge* of any Debt, &c. or other Thing personal; or knowingly pronouncing or publishing, &c. the same, Misdemeanor, &c. *ib.*

Committing any of such Offences a second Time, (i. e. after Conviction by Judgment) Felony without Clergy. *ib.*

Construction of the Stat. 5 Eliz. c. 14. - § 33.

To what Estates the Stat. extends. *ib.*

To what Writings. *ib.*

ii. Forging any *Deed, Will, Testament, Bond, Writing-Obligatory, Bill of Exchange, Promissory Note for the Payment of Money, Indorsement or Assignment of such Bill or Note, Acquittance or Receipt for Money or Goods*, with Intent to defraud any Person (or by Stat. 31 Geo. 2. c. 22. s. 78. any Corporation); or *uttering or publishing* the same as true; Felony without Clergy, by Stat. 2 Geo. 2. c. 25. and 9 Geo. 2. c. 18. - - - - § 34.

Extended by Stat. 7 Geo. 2. c. 22. and 18 Geo. 3. c. 18. to *Forgers, Procurers*, or *Assisters* in forging of any *Acceptance of any Bill of Exchange*, or *the Number or principal Sum of any accountable Receipt for any Note, Bill, or other Security for Payment of Money*, or any

Warrant

Warrant or Order for Payment of Money or Delivery of Goods. - - - - § 34.
Knowingly *uttering or publiſhing* the ſame. *ib.*
Quære. Whether uttering in England a Bank Note made and payable in Scotland be within the Acts as a *Writing-Obligatory.* - - § 35.
What a *Receipt for Money.* - - § 36.
Indictment for forging a Receipt, viz. " Received the " *Contents above* by me," &c. is ſufficient, without ſetting forth the Bill of Items to which it refers. *ib.*
Receipt for *Bank Notes* not a Receipt for *Money* or *Goods* within Stat. 2 Geo. 2. c. 25. *ib.*
Nor a forged Receipt for *Bank Notes* with Intent to defraud a *Corporation*, within the Stat. 7 Geo. 2. which only names *Perſons.* *ib.*
But that now aided by Stat. 18 Geo. 3. c. 18. *ib.*
A falſe Entry of a Sum and a Date as by the Bank on the Debtor Side of their Caſh Book kept by a Cuſtomer, is a Receipt for Money, &c. within the Acts. *ib.*
But where the Words forged do not in themſelves purport to be a Receipt (as a mere Name), but are only ſo as connected with ſome other Matter, ſuch Connection muſt be ſhewn in the Indictment. *ib.*
A Scrip Receipt with the Blank not filled up with any Perſon's Name, from whom it was ſuppoſed to be received, is not a Receipt for Money within the Statutes. *ib.*
A falſe Voucher forged in the Name of a third Perſon, as acknowledging the Receipt of Money by ſuch Perſon to the Forger in order to obtain Reimburſement from another on the Credit of ſuch Voucher, is within the Statutes. *ib.*
What a *Warrant or Order for Payment of Money, or Delivery of Goods.* - - - § 37.
It muſt be by one having or claiming Authority to command, and not merely a Requeſt. *ib.*
But ſufficient if it ſo purport to be, though in Truth he had no ſuch Authority. - - § 38.
And though made in a fictitious Name. *ib.*

An Order in general Terms is ſufficient, without ſpecifying the particular Goods or Sum of Money; if intelligible to thoſe to whom addreſſed. - § 39.
As " to deliver my Work," &c. *ib.*
So an Order for Payment of " all my Proportion of Prize Money," &c. *ib.*
The Statutes extend to Inſtruments of other ſpecific Denominations, if in legal Effect *Warrants*, *Orders*, &c. as Bills of Exchange, &c. - - § 40.
Not confined to Commercial Tranſactions. § 41.
Extends to Orders for Seamen's Pay, &c. *ib.*
By Stat. 41 Geo. 3. c. 57. counterfeiting, &c. certain *Moulds* for certain *printed Forms* or *Paper* of a particular Deſcription *uſed by Bankers*, &c. in their *Bills*, *Notes*, &c. or uſing the ſame, &c. or publiſhing ſuch Notes, &c. knowingly; Miſdemeanors: and for 2d Offence, Tranſportation. - § 42.

IV. *How far the Validity in Law of the Thing forged, ſuppoſing it were true, is eſſential to Forgery.* - - - - § 43.

Sufficient if it purport on the Face of it to be ſuch a true Inſtrument or Writing, of which Forgery may be committed.
As the Forgery of a Protection in the Name of one as a Member of Parliament who was not ſo. *ib.*
Of a Conveyance of an Eſtate by a wrong Deſcription. *ib.*
Of the Will of a living Perſon. *ib.*
Of the Inſtruments of Perſons who had no Exiſtence. *ib.*
What Degree of Similitude between the counterfeit and true Inſtrument is ſufficient. - - § 44.
It muſt have the eſſential Requiſites of the true Inſtrument; but ſufficient if calculated to impoſe on Perſons in general. *ib.*
How the Counterfeit muſt tally with the Deſcription of the particular Inſtrument alleged in the Indictment to be forged. - - - § 45.
A Bill of Exchange directed to J. *Ring* and accepted by J. *King* cannot be laid as *purporting* to be directed to J. *King* by the Name of J. *Ring*. *ib.*

But Indictment for forging Will of P. P. good, though the Will which began "I P. P." &c. concluded with the Signature of *J. P.* - - §45.

But if the Inſtrument, if genuine, would be illegal and void on the Face of it, as where a forged Will of Lands was only atteſted by two Witneſſes, being preſumed to be freehold, (the contrary not appearing), and therefore void by Stat. of Frauds, held no Forgery as of a Will. *ib.*

So where a Bill of Exchange for leſs than 5l. had not the Requiſites enjoined by Stat. 17 Geo. 3. c. 30. without which it was declared void. *ib.*

Aliter in caſe of Forgery of a Bill of Exchange on unſtamped Paper. *ib.*

Or where the Inſtrument is only avoidable by collateral Evidence dehors, but good on the Face of it. *ib.*

V. *How far uſing a fictitious Name, or perſonating the true Man or fictitious Character aſſumed at the Time, will affect the Offence.* §46.

Forgery may be committed in the Name of a non-exiſting Perſon. *ib.*

As of a Power of Attorney to receive Prize-Money in the Name of a ſuppoſed Repreſentative of a deceaſed Seaman. *ib.*

So of bills of Exchange drawn or indorſed in fictitious Names. *ib.*

Immaterial whether any additional Credit be gained by the Forgery; as where a Party unknown indorſed a Bill in a different Name as for his own. §47.

Or where one in like Manner ſigned a Receipt to the Drawee for the Contents of a Bill, made payable to Order, and indorſed in Blank. *ib.*

But where the Credit is given to one *perſonally*, ſaid to be no Forgery if he give a Security for it in a fictitious Name as for his own: (ſed Qu. if done fraudulently? poſt.). Aliter, where he thereby gains a ſuperior Credit, or induces a Truſt which would not otherwiſe be beſtowed. - - - §48.

Or

Or as it ſeems, if he uſed ſuch other Name the better to deceive and defraud, and elude Reſponſibility. §48.

Giving Security in Name of another real Perſon, whom the Party aſſumes to be, is Forgery. - §49.

Although the Party's own Name happened to be the ſame. As where one indorſed a bill payable to the Order of another of the ſame Name, knowing that he was not the Perſon intended. *ib.*

Or where one, having authoriſed another to draw a Note in his own Name, afterwards paſſed it off as another's. *ib.*

Aliter where one only aſſumed to be the real Indorſer, though for the Purpoſe of Fraud. *ib.*

But perſonating others for fraudulent Purpoſes puniſhable capitally by Statute in certain Caſes. *Poſt.*

Aſſuming to be the ſuppoſed Character in whoſe Name the Forgery is committed. - - §50.

Giving a Banker's Draft in a fictitious Name as for the Party's own, but with a falſe Deſcription of Place of Abode to elude Reſponſibility, Forgery. *ib.*

Q. Where the Party at the Time he gave the Note gave his true Place of Abode, and had taken the Houſe in the aſſumed Name a Month before: though he aſſumed it for the Purpoſe of Fraud. *ib.*

VI. *What a publiſhing or uttering.* - §51.

Every Manner of exhibiting the Inſtrument as a true one, with Knowledge of its being forged.

This Offence diſtinct from the Act of Forgery.

VII. *Aſſiſters and Acceſſaries.* - §52.

At Common Law all are Principals in Forgery.

Aliter under the Statutes creating it Felony.

VIII. *Indictment and Evidence.* - §53.

Indictment muſt ſet forth forged Inſtrument in *Words* and *Figures*. *ib.*

But ſetting it forth "as follows" is the ſame as "according to the *Tenor* following." *ib.*

Indictment, ſetting forth the *Tenor* of the Note forged, ſuſtained by Proof that the Atteſtation of the Witneſs, and the Words "M. W. her Mark" ſet forth, were added after the Party had ſigned the Note, but on the ſame Occaſion. - - § 53.

And ſufficient to ſet forth the Thing forged, as a Receipt, which purports to be ſuch on the Face of it, without ſetting forth the Inſtrument to which it has Relation or Reference. *ib.*

Aliter where in itſelf it did not purport to be a Receipt; in which Caſe it muſt be ſhewn how it operated as ſuch by proper Averments. *ib.*

A literal Variance, as writing "Value *received*" for "Value *receivd*," evidently meaning the ſame word, will not vitiate. - - - - § 54.

Where *true* Inſtrument *in Part altered*, it may be laid as a Forgery of the *Whole*. - - § 55.

Charging Forgery of a *Paper Writing purporting* to be ſuch an Inſtrument as the Statute deſcribed is good. § 56.

But the forged Paper muſt *on the Face of it* purport to be as deſcribed. *ib.*

Deſcribing a Bill as *purporting* to be directed to J. K. by the Name of J. R., or to R. D. &c. by the Name of Meſſrs. D. &c. bad. *ib.*

Stating a Bill of Exchange *to be ſigned* by H. H., inſtead of only *purporting* to be ſo ſigned, is bad, if the Signature appear to be forged. *ib.*

What *technical Words* neceſſary in laying Forgery at Common Law. - - - § 57.

Indictment muſt bring Offence within the deſcriptive Words of the Statute. - - § 58.

But *ſuperfluous Deſcription* does not hurt; as deſcribing a Bond to be a Bond *and* Writing-Obligatory. *ib.*

And charging that one *altered* a Bill of Exchange *by falſely making*, *forging* and adding a cypher, &c. is good, though the Statute has the Words "if any Perſon ſhall *falſely make*, *forge*, &c. *ib.*

So a *Variance* in immaterial Words of a Statute does not hurt; as ſtating a Duty to be chargeable *for*, *on*,

on, and in reſpect of Muſlin; the Statute impoſing it *for and upon*, &c. - - - - § 58.

But alleging that Defendant forged *or* cauſed to be forged, &c. bad for Uncertainty. *ib.*

Indictment muſt ſtate *Intent to defraud*, and *whom*. § 59.

Offence created, with Intent to defraud *a Perſon*, not ſuſtained by Charge or Intent proved to defraud a *Corporation*: But this now remedied by Statute 18 G. 3. c. 18. in certain Caſes. *ib.*

Indictment need not ſtate how the Party charged was to be defrauded, which is Matter of Evidence. *ib.*

But ſufficient to allege the Forgery of the Thing prohibited, and that it was with Intent to defraud ſuch an one.

How the *Parties* to be deſcribed againſt whom the Offence is committed; particularly in Caſe of Partnerſhip Firms, and public Bodies. - § 60.

What Proof required of Forgery in the particular *County*. - - - - § 61.

IX. *As to the Competency of the Witneſſes to the requiſite Facts.* - - - § 62.

Perſons *intereſted* in avoiding an Inſtrument not competent to prove the Writing forged. - § 63.

Though by collateral Evidence diſproving the Hand-Writing. - - - - § 64.

How far competent to prove other collateral Facts. § 65.

As Identity, or Non-Exiſtence of the Perſon whoſe Name is alleged to be forged. *ib.*

Where the Intereſt of the Party is removed by Payment of the Security, or Settlement of the Account outſtanding againſt him on Account of the Forgery, his Competency to prove his Hand-Writing forged is reſtored. - - - - § 66.

So the Party is competent who never had an Intereſt: as in caſe of Forgery of a Will of a living Perſon, or of Vouchers in his Name for the Purpoſe of impoſing on third Perſons with whom he had no Concern. § 67.

How far one who is a bare *Truſtee*, acting in the Name or for the Benefit of another is a competent or neceſſary Witneſs to prove the Forgery of his Hand-Writing. - - - - § 68.
In all Caſes a *Releaſe* reſtores the Competency of a Witneſs otherwiſe intereſted. - § 69.

X. *Judgment and its Conſequences.* - § 70.

Forgery.

§ 1. *Definition.* *Vide* 3 Inſt. 169.

TO *forge*, (a metaphorical expreſſion borrowed from the occupation of the ſmith), means, properly ſpeaking, no more than to *make* or *form*: but in our law it is always taken in an evil ſenſe; and therefore *Forgery* at common law denotes a *falſe* (*a*) making [which includes every alteration of or addition to a true inſtrument], a making *malo animo*, of any written inſtrument for the purpoſe of fraud and deceit. This definition reſults from all the authorities ancient and modern taken together. The more early writers on the Crown Law ſeem to have fettered their definitions of the nature and principle of the offence with its application to the particular ſpecies of inſtruments alone to which the experience and neceſſity of their own times had extended it: theſe, which I ſhall preſently advert to, were either public inſtruments or deeds. But they all conſider the offence as conſiſting in the falſe and fraudulent making or altering of ſuch and ſuch inſtruments. Lord Coke indeed ſeems to confine it in ſtrictneſs to an act done *in the name of another*, but this was long ago agreed in Anne Lewis's caſe to be too narrow a definition. Hawkins ſays, that the notion of forgery does not ſeem ſo much to conſiſt in the counterfeiting a man's hand and ſeal, as in endeavouring to give an appearance of truth to a mere deceit and falſity, and either to impoſe that upon the world as the ſolemn act of another, which he is no way privy to, or at leaſt to make a man's own act appear to have been done at a time when it was not done, and by force of ſuch a falſity to give it an operation

Brit. 16. Fleta, lib. 1. c. 22 and lib 2. c. 1. ſ. 9. *Vide* Pult. 43. b. &c. 3 Inſt. 169. 1 Hawk. ca. 70. ſ. 1. &c. Poſt. ſ. 7.

Lewis's caſe, Foſt. 117. Poſt. ſ 46. 1 Hawk. ch. 70. ſ. 2.

(*a*) Forgery is known in the civil law under the denomination of *crimen falſi*.

which

which in truth and juſtice it ought not to have. He however, like others before him, limits the application of the offence to certain inſtruments, though he adds *wills* to the liſt given by former writers. As experience grew, and the true principle of the offence became more conſidered and better underſtood, more modern definitions have taken a larger ſcope. Mr. Juſtice Blackſtone ſays, that forgery is "the fraudulent making or alteration of a writing to the prejudice of another's right." In Coogan's caſe Buller J. ſaid, it is "the making a falſe inſtrument with intent to deceive;" as Eyre B. in Taylor's caſe, defined it to be "a falſe ſignature made with intent to deceive." In the word *deceive* muſt doubtleſs be intended to be included an intent to *defraud*; and ſo it was defined by Groſe J. in delivering the opinion of the Judges in the caſe of Parkes and Brown; viz. the falſe making a note or other inſtrument with intent to defraud. Again, Eyre B. in the caſe of Jones and Palmer defined it to be "the falſe making an inſtrument, which purports on the face (*a*) of it to be good and valid for the purpoſes for which it was created, with a deſign to defraud," &c.

Ch. XIX. § 1. *Definition.*

4 Blac. Com. 247. and *vi.* poſt. 861.

Coogan's caſe, Mich. term 1787, poſt. f. 43.

Taylor's caſe, coram Juſts. Nov. 1779, MS. Buller J. Poſt. f. 47.

Parkes and Brown's caſe, O. B. Dec. 1797. 2 Leach, 910. Poſt. f. 50. and *vi* Obrian's caſe, 2 Seſſ. Caſ. 369.

Jones and Palmer's caſe, O. B. 1785, 1 Leach, 405.

The offence is puniſhable as a miſdemeanor at common law. But it has been enhanced in ſuch a variety of inſtances by different ſtatutes, upon which it is now moſt uſual to proſecute, that a compendious view of theſe, explained by adjudged caſes, and illuſtrated by the principles of the common law, forms the principal ſubject for conſideration upon this head of criminal juriſprudence. For this purpoſe I ſhall endeavour to claſs them under appropriate heads; taking care, whilſt brevity is conſulted in this reſpect, to preſerve not only the ſubſtance, but in every material part the very words, of theſe ſtatutes. I muſt premiſe however that as the Legiſlature in many of theſe acts have treated the offence of falſe perſonating others for fraudulent purpoſes in the ſame light as forgery ſtrictly ſo called, and as the offences bear a cloſe affinity to each other, often making parts of the ſame plot of deception, I ſhall for the preſent claſs them together as they occur; though there will be a ſeparate reference to the offence of falſe perſonating in the enſuing chapter.

Puniſhment. 1 Hawk. ch. 70. ſ. 1. 4 Blac. Com. 247. 3 Bac. Abr 277. Poſt. f. 70.

(*a*) This muſt be underſtood in reſpect of the frame or terms of the inſtrument or writing itſelf, and not of any other collateral matter, as a *ſtamp*. *Vide* poſt. f. 45.

Ch. XIX. § 2. *General diviſion of the ſubject.*

I proceed now to conſider the ſubject as it falls properly under one or other of theſe inquiries;

1. *With what intent the act muſt be done.*
2. *What falſe making, inſertion, alteration, or erazure, amounts to forgery.*
3. *Of what things forgery may now be committed.*
4. *How far the validity in law of the thing forged, ſuppoſing it were true, is eſſential to forgery. Wherein is alſo to be conſidered what degree of ſimilarity is required between the counterfeit and the true inſtrument.*
5. *How far uſing a fictitious Name or perſonating the true man or fictitious character aſſumed at the time will affect the offence.*
6. *What is a publiſhing or uttering.*
7. *What ſhall make a perſon aſſiſting or acceſſary.*
8. *Some general rules touching the manner in which the offence is to be laid in the indictment and proved in evidence.*
9. *As to the competency of the witneſſes to the fact.*
10. *Judgment, and its conſequences.*

I. *With what intent the act muſt be done.*

Intent.
Ante, f. 1.
1 Hale, 683.
3 Bac. Abr. 278, MS. Burnet.
Poſt. f. 32.
1 Hawk. ch. 70. ſ. 4. 11.
Noy. 99.
Moor, 619. 655.
Salk. 375.
3 Bac. Abr. 279.
Vide Tatlock v. Harris, 3 Term Rep. 181.

The deceitful and fraudulent intent appears from the definitions before given of this offence to be of the eſſence of it: this is indeed particularly expreſſed in the ſtatute 5 Eliz. c. 14. and in moſt if not all the other acts. Therefore one who raſed out the word *libris* in a bond made to himſelf and put in *marcis* was adjudged not guilty of forgery; becauſe there was no appearance of a fraudulent deſign to cheat another. But at any rate it is very dangerous to tamper in theſe matters, beſides the conſequence of vacating the ſecurity altogether. And it is ſaid that it would be forgery if it any way appeared to be done with a view of gaining an advantage to the party himſelf, or of prejudicing a third perſon. Yet it was holden no objection to a ſpecial verdict that the forgery was not found to have been committed for the ſake of lucre or to defraud the party. But in all caſes of forgery, properly ſo called, it is immaterial whether any perſon be actually injured or not, provided any may be prejudiced by it.

Bigg's caſe, 3 P. Wms. 419.

R. v. Ward, 2 Ld Ray. 1466. poſt. f. 7.

II. *What*

II. *What falſe making, &c. is ſufficient.*

Ch. XIX. § 4. *What a falſe making or altering.*

§ 4.

The very making, with ſuch fraudulent intent and without lawful authority, of any inſtrument which at common law or by ſtatute is the ſubject of forgery, is of itſelf a ſufficient completion of the offence even before publication, and of conſequence before any actual injury ſuſtained: for though publication be the medium by which the intent is uſually made manifeſt, yet it may be proved as plainly by other evidence. And by the ſtatute law the publication, with knowledge of the fact, is for the moſt part made a ſubſtantive offence.

Vide 1 Hawk. ch. 70. ſ. 27. Elliot's caſe, poſt. f. 44. R. v. Goate, 1 Ld. Ray. 737. R. v. Ward, 2 Ld. Ray. 1469.

Forgery may even be committed by a party's making a falſe deed in his own name; as if he make a ſubſequent deed of feoffment, as of a date prior to a former deed of his own, conveying the ſame lands, thereby attempting to give the laſt an operation which in juſtice it ought not to have, in order to defraud his own feoffee.

1 Hawk. ch. 70. ſ. 2. 3 Inſt. 169. Poſt. 117. 1 Hale, 683. Pult. 47. b. 27 H. 6. 3. Moor, 655.

So if a bill of exchange payable to A. or order get into the hands of another perſon of the ſame name with the payee, and ſuch perſon, knowing that he is not the real payee in whoſe favour it was drawn, indorſe it for the purpoſe of fraudulently poſſeſſing himſelf of the money, he is guilty of forgery. So if one put off a note ſubſcribed with his own name as the note of another, it is a falſe uttering and publiſhing within the ſtatute.

Mead v. Young, 4 Term Rep. 28. Brown's caſe, poſt. f. 49.

Making a fraudulent inſertion, alteration, or eraſure, in any material part of a true inſtrument, although but in a letter, and even if it be afterwards executed by another perſon, he not knowing of the deceit; or the fraudulent application of a true ſignature to a falſe inſtrument for which it was not intended, or vice verſâ; are as much forgeries, as if the whole inſtrument had been fabricated; for any ſuch alteration gives it a new operation. As by altering the date of a bill of exchange after acceptance, whereby the payment was accelerated.

1 Hawk. ch. 70. ſ. 2. 4, 5. 3 Inſt. 169, 170, 1. 1 Hale, 683, 4, 5. Dawſon's caſe, poſt. f. 55. 1 Stra. 18. Puckering's caſe, 1 Ander. 100. Teague's caſe, poſt. f. 55. Maſter v. Miller, 4 Term Rep. 320.

Expunging an indorſement on a bank note with a certain liquor (lemon juice) unknown to the jury was holden a raſing within the act, 8 & 9 W. 3. c. 20.

R. v. Bigg, 3 P. Wms. 419. Ld. King's MS. 98. poſt. f. 11.

Samuel Kinder procured a deed to be forged as from one J. Moore and his ſon, conveying a certain eſtate for life to

Kinder's caſe, Nottingham Sum. Aſſ. 1800, MS. Jud. and Mich. Term following.

Ch. XIX. § 4. *What a falſe making or altering.*

Mary Kinder, and after the death of one of the ſuppoſed grantors he procured the forged deed to be altered by enlarging the grantee's eſtate to a fee; and was indicted and convicted for forging and uttering it in the ſtate to which it was ſo altered; and held well by all the Judges; for it was no leſs a forgery after than before ſuch alteration.

Vi. poſt. f. 55.

1 Hawk. ch. 70. f. 2. 6. Moor, 760. Noy, 101.

So the wilful inſertion of a legacy in another's will unknown to him prior to and at the time of its execution is a forgery. But a bare nonfeaſance or omiſſion is ſaid not to be ſuch: as by omitting a legacy out of a will which one is directed to draw for another; unleſs as ſome have holden ſuch omiſſion makes a material alteration in other parts of the will: as where by the omiſſion of a prior life eſtate to A. a preſent fee is paſſed to B., inſtead of a remainder as was intended.

§ 5. *Aſſuming to be the party to a true inſtrument.*

In all caſes the thing made muſt be falſe; for certainly a man cannot be guilty of forgery merely by paſſing himſelf off for the perſon whoſe real ſignature appears, although for the purpoſe of fraud, and in concert with ſuch real perſon; for there is no falſe making. But this appears to be a falſe pretence within the ſtat. 30 Geo. 2. c. 24.

Ante, 817.

Hevey's caſe, O. B. Jan. 1782, MS. Crown Caſ. Ref. 125. and MS. Buller J. (1 Leach, 268. S. C.) *It is not forgery to paſs for the perſon whoſe indorſement it on a bill, and thereby to obtain credit in the name of another.*

John Hevey was indicted for that he having in his cuſtody a bill of exchange with the name, "Jer. Connell" thereunto ſubſcribed, purporting to bear date 19th Nov. 1781, and to have been drawn by one Jer. Connell for Smith, Moore, and Co., and directed to Richard Beatty and Co. London, for the payment of 30l. to one Barnard M'Carty or order, thirty-one days after ſight, the tenor of which ſaid bill is as follows:

"No. 59. £. 30 Bath Bank, Nov. 19th, 1781.
"Thirty-one days after ſight pay Mr. Barnard M'Carty
"or order £. 30 value received.
"For Smith, Moore, and Co.
"To Rich^d Beatty and Co. Jer. Connell.
"London.
"No. 19. Great St. Helen's."

on, &c. feloniouſly did forge, &c. upon the back of the ſaid bill of exchange an indorſement in the name of the ſaid Barnard M'Carty, and which purported to be an aſſignment of the ſaid bill of exchange by and under the hand-writing of

Ch. XIX. § 5. *What a falſe making or altering.*

of the ſaid B. M'Carty, viz. "Barnard M'Carty," with intent to defraud William Maſters and Edward Beauchamp, &c. 2d Count for uttering and publiſhing the ſaid indorſement with the like intent. It appeared in evidence that the priſoner came to the ſhop of Beauchamp and Maſters, pawnbrokers, to buy a watch, and offered the bill in queſtion with the indorſement then written on it. They heſitated about taking of it; but the priſoner told them it was a good bill, that his name was Barnard M'Carty, and he had indorſed it, and that Beatty and Co. by whom the bill purported to be accepted were agents to the Bath bank. The pawnbrokers, ſtill doubting, ſent their ſervant to St. Helen's, to inquire whether it were a good acceptance, and he being told that it was by a man whom he ſaw there, on his return the proſecutors let the priſoner have the watch, and gave him the difference of the bill. It further appeared that the priſoner had procured the plate to be engraved ſome time before, containing the form of the bill in queſtion, and had printed ſeveral hundred copies. That he had always been known by the name of John Hevey. That no ſuch perſon as Smith, Moore, and Co. could be found in Bath; though there were ſuch names put on the door of a houſe, but the perſon who had been there had ran away. There were alſo the names of Beatty and Co. on a counting-houſe door in Great St. Helen's, and a man of the name of Beatty had lived there who ſaid he was a clerk, but he was ſince taken up and lodged in priſon. It further appeared that there was ſuch a man as Barnard M'Carty, and that the indorſement was in fact of his hand-writing. Aſhhurſt J. directed the jury, that if they thought there was no ſuch perſon as Barnard M'Carty, or that the indorſement was not his hand-writing, they muſt of courſe find the priſoner guilty. But even if they were ſatisfied of thoſe facts, yet if they thought that the priſoner was not that perſon, but paſſed himſelf upon the proſecutors as ſuch, they ſhould find him guilty, and he would ſave the caſe for the opinion of the Judges, whether in point of law it were forgery. The jury found the priſoner guilty, and the facts that there was ſuch a perſon exiſting as Barnard M'Carty, and that the indorſement was of his hand-writing; but that the priſoner was not that perſon, but had paſſed himſelf upon the proſecutors as ſuch at the time he tendered the bill in payment. In Hilary term 1782

all

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all the Judges were of opinion that the caſe did not amount to forgery; for there was no falſe indorſement; the jury having found that the indorſement was truly made by a real perſon whoſe name it purported to be (*a*).

§ 6. *Reſemblance to the true writing need not be perfect. vi.* 1 Hale, 184.

Ante, 86, 163. Elliot's caſe, poſt. f. 44.

In all caſes however it is to be obſerved that where the forgery conſiſts in counterfeiting any other known inſtrument, it is not neceſſary that the reſemblance ſhould be an exact one: if it be ſo like as to be calculated to deceive where ordinary and uſual obſervation is given, it ſeems to be ſufficient. The ſame rule holds in caſes of counterfeiting the ſeals and coining. Therefore though the word *pounds* and the water-mark words "*Bank of England*" were omitted

(*a*) The priſoner was afterwards at the O. B. Feb. 1782, before Serjt. Adair, Recorder, indicted with his aſſociates Richard Beatty and Bryan M'Carty, for a conſpiracy to defraud, and they were all convicted. The indictment there charged that the defendants fraudulently and unlawfully conſpired that Richard Beatty ſhould write his acceptance to a certain paper-writing purporting to be a bill of exchange, &c. (the tenor of which was ſet out as before) in order that John Hevey might by ſuch acceptance, and of the name B. M'Carty being indorſed on the back thereof, negotiate the ſaid paper-writing as a good bill of exchange truly drawn at Bath by one Jer. Connell for Smith, Moore, and company, as partners in the buſineſs of bankers under the ſtile of *Bath Bank*, as perſons well known to them the ſaid defendants, and thereby fraudulently to obtain from the king's ſubjects goods and monies. That Richard Beatty, in purſuance of ſuch conſpiracy and agreement, *did* fraudulently and unlawfully *write his acceptance* to the ſaid paper-writing to the tenor following; viz. Accepted 20th Nov. 81. R. B., well knowing the firm of Smith, Moore, and company to be fictitious. That the defendants procured the indorſement "B. M'Carty" to be written on the ſame; and that the ſaid John Hevey, in purſuance of ſuch fraudulent conſpiracy, did utter the ſaid paper-writing to S. Read, as and for a good bill of exchange, truly drawn, &c. and accepted by the ſaid Richard Beatty as a perſon able to pay the ſaid ſum of 30*l.* in order to negotiate the ſame, and by means thereof did fraudulently obtain a gold watch, value 12 guineas, and 7*l.* 8*s.* in money. Whereas in truth at the time of drawing, accepting, and uttering the ſaid bill there were no ſuch perſons as Smith, Moore, and company in the buſineſs of bankers at Bath, and the ſaid Richard Beatty was not of ſufficient ability to pay the ſaid 30*l.* they the defendants well knowing the ſame; &c. whereby they defrauded the ſaid S. Read of the ſaid goods and monies.—All the facts charged were fully proved, except that no other evidence was given either of the fact of writing the acceptance or of the hand-writing of Richard Beatty than by a witneſs who proved that the bill, *with the acceptance written upon it*, was ſhewn to Richard Beatty, who, being aſked whether it were a good bill? anſwered that *it was very good*. A queſtion was thereupon, after conviction, reſerved for the opinion of the Judges, Whether this evidence ſupported the allegation in the indictment that Richard Beatty *wrote the acceptance?* And in Eaſter term 22 G. 3. all the Judges were of opinion that it was proper evidence to be left to the jury, on which they might found their verdict that Beatty wrote the acceptance. MS. Gould and Buller Js and MS. Jud.

in

Ch. XIX. § 6. *What a falſe making, &c.*

in the body of a forged bank note, the paper of which was alſo thicker than ordinary, yet as it reſembled a true note in other reſpects, it was holden to be ſufficient. The further conſideration of this queſtion will be reſumed in another place.

Vide R. v. Jones, poſt. f. 11. poſt. f. 44.

III. *Of what Inſtruments, &c. Forgery may be committed.*

1. At common law. 2. By ſtatute.

§ 7. *At common law.* Ante, f. 1. 3 Inſt. 168, 9. 1 Hawk. ch. 70. f. 8, 9, 10. 1 Roll. Abr. 66. 2 Sid. 71. 3 Bac. Abr. 277. 9.

1. To what inſtruments the crime of forgery was applied at common law ſeems to have been very indiſtinctly marked. It was never doubted but that it extended to the falſification of records, and other inſtruments of a public nature; as a pariſh regiſter, a privy ſeal, a licence from the Barons of the Exchequer to compound a debt, a certificate of holy orders, a protection from a member of parliament, or the like. It is equally clear that it extended to private deeds or inſtruments under ſeal; and as Hawkins and other writers think to wills alſo, by a parity of reaſoning; though he admits that he does not find the point any where directly holden. And it is no matter of ſurprize to find ſo able a writer treading with ſo much caution in a path, now indeed too well beaten, but which previous to the time of the Revolution, when paper ſecurities became much more common, had been but little explored. The few occaſions which occurred in early times of transferring property by written inſtruments from one to the other were for the moſt part under ſeal. It was the moſt eaſy and practicable method when few perſons among the laity could write, and therefore it was natural enough for the firſt writers on this ſubject to adapt the language of their definition to the common experience of the times. But ſuch a diſtinction never appears to have been ſolemnly adopted; and the ſubject having ſince undergone much deeper and more frequent conſideration, the modern definitions which have been before given are better adapted to the nature and principle of the offence, and to the prevention of its pernicious conſequences to ſociety. The laſt-mentioned writer ſtopped ſhort even of the experience of his own and former times, when he proceeds to ſay that it ſeems to have been generally laid down as a rule that the counterfeiting of writings of an inferior nature (to deeds and wills) is

Vide 2 Stra. 749.

Ante, f. 1.

1 Hawk. ch. 70. f. 11.

not

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not properly forgery: but it appears that he was not ſatisfied with the authorities to which he refers in this reſpect, nor with the principal reaſon on which they were founded, namely, that ſuch writings were of a private nature; a reaſon which, as he juſtly obſerves, would apply as well to deeds. And not being able to ſatisfy himſelf upon the ſubject, he ſuggeſts a diſtinction to be made between the counterfeiting of ſuch writings (i. e. under ſeal, and public documents) as is allowed to be forgery properly ſo called, and the counterfeiting of other inferior writings; that the former is in itſelf criminal, whether any third perſon be actually injured thereby or not: but that the latter is no crime unleſs ſome one receive a prejudice by it. But however plauſible this may be, it is by no means a ſolution of the difficulty. It is a mere conjecture which leaves the crime of forgery as indiſtinct in principle as before; and tends to confound it with the general claſs of cheats, the diſtinction between which was well ſettled in Ward's caſe. It was there ſhewn to be immaterial to the offence of forgery, properly ſo called, whether any perſon were prejudiced or not, provided any might have been prejudiced. But that to conſtitute a cheat properly ſo called, there muſt be a prejudice received, both at common law and under the ſtatutes of 33 H. 8. c. 1. and 30 Geo. 2. c. 24. But further, it does not appear upon full conſideration of the books to which Hawkins refers that it is any where adjudged, or is even generally laid down, that the counterfeiting of writings of any ſort, whereby any perſon may receive a prejudice, if done *lucri cauſâ* or *malo animo*, is not puniſhable as forgery. The authorities referred to by him are all caſes of actions for ſlander; many of them contradictory, and ſome ſince expreſsly denied to be law; all of them prior to Ward's caſe, where the general reſult of the authorities on this ſubject was plainly ſhewn to be againſt ſuch a concluſion. But even with reſpect to thoſe books which ſeem at firſt ſight moſt ſtrongly to warrant the notion that writings of an inferior nature, ſuch as letters, are not the ſubjects of forgery at common law, if fairly conſidered and compared, they amount to no more than this, that the imputation of counterfeiting letters or writings *frivolous*, or *of no moment*, or *from whence no damage could enſue*, or *of uncertain ſignification*, is not actionable. In none of theſe inſtances to be ſure would the crime

Ward's caſe, poſt. 861.

Vide ante, 825.

Vide 3 Bac. Abr. 280. 13 Vin. Abr. 460. and 1 Rol. Abr. 65. Trem. P. C. 100.

Vide 3 Bulſtr. 265. 1 Roll. Rep 431.

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3 Bac. Abr. 278.

crime amount to forgery; but it is plain that the objection would be to the ſubſtance, and not to the form of the writing; for the fraud and intention to deceive conſtitute the chief ingredients of this offence. And the very qualifications introduced afford ſome preſumption againſt the generality of the rule ſuppoſed to be deducible from thoſe authorities. But the following caſe has now ſettled the rule, that the counterfeiting of any writing with a fraudulent intent, whereby another may be prejudiced, is forgery at common law.

Rex v. John Ward, Hil. 13 Geo. 1. 2 Ld. Ray. 1461. 2 Stra. 747. *Forging an order from one, to charge certain goods contained in a ſchedule to his account, and to appropriate part of the proceeds to the defendant's own uſe, &c. done with intent to defraud the principal, is forgery at common law, tho' the fraud were not effected.*

An information was filed by the Attorney-General charging that the defendant Ward being bound to deliver 315 tons and a quarter of allum of the value of 1000 l. to the Duke of Buckingham at a certain day then paſt, he the defendant wickedly contriving and intending the ſaid Duke of the ſaid allum to deceive and defraud, and with a wicked and fraudulent intent to avoid the delivery of the ſaid allum on, &c. at, &c. with force and arms upon the back of a certain certificate in writing ſigned by one A. N. falſely forged and counterfeited and cauſed to be forged and counterfeited a certain writing in the words and figures following:

	Tons.	C.	
" Schedule	660	5	Mr. John Ward. I do hereby order you to charge the quantity of 660 tons and 1 quarter of allum to my account, part of the quantity here mentioned in this certificate; and out of the money ariſing by the ſale of the allum in your hand pay to Mr. W. Ward and yourſelf 10 l. for every ton according to agreement; and for your ſo doing this ſhall be your diſcharge. Buckingham. April 30th, 1706." To the evil example, &c. to the great damage of the ſaid Duke and againſt the peace, &c. A ſecond count charged him with publiſhing the ſame forged writing knowing it to be forged, &c.
	315	5	
	976	10	

After conviction it was moved in arreſt of judgment that the inſtrument ſet forth was not the ſubject of forgery at common law; but at moſt the offence was only puniſhable as a cheat, and not in this form; being merely a thing of a private nature, and in effect nothing more than a letter: and if the counterfeiting of a letter had been puniſhable as a forgery at common law, then the making of the ſtat. 33 H. 8. c. 1. to puniſh thoſe who got the money

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or goods of others under colour of falſe tokens or counterfeit letters was nugatory. That it no where appeared that the Duke had been prejudiced by this; which, if he had, it might have been indictable as a cheat, but not as for forgery at common law. But all the Court held that this was indictable as a forgery at common law. That none of the books confine the offence to the particular kinds mentioned in 3 Inſt. 169. and that as forging a writing not ſealed came within all the miſchief of forging a deed, the maxim applied, ubi eadem eſt ratio eadem eſt lex. That this was recognized in the preamble of the ſtat. 5 Eliz. c. 14. which recites that the forging of *writings* as well as of *deeds* was puniſhable by law before that ſtatute, but that offenders had been encouraged by the too great mildneſs of the puniſhments; and that the ſtat. 33 H. 8. c. 1. did not create new offences, but only enhanced the penalty where the fraud was executed. They alſo referred to ſeveral inſtances of indictments at common law for forging inſtruments not under ſeal; as a bill of lading (*a*), an acquittance (*b*), a warrant of attorney (*c*), a marriage regiſter (*d*), a bill of exchange (*e*), letters of credit to gather money (*f*), and others of a ſimilar kind (*g*). And they diſtinguiſhed this offence from cheats at common law, and upon the ſtat. 33 H. 8. c. 1. where the party received an actual prejudice, which was not neceſſary to conſtitute forgery; it being ſufficient if the party might be prejudiced by it.

Sed *vide* ante, 853, 4.

Fawcett's caſe, York Spring Aſſizes 1793, MS. Buller J. and MS. Jud. *One who was committed to gaol under an attachment for a contempt in a civil cauſe counterfeited*

Leander Fawcett, who was confined in the gaol of York under an attachment iſſued out of the Court of B. R. for a contempt, (but not for non-payment of money) which was indorſed "*By rule of Court for contempt, Dawſon ex parte Fawcett,*" was tried before Buller J. at York on an indictment framed as for a miſdemeanor at common law; which charged in ſubſtance that A. Dawſon had proſecuted a writ

(*a*) R. v. Stocker, 5 Mod. 137. 1 Salk. 342. 371. The indictment was quaſhed for uncertainty in the form: but the offence was not denied to be forgery.

(*b*) R. v. Ferrers, 1 Sid. 278. Trem. Entr. 129.

(*c*) Farr's caſe, T. Ray. 81. (*d*) Dudley's caſe, 2 Sid. 71.

(*e*) R. v. Sheldon, H. 34 Car. 2. Roll. 35.

(*f*) Savage's caſe, Stiles, 12.

(*g*) *Vide* R. v. Hales and Kinnerſly, 9 St. Tr. 77. and ib. 93. R. v. Gibſon, 2 Seſſ. Caſ. 428. and ib. 432. for forging promiſſory notes, and indorſements; and *vide* alſo in general 13 Vin. Abr. 460. Trem. P. C. 100. 2 Show. 20. Obrian's caſe, 7 Mod. 378. 2 Seſſ. Caſ. 366. 2 Stra. 1144.

of

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of attachment out of B. R. directed to the ſheriff of York, whereby he was commanded to attach the defendant, which writ was delivered to the ſheriff, and by virtue of which he arreſted the defendant; and that the ſheriff by his warrant committed him to the cuſtody of the gaoler; by virtue of which writ and warrant he was conveyed and detained in gaol for the cauſe expreſſed, there to remain until he ſhould be thence diſcharged by due courſe of law. That the defendant contriving the due courſe of law to hinder and pervert, and by falſe means, &c. to procure his diſcharge and effect his eſcape, &c. on the 26th of February, 33 Geo. 3. with force and arms at, &c. did forge, &c. a certain writing purporting to be ſigned in the name of the ſaid A. Dawſon, &c. and to contain his authority to the ſheriff for the defendant's diſcharge, &c. as follows: "To the high ſheriff "of the county of York, his deputy, &c. and gaoler.—As "to any writ, attachment, or any other proceſs or cauſe "whatſoever at the ſuit inſtance or promotion of me A. "Dawſon, by reaſon whereof Leander Fawcett is now de"tained a priſoner in your cuſtody, you may forthwith diſ"charge and ſet at liberty him the ſaid L. F. unleſs detained "at the ſuit of ſome other perſon; and for ſo doing this "ſhall be your warrant and indemnity. (Dated) 26th Feb. "1793. (Signed) A. Dawſon," and witneſſed by one R. W. That the defendant further contriving to complete his evil purpoſe, unlawfully wickedly and falſely did forge, &c. a certain other writing purporting to be an affidavit ſubſcribed and ſworn by one R. W. (the witneſs to the above order) before one J. P. one of the commiſſioners appointed for taking affidavits in B. R. &c. of the following tenor, (ſetting forth an affidavit of the execution of the before-mentioned order): whereas in truth and fact the paper-writing in the ſaid ſuppoſed affidavit mentioned was not the hand-writing of the ſaid A. D. nor by him ſubſcribed, nor the words "R. W." ſubſcribed as witneſſed thereto, nor the name R. W. &c. ſubſcribed to the ſaid ſuppoſed affidavit, the hand-writing of the ſaid R. W. And then it proceeded to charge that the defendant produced and ſhewed the ſaid ſeveral falſe forged and counterfeited writings to the then deputy ſheriff of the ſaid county, and that the defendant by colour and pretence of the forged order and affidavit

a pretended diſcharge as from his creditor to the ſheriff and gaoler, under which he obtained his diſcharge from gaol. Held a miſdemeanor at common law; although the attachment not being for non-payment of money, the order was in itſelf a mere nullity, and no warrant to the ſheriff for the diſcharge: and ſeeble alſo indictable as a forgery.

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falſely knowingly and deceitfully obtained his diſcharge from impriſonment, and thereby effected his liberation out of the gaol, &c. in contempt, &c. There was another count in ſubſtance the ſame, for publiſhing the ſaid order knowingly, &c. and thereby obtaining his diſcharge.

The defendant was convicted, and the following queſtions were reſerved for the opinion of the Judges; 1. Whether the order were a matter of ſuch a public nature that the counterfeiting of it would be a forgery at common law. 2. Whether, as the attachment was not for non-payment of money, the order, if genuine, would not have been a mere nullity, and the ſheriff not authoriſed to diſcharge the priſoner under it. 3. Whether upon this indictment the priſoner could be convicted of an offence within the ſtat. 5 Eliz. c. 14. ſ. 3. 4. Whether if he could be ſo convicted, the puniſhment preſcribed by that ſection of the ſtatute is ſo far ſpecific that it muſt neceſſarily be directed by the ſentence. Upon the conference in Eaſter term 1793, the caſes of Ward and Dickens were cited. Lord Kenyon C. J. and Eyre C. J. ſaid that there was an injury to a third perſon, and that it was an interruption to public juſtice; but the latter thought it was not a forgery, but a cheat. The matter was adjourned to Trinity term, when Eyre C. J. was ſtill not ſatisfied as to the forgery; though he thought the indictment good as for a cheat. But all the Judges concurred in holding that the offence was indictable as for a miſdemeanor at common law; and a great majority (*a*) alſo thought it was forgery at common law.

Ante, 861.

R. v. Gibbs, 1 East. R. 173.

In the ſubſequent caſe of Micah Gibbs an objection of a ſimilar kind was ſtarted upon the abſolute nullity of the writing (*b*) alleged to be counterfeited, ſuppoſing it to have been genuine: but no opinion was given on that point; as taking it to be a forgery, the ſeſſions where the indictment was found, had no juriſdiction of it.

2. *By*

(*a*) Mr. Juſtice Buller's MS. only makes a quære as to the opinion of Eyre C. J. But it appears from other MSS. as well as his own, that the Judges all concurred to ſuſtain the conviction on the general ground only before mentioned.

(*a*) The indictment there charged that the defendant being a perſon aſſeſſed to certain duties granted upon income by certain commiſſioners; and under pretence of being aggrieved, having appealed to certain other commiſſioners, and intending to deceive the commiſſioners of appeal, and to induce them to believe that the particulars

Ch. XIX. § 8. *Of what matters by ſtatute.*

2. *By Statute.*

The ſtatutes relating to forgery may be diſtributed into ſeveral claſſes; as they relate,

§ 8. *By ſtatute.*

1. *To Records.*
2. *To the public Funds and the Stocks of public Companies.*
3. *To Notes and other Securities of the Bank of England and other public Companies.*
4. *To Stamps.*
5. *To official Papers, Securities, and Documents.*
6. *To private Papers, Securities, and Documents.*

§ 9. *a Records.* 8 H. 6. c. 12. *Vide* ante, tit. Larceny, p. 596, the ſame ſtatute at length.

1. By ſtat. 8 Hen. 6. c. 12. ſ. 3. "If any record or parcel of the ſame writ, return, panel, proceſs, or warrant of attorney in the King's Courts of Chancery, Exchequer, the one bench, or the other, or in his Treaſury, be willingly ſtolen, &c. or *avoided* by any clerk or by other perſon; becauſe whereof any judgment ſhall be reverſed, ſuch ſtealer, &c. or *avoider*, their procurators, counſellors, and abettors, thereof indicted and duly convicted by their own confeſſion or by inqueſt," (half of whom are to be officers of any of the ſame courts, and the other half common jurors) "ſhall be guilty of felony." The inquiry is alſo thereby directed to be made by the judges of the ſaid courts of the one bench or the other: which together with other matters of conſtruction on this ſtatute, ſo far as the ſame relates to ſtealing as well as avoiding ſuch records, has been already mentioned in another place. This ſtatute does not extend to the judges, clerks who are inferior to them being firſt named; but they as well as clerks are by the ſtat. 8 Ric. 2. c. 4. to pay a fine to the King, and make ſatisfaction to the party "for falſely entering pleas, or raſing rolls, or changing verdicts to the diſheriſon of any one." Beſides which it is clear that all offences of this nature, whether committed by means of forgery or otherwiſe, tending to

1 Hawk, ch. 41. ſ. 4.

particulars of his income delivered in and the deductions claimed by him to be allowed had been inquired into, examined, and approved by one R Elſe, the clerk to the firſt named commiſſioners, and with a fraudulent intent to give effect to his appeal, and to evade the duty, at the bottom of a paper purporting to be a ſchedule of the defendant's income, did forge, &c. the letters R. E. purporting to be the initials of the ſaid clerk, and did exhibit to the commiſſioners of appeal the ſaid paper, &c. againſt the peace, &c.

Ch. XIX. §9. *By ſtatute, of records.*

avoid or interrupt the courſe of juſtice, are high miſdemeanors at common law.

1 Hawk. ch. 45 ſ. 5. 3 Inſt. 72. 2 Roll. Rep. 81. 11 Rep. 34.

But further, with reference to the offence now under conſideration, it has been holden that the word *avoid* is to be taken in a large ſenſe, and includes raſing, clipping, or any other kind of avoiding: and that not only any alteration of a record whereby the judgment is *reverſed*, (by which is to be underſtood *annulled*) but alſo whereby it is ſo made void as to be *reverſible*, is within the ſtatute 8 H. 6.; and that whether made before or after judgment, or whether or not afterwards amended by the Court. So if A. B. be outlawed by the name of A. C., and afterwards the record be altered from A. C. to A. B., this is within the ſtatute, becauſe the record as it ſtood againſt A. C. is thereby annulled, and the judgment prevented which might have been given on a writ of error for this defect: and the ſtatute was made in advancement of juſtice and to remedy the miſchief.

In no inſtance can the counterfeiting or alteration of any judicial proceſs or matter be leſs than a very high miſdemeanor, as tending to ſtop or impede the courſe of juſtice, or to incroach upon the judicial power.

2. *Public Funds, and Stocks of public Companies.*

§ 9. *b* *Public funds and ſtocks of public companies.* 8 Geo. 1. c. 22. 31 Geo. 2. c. 22. ſ. 77. 4 Geo. 3. c. 25. *Vide* 9 Geo. 1. c. 12.

2. The ſtats. 8 Geo. 1. c. 22. ſ. 1. and 31 Geo. 2. c. 22. ſ. 77. protect from forgery all the public funds then or ſince eſtabliſhed by the authority of parliament. The ſtats. 31 Geo. 2. c. 22. ſ. 77. and 4 Geo. 3. c. 25. ſ. 15. extend the ſame protection to the parliamentary funds or ſtocks of public companies, and the 8 Geo. 1. c. 22. eſpecially includes the South-Sea Company, as the ſtat. 9 Geo. 1. c. 12. and other acts eſpecially include particular orders and public annuities.

8 Geo. 1. c. 22. *Forging hand-writing of proprietors of ſhares in the funds of public companies, eſtabliſhed by parliament, or the* DIVIDENDS *thereof, or the hand-writing of perſons entitled to* ANNUITIES *in the public funds, or* DIVIDENDS *thereof, to convey*

The ſtat. 8 Geo. 1. c. 22. ſ. 1. reciting that divers frauds and abuſes had been committed "by forging and counterfeiting the hands of ſome of the proprietors of the ſhares of and in the capital ſtock and funds of ſuch body or bodies politic or corporate as are eſtabliſhed by act or acts of parliament in that behalf, or ſome of them, or by forging or counterfeiting the hands of perſons entitled to the dividends attending the ſaid ſhares, or ſome of them, or the hands of perſons entitled to annuities in reſpect whereof the proprietors have transferable ſhares in a capital ſtock or

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ſtocks eſtabliſhed by act or acts of parliament in proportion to their reſpective annuities; and divers frauds and abuſes have been or may be committed by perſons falſely and deceitfully perſonating the true and real proprietors of the ſaid ſhares in ſtock annuities and dividends, or ſome of them," &c. for better prevention enacts, that if any perſon or perſons whatſoever from and after the 1ſt of March 1721 ſhall forge or counterfeit, or procure to be forged or counterfeited, or knowingly and wilfully act or aſſiſt in the forging or counterfeiting any letter of attorney, or other authority or inſtrument to transfer, aſſign, ſell, or convey, any ſuch ſhare or ſhares or any part of ſuch ſhare or ſhares of and in ſuch capital ſtock or ſtocks as aforeſaid, or any of them; or to receive any ſuch annuity or annuities, dividend or dividends as aforeſaid, or any of them, or any part thereof; or ſhall forge or counterfeit or procure to be forged, &c. or knowingly and wilfully act or aſſiſt in the forging or counterfeiting any the name or names of any the proprietors of any ſuch ſhare or ſhares in ſtock, or of any the perſons entitled to any ſuch annuity or annuities, dividend or dividends as aforeſaid, in or to any ſuch pretended letter of attorney, inſtrument, or authority; or ſhall knowingly and (*a*) fraudulently demand or endeavour to have any ſuch ſhare or ſhares in ſtock, or any part thereof, transferred, aſſigned, ſold, or conveyed, or ſuch annuity or annuities, dividend or dividends, or any part thereof to be received by virtue of any ſuch counterfeit or forged letter of attorney, authority or inſtrument; or ſhall falſely and deceitfully perſonate any true and real proprietors of the ſaid ſhares in ſtock annuities and dividends, or any of them, or any part thereof, and thereby transferring or endeavouring to transfer the ſtock, or receiving or endeavouring to receive the money of ſuch true and lawful proprietor, as if ſuch offender were the true and lawful owner thereof; in all or any ſuch caſe all and every ſuch perſon and perſons (being thereof lawfully convicted) ſhall be adjudged guilty of felony without benefit of clergy."

the ſame; or PERSONATING *the proprietors, and thereby* TRANSFERRING *or* ENDEAVOURING *to transfer ſuch ſhares, annuities, or dividends; felony without clergy.*

(*a*) The ſtat. 31 Geo. 2. c. 22. ſ. 77. has the word *or* here in ſtead of *and*.

31 Geo. 2. c. 22. ſ. 77. *Exerding proviſions of former acts more largely*

The ſtat. 31 Geo. 2. c. 22. ſ. 77. reciting doubts whether the abovementioned act extended to the like forgery and offences in relation to ſuch capital ſtocks and funds as had been

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to ſtock, then or thereafter to be created by act of parliament.

been eſtabliſhed by authority of Parliament ſince the paſſing of that act, or that might be thereafter eſtabliſhed, re-enacts and extends in terms all the proviſions of the former act to "the capital ſtock or funds of any body or bodies politic or "corporate eſtabliſhed, *or which ſhall be eſtabliſhed*, by any "act or acts of Parliament," &c.

4 Geo 3. c. 25. *Extending to future corporations.*

The ſtat. 4 Geo. 3. c. 25. ſ. 15. which continued the corporation of the Bank, extends the ſame proviſions to any "capital ſtock or ſtocks *of any body or bodies politic or corporate* "which *now are* or *hereafter ſhall be* eſtabliſhed by any act "or acts of Parliament," &c.

33 Geo 3. c. 30. *Reciting certain injuries.*

By ſtat. 33 Geo. 3. c. 30. reciting that "the laws then "in being had been found inſufficient to prevent forgeries "and frauds in the transferring ſtocks, annuities, and other "public funds, transferable at the Bank of England; and "that for the better preventing ſuch forgeries and frauds in "future, it was neceſſary that further proviſion ſhould be "made, as well to prevent frauds practiſed by perſons taking "upon themſelves to make transfers in the books of the go-"vernor and company of the Bank of England, of ſtock or "annuities, or other funds, transferable as aforeſaid, "whereof ſuch perſons were not the true owners and propri-"etors, as to prevent forgeries of ſuch transfers in the names "of the true owners or proprietors. And that it was alſo "neceſſary, the better to prevent ſuch forgeries and frauds, "that the public accounts between the governor and com-"pany of the Bank of England and the ſeveral owners and "proprietors of ſtock, annuities, and other funds, transfe-"rable at the Bank of England, ſhould be ſecured from fal-"ſification by means of falſe entries therein, or of the "alteration of any of the words or figures thereof, or by any "other ways or means whatſoever:" enacts, "That from "and after the 10th of May 1793, if any perſon or perſons "ſhall wilfully make, or aſſiſt in making, any transfer of "any intereſt, part, or ſhare of or in any ſtock or ſtocks, "annuity or annuities or other funds, transferable at the "Bank of England, in any of the books of the ſaid gover-"nor, &c. in which transfers of ſtock, annuities, or other "funds, as aforeſaid, are made, in the name or names of "any perſon or perſons, not being the owner or owners, or "proprietor or proprietors of ſuch ſtock, annuities, or other "funds,

Perſons making, or aſſiſting in making, transfers of ſtock in any other names than the owners, guilty of felony.

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"funds, transferable as aforeſaid; with intent to defraud "the ſaid governor, &c or any other body politic or cor-"porate, or any perſon or perſons whatſoever, ſuch perſon "or perſons ſo making, or aſſiſting in making, ſuch transfer "as aforeſaid, ſhall be deemed guilty of felony, without "benefit of clergy."

Alſo perſons forging, or aſſiſting in forging transfers, &c.

By ſ. 2. "If any perſon or perſons whatſoever ſhall from "and after the 10th of May 1793, falſely make, forge, or "counterfeit, or cauſe or procure to be falſely made, forged, "or counterfeited, or ſhall willingly act or aſſiſt in the "falſely making, forging, or counterfeiting of any transfer "of any intereſt, part, or ſhare of or in any ſtock or ſtocks, "annuity or annuities, or other funds, transferable, or "which by any act or acts of parliament ſhall hereafter be "made transferable, at the Bank of England, or of or in "the capital ſtock belonging, or which hereafter ſhall or "may belong to the ſaid governor, &c. called bank ſtock; "or ſhall utter or publiſh as true any ſuch falſe, forged, or "counterfeited transfer as aforeſaid, knowing the ſame to "be falſe, forged, or counterfeited; with intent to defraud "the ſaid governor, &c. or any other body politic or corpo-"rate, or any perſon or perſons whatſoever; all and every "perſon or perſons whatſoever ſo offending ſhall be deemed "guilty of felony without benefit of clergy."

And alſo perſons making, or aſſiſting in making, falſe entries in the books of the Bank, &c.

By ſ. 3. "If any perſon or perſons from and after the "ſaid 10th of May 1793, ſhall wilfully make, or aſſiſt in "making, any falſe entry, or ſhall wilfully alter, or aſſiſt in "altering, any word or figure in any entry in the books of "account kept by the ſaid governor, &c. wherein the ſeve-"ral accounts of the owners or proprietors of ſtock, annui-"ties, or other funds, transferable at the Bank of England, "are entered and kept; or ſhall in any manner wilfully "falſify the accounts of ſuch owners and proprietors in the "books of the ſaid governor and company, wherein ſuch "accounts are entered and kept, with intent to defraud the "ſaid governor, &c. or any other body politic or corporate, "or any perſon or perſons whatſoever; every ſuch perſon "or perſons ſo offending ſhall be deemed guilty of felony "without benefit of clergy."

Sect. 4. reciting that "whereas in order to cover and "conceal forgeries and frauds in transfers, dividend war-

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Perſons making out, &c. falſe dividend warrants, to be tranſported for ſeven years.

" rants have been ſometimes made out for different ſums " than the ſums really due;" enacts, " that if any clerk, " officer, or ſervant of, or other perſon or perſons employed " or intruſted by the ſaid governor and company ſhall, from " and after the ſaid 10th of May 1793, knowingly or wil- " lingly make out or deliver, or cauſe or procure to be made " out or delivered, or willingly act or aſſiſt in the making " out or delivering, of any dividend warrant for a greater or " leſs amount than the perſon or perſons on whoſe behalf, " or pretended behalf, ſuch dividend warrants ſhall be made " out, is or are entitled to; with intent to defraud the ſaid " governor, &c. or any other body politic or corporate, or " any perſon or perſons whatſoever; all and every ſuch " perſon or perſons ſo offending, and being convicted of ſuch " offence or offences as aforeſaid ſhall be tranſported for " ſeven years."

37 Geo. 3. c. 122 *Reciting the mode of tranſferring ſtock.*

The ſtat. 37 Geo. 3. c. 122. reciting that " Whereas by " the ſeveral ſtatutes creating and authorizing the transfer of " the public ſtocks, &c. transferable at the Bank of England, " it is provided, that all aſſignments, or transfers thereof, " ſhall be entered and regiſtered in books to be kept by the " accountant-general of the Bank, which entries ſhall be ſign- " ed by the parties making ſuch aſſignments or transfers, or " if ſuch parties be abſent, by their reſpective attorney or at- " tornies thereunto lawfully authorized in writing under their " hands and ſeals, *to be atteſted by two or more credible wit- " neſſes;* and the ſame regulation is preſcribed and obſerved " with reſpect to the atteſtation of letters of attorney for the " transfer of any part of bank ſtock;" and further reciting that by the ſtat. 9 Ann. (c. 21.) and other acts, and by the charter of the (South-Sea) company the like regulations prevail in transfers of South-Sea ſtock; and alſo of Eaſt-India ſtock by the regulations of that company; " and that it is " expedient that proviſion ſhould be made for the prevention " of all frauds and impoſitions upon the ſaid reſpective " governors and companies and the ſaid united company, " reſpecting the transfer of, or the receipt of dividends " upon, any of the public funds or annuities, transferable " at the Bank of England, or of bank ſtock, or of the capital " ſtock of the ſaid South-Sea company, or of the ſaid united " company, or any other ſtocks or funds ariſing thereout, or " transfer-

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Perſons forging the names of witneſſes to inſtruments for the transfer, or receipt of dividends, of ſtocks at the Bank, or of the South Sea or Eaſt India Company's ſtocks, to be guilty of felony, and be tranſported for 7 years, or ſuffer ſuch leſſer puniſhment as the Court ſhall award.

" transferable, or which ſhall hereafter be made transfe- " rable, at the South-Sea houſe or Eaſt-India houſe reſpec- " tively:" enacts, " That if any perſon or perſons whatever " ſhall from and after the 1ſt of Auguſt 1797, falſely make, " forge, or counterfeit, or cauſe or procure to be falſely " made, forged, or counterfeited, or ſhall willingly act or " aſſiſt in the falſely making, forging, or counterfeiting the " name or names, hand-writing or hands-writing of any " perſon or perſons as, or purporting to be, the witneſs or " witneſſes atteſting the execution of any letter of attorney, " or other authority or inſtrument, to transfer, aſſign, ſell, or " convey any intereſt, part, or ſhare, of or in any ſtock or " ſtocks, annuity or annuities, or other funds, or the divi- " dends thereof, transferable, or which, by any act or acts " of parliament, ſhall hereafter be made transferable at the " Bank of England, or of or in the capital ſtock belonging, " or which hereafter ſhall or may belong, to the governor, &c. " of the Bank of England, called bank ſtock, or to the gover- " nor, &c. (of the South-Sea company), or under their care " or management, or of or in the capital ſtock belonging, or " which hereafter ſhall or may belong, to the ſaid united " company, &c. trading to the Eaſt-Indies, commonly " called Eaſt-India ſtock, or of any letter of attorney, or " other authority or inſtrument, to receive any dividend or " dividends on any of the ſaid ſtocks, annuities, or other " funds; or ſhall utter or publiſh, as true, any ſuch letter " of attorney, or other authority or inſtrument, containing " ſuch falſe, forged, or counterfeited name or names, hand- " writing or hands-writing, of ſuch atteſting witneſs or wit- " neſſes as aforeſaid, knowing ſuch name or names, hand- " writing or hands-writing, to be falſe, forged, or counter- " feited; all and every perſon or perſons whatever ſo " offending, and being convicted of any ſuch offence or " offences as aforeſaid, ſhall be adjudged guilty of felony, " and ſhall be tranſported for ſeven years; or ſhall be ad- " judged to ſuffer ſuch leſſer puniſhment as the Court, " before whom ſuch offender or offenders ſhall be tried, " ſhall think fit to award." This is made a public act.

The ſtats. 35 Geo. 3. c. 66. and 37 Geo. 3. c. 46. for making certain annuities created by the parliament of Ireland transferable, and the dividends thereon payable at the Bank

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35 Geo. 3. c. 66. and 37 Geo. 3. c. 46. *Regulations for transferring the payment of certain annuities and dividends from Ireland to the Bank of England.*

of England, &c. enact, (ſ. 2.) "That it ſhall and may be "lawful for the governor, &c. of the Bank of England to "authorize and direct their accountant-general for the time "being to keep books wherein all aſſignments or transfers "of the ſaid (i. e. therein before mentioned) annuities and "principal ſums or ſtock ſhall be entered and regiſtered in "ſuch manner as the ſaid governor, &c. ſhall direct; which "entry ſhall be ſigned by the parties making ſuch aſſign-"ments or transfers, or if ſuch parties be abſent, by their "reſpective attorney or attornies thereunto lawfully autho-"rized in writing under his her or their hand and ſeal, or "hands and ſeals, to be atteſted by two or more credible "witneſſes; and that the ſeveral perſons to whom ſuch "transfers ſhall be made ſhall reſpectively underwrite their "acceptance thereof by themſelves or by their reſpective "attorney or attornies thereunto lawfully authorized in "manner aforeſaid; and that no other method of aſſigning "or transferring the ſaid annuities and principal ſum or "ſtock, or any part thereof, or any intereſt therein, ſhall be "good or available in law. Provided that no ſtamp duties "whatſoever ſhall be charged on any of the ſaid transfers, "nor on any receipt for any payment in reſpect of the ſaid "annuities, or the ſaid principal ſums, or ſtock, or the in-"tereſt thereof," &c.

Forging receipts for ſubſcriptions to loans or debentures under the reſpective acts, either with or without names of ſubſcribers; or altering ſuch; death.

By ſ. 3. reciting that "whereas for the prevention of "forgeries and frauds in reſpect of the receipts, payments, "and transfers made or given in purſuance of this act, it is "neceſſary that the like proviſions ſhould be enacted as by "the laws now in being are already in force reſpecting "ſtocks, annuities, and other public funds transferable at "the Bank of England, be it enacted that from and after "the paſſing of this act, if any perſon or perſons ſhall forge "or counterfeit, or cauſe or procure to be forged or coun-"terfeited, or (*a*) wilfully act or aſſiſt in the forging or "counterfeiting any receipt or receipts for the whole or any "part or parts of the ſaid ſubſcriptions, or contributing to-"wards the ſaid (loans or principal ſums reſpectively,) or "any debenture or debentures purporting to entitle any "perſon or perſons or body politic or corporate whatſoever "to any principal ſum or the intereſt thereon, or any an-"nuity or part of any principal ſum, intereſt, or annuity, "payable

(*a*) The ſtat. 8 Geo. 2. c. 22. has the words *knowingly and wilfully.*)

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"payable under the ſaid (reſpective acts of parliament of "Ireland) either with or without the name or names of any "perſon or perſons, or body politic or corporate being in-"ſerted therein as the ſubſcriber or ſubſcribers, or contri-"butor or contributors, or payer or payers, towards the ſaid "(loans or principal ſums reſpectively) or any part or parts "thereof; or ſhall alter any number, figure, or word there-"in; or utter or publiſh as true any ſuch falſe, forged, "counterfeited, or altered receipt or receipts, debenture or "debentures, with intention to defraud the governor and "company of the Bank of England, or any body politic or "corporate, or any perſon or perſons whatſoever; every "ſuch perſon or perſons ſo forging or counterfeiting, or "cauſing or procuring to be forged or counterfeited, or "wilfully acting or aſſiſting in the forging or counterfeit-"ing, or altering uttering or publiſhing as aforeſaid, ſhall "be deemed guilty of felony without benefit of clergy (*a*)."

Sect. 4. contains the ſame proviſion as the ſtat. 8 Geo. 1. c. 22. ſ. 1. before mentioned, adding the word *intereſt* to "annuities or dividends" there mentioned; and ſ. 7, 8, 9, & 10. re-enact the proviſions of the ſtat. 33 Geo. 3. c. 30. before ſtated. Ante, 866. Ante, 868

Forging or uttering forged dividend warrants.

By ſ. 5. "If any perſon or perſons ſhall forge, counter-"feit, or alter any dividend warrant, or warrant for payment "of any annuity, intereſt or money payable in purſuance of "this act (reſpectively) at the Bank of England, or any in-"dorſement thereon; or ſhall offer or diſpoſe of or put away "any ſuch forged counterfeited or altered dividend warrant, "or warrant for payment of any annuity, intereſt, or mo-

(*a*) This is a common clauſe, the ſubſtance of which is to be found in other acts for raiſing new loans. *Vide* 41 Geo. 3. (U. K.) c. 3. ſ. 24. The laſt of theſe acts in print is the 42 Geo. 3. c. 8. ſ. 26. whereby "if any perſon or per-"ſons ſhall forge or counterfeit, or cauſe or procure to be forged, &c. or ſhall "willingly act or aſſiſt in the forging, &c. any certificate or certificates, receipt or "receipts, directed to be made out by this act, or any aſſignment thereof or in-"dorſement thereon, or ſhall alter any number, figure, or word, in any ſuch cer-"tificate or receipt, or in any aſſignment thereof, or indorſement thereon; or "utter or publiſh as true any ſuch falſe, forged, counterfeited, or altered certifi-"cate or certificates, receipt or receipts, or aſſignment or aſſignments thereof, or "indorſement or indorſements thereon; with intent to defraud his Majeſty, or "the governor and company of the Bank of England, or any body politic or cor-"porate, or any perſon or perſons whatſoever;" every ſuch offender ſhall on con-viction be adjudged guilty of felony without clergy.

"ney,

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" ney, payable as aforeſaid, or the indorſement thereon; or " demand the money therein contained or pretended to be " due thereon, or any part thereof, of the ſaid governor and " company of the Bank of England, or any their officers or " ſervants; knowing ſuch dividend warrant, &c. to be " forged, counterfeited, or altered; with intent to defraud " the ſaid governor, &c. or their ſucceſſors, or any other " body politic or corporate, or any perſon or perſons whatſo- " ever; every perſon or perſons ſo offending ſhall be deemed " guilty of felony without benefit of clergy."

The ſubſtance of this clauſe as a general proviſion is to be found in the ſtat. 15 Geo. 2. c. 13. ſ. 11. after mentioned.

Poſt. ſ. 10.

Gade's caſe, O. B. Feb. 1796, MS. Jud. *An indictment for forging a tranſfer of a ſhare in the 3 per cents. charged that W. H. was poſſeſſed of and entitled to ſuch ſhare; and the evidence was that the former owner had transferred the ſame into the name of the ſaid W. H. who was entitled to it by virtue of a bequeſt, but that W. H. had not accepted ſuch tranſfer as required by* ſtat. 33 Geo. 3. c. 28.: *yet held well upon the* ſtat. 33 G. 3. c. 30.; *nor is it any objection that ſuch tranſfer was not witneſſed as required by the regulations at the Bank in the printed form, in which tranſfers are there made.* (2 Leach, 847. S. C.)

John Henry Gade was tried before Lawrence J. at the Old Bailey, February 1796, on an indictment charging that William Harriſon *was poſſeſſed of and entitled to* 50*l.* intereſt or ſhare in the conſolidated 3 per cent. annuities; and that the priſoner whilſt W. H. was ſo poſſeſſed of and entitled to the ſaid 50l. &c. did falſely make forge and counterfeit a *tranſfer* of the ſaid 50l. intereſt or ſhare, with the name of the ſaid W. H. thereto ſubſcribed, purporting to have been ſigned by the ſaid W. H., and to be a tranſfer of the ſaid 50l. &c. from the ſaid W. H. unto one W. W., the tenor of which is as follows; (ſetting it out); with intent to defraud the governor and company of the Bank of England, contrary to the form of the ſtatute, &c. Other counts charged the intent to be to defraud W. H. and W. W. Others charged the priſoner with publiſhing the tranſfer, knowing it to be forged, with the ſame intent. And others again charged the priſoner generally with forging a certain tranſfer, to wit, a tranſfer of an intereſt and ſhare, viz. 50l. intereſt and ſhare of and in certain annuities tranſferable at the Bank of England, commonly called " conſolidated " 3 per cent. annuities," without ſtating to whom the ſtock belonged, or reciting the ſtatutes relating thereto, in fraud of the ſame ſeveral perſons.

In ſupport of the charge it was proved that the priſoner and Henry Harland being executors of John Howard who had by his will given 50l. in the 3 per cent. conſols to his grandſon William Harriſon, on the 11th January 1796 transfer-

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transferred the ſame into the name of William Harriſon; *but the tranſfer never was accepted by William Harriſon.* That afterwards, on the 14th of January, the priſoner brought his own ſon with him to the Bank, whom he repreſented to be William Harriſon; and by the intervention of a broker the ſtock was agreed to be ſold to William Weſt; and the priſoner's ſon in his preſence ſigned the tranſfer, which was properly filled up: but as he wrote the name " Harriſon" with a double (ſs) it was required of him to bring an affidavit that he was the perſon deſcribed in the books of the Bank by the name of Harriſon with a ſingle (s); in conſequence of which the broker did not pay over the money he had received from Weſt for the ſtock, and the tranſfer was not witneſſed; which according to the printed form of tranſfers uſed at the Bank ſhould be done. It appeared alſo on the examination of clerks of the Bank that dividends may be received on ſtock before it is accepted; but that there are poſitive orders not to tranſfer any ſtock till it has been accepted; which the clerks ſhould ſee done: but that with the ſtock-jobbers tranſfers are too often made without the ſtock being firſt accepted.

A clauſe of the ſame ſort as that before ſet out in the 35 Geo. 3. c. 66. *which is alſo to be found in other ſtatutes. Vide* 2 Leach, 855.

It was objected for the priſoner that as the ſtat. 33 Geo. 3. c. 28. requires " that the books ſhall be kept at the Bank " for the entering of all tranſfers, which ſhall be conceived " in proper words for that purpoſe, and ſigned by the parties " making ſuch tranſfers, and that the ſeveral perſons to " whom ſuch tranſfers ſhall be made ſhall underwrite their " acceptance thereof, and no other method of transferring " or aſſigning the ſaid annuities ſhall be good or available " in law;" that the evidence did not ſupport the indictment: firſt, For want of the acceptance of Harriſon of the tranſfer made to him by the executors of Howard; till which time it was contended that the tranſfer was incomplete, and Harriſon was not poſſeſſed of the 50l. ſtock. Secondly, Becauſe that till the ſtock was accepted no tranſfer at all could be made. 3dly, Becauſe the inſtrument given in evidence as a tranſfer in the name of William Harriſon was not witneſſed; which being, as was contended, a part of the words in which tranſfers were conceived, the inſtrument was not available in law, and therefore no tranſfer. And the want of witneſſing was compared to the omiſſions in the bill of

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of exchange in Moſſat's caſe, Leach, 337. (*a*) The jury found the priſoner guilty, but ſentence was reſpited till the Judges could be conſulted on theſe objections: and in Eaſter term 1796 they were all over-ruled, and the offence was holden to be complete.

The indictment in the above caſe was ſupported in argument by the counſel for the proſecution on the 2d ſect. of the ſtat. 33 Geo. 3. c. 30. And in the June ſeſſions following Mr. Juſtice Buller is ſtated to have delivered the opinion of the Judges to this effect. After ſtating the objections, which had been urged in the Exchequer-chamber, he obſerved as to the two firſt that two anſwers had been given, 1. That the ſtock veſted in W. H. by the mere act of transferring it into his name; and that if he had died before he had accepted it, yet it would have gone to his executors as part of his perſonal eſtate. 2. That the nature of the offence would not have been altered if W. H. had not had any ſtock ſtanding in his name; for the transfer forged by the priſoner was complete on the face of it, and imported that there was ſuch a deſcription of ſtock capable of being tranſferred. Neither the forgery nor the fraud would have been leſs complete if Harriſon had really had no ſtock. As to the 3d objection, that the Judges all thought that the entry and ſignatures as ſtated in the indictment were a complete transfer without the atteſtation of witneſſes, which was no part of the inſtrument, but only required by the Bank for their own protection ex abundanti cautelâ.

2 Leach, 866.

3. *Notes and other Securities of the Bank of England and other public Companies.*

§ 10. *Notes, &c. of the Bank of England.* 15 Geo. 2. c. 13. ſ. 11. *Forging Bank notes, bills, dividend warrants, bonds, or indorſements; or offering, &c. the ſame, or demanding money thereon, &c. capital felonies.*

1. *Of the Bank of England.* The ſt. 15 Geo. 2. c. 13. ſ. 11. enacts, "That if any perſon or perſons ſhall forge counterfeit or alter any bank note, bank bill of exchange, dividend warrant, or any bond or obligation under the common ſeal of the ſaid company, (i. e. Bank of England) or any indorſement thereon, or ſhall offer, or diſpoſe of, or put away any ſuch forged counterfeit or altered note, &c. or the indorſement thereon, or demand the money therein contained or pretended to be due thereon, or any part thereof of the ſaid company or any their officers or

(*a*) Laſt edit. 2 vol. 483.

"ſervants,

"ſervants, knowing ſuch note, &c. to be forged counterfeited or altered, with intent to defraud the ſaid company, or their ſucceſſors, or any other perſon or perſons whatſoever; every perſon or perſons ſo offending, and being thereof convicted in due form of law, ſhall be deemed guilty of felony without benefit of clergy."

Ch. XIX. § 10. *By ſtatute, of public ſecurities of the Bank, &c.* 13 Geo. 3 c. 79.

Vide Biggs's caſe and Jones's caſe, poſt ſ. 11. 7 & 8 W. 3. c. 31. ſ. 36. 8 & 9 W. 3. c. 20. ſ. 36. 11 Geo. 1. c. 9. *Seal of the Bank.*

By ſeveral ſtatutes paſſed in the reign of King William 3. "the forging or counterfeiting the common ſeal of the corporation of the governor and company of the Bank of England," is made felony without benefit of clergy; which proviſion ſtill remains; for the ſtat. 11 Geo. 1. c. 9., which left ſeveral of the offences contained in thoſe acts ſimple felonies, makes no mention of the common ſeal, and reſerves all the pains and penalties, &c. of former acts not thereby altered.

13 Geo. 3. c. 79. *making or knowingly having in poſſeſſion inſtruments for making paper with the words* BANK OF ENGLAND *viſible in the ſubſtance of it, a capital felony.*

By 13 Geo. 3. c. 79. ſ. 1. "If any perſon or perſons (other than the officers, ſervants, workmen, or agents for the time being of the governor and company of the Bank, to be authoriſed and appointed by them for that purpoſe, and for the uſe of the ſaid governor and company only), ſhall make or uſe, or cauſe or procure to be made or uſed, or knowingly aid or aſſiſt in making or uſing, or [without being authoriſed as aforeſaid] ſhall knowingly have in his her or their cuſtody or poſſeſſion, without lawful excuſe, [the proof whereof ſhall lie on the perſon accuſed] any frame, mould, or inſtrument, for the making of paper, with the words *Bank of England* viſible in the ſubſtance of ſuch paper; or ſhall make, or cauſe or procure to be made, or knowingly aid or aſſiſt in the making any paper, in the ſubſtance of which the ſaid words *Bank of England* ſhall be viſible; or if any perſon (except as before excepted) ſhall by any art or myſtery or contrivance cauſe or procure the ſaid words *Bank of England* to appear viſible in the ſubſtance of any paper whatſoever; or knowingly aid or aſſiſt in cauſing the ſaid words *Bank of England* to appear in the ſubſtance of any paper whatſoever, every ſuch offender ſhall, being thereof lawfully convicted, be adjudged a felon without benefit of clergy."

Engraving notes, &c. with like words or with

And after reciting (ſ. 2.) "that perſons have taken in payment and otherwiſe received notes, inland bills, and

"bills

Ch. XIX. § 10. *By ſtatute, of public ſecurities of the Bank, &c.*

the SUMS IN WHITE LETTERS ON BLACK GROUND, *or knowingly having ſuch in poſſeſſion, or uttering, &c. ſubject to imprisonment.*

" bills of exchange, with certain words and characters ſo " nearly reſembling the notes and bills of the ſaid governor " and company as to appear to ſuch perſons to be the notes " or bills of the Bank of England; to the great prejudice of " public credit," it is enacted, " that if any perſon or per- " ſons, without being authoriſed and appointed as aforeſaid, " ſhall engrave, cut, etch or ſcrape in mezzotinto, or cauſe " or procure to be engraved, &c.; or ſhall knowingly aid or " aſſiſt in the engraving, &c. in or upon any plate of cop- " per, braſs, ſteel, pewter, or of any other metal or mixture " of metals, or upon wood, or any other material or any " plate whatſoever, any promiſſory note, inland bill, or bill " of exchange, or blank promiſſory note, inland bill, or bill " of exchange, or part of a promiſſory note, inland bill, or " bill of exchange, containing the words *Bank of England*, " or *Bank poſt bill*, or any word or words expreſſing the ſum " or amount, or any part of the ſum or amount of ſuch " promiſſory note, inland bill, or bill of exchange, *in white* " *letters or figures on a black ground;* or ſhall uſe any ſuch " plate ſo engraved, &c. or ſhall uſe any other inſtrument " for the making or printing any ſuch promiſſory note, in- " land bill, or bill of exchange, or blank promiſſory note, " inland bill, or bill of exchange, or part of a promiſſory " note, inland bill, or bill of exchange; (or (*a*)) if any per- " ſon or perſons (without being authoriſed and appointed as " aforeſaid) ſhall knowingly have in his her or their cuſtody " any ſuch plate or inſtrument, or ſhall knowingly and wil- " fully utter or publiſh any ſuch promiſſory note, inland " bill, or bill of exchange, blank promiſſory note, inland " bill, or bill of exchange; every ſuch offender ſhall, being " convicted thereof, be committed to the common gaol of " the county or place where the offence ſhall be committed " for any ſpace not exceeding ſix months." With a proviſo (ſ. 3.) not " to extend to ſuch perſon, who being poſſeſſed " of any ſuch note or bill, ſhall only utter the ſame by car- " rying the ſame for payment to the iſſuers, drawers, ac- " ceptors, or indorſers thereof reſpectively, or uſing proper " means to compel the payment of any ſuch note or bill."

(*a*) The word *or* is here omitted in Runnington's edition of the Statutes, probably by a miſtake of the preſs.

The

Ch. XIX. § 10. *By ſtatute, of public ſecurities of the Bank, &c.*

41 Geo. 3. (U. K.) c. 39. *Making or having in poſſeſſion without authority any inſtrument for making paper of the ſort therein deſcribed* WITH CURVED BAR LINES, *or the* SUMS APPEARING IN THE SUBSTANCE OF THE PAPER, *or procuring the numerical ſum of any Bank note, &c. to appear viſible in the ſubſtance of the paper, &c. felony and tranſportation for 14 years.*

The ſtat. 41 Geo. 3. c. 39. reciting that " whereas the " forgery of bank notes, bank bills of exchange, and bank " poſt bills had much increaſed, and that to prevent it, and " alſo to facilitate the detection of it, the Bank of England " had procured to be made for the future iſſue of bank " notes, &c. a new paper of a different manufacture from " that formerly uſed either by the bank or any other; " in which new paper inſtead of the bar lines being ſtraight " and parallel to each other, as in the paper heretofore uſed, " the ſame are curved or waving, and the laying wire lines " are alſo formed in a waved or curved ſhape, and the nu- " merical account or ſum of each bank note, &c. expreſſed in " a word or words in Roman letters, is made to appear viſible " in the ſubſtance of the paper. And whereas it is expe- " dient, for the better prevention of the forgery of bank " notes, &c. that the ſaid governor and company ſhould have " the excluſive privilege of uſing, in the iſſue of their notes " and bills, the paper hereinbefore deſcribed, it is enacted " that if any perſon or perſons, (other than the officers, " workmen, ſervants, or agents for the time being, of the " ſaid governor, &c. to be authoriſed and appointed for that " purpoſe by the ſaid governor, &c. and for the uſe of the " ſaid governor, &c. only) ſhall make or uſe, or cauſe or " procure to be made or uſed, or knowingly aid or aſſiſt in " making or uſing; or (without being authoriſed or appointed " as aforeſaid) ſhall knowingly have in his, her, or their " cuſtody or poſſeſſion, (without lawful excuſe, the proof " whereof ſhall lie upon the perſon accuſed) any frame, " mould, or inſtrument, for the making of paper, with " curved or waving bar lines, or with the laying wire lines " thereof in a waving or curved ſhape, or with any number, " ſum or amount, expreſſed in a word or words, in Roman " letters, viſible in the ſubſtance of ſuch paper; or ſhall ma- " nufacture, make, uſe, vend, expoſe to ſale, publiſh or diſ- " poſe of, or cauſe or procure to be manufactured, &c. or " aid or aſſiſt in the manufacturing, &c.; or (without being " authoriſed or appointed as aforeſaid) ſhall knowingly have " in his, her, or their cuſtody or poſſeſſion any paper what- " ſoever, with curved or waving bar lines, &c. (as before;) " or if any perſon or perſons (except as before excepted)

Ch XIX. § 10. *By ſtatute, of public ſecurities of the Bank, &c.*

41 Geo. 3. c. 39.

" ſhall, by any art, myſtery, or contrivance, cauſe or procure " the numerical ſum or amount of any bank note, bank bill " of exchange, or bank poſt bill, blank bank note, blank " bank bill of exchange, or blank bank poſt bill, in a word " or words to appear viſible in the ſubſtance of the paper " whereon the ſame ſhall be written or printed; or ſhall " knowingly aid or aſſiſt in cauſing the numerical ſum or " amount of any bank note, &c. in a word or words in Ro- " man letters to appear viſible in the ſubſtance of the paper " whereon the ſame ſhall be written or printed; every per- " ſon or perſons ſo offending in any of the caſes aforeſaid, " and being convicted thereof according to law, ſhall be " adjudged a felon and ſhall be tranſported for the term of " 14 years."

Not to reſtrain the negotiation of bills already iſſued on ſuch paper.

By ſ. 2. " the act ſhall not extend to reſtrain or render " illegal the negociation, circulation, or re-iſſuing of any bill " or bills of exchange, promiſſory note, or promiſſory notes, " which have already lawfully been iſſued, negociated, or " circulated, or which ſhall or may be now lawfully re- " iſſued, negociated, or circulated, before the 1ſt of No- " vember 1801, notwithſtanding the ſame ſhall be written " or printed upon paper, which by this act is prohibited from " being manufactured, made, uſed, vended, expoſed to ſale, " publiſhed or diſpoſed of, except by the governor and com- " pany of the Bank of England; nor (by ſ. 3.) to extend to " reſtrain any perſon or perſons from iſſuing or negociating " any bill or bills of exchange, promiſſory note, or promiſſory " notes, having the ſum or amount thereof expreſſed in " guineas or in a numerical figure or figures denominating " the ſum or amount thereof in pounds ſterling, appearing " viſible in the ſubſtance of the paper upon which the ſame " ſhall be written or printed. Nor (by ſ. 4.) to reſtrain or " prevent any perſon or perſons from making, uſing, vend- " ing, expoſing to ſale, publiſhing, or diſpoſing of any paper " having waving or curved lines, or any other devices in the " nature of water-marks, viſible in the ſubſtance of the " paper, not being bar lines, or laying wire lines; provided " the ſame are not contrived in ſuch manner as to form the " ground-work or texture of the paper, or to imitate or re- " ſemble the waving or curved laying wire lines, or bar

Nor the iſſuing of bills with the amount expreſſed in guineas, or with figures in pounds, in the paper.

Nor the making or uſing paper with water marks not reſembling thoſe of the Bank.

" lines of the ſaid new paper of the governor and company " of the Bank of England, or to imitate or reſemble the " water-marks uſed by the ſaid governor, &c. in the bank " notes, &c. iſſued by the ſaid governor, &c."

Ch. XIX. § 10. *By ſtatute. Of public ſecurities of the Bank.*

41 Geo. 3. c. 39. *Knowingly receiving or having in poſſeſſion forged Bank notes, &c. without lawful excuſe, felony and tranſportation for 14 years.*

Sect. 5. enacts, " That if any perſon or perſons ſhall from " and after the paſſing of this act purchaſe or receive from any " other perſon or perſons any forged or counterfeited bank " note, bank bill of exchange, bank poſt bill, or blank bank " note, blank bank bill of exchange, or blank bank poſt bill, " knowing the ſame to be forged or counterfeited; or ſhall " knowingly or wittingly have in his, her or their poſſeſſion " or cuſtody, or in his, her or their dwelling-houſe, out- " houſe, lodgings, or apartments, any forged or counter- " feited bank note, &c. knowing the ſame to be forged or " counterfeited, (without lawful excuſe, the proof whereof " ſhall lie upon the perſon accuſed) every perſon or perſons " ſo offending and being thereof convicted according to " law, ſhall be adjudged a felon and ſhall be tranſported for " the term of 14 years."

Engraving, &c. on plate, &c. any Bank note, &c. purporting to be of the Bank of England, or uſing ſuch plate, &c. or knowingly having ſuch in poſſeſſion without written authority, or uttering, &c. felony and tranſportation for ſeven years.

Sect. 6. reciting " That whereas the laws now in force " do not inflict a ſufficient puniſhment upon offenders con- " cerned in engraving plates and printing blank forms for " bank notes, bank bills of exchange, and bank poſt bills, " for the purpoſe of being made uſe of in perpetrating the " crime of forgery; enacts, that if any perſon or perſons " from and after the paſſing of this act ſhall engrave, cut, " etch, ſcrape, or by any other means or device make, or " ſhall cauſe or procure to be engraved, &c., or ſhall know- " ingly aid or aſſiſt in the engraving, &c. in or upon any " plate of copper, braſs, ſteel, pewter, or of any other metal, " or mixture of metals, or upon any wood, or any other " materials, or any plate whatſoever, any bank note, bank " bill of exchange, bank poſt bill, or blank bank note, blank " bank bill of exchange, or blank bank poſt bill, or part of a " bank note, bank bill of exchange, or bank poſt bill, pur- " porting to be the note or bill of exchange, or bank poſt " bill, or blank bank note, or blank bank bill of exchange, or " blank bank poſt bill, or part of the note or bill of exchange " or bank poſt bill of the governor and company of the Bank " of England, without an authority in writing for that pur-

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" poſe from the governor, &c.; or ſhall uſe any ſuch plate ſo " engraved, cut, etched, ſcraped, or by any other means or " device make (*a*); or ſhall uſe any other inſtrument or device " for the making or printing of any ſuch bank note, &c. (as " laſt before named) without ſuch authority in writing as " aforeſaid; or if any perſon or perſons ſhall, after the paſſing " of this act, without ſuch authority as aforeſaid, knowing- " ly have in his, her or their cuſtody any ſuch plate, inſtru- " ment or device; or ſhall without ſuch authority as afore- " ſaid knowingly and wilfully utter, publiſh, diſpoſe of, or " put away, any ſuch bank note, &c. (as laſt before named); " every perſon ſo offending and being thereof convicted " ſhall be adjudged a felon and tranſported for ſeven " years."

(*a*) Q. A miſprint for *made*.

Poſt.

The forgery of *private* documents of the bank will be hereafter conſidered.

§ 11. Rex v. Bigg, 3 P. Wms. 419. *Expunging by a certain liquor a notification of payment of part of the contents of a Bank bill written on the face of it, ſuſtains an indictment for* RAZING OUT AN INDORSEMENT *on ſuch bill.*

John Bigg was indicted (*a*) for raſing out an indorſement of 90l. made on a bank bill for 100l., which indorſement was made by the agent of the Bank as for ſo much money before paid thereon to the bearer on behalf of the company; and a ſpecial verdict was found, ſtating that the priſoner did expunge the words and figures following, " 22*d February* 1714 *paid* 90*l.*" written with red ink *upon the face and inſide* of the note, with a certain liquor unknown. On the argument of the caſe before all the Judges at Serjeants' Inn, ſeveral objections were taken. 1. That Adams, who the indictment and verdict ſtated to have been entruſted by the bank to ſign notes, &c. for the company, was not properly authoriſed under the common ſeal. 2. That the receipt *on the face* of the note could not be called an *indorſement*. 3. That the taking it out by a liquor could not be called *a raſing*. 4. That the verdict ought to have found the raſure to have been for the

(*a*) The indictment was framed on the ſtat. 8 & 9 W. 3. c. 20. ſ. 36. which enacts " that the forging or counterfeiting the common ſeal of the corporation of " the Governor and Company, or of any ſealed Bank bill made or given out in " the name of the ſaid Governor, &c. for the payment of any ſum of money or of " any Bank note of any ſort whatſoever ſigned for the ſaid Governor, &c. of the " Bank of England, or the altering or *raſing* any *indorſement* on any Bank bill or " note of any ſort ſhall be and is hereby declared and adjudged to be felony with- " out benefit of clergy."

ſake

ſake of lucre, or to defraud the company, which it did not do. The printed report ſays, that the Judges differed in opinion, but the majority held it to be felony. But the fact was (as ſtated in the MS. quoted) that ten Judges agreed that it was felony, one was ill, and the other place was vacant.

Ch. XIX. § 11. *By ſtatute. Of public ſecurities of the Bank.*

Serjt. Forſter's MS. who cites Ld. King's MS. 98.

An indictment drawn on the ſtat. 15 Geo. 2. c. 13. ſ. 11. charged in the 3d count that the priſoner W. Jones having in his cuſtody a certain forged *paper writing purporting to be a bank note* (prout) did diſpoſe of and put away the ſame as and for a true bank note, with intent to defraud John Rayner. The fourth count only differed from the third in ſtating it to be *a note* inſtead of *a paper writing*; and the ſixth count charged that the priſoner uttered and publiſhed as true a forged paper writing *purporting to be a promiſſory note for payment of money*. The forged note was ſet forth as follows.

Rex v. Jones al. Thorowgood, B.R. M. 30 G. 3. 1779, Serjt. Forſter's MS. (Doug. 302. and 1 Leach, 243. S. C.) *Upon a charge of forging a paper writing purporting to be a* BANK NOTE, *the reſemblance muſt appear on the face of the inſtrument, and cannot be ſupplied by what the priſoner ſaid that it was; and held that the ſignature being* " FOR SELF " AND CO. OF " MY BANK IN " ENGLAND," *had no ſuch purport.*

" No. F. 946."

" I promiſe to pay John Wilſon Eſq. or bearer Ten " Pounds."

" London March 4th 1776."

" £. Ten." " For ſelf and Company"

" Entd. John Jones." " of my Bank in England."

There were a ſet of counts charging the forgery to be with intent to defraud the bank: but the jury acquitted the priſoner on thoſe; and found ſpecially on the third count, that the paper writing therein ſet forth was not a note filled up by any of the officers of the Bank of England, nor entered in their books, but was forged. That the priſoner knowing the ſame averred it to be a good *bank note*, and put it away as ſuch to Rayner with intent to defraud him; and that Rayner believing it to be a good bank note gave the full value of it, and further that the Bank frequently pay bank notes which are filled up by their officers and entered in their books, though they happen not to be ſigned. The finding on the fourth count was the ſame, only calling it as in that count *a note* inſtead of a paper writing. On the ſixth they found that the ſaid paper writing, purporting to be a promiſſory note as in that count ſet forth, was not filled up, &c. and that the priſoner knowing, &c. uttered it as ſuch (as on

Ch. XIX. § 11. *By ſtatute. Of public ſecurities of the Bank.*

the third count). The queſtion made on the argument was, whether this paper writing *purported* to be a *bank note?* And the Court, without hearing counſel for the priſoner were of opinion that it did not. *Lord Mansfield* ſaid, that the repreſentation of the priſoner afterwards could not vary the purport of the inſtrument: on the face of it, it did not purport to be a bank note. It was admitted by the counſel for the proſecution that the finding did not ſupport the ſixth count. The priſoner was diſcharged.

This caſe does not appear to have turned altogether upon the manner of laying the offence in the indictment: for the ſame objection did not apply to the 6th count which was framed upon the ſtats. 2 and 31 Geo. 2. An objection aroſe out of the very nature of the thing itſelf forged; namely, that it was no promiſſory or other note at all of the Bank or otherwiſe. In order to conſtitute forgery there muſt be ſome reſemblance to the thing ſuppoſed to be forged, though it need not be an exact one. The forged inſtrument muſt at leaſt have the principal conſtituent parts of that which it is intended to repreſent, which was wanting in the preſent caſe; and therefore the thing itſelf was no reſemblance of that which it was charged to be. Wherefore in caſes where any difficulty occurs in drawing the indictment upon the ſtat. 15 Geo. 2. for defect of ſimilitude between the forgery and the common form of bank notes, it ſeems beſt to frame the charge upon the other more general ſtatute of the 2 Geo. 2. c. 25. and its auxiliary ſtatutes, as was done in Elliott's caſe, and alſo in the fixth count of Jones's caſe above referred to. It is however eſſential to the charge of forgery in every ſuch caſe that the note ſhould at leaſt purport to be drawn in ſome other name than that of the party himſelf charged with the crime, which did not ſo appear in this inſtance.

Ante, f. 6.

Poſt. f. 44.

§ 12. *South Sea Company.* 9 Ann. c. 21. 6 G. 1. c. 4. f. 56. 12 G. 1. c. 32. f. 9.

In regard to the ſecurities of other public companies;

By ſtats. 9 Ann. c. 21. f. 57. and 6 Geo. 1. c. 4. f. 56. " If any perſon ſhall forge or counterfeit the *common ſeal* of " the South-Sea company; or ſhall forge, counterfeit or " alter any *bond* or *obligation* under their common ſeal, or " ſhall offer to *diſpoſe* of or *pay away* any ſuch forged, coun-

" terfeited or altered bond, knowing the ſame to be ſuch; Ch. XIX § 12. *By ſtatute. Of public ſecurities of the Bank.*
" or ſhall *demand the money* therein contained or pretended
" to be due thereon, or any part thereof, of the ſaid company
" or any of their officers, knowing ſuch bond or obligation to
" be forged, counterfeited or altered; with intent to defraud
" the ſaid company or their ſucceſſors, or any other perſon or
" perſons whatſoever; every ſuch perſon and perſons ſo of-
" fending ſhall be guilty of felony without benefit of clergy."

The ſtat. 12 Geo. 1. c. 32. f. 9. inflicts the ſame puniſh- 12 Geo. 1. c. 32.
ment on the " forging, or counterfeiting, or procuring to
" be forged, &c. or willingly acting or aſſiſting in the forg-
" ing any *indorſement or aſſignment* on any bond or obligation
" under the common ſeal of the governor and company of
" merchants, &c. trading to the South-Seas, &c."

Alſo, beſides the general proviſion before ſtated to Ante, f. 9. 8 Geo. 1. c. 22. &c.
protect the ſtocks of public companies, the ſtat. 6 Geo. 1. 6 Geo. 1. c. 11. *Forging, &c. South Sea receipts or dividend warrants.*
c. 11. f. 50. reciting that the corporation, &c. trading
to the S. S. &c. " may iſſue out *receipts* under the
" hand or hands of one or more of their officers from
" time to time upon or for ſubſcriptions to be by the ſaid
" company taken for increaſing their capital ſtock purſuant
" to an act of the ſame ſeſſion, and may alſo iſſue out *war-*
" *rants* under the hand or hands of one or more of their
" officers for the dividend from time to time to be made to
" the proprietors of the ſtock in the ſaid company; enacts,
" that if any perſon or perſons ſhall forge, counterfeit or
" alter any ſuch receipt or receipts, warrant or warrants, or
" any indorſement or writing, indorſements or writings
" thereupon or therein, or ſhall tender any ſuch forged, coun-
" terfeited or altered receipt or receipts, or warrant or war-
" rants, or any ſuch receipt or warrant, &c. with ſuch coun-
" terfeit indorſement or writing thereon or therein, knowing
" the ſame to be ſo forged, counterfeited, or altered, to the
" ſaid company or any of their officers; or ſhall offer to alie-
" nate or diſpoſe of the ſame, knowing the ſame to be forged,
" counterfeited or altered; and with intent to defraud the
" ſaid company or any other perſon or perſons, bodies poli-
" tic or corporate; every ſuch perſon or perſons ſo offend-
" ing (being thereof lawfully convicted) ſhall be adjudged a
" felon, without benefit of clergy."

Ch. XIX. § 13. *By ſtatute.*

Proviſions ſimilar to thoſe in the ſtats. 9 Ann. c. 21. and 6 Geo. 1. c. 4. above mentioned, are made in reſpect to the London and Royal Exchange Aſſurance Companies, mutatis mutandis, only including further "any *policy* or *bill*," as well as bond or obligation *under the common ſeal* of either.

§ 13. *London and Royal Exchange Aſſurance Companies, &c.* 6 Geo. 1. c. 18. ſ. 13. *Vide* alſo 39 G. 3. (c. 83) ſ. 22.

In like manner the Globe Inſurance Company is protected from forgery.

§ 14. *Eaſt India Company.* 12 Geo. 1. c. 32. ſ. 9.

It is alſo made felony without benefit of clergy if any perſon ſhall "forge or counterfeit, or procure to be forged, "&c. or willingly act or aſſiſt in the forging, &c. any *bond* "or *obligation* under the common ſeal of (the Eaſt-India "Company), or any *indorſement* or *aſſignment* thereon; or "ſhall *utter* or *publiſh* any ſuch, *knowing* the ſame to be "forged or counterfeited, with intent to defraud any per-"ſon (*a*) whatſoever, being thereof lawfully convicted."

§ 15. *Plate glaſs manufactory.* 13 Geo. 3 c 38. ſ. 28. and 28 Geo. 3. c. 17. ſ. 23.

By ſtat. 13 Geo. 3. c. 38. ſ. 28. revived by ſtat. 33 Geo. 3. (c. 17.) ſ. 23. "If any perſon or perſons ſhall forge or "counterfeit the *ſeal* of the governor and company of the "Britiſh Caſt Plate Glaſs Manufactory, or any *deed* or "*writing* under their common ſeal; or ſhall *demand any* "*money* in purſuance of any ſuch forged or counterfeited "deed or writing, either from the ſaid corporation or any "members or ſervants thereof, knowing ſuch writing to be "forged, with intent to defraud the ſame corporation or "any other perſon or perſons whomſoever; every perſon ſo "offending, and being duly convicted, ſhall be guilty of "felony and ſuffer as a felon (*b*)."

4. *To Stamps.*

§ 16. *Vide* 3 Bac. Abr. 285. 1 Hawk. ch. 18. ſ. 9. in margin, and 12 Geo. 3. c. 48. as a general one.

Stamps denoting the payment of certain duties are required by various acts of parliament to be affixed on a multiplicity of written or printed documents. And for the purpoſe of protecting the revenue from fraud in counterfeit-

(*a*) The word *perſon* does not ſeem an appropriate term as applied to the ſubject matter, namely, a corporation. However, this ſeems included in the general acts of the 2 Geo. 2. c. 25. and 31 Geo. 2. c. 22. ſ. 78.

(*a*) The firſt mentioned act, which had expired, directed the felon to be tranſ[illegible] America for a term not exceeding ſeven years; but that is omitted in the re[illegible]ing act.

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ing, uttering, or vending the ſame knowingly, the reſpective acts (*a*) always contain a clauſe for the moſt part in the preciſe words following; though ſometimes with ſome verbal differences, which as far as have met my notice are marked below. I ſelect as the one moſt generally adopted in modern times the 5th clauſe of the ſtat. 37 Geo. 3. c. 90. which impoſes additional duties on a great variety of inſtruments therein mentioned; and alſo becauſe the ſame form is uſed (with the additional words, *mark* or *ſeal* as well as *ſtamp*) in the general conſolidating act of the 27 Geo. 3. c. 13. ſ. 46. which includes ſtamps impoſed by that and all former acts.

Ch. XIX. § 16. *By ſtatute. Of ſtamps.*

"If any perſon ſhall counterfeit or forge, or cauſe or 37 Geo. 3. c. 90. "procure to be counterfeited or forged any ſtamp (*b*) di-ſ. 5. "rected or allowed to be uſed by this act, or provided "made or uſed for the purpoſe of denoting the duties by "this act granted as aforeſaid, or any of them, or ſhall "counterfeit or reſemble the impreſſion of the ſame (*c*), "with an intent to defraud his Majeſty his heirs, &c. of "any of the ſaid duties; or ſhall utter, vend or ſell (*d*) "any vellum, parchment, or paper, liable to any ſtamp "duty by this act impoſed, with ſuch counterfeit ſtamp or "mark thereupon, knowing the ſame to be counterfeit; or "ſhall privately or fraudulently (*e*) uſe any ſtamp directed

(*a*) See the Index to Runnington's edition of the Statutes at large, title *Stamps*.

(*b*) The ſtatutes 31 Geo. 3. c. 25. ſ. 29. and 39 Geo. 3. c. 107. ſ. 25. repealing old and impoſing new duties on bills of exchange, promiſſory notes and other notes, drafts and orders, and on receipts; and the ſtat. 35 Geo. 3. c. 63. ſ. 25. as to ſtamps on ſea aſſurances, add here the words "*or mark*;" which alſo occurs in the ſubſequent part of the recited act. And the general conſolidating act 27 Geo. 3. c. 13. ſ. 46. mentioned in the text, including all former acts, the 30 Geo. 2. c. 19. ſ. 27. as to deeds, newſpapers, almanacks, and licences for wine, ſpirituous liquors, and ale, beer, &c., the 31 Geo. 3. c. 21. ſ. 5. as to game certificates, and the 34 Geo. 3. c. 14. as to indentures of clerkſhip to attornies, &c. add the words "*ſeal* or *mark*."

(*c*) The ſtatutes 31 Geo. 3. c. 25. ſ. 29. and 35 Geo 3. c. 63. ſ. 23. abovementioned, add here the words "upon any vellum, parchment, or paper."

(*d*) The ſtats. 31 Geo. 3. c. 25. ſ 29. and 39 Geo. 3. c. 107. ſ. 25. (which latter extends to ſtamps on bills of exchange and promiſſory notes for ſmall ſums of money) add the words "*or expoſe to ſale*," and ſo does the ſtat. 23 Geo. 3. c. 58. ſ. 11. which extends to all prior acts.

(*e*) The ſtat. 42 Geo. 3. c. 86. ſ. 16. granting additional ſtamp duties on cards and dice, probates of wills or letters of adminiſtration, certain indentures, leaſes, bonds, and other deeds, and ale licences, omits the words "*or fraudulently*."

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" or allowed to be uſed by this act, with intent to defraud " his Majeſty of the ſaid duties (*a*); then every perſon ſo " offending, and being thereof lawfully convicted, ſhall be " adjudged a felon, &c. without benefit of clergy."

10 Ann. c. 19. ſ. 97. *On ſilks, callicoes, linens, and ſtuffs.*

By the ſtat. 10 Ann. c. 19. ſ. 97. which directs the commiſſioners of the Cuſtoms to provide certain ſeals or ſtamps for imported linens, and the commiſſioners for managing the duties on ſilks, callicoes, linens, and ſtuffs, to be printed or dyed, &c. in Great Britain, to provide certain other ſeals or ſtamps for marking the ſame, enacts, that " if any perſon " ſhall counterfeit or forge any ſtamp or ſeal to reſemble " any ſtamp or ſeal which ſhall be provided or made in pur- " ſuance of this act, or ſhall counterfeit or reſemble the " impreſſion of the ſame upon any of the commodities " chargeable by this act, thereby to defraud her Majeſty, &c. " of any of the ſaid duties hereby granted; every perſon ſo " offending, being thereof convicted in due form of law, ſhall " be adjudged a felon without benefit of clergy: And if any " perſon or perſons ſhall during the continuance of this act ſell " any printed, painted, ſtained, or dyed ſilks, callicoes, linens, " or other ſtuffs as aforeſaid with a counterfeit ſtamp there- " on, knowing the ſame to be counterfeited, with an intent to " defraud her Majeſty, &c. every ſuch offender, their aiders, " abettors, and aſſiſtants (being duly convicted as aforeſaid) " ſhall for every ſuch offence forfeit to her Majeſty, &c. " 100l. and ſhall be adjudged to ſtand in the pillory in ſome " public place for two hours."

§ 17. 12 Geo. 3. c 48.

Another general proviſion in regard to offences againſt the ſtamp laws is in the ſtat. 12 Geo. 3. c. 48. for the more effectual prevention of frauds in reſpect of ſtamp duties granted by ſeveral acts, which enacts, " That if any perſon " or perſons, at any time after the firſt of Auguſt 1772, " ſhall write or engroſs, or cauſe to be written or engroſſed, " either the whole, or any part of any writ, mandate, bond,

Writing or engroſſing any writ, bond, &c. or other writing, matter, or thing

(*a*) The ſtat. 41 Geo. 3. c. 86. ſ. 16. laſt mentioned, adds here the words (as applicable to the ſubject-matter,) " or ſhall counterfeit or forge, or cauſe to " be counterfeited or forged, any mark or name provided by the commiſſioners " under this act for the wrapping or incloſing any dice, or making any part of, " or being affixed to ſuch wrapper."

" affidavit,

" affidavit, or other writing, matter, or thing whatſoever, in " reſpect whereof any duty is or ſhall be payable by any act " or acts made, or to be made, in that behalf, on the whole, " or any part of any piece of vellum, parchment, or paper " whereon there ſhall have been before written any other " writ, bond, mandate, affidavit, or other matter, or thing, " in reſpect whereof any duty was or ſhall be payable as " aforeſaid, before ſuch vellum, parchment, or paper ſhall " have been again marked or ſtamped according to the ſaid " acts; or ſhall fraudulently eraſe or ſcrape out, or cauſe " to be eraſed or ſcraped out, the name or names of any " perſon or perſons, or any ſum, date, or other thing, writ- " ten in ſuch writ, mandate, affidavit, bond, or other writ- " ing, matter or thing as aforeſaid; or fraudulently cut, " tear, or get off, any mark or ſtamp, in reſpect whereof, or " whereby, any duties are or ſhall be payable, or denoted " to be paid or payable as aforeſaid, from any piece of vel- " lum, parchment, paper, playing cards, outſide paper of " any parcel or pack of playing cards, or any part thereof; " with intent to uſe ſuch ſtamp or mark for any other " writing, matter, or thing, in reſpect whereof any ſuch " duty is or ſhall be payable, or denoted to be paid or pay- " able as aforeſaid; then, ſo often, and in every ſuch caſe, " every perſon ſo offending in any of the particulars before- " mentioned, and every perſon knowingly and wilfully aid- " ing, abetting, or aſſiſting any perſon or perſons to commit " any ſuch offence or offences as aforeſaid, ſhall be deemed " and conſtrued to be guilty of felony; and, being thereof " convicted by due courſe of law, ſhall be tranſported to " ſome of his Majeſty's plantations beyond the ſeas for a " term not exceeding ſeven years, according to the laws in " force for the tranſportation of felons: And if any ſuch " perſon or perſons ſo convicted or tranſported, ſhall volun- " tarily eſcape or break priſon, or return from tranſportation " before the expiration of the time for which he, ſhe, or " they ſhall be ſo tranſported as aforeſaid, ſuch perſon or " perſons being thereof lawfully convicted, ſhall ſuffer death " as a felon, without benefit of clergy, and ſhall be tried " for ſuch felony in the county where he, ſhe, or they ſhall " be apprehended."

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whatſoever in reſpect of which any ſtamp duty is or ſhall be payable on any paper, &c. whereon was written any other writ, &c. before the ſame ſhall be ſtamped again; or fraudulently eraſing, &c. and inſerting other matter, &c. on the ſame ſtamp, or cutting off, &c. any ſtamp, with intent to uſe it for any other writing; or aiding and abetting therein; felony and tranſportation.

Breaking priſon, or returning from tranſportation, death.

Trial.

By

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Vide Rex v. Field, 1 Leach, 422. *Pardon for offenders making diſcovery of others.*

By ſ. 2. "If any perſon or perſons ſhall, after the 1ſt of "Auguſt 1772, commit any of the offences aforeſaid, and "afterwards, being out of priſon, diſcover one or more per- "ſons who ſhall, ſince that time, have committed any of "the offences aforeſaid, ſo as ſuch perſon or perſons diſco- "vered ſhall be convicted of ſuch offence or offences; he, "ſhe, or they, ſo diſcovering, ſhall have and be entitled to "his Majeſty's gracious pardon for all ſuch offences by him "or her committed at any time or times before ſuch diſco- "very made."

But any fraudulent uſing of a legal ſtamp, which many of the above-mentioned offences may be deemed to be, is made capital by ſubſequent ſtatutes, the 23 Geo. 3. c. 58. ſ. 11. and 27 Geo. 3. c. 13. ſ. 46. in the terms before expreſſed, which refer to all prior ſtamp acts.

Ante, 887.

§ 18. *Stamps on plate, &c.* Ante, 188, &c.

With reſpect to the forging and counterfeiting, or tranſpoſing of ſtamps on gold and ſilver plate, &c. the marks on which have been before adverted to in treating of offences relating to bullion, the ſtat. 12 Geo. 2. c. 26. ſ. 8. firſt made the offences puniſhable by a forfeiture of 100l., or in default of payment by impriſonment. But the ſtat. 31 Geo. 2. c. 32. ſ. 14. reciting that the puniſhment preſcribed by the former ſtatute had not been found ſufficient to deter offenders, repeals the former proviſion, and enacts (ſ. 15.)

31 Geo. 2. c. 32. ſ. 15.

"That if any perſon whatſoever, after the 5th of July 1758, "ſhall caſt, forge, or counterfeit, or cauſe or procure to be "caſt, forged, or counterfeited, any mark or ſtamp uſed, or "to be uſed for making gold or ſilver plate, in purſuance "of the ſaid act or of any other act or acts of parliament "now in force, by the company of Goldſmiths in London, "or by the wardens, or aſſayer or aſſayers, at York, Exeter, "Briſtol, Cheſter, Norwich, or Newcaſtle-upon-Tyne, or "by any maker or worker of gold or ſilver plate, or any or "either of them; or ſhall caſt, forge, or counterfeit, or "cauſe or procure to be caſt, forged, or counterfeited, any "mark, ſtamp, or impreſſion, in imitation of, or to reſemble "any mark, ſtamp, or impreſſion, made or to be made with "any mark or ſtamp, uſed or to be uſed as aforeſaid, by the "ſaid company of Goldſmiths in London, or by the ſaid

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"wardens, or aſſayer or aſſayers, or by any maker or worker "of gold or ſilver plate, or any or either of them; or ſhall "mark or ſtamp, or cauſe or procure to be marked or "ſtamped, any wrought plate of gold or ſilver, or any wares "of braſs, or other baſe metal ſilvered or gilt over, and re- "ſembling plate of gold or ſilver, with any mark or ſtamp, "which hath been or ſhall be forged or counterfeited, at "any time either before, on, or after the ſaid 5th day of "July, in imitation of, or to reſemble any mark or ſtamp "uſed, or to be uſed as aforeſaid, by the ſaid company of "Goldſmiths in London, or by the ſaid wardens, or aſſayer "or aſſayers, or by any maker or worker of gold or "ſilver plate, or any or either of them; or ſhall tranſpoſe "or remove, or cauſe or procure to be tranſpoſed or re- "moved from one piece of wrought plate to another, or to "any veſſel of ſuch baſe metal as aforeſaid, any mark, ſtamp, "or impreſſion, made or to be made by or with any mark "or ſtamp uſed or to be uſed as aforeſaid by the ſaid com- "pany of Goldſmiths in London, or by the ſaid wardens, "or aſſayer or aſſayers, or by any maker or worker of gold "or ſilver plate, or any or either of them; or ſhall ſell, "exchange, or expoſe to ſale, or export out of this king- "dom, any wrought plate of gold or ſilver, or any veſſel of "ſuch baſe metal as aforeſaid, with any ſuch forged or "counterfeit mark, ſtamp, or impreſſion thereon, or any "mark, ſtamp, or impreſſion, which hath been or ſhall "be tranſpoſed or removed from any other piece of "plate, at any time either before, on, or after the ſaid 5th "of July; knowing ſuch mark, ſtamp, or impreſſion to be "forged, counterfeited, or tranſpoſed, or removed as afore- "ſaid; or ſhall wilfully and (*a*) knowingly have, or be "poſſeſſed of any mark, or ſtamp, which hath been or ſhall "be forged or counterfeited, (*b*) at any time, either before, "on, or after the ſaid 5th day of July, (*b*) in imitation of, "or to reſemble any mark or ſtamp uſed, or to be uſed as "aforeſaid, by the ſaid company of Goldſmiths in London, "or by the ſaid wardens, or aſſayer or aſſayers, or by any "maker or worker of gold or ſilver plate, or any or either

(*a*) The ſtat. 24 Geo. 3. ſt. 2. c. 53. ſ. 16. and 38 Geo. 3. c. 69. ſ. 7. have the word *or* inſtead of *and*, and the relative words between theſe letters (*b b*) are omitted.

"of

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" of them; every ſuch perſon offending in any, each, or " either of the caſes aforeſaid, being thereof lawfully con- " victed, ſhall be adjudged guilty of felony, &c. without " benefit of clergy."

24 Geo. 3. ſt. 2. c. 53. ſ. 16.

The ſame proviſions are re-enacted with reſpect to the duty mark of the king's head impoſed by the ſtat. 24 Geo. 3. ſt. 2. c. 53. ſ. 16. including ſuch mark impoſed by the company of Goldſmiths in Edinburgh as well as London, and by the Birmingham or Sheffield company, as well as by the wardens and aſſayers at York, &c. and referring to the 1ſt of December 1784 inſtead of the 5th of July 1758. Then

38 Geo. 3. c. 69. *Vide* ante, p. 192.

the ſtat. 38 Geo. 3. c. 69. by which *gold wares* were allowed to be manufactured at a lower ſtandard than was before allowed, viz. at the ſtandard of 18 inſtead of 22 carats in a pound troy, enacts, ſ. 7. that from and after the 1ſt of October 1798 " if any perſon ſhall forge, caſt, or counterfeit, " or cauſe or procure to be forged, &c. the mark or ſtamp " uſed or directed to be uſed *in purſuance of this act* for the " marking or ſtamping of *gold plate* by the company of Gold- " ſmiths in London or Edinburgh, or the Birmingham or " Sheffield company, or by the wardens, or aſſayer or aſſay- " ers at York, Exeter, Briſtol, Cheſter, Norwich, or New- " caſtle-upon-Tyne, or any or either of them," &c. And then it follows verbatim the proviſions of the former acts, excepting only that it does not extend as they do in general terms to the *makers and workers* of gold plate, as well as to the companies and aſſayers before mentioned: and alſo that it varies the deſcription of the wares therein named to " any

Vide note (*a*) in the laſt page.

" *wrought plate of gold*, or any *wares of ſilver, braſs, or other* " *metal gilt over and reſembling plate of gold.*" And then, inſtead of making the offences capital, it concludes, that " every ſuch perſon offending in any ſuch or either of the " caſes aforeſaid, being thereof lawfully convicted, ſhall be " adjudged guilty of felony, and ſhall be tranſported for " ſeven years."

It is ſingular that when this ſubject was under the review of the Legiſlature, and the puniſhment for the offences under this act limited to tranſportation, offenders ejuſdem generis under the former act ſhould be left ſubjected to capital puniſhment.

The

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The following caſes have occurred on the conſtruction of the ſeveral ſtamp acts.

§ 19. *Conſtruction of the ſtamp acts.*

Holland Palmer was indicted on the 23 Geo. 3. c. 49. ſ. 20. which enacts, " that if any perſon ſhall forge or " counterfeit, or procure, &c. any ſtamp or mark directed " or allowed to be uſed by the act, for the purpoſe of de- " noting the duties aforeſaid (therein mentioned) with in- " tent to defraud his Majeſty; or ſhall fraudulently uſe any " of the ſaid ſtamps or marks with the like intent; or ſhall " utter, vend, ſell, or expoſe to ſale *any paper liable to the* " *ſaid duties* (*a*) with any counterfeit mark or impreſſion " thereon, knowing, &c." he ſhall be guilty of felony without benefit of clergy.

Palmer's caſe, O. B. Dec. 1784, MS. Gould J. (1 Leach, 391. S. C.) *Indictment for uttering, &c. ſo many pieces of paper liable to the duty of* 2*d.* (i. e. *on receipts*) *with a counterfeit impreſſion thereon, held well; for it follows the deſcription in the ſtat.* 23 Geo. 3. c. 49. ſ. 20. *and means ſuch pieces of paper as are deſtined and prepared for receipts by having counterfeit ſtamps. Semble alſo ſufficient if the indictment omit the words,* " liable to the ſaid duty," *&c.*

The firſt count, after ſtating that a certain ſtamp was provided by the ſtatute for ſtamping every piece of paper upon which any receipt, &c. upon the payment of money amounting to 2 l. &c. was written with a ſtamp duty of 2 d. &c. ſtated, that the priſoner intending to defraud the King of the duty on, &c. " unlawfully, fraudulently, and felonioufly did utter and expoſe for ſale to H. G. 1000 pieces of paper *liable to the ſaid duty of* 2 *d.* with a counterfeit impreſſion upon each and every one of the ſaid pieces of paper reſembling the impreſſion of the ſaid ſtamp then and there uſed, according to the form of the ſtatute, &c. he the defendant at the ſaid time of uttering, &c. well knowing the ſaid impreſſion on the ſaid pieces of paper ſo by him uttered, &c. to be counterfeited; againſt the form of the ſtatute; &c."

The 2d count was like the firſt, except that the words, *liable to the ſaid duty of* 2 *d.* were left out.

The priſoner being found guilty, a queſtion was reſerved for the opinion of the Judges, whether the indictment were ſufficient under the ſtatute? Ten Judges who met in Hilary term 1785 were all of opinion that the conviction was proper: and Gould J. who afterwards delivered their unanimous opinion at the O. B. in the February ſeſſions following, ſaid that the difficulty aroſe from the penning of the act of

(*a*) The ſtat. 30 Geo. 2 c. 19. ſ. 27. and 32 Geo. 2. c. 25. ſ. 8. requiring ſtamps on affidavits, &c. have the ſame words.

parliament,

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parliament, and not from the indictment, which ſeemed to be properly drawn. The objection was founded on the ſuppoſed inaccuracy of the ſentence, "*paper liable to the* "*duties*," which in this caſe the indictment had properly and neceſſarily applied to the particular duty in queſtion, namely, the duty of 2d. on receipts. It had been aſked what was meant by *paper liable to the duties;* and how could one piece of paper be ſaid to be liable to any of the duties more than another? But that an attentive conſideration of the act in queſtion, together with a ſubſequent ſtatute, 24 Geo. 3. c. 7. in pari materiâ would help to make it clear: and that from a collection of paſſages in the two acts it would appear that thoſe words were not to be taken in the large and abſurd ſenſe of all the pieces of paper on which receipts and the other inſtruments mentioned in the 23 Geo. 3. might be written; but ſuch pieces as were deſtined or prepared for thoſe uſes: if genuine, then ſuch as by the 14th ſect. were ordered to be brought to the office to be ſtamped before they were written upon: if falſe, then ſuch pieces of paper as having ſtamps reſembling the true ones upon them purported to be papers duly ſtamped, and as ſuch liable to the ſaid duties. That it was to be obſerved, that ſection 14th of 23 Geo. 3. c. 7. expreſsly required that the papers on which the inſtruments were to be written ſhould be firſt duly ſtamped, and the ſtat. 24 Geo. 3. c. 7. made the writing of the inſtrument upon it penal (by a forfeiture of 5 l.) if it were not ſo, or unleſs a ſtamp reſembling the true one appeared upon it; (a moſt equitable exemption if the party were innocent.) When that deception appeared upon the face of the paper, the parties giving and taking it (being innocent) were perſuaded that it was duly ſtamped; and if afterwards the fraud were detected, every one muſt ſay that the paper being prepared and deſtined for a receipt to be written upon it, was liable to the duty ſignified by the counterfeit mark, and ought to have been ſtamped accordingly. It appeared to the Judges therefore that the words "paper liable to the "ſaid duties" were to be applied according to the ſubject matter to ſuch paper which from the counterfeit mark upon it appeared to be prepared to be uſed as if the mark were genuine for a receipt, and conſequently was liable to the duty.

24 Geo. 3. c. 7.

It

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It alſo ſeemed to ſome of the Judges on the conference in the above caſe, that the ſecond count which omits the words "liable to the ſaid duties," was ſufficient; for it was a charge of fraudulently uttering, &c. paper with a counterfeit impreſſion reſembling the ſaid ſtamps uſed in purſuance of the ſtatute, knowing, &c.; and this in ſubſtance was a charge of its being paper denoted by the ſaid impreſſion to be deſtined for writing receipts, and as ſuch being paper liable to that duty.

Hall and Crutchfield were indicted for forging a ſtamp on foreign muſlins printed, &c. here, with intent to defraud the King of the duty. Crutchfield being convicted, judgment was reſpited on two objections taken by his counſel; 1. That the offence was originally created by 25 Geo. 3. c. 72. ſ. 17. by which the duties for ſecuring of which the ſtamps were provided were impoſed. That by 27 Geo. 3. c. 13. ſ. 35. all the former duties are repealed except duties due and penalties and forfeitures incurred at the time of paſſing that act: and therefore it was argued that all penalties were annihilated unleſs re-enacted. That this as well as all preceding ſtatutes took a diſtinction between *duties of Exciſe* and duties *under the management of the commiſſioners of Exciſe;* according to what was obſerved by Mr. Juſtice Aſhhurſt in Rex v. The Juſtices of Surry, 2 Term Rep. 504. That ſection 38. of the latter ſtatute ſtates that "all pains, "penalties, fines, and forfeitures of any nature or kind "whatſoever, as well pains of death as others, for any "offence in force before 10th May 1787, made for ſecuring "the Revenue of Exciſe or other duties under the manage-"ment of the commiſſioners of Exciſe, &c. ſhall extend to "and be applied for and in reſpect of the ſeveral *duties of* "*Exciſe*, and allowances, bounties, and drawbacks of duties "of Exciſe thereby charged and allowed (*a*)," &c. That therefore thoſe penalties and pains of death being re-enacted only ſo far as they relate to *duties of Exciſe* and not to duties or ſums *under the management of the commiſſioners of Exciſe*, (which was the caſe with reſpect to the duty in queſtion,) they could not be revived by conſtruction, but being ſo highly

Hall and Crutchfield's caſe, O. B. 1795, MS. Buller J. and MS. Jud. *The ſtat.* 27 G. 3. c. 13. ſ. 35. *repealing former duties on foreign muſlin printed here, and enacting others in their ſtead; and providing by* ſ. 38. *that all pains, penalties, fines, and forfeitures, as well of death, as others, for any offence in breach of former acts made for ſecuring the revenue of* exciſe *or* other duties under the management of the commiſſioners of exciſe, *ſhould extend to the ſeveral* duties of exciſe, *thereby charged; re-enacts the penalty of forging the ſtamps on ſuch foreign muſlin, printed here; though the duty thereon is not denominated a duty* of exciſe *but a duty* under the management of the commiſſioners of exciſe. *The indictment ſtating the duty*

(*a*) See alſo ſ. 46. before referred to, *ante*, 27.

penal

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penal muſt be ſpecially re-enacted. 2. That the indictment did not purſue the words of the ſtatute. The words of the 25 Geo. 3. c. 72. ſ. 17. are, "if any perſon ſhall forge, &c. any "ſtamp to reſemble any ſtamp provided to denote the charging of the duties *on* the ſaid muſlins," &c. The 2d clauſe of the ſtatute which impoſes the duties ſays, "*for and upon* all "muſlins," &c. The ſt. 27 Geo. 3. which repeals the former duties and impoſes others, has in ſect. 36. theſe words; "there ſhall be raiſed *upon* the goods mentioned in the "ſchedule," &c. The ſchedule itſelf ſays *for* every yard of foreign muſlin, &c.; whereas the indictment ſtates the intent to defraud the King of certain duties chargeable *for, on, and in reſpect of* foreign muſlin; and that the priſoner counterfeited a ſtamp to denote the payment of duties *for, on, and in reſpect of*, &c. which it was contended was a variance from the words creating the offence; and recites the words by which the duty is charged erroneouſly; for though the words uſed in the indictment are to be found in the 36th ſection of 27 Geo. 3. they refer only to drawbacks of duties impoſed, and not to the impoſition of the duties themſelves.

to be chargeable for, on, and in reſpect of *foreign muſlin, &c. is ſufficient; though the words of the ſtatute impoſing the duty are* "for and upon," *in ſome clauſes* "for," *in others* "on," *in others* "upon"

In Eaſter term 1795, ten Judges preſent, all over-ruled the objections, and held the conviction proper. Eyre C. J. thought that the naming of *duties of Exciſe* and *duties under the management of the commiſſioners of Exciſe*, was tautology. But all held it clear, that the expreſſions were uſed as ſynonimous in this act; adverting to ſchedule F, in which the duties on muſlins are denominated "duties of Exciſe." The other objection was not thought worth urging.

Vide R. v. Baxter, 5 T. Rep. 83. and 2 Hawk. ch. 25. ſ. 102.

5. *Official Papers, Securities, and Documents.*

§ 20. 39 Eliz. c. 17. ſ. 3. *Teſtimonials of ſoldiers and mariners.*

By ſtat. 39 Eliz. c. 17. ſ. 3. "Every idle and wandering "ſoldier or mariner who coming from his captain from the "ſeas or from beyond the ſeas ſhall not have a teſtimonial "under the hand of ſome one juſtice of the peace of or near "the place where he landed, ſetting down therein the "place and time when and where he landed, and the place "of his dwelling or birth unto which he is to paſs as afore-"ſaid, (referring to ſ. 2.) and a convenient time therein "limited for his paſſage:" "and alſo as well every ſuch "idle

"idle and wandering ſoldier or mariner, as every other idle "perſon wandering as ſoldier or mariner, who ſhall forge or "counterfeit any ſuch teſtimonial, or have with him or "them any ſuch teſtimonial forged or counterfeited as "aforeſaid, knowing the ſame to be counterfeited or forged; "Every ſuch act or acts to be felony, without benefit of "clergy."

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By ſ. 2. the juſtices of aſſize, of gaol delivery, and of the peace, are directed *to execute* the offenders convicted before them, except ſome honeſt perſon valued at the laſt ſubſidy to 10l. in goods, or 40s. in lands, or elſe ſome honeſt freeholder ſhall agree to take the felon into his ſervice for a year in the manner there mentioned.

Vide tit. *Vagrancy.*

§ 21. 2 & 3 Ann. c. 4. *Forging memorial or certificate of deeds or wills of land, &c. regiſtered in the W. R. of Yorkſhire, ſubjected to pains and penalties of* 5 Eliz. c. 14. poſt.

The ſtat 2 & 3 Ann. c. 4. "for the public regiſtering of "all deeds, conveyances, and wills of any honors, manors, "lands, tenements, or hereditaments within the Weſt "Riding of the county of York, after the 29th of Septem-"ber 1704," directs a memorial of all ſuch to be regiſtered in a certain manner at Wakefield, and that the regiſtrar ſhall indorſe a certificate of ſuch regiſtry on every ſuch deed, &c. Then by ſ. 19. "If any perſon or perſons ſhall forge or coun-"terfeit any ſuch memorial or certificate as are therein "before mentioned and directed, and be thereof lawfully "convicted, ſuch perſon or perſons ſhall incur and be liable "to ſuch pains and penalties as by the ſtat. 5 Eliz. c. 14. "are impoſed upon perſons for forging or publiſhing of "falſe deeds, &c. whereby the freehold or inheritance of "any perſon in lands, &c. may be moleſted," &c.

Extended to bargains and ſales by 5 Ann. c. 18.

The ſtat. 5 Ann. c. 18. directs that all bargains and ſales of any manors, lands, tenements and hereditaments within the Weſt Riding of the county of York ſhall be regiſtered at Wakefield, and indorſed by the regiſtrar; that the inrolment of every ſuch deed ſhall be deemed a memorial purſuant to the laſt-mentioned act; and by ſ. 4. no judgment, ſtatute, or recognizance ſhall bind any manors, lands, &c. but only from the time a memorial thereof ſhall be regiſtered in the office. Then ſ. 8. ſubjects to the ſame puniſhment as the former act "any perſon or perſons who ſhall forge "or counterfeit any entry of the acknowledgment of any

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" bargainer in any ſuch bargain and ſale as aforeſaid, or any " ſuch memorial, certificate, or indorſement as are therein " mentioned or directed, being thereof lawfully con- " victed."

8 Geo. 2. c. 6. *North Riding.*

The ſtat. 8 Geo. 2. c. 6. ſ. 31. extends the proviſions of both ſtatutes to the North Riding of the ſame county.

7 Ann. c. 20. *Middleſex.*

And the ſtat. 7 Ann. c. 20. which directs the like regiſtry of deeds, conveyances, and wills, and other incumbrances affecting honors, manors, lands, &c. in the county of Middleſex, as in ſtat. 2 & 3 Ann., and directs certificates to be indorſed on ſuch memorials, and on the deeds, &c. regiſtered, by ſ. 15. inflicts the like puniſhment on perſons who ſhall " forge or counterfeit any entry of the acknow- " ledgment of any ſuch memorial, certificate, or indorſe- " ment as is therein mentioned or directed, being thereof " lawfully convicted."

§ 22. 12 Geo. 1. c. 32. ſ. 9. *Documents relating to the money of ſuitors in Chancery.*

By the act for better ſecuring the money of the ſuitors in Chancery, lodged in the Bank, or directed to be laid out in government or other ſecurities there mentioned, (ſ. 9.) " If " any perſon or perſons forge or counterfeit, or procure to be " forged or counterfeited, or willingly act or aſſiſt in the forg- " ing or counterfeiting the name or hand of the ſaid Accomp- " tant-General, (i. e. of the court of Chancery,) the ſaid re- " giſter, the ſaid clerk of the Report Office, or any of the " caſhiers of the ſaid governor and company of the Bank of " England, to any certificate, report, entry, indorſement, de- " claration of truſt, note, direction, authority, inſtrument, or " writing whatſoever, for or in order to the receiving or ob- " taining any the money or effects of any of the ſuitors of the " ſaid court of Chancery, or ſhall forge, or counterfeit, or " procure, &c. or wilfully act or aſſiſt in forging, &c. any cer- " tificate, report, &c. (ut ſupra) made by ſuch Accomptant- " General, regiſter, clerk of the report-office, or any of the " caſhiers of the ſaid governor, &c.; or ſhall utter or pub- " liſh any ſuch knowing the ſame to be forged or counter- " feited, with intent to defraud any perſon whatſoever; " every ſuch offender being thereof lawfully convicted ſhall " be adjudged guilty of felony without benefit of clergy."

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Gibſon's caſe, Mich. 8 Geo. 3. in the Exchequer-chamber; and tried at the O. B. 1766, cor. Lord C. B. Parker, Gould and Yates Juſts. MS. Buller J. (1 Leach, 72. S. C.) *Forging a paper writing purporting to be an* office copy of a report of the Accomptant-General *of money being paid into the Bank (or as laid in another count an* office copy *of the* certificate of the Accomptant-General), *and alſo* an office copy *of a* certificate of one of the caſhiers of the Bank, *(or as laid in another count* an office copy of the receipt of the caſhier, *&c.) is within the ſtat.* 12 Geo. 1. c. 32. ſ. 9.

James Gibſon was indicted on the above ſtatute for forging a writing purporting to be *an office copy of a report of the Accomptant General* of money being paid into the Bank purſuant to an order of Chancery, and alſo *an office copy of a certificate of one of the caſhiers of the Bank* of the payment of the money into the Bank. The ſecond count was for publiſhing the ſame knowing them to be forged, with intent to defraud, &c. The third and fourth counts were the one for forging, the other for publiſhing a writing in form of a writing purporting to be *an office copy of the certificate of the Accomptant-General,* and *an office copy of the receipt of the caſhier of the Bank.* There were other counts in the indictment, of which the defendant was acquitted. The certificate and receipt were ſet out verbatim in all the counts; and the offence was laid to be done with intent to defraud William Hunt.

At the trial a ſpecial verdict was found, ſtating as to the 1ſt and 4th counts that divers ſums of money ſince the ſtat. 12 Geo. 1. had been paid into the Bank by the order of the court of Chancery, and that the party paying the ſame had taken from one of the caſhiers of the Bank a writing ſubſcribed with his hand, the form of which the jury found in terms. That the perſon paying the money into the Bank had carried ſuch writing to the Accomptant-General, who had thereupon made a certificate under his hand, the form of which was alſo found in terms; and that the Accomptant-General had filed the ſame and the caſhier's receipt at the report office; and that the clerk of the report office had made copies of them for the party paying the money into the Bank, and for any other perſon deſiring it; and that ſuch copies were read as evidence in Chancery of the money being paid into the Bank, and of ſuch writings ſigned by the Accomptant-General and the caſhier of the Bank being filed in the report office; *but that ſuch copy was never ſigned by the ſaid clerk of the report office, nor had the ſame any mark or ſignature to denote its being made in that office, excepting that the word* " EXAMINED" *was always ſubjoined to ſuch copy by ſome clerk in the report office.* That the clerk of the report office never delivered out any thing touching the payment of money into the Bank except ſuch office copy; but applications were frequently made at the report office to ſearch for the original

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writings ſigned by the Accomptant-General and caſhier of the Bank; and the clerk of the report office made and delivered out to any perſon deſiring it copies of all decrees, reports, orders, and writings filed in that office. The jury then found that there was a certain cauſe inſtituted in the court of Chancery, and a bill of revivor in the ſame cauſe. That Hunt was appointed receiver of the rents of the premiſes, (to compel a ſale of which the bill was brought); and that he remitted 437 l. 16 s. 7 d. to be paid into the Bank to the credit of the cauſe, and that Gibſon received it. That Gibſon forged the writing (*a*) ſet forth in the firſt count with intent to defraud Hunt, and uttered and publiſhed the ſaid writing with intent to defraud, &c. knowing the ſame to be forged; which writing was in form of an office copy made by the clerk of the report office of ſuch writings ſubſcribed with the hands of the Accountant-General and one of the caſhiers of the Bank. That at the time of forging the ſaid writing Richard Rainsford was clerk of the report office, Thomas Anguiſh accomptant-general, and Benjamin Sabberton caſhier. That the ſaid forged writing purports to be an office copy made by the ſaid R. Rainsford as ſuch clerk of the report office of a writing ſubſcribed with the hand of the ſaid Thomas Anguiſh, as accomptant-general, and alſo of a writing ſubſcribed with

(*a*) The writings in queſtion are thus ſet forth in Mr. Leach's report; "20th "of February 1764, Between Robert Lee Eſq. and Chriſtopher D'Oyley Eſq. "executors of Sir George Browne Baronet, plaintiffs, and Robert Pringle Eſq. "and others, defendants. By original and ſupplemental bills, and bills of "revivor. I do hereby certify, that purſuant to an order dated the 15th of Fe- "bruary inſtant, Mr. William Hunt, the receiver, hath paid into the Bank of "England the ſum of 437 l. 13 s. 7 d. which is placed to my account as Ac- "countant General, and to the credit of the cauſe of Browne againſt Pringle, in "Maſter Bennett's office; as appears by the receipt of Mr B. Sabbarton, one of "the caſhiers of the Bank, dated the ſixteenth inſtant, hereto annexed. (Signed) "T. Anguiſh, Accountant General, London."

"London, the 16th of February 1764. Received of Mr. William Hunt, "the receiver, the ſum of 437 l. 13 s. 7 d. purſuant to an order dated 13th Feb. "inſtant, made in the cauſe of Lee againſt Pringle, which money is placed to "the account of Thomas Anguiſh Eſq. as Accountant General of the Court of "Chancery, and to the credit of the cauſe of Browne againſt Pringle, in Maſter "Bennet's office, in the books kept at the Bank for the ſuitors of the ſaid court "of Chancery. For the Governor and Co. of the Bank of England, 437 l. 13 s. "7 d. entered.——B. Sabberton."

"T. Cradwell examined.

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the hand of the ſaid Benjamin Sabberton as caſhier. That the money was not paid into the Bank, nor did ſuch writing ever exiſt as the ſaid forged writing purports to be an office copy of. That the forged writing was ſent to Hunt; and he believing the ſame to be a true office copy, afterwards remitted more money to Gibſon to be paid into the Bank in the ſame cauſe, which he would not have done if he had not believed the ſaid office copy to be a true one. But whether on the whole the writing ſo forged, counterfeited, atteſted, and publiſhed by the ſaid James Gibſon as aforeſaid be a writing in form of a certificate, report, entry, &c. (the words of the act) within the meaning of the ſaid act, the jurors were ignorant, and ſo prayed the advice of the Court. And if, &c.

The ſpecial verdict was argued (*a*) in the Exchequer-chamber in Mich. term 8 Geo. 3. before ten Judges, when it was contended for the proſecution (*b*) that the forged writings in queſtion were within the ſtatute, the object of which was the ſecurity of the ſuitor's money. That every authentic certificate was comprehended within it, to which the hand of the Accomptant-General was neceſſary. And it was intended that the different offices ſhould be a check upon one another, and in this caſe the report office was a check upon the Accomptant-General. The act conſidered the report office as the public repoſitory where all theſe documents were depoſited, and the only evidence the party had was the copy of the particular document lodged there: and therefore in the firſt inſtance it was felony to forge the name or hand of the Accomptant-General with an intention to receive the ſuitor's money. The next clauſe was ſtill more penal, upon which the indictment was founded. 1. As to the nature of *an office copy*. In every court of juſtice there is a proper officer appointed, in whom the court confides, to make authentic copies of its proceedings, and the originals

(*a*) As there is no account in the note of the particular grounds on which the caſe was decided, I have thought it neceſſary to ſtate the arguments of the counſel at ſome length.

(*b*) Some trifling informalities were remarked in the drawing up of the ſpecial verdict, which were reſerved for future conſideration, if they ſhould be found weighty enough to raiſe a doubt.

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are depoſited with him for the benefit of the public; and ſuch office copies are equivalent to the records themſelves of the court. The clerk of the report office is the confidential officer of the court of Chancery, and copies under his hand are read in the ſame cauſe without any further evidence; and this is a form of an office copy made under the hand of that officer, and in the ſame cauſe then before the court. The jury have found that Hunt was the receiver, and that Gibſon received the money for which this certificate was forged, and that it was in the form of a certificate. 2. As to the nature of the priſoner's offence. He is found guilty of forging and publiſhing theſe authenticated office copies with an intention to defraud the receiver: and it is found that Hunt, confiding in this forged office copy, remitted further ſums, which he would not otherwiſe have done: and it is clear that this was done to defraud. It may be aſked *cui bono* could the priſoner forge a copy of that of which there was no original? But that is anſwered by ſaying, that every forgery is intended to carry the appearance of a true tranſaction in itſelf, while it carries evidence of facts which are falſe; and it is no alleviation of the offence that the party has forged that which could not be true; for the criminal intent which is found was to defraud and impoſe upon Hunt. 3. The forgery is within the words of the act; for it is *a writing in form of a writing made by the clerk of the report office*, as the jury have found. The Legiſlature meant to include every kind of writing, and leave the criminality of the intention to the determination of the jury. But, 4. It is as much within the meaning as the words of the act, which meant to take in all documents whatſoever, and to protect the ſuitor's money as well before as after it is brought into court; and all the documents are repeated in the penal clauſe. The only way of deceiving was to ſend an *office copy*, as the defendant did. This was ſuitor's money, and therefore expreſsly within the act: though it would have been ſufficient if done to defraud any perſon. 5. Though the ſpecial verdict finds that any perſon may have an office copy, that does not weaken the authority of the inſtrument. Nor, 6. does the circumſtance that it has no office mark, except the word "*examined*," though it might weigh as a reaſon with the Judge who preſides in Chancery to direct that

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that there ſhould be ſome other ſignature. But hitherto there never has been any other mark, and the Court has confided in its officer, marking it as *examined*: and the copy in queſtion might have been read without any diſpute in any cauſe, and in the particular cauſe was equal (if genuine) to the original itſelf, without proving it to be an examined copy, which is only neceſſary where the copy is produced in other cauſes.

For the priſoner two queſtions were made; 1. Whether this were ſuch a forgery as is within the ſtatute. 2. If the finding of the jury were ſufficient. 1. The difference of the papers mentioned in the 1ſt and 4th counts is, that in the firſt count the paper is called "an office copy *of a report* "*of the Accomptant-General*," and "an office copy *of the* "*certificate of the caſhier*," and in the fourth count it is called "an office copy *of the certificate of the Accomp-* "*tant-General*," and "an office copy *of the receipt* "*of the caſhier*." And the argument for the Crown is, that the words "*inſtrument or other writing*" can mean nothing unleſs they comprehend the preſent writing. But there are ſeveral writings mentioned in the act, which are not recapitulated in the penal clauſe, ſuch as the *intratur*, the *authority*, and the *counter-ſigning by the Maſter*. The act could not mean the forging the office copy of any writing whatever, but only a writing in form of ſome original inſtrument ſuppoſed to be made by one of the officers named in the act, and which (if genuine) would be authentic under the proviſion of the act itſelf: for no practice of the court of Chancery in allowing or rejecting an office copy to be evidence can affect the queſtion; for that would be to make the expoſition of a penal ſtatute depend upon matters collateral, and become uncertain from variable rules at the diſcretion of the court of Chancery. The object of the Legiſlature was to protect the ſuitors againſt fraud; which would have been fruſtrated by making an office copy evidence of its contents. All the inſtruments enumerated in the penal clauſe are provided for, and their ſeveral officers aſſigned them in the preceding parts of the act; but there is no mention of *an office copy* of any kind. An office copy bears no marks of authenticity; it is ſigned by no body, and procureable by any body upon aſking for it and paying the fees:

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but the original which is depoſited in a certain place is ſigned by the proper officer, and is authentic evidence; and therefore it cannot be ſuppoſed that the court of Chancery would rely upon ſuch a copy which had no evidence of authenticity. It is ſaid the words "*writing in form of a writing*" have a general ſignification; but that would extend the clauſe beyond what it is poſſible the Legiſlature could mean; for then every private inſtrument of theſe officers fabricated with intent to defraud would be within the penal clauſe. Neither can it extend even to things ſuppoſed to be made by them virtute officii; for if ſo, a forged copy of a *decree* made with a deſign to defraud would be within the act; which could not be, as it would have no relation to the deſign for which the act was framed, which only meant to prevent frauds in obtaining the money of ſuitors out of court. As if one forged a ſuppoſed office copy of a decree upon which he was to receive 1000l., upon the credit of which he borrowed money; this could not come within the act; and yet it would be "*a writing* in form of a writing," ſigned by the proper officer, with intent to defraud. To forge or counterfeit imports in its nature a ſimilitude to ſomething that exiſts, a reſemblance of or deſign to reſemble the hand of ſome other perſon whoſe name or character it bears: but this bears no name, no ſignature, no mark to denote its being any writing made by Mr. Rainsford, the clerk of the report office, rather than of any of his under clerks, or indeed to have been made in that office at all. It is notorious that none of theſe copies are even ſuppoſed to be made by the ſuperior officer, and ſo the verdict ſtates. It is not ſaid in the indictment that this was ſuitors' money, or that Hunt was the receiver, or that there was any cauſe depending, or any order to pay the money into court. 2dly, As to the finding of the jury: It was neceſſary that there ſhould be a cauſe depending, and an order for the payment of the money; but no ſuch order is found by the verdict; and without it the caſhier of the Bank could not receive, nor the Accomptant-General take any account; and there can be no intendment that there was ſuch an order. Plummer's caſe, Kel. 111. The verdict only ſtates, that Gibſon having the money in his hands (received honeſtly and without fraud), this writing was forged with intent to defraud

defraud Hunt, and that the money was never paid into the Bank, and that ſuch writing (of which this is a ſuppoſed copy) never exiſted. It could be no fraud not to have paid the money without an order, and nothing is found from whence any intention of fraud can be inferred. The money, being lawfully received, was lawfully retained by Gibſon, becauſe he had no authority to pay it into the Bank without an order from the court. Therefore, if there were an intention to defraud by means of this paper, however criminal it might be, it is no offence within the act; for the act ſuppoſes the money to have been paid into the Bank, which this never was. Suppoſing Hunt had remitted the money to Gibſon for another purpoſe, and he for the ſake of retaining it, had pretended to Hunt by doing this act that he had applied it in that manner, would that have been within the act? The finding that Hunt upon the credit of this afterwards remitted more money is immaterial, for it is not even found that Gibſon received it.

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In reply it was obſerved, that the *authority* was expreſsly mentioned in the penal clauſe, and ſo was the *intratur*, which was no more than the entry of the name. Admitting that the object of the act was the ſecurity of the ſuitors' money, yet it was not only meant to ſecure it when paid in, but alſo *in tranſitu*, and in the hands of any perſon, provided it could fall under the denomination of *ſuitors' money*. That the admiſſion of office copies in evidence did not depend on the practice of the court of Chancery, but was the common law of the kingdom; and therefore it was no anſwer to ſay that it would open a door to fraud. That the true queſtion was, whether this were ſuch an inſtrument as would be authentic, if made by the officer in his office, and in which he was entruſted by the court for the purpoſe. That admitting that the writing had not the reſemblance of an *original* writing, yet it had the form and appearance of an *office copy*; and any thing that had the form and appearance of an office copy was evidence in itſelf. That it was not true that no perſon was liable to be defrauded in this caſe; for the receiver was deceived by it, and remitted the priſoner a further ſum on the credit of it. That the indictment was founded on the laſt branch of the penal clauſe of the act, and expreſsly charged

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charged that the priſoner forged a paper writing purporting to be a receipt ſigned by the Accomptant-General. As to there being no order found to pay the money into court, it conſtituted part of the offence complained of; for if the priſoner, as part of the contrivance to defraud, had previouſly inſtructed counſel to move for an order, that could not have altered the law: but as the matter ſtood, it added another falſehood to the offence committed. Neither was it neceſſary to aver in the indictment that a cauſe was depending, if the caſe were within the laſt branch of the penal clauſe; for that puniſhes the act if done to defraud any perſon generally.

After the argument Lord Mansfield C. J. obſerved, that the verdict left but one queſtion to conſider, which was, whether the offence were within the act. That if they had any doubts, the Judges would appoint it to be argued again the next term; otherwiſe they would determine the matter among themſelves. Accordingly, in Hilary term following, eleven Judges met at Serjeants'-Inn, and were of opinion that the indictment and verdict were ſufficient and needed no amendment, and that the caſe of the priſoner was within the act of parliament.

(One place was vacant.)

§ 23. 4 Geo. 2. c. 18. *Mediterranean paſs. Vide* Report on Temporary Laws by Committee of Houſe of Commons, page 17.

In reference to the treaties between this kingdom and the Barbary powers, by which on producing a paſs in a certain form the latter agree to let Britiſh veſſels go free, the ſtat. 4 Geo. 2. c. 18. enacts, "that if any perſon or perſons "ſhall within Great Britain or Ireland, or any other his "Majeſty's dominions, or without, falſely make, forge, or "counterfeit, or cauſe or procure, &c. or wittingly or knowingly act or aſſiſt in the falſe making, &c. any paſs or "paſſes for any ſhip or ſhips whatſoever, commonly called "a Mediterranean paſs or paſſes, or ſhall counterfeit the "ſeal of the ſaid office, (i. e. of Lord High Admiral) or the "hand or hands of the Lord High Admiral of Great Britain and Ireland, or of any commiſſioner or commiſſioners for executing the ſaid office to any ſuch paſs or "paſſes; or ſhall alter or eraſe any true or authentic paſs "or paſſes iſſued or made out by the Lord High Admiral, "&c. or the commiſſioners, &c.; or ſhall utter or publiſh "as true any ſuch falſe, forged, counterfeited, altered, or "eraſed

"eraſed paſs or paſſes, knowing the ſame to be falſe, &c. "or eraſed; every ſuch perſon or perſons, being duly con- "victed of any of the offences aforeſaid in any proper court "of Great Britain, Ireland, or any of his Majeſty's Planta- "tions beyond the ſeas, where ſuch offence ſhall be com- "mitted reſpectively, ſhall be adjudged guilty of felony "without benefit of clergy."

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Trial.

By ſ. 2. ſuch offences "committed in any country or "place out of Great Britain, either within or without the "dominions of his Majeſty, his heirs, &c. ſhall and may be "inquired of, tried, &c. and adjudged in any ſhire or "county of Great Britain by virtue of the King's commiſ- "ſion of oyer and terminer and gaol delivery, or before any "court of juſticiary in Scotland," &c.

§ 24. *Marriage regiſter licence, &c.* 26 Geo. 2. c. 33. Ante. 477. Dudley's caſe, 2 Sid. 71.

The forging or making falſe entries in marriage regiſters, or marriage licences, &c. which were puniſhable as miſdemeanors at common law, and are made capital felonies by ſtat. 26 Geo. 2. c. 33. ſ. 16. have been ſhewn before.

§ 25. *Seamens' wills, &c.* 31 Geo. 2. c. 10. ſ. 24. *Perſonating ſeaman, &c. his executor, wife, relation, or creditor, in order to receive his wages, &c. or forging letter of attorney, &c. or other authority to receive the ſame, or uttering or publiſhing ſuch, &c. death. Vide* the next chapter, ſ. 3, 4.

By ſtat. 31 Geo. 2. c. 10. ſ. 24. "Whoſoever willingly "and knowingly ſhall perſonate or falſely aſſume the name "or character of, or procure any other to perſonate or "falſely to aſſume the name or character of, any officer, "ſeaman, or other perſon entitled, or ſuppoſed to be enti- "tled, to any wages, pay, or other allowances of money, or "prize money, for ſervice done on board of any ſhip or "veſſel of his Majeſty, his heirs, &c.; or the executor or "adminiſtrator, wife, relation, or creditor, of any ſuch "officer or ſeaman, or other perſon, in order to receive any "wages, pay, or other allowances of money, or prize money, "due or ſuppoſed to be due or payable, for or on account of "the ſervices of any ſuch officer or ſeaman or other perſon, "as aforeſaid; or ſhall forge or counterfeit, or procure to be "forged, &c. any letter of attorney, bill, ticket, certificate, "aſſignment, laſt will, or any other power or authority "whatſoever, in order to receive any ſuch wages, &c. due "or ſuppoſed to be due to any ſuch officer, &c.;" or by ſtat. 9 Geo. 3. c. 30. ſ. 6. "if any perſon ſhall utter or "publiſh, as true, any falſe, forged, or counterfeited letter "of attorney, bill, &c. (as before) in order to receive any "wages,

Vide 32 Geo. 3. c. 33. as to the inſtruments named.

9 Geo. 3. c. 30. ſ. 6. *Uttering or publiſhing the ſame.*

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" wages, &c. due or ſuppoſed to be due to any officer or " ſeaman or other perſon, who has really ſerved or was " ſuppoſed to have ſerved, or who ſhall hereafter ſerve or " be ſuppoſed to have ſerved on board of any ſhip or veſſel " of his Majeſty, his heirs, &c. with intent to defraud any " perſon, knowing the ſame to be falſe, forged or counter- " feited;) every ſuch perſon ſo offending, being lawfully con- " victed of any ſuch offence or offences, ſhall be deemed " guilty of felony without benefit of clergy."

Moſt of theſe offences were before ſubjected to a penalty of 200l., and impriſonment till payment by ſtat. 9 & 10 W. 3. c. 41. ſ. 3.

By ſ. 5. of the laſt-mentioned act, the treaſurer, comptroller, ſurveyor, clerk of the acts, or any commiſſioner of the navy may act as juſtices of the peace in cauſing the offenders to be apprehended.

32 Geo. 3. c. 33. ſ. 23. *Extends to tickets for wages of marines as well as ſeamen.*

By ſtat. 32 Geo. 3. c. 33. ſ. 23. " If any perſon after " the 1ſt of Auguſt 1792 ſhall falſely make, forge, or coun- " terfeit, or cauſe or procure to be falſely made, forged, or " counterfeited, or willingly act and aſſiſt in the falſe mak- " ing, forging, or counterfeiting any ticket for the wages or " pay due to any petty officer or ſeaman, non-commiſſioned " officer (*a*) of marines, or marine, for his ſervices on board " any ſhip or veſſel of his Majeſty, his heirs, &c. or any " duplicate of any ſuch ticket, or any certificate of diſcharge " from any naval hoſpital of his Majeſty, his heirs, &c.; or " any remittance bill, or duplicate of remittance bill; with " intention to receive any wages, pay, or other allowances " of money, or prize money, due, or ſuppoſed to be due, " for or on account of the ſervice of any petty officer or " ſeaman, non-commiſſioned officer of marines, or marine " on board any ſhip or veſſel of his Majeſty, his heirs, &c.; " or ſhall utter or publiſh as true any ticket for the wages " or pay due to any petty officer or ſeaman, non-commiſ- " ſioned officer of marines, or marine, for his ſervice on

(*a*) By ſ. 8. of ſtat. 32 G. 3. c. 34. inferior or petty officers and ſeamen and non-commiſſioned officers of marines or marines, named in that and former acts, are to be underſtood of all the complement of a ſhip excepting ſuch as are rated admirals or flag officers and their ſecretaries, captains and lieutenants, maſters, ſecond maſters and pilots, phyſicians, ſurgeons, chaplains, boatſwains, gunners, carpenters, and purſers, captains of marines, and captain-lieutenants, lieutenants, and quarter-maſters of marines.

" board

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" board any ſhip or veſſel of his Majeſty, his heirs, &c.; or " any duplicate of any ſuch ticket, or any certificate of diſ- " charge from any naval hoſpital of his Majeſty, his heirs, " &c.; or any remittance bill, or duplicate of remittance " bill; with intention to receive any wages, pay, or other " allowances of money, or prize money, due, or ſuppoſed " to be due, for or on account of the ſervice of any petty " officer or ſeaman, non-commiſſioned officer of marines, or " marine, on board of any ſhip or veſſel of his Majeſty, his " heirs, &c. knowing the ſame to be falſe, forged or coun- " terfeited; then every ſuch perſon ſo offending, being " lawfully convicted of any ſuch offence or offences, ſhall " be deemed guilty of felony without benefit of clergy."

So much of 31 Geo. 2. c. 10. *not repealed, to remain in force.*

By ſ. 24. it is expreſsly declared, that ſo much of the ſtat. 31 Geo. 2. c. 10. as is not repealed by this act ſhall remain in force.

Regulations by 26 Geo. 3. c. 63.

In further aid of theſe proviſions the ſtat. 26 Geo. 3. c. 63. has provided that no letter of attorney of any petty officer or ſeaman, or of their executors or adminiſtrators empowering any perſon to receive their wages, pay, or allowance of money of any kind for ſervice due or to grow due, ſhall be valid, unleſs made revocable; and that no letter of attorney or will of ſuch petty officer or ſeaman diſpoſing of the ſame wages, &c. ſhall be valid; unleſs (if made in actual ſervice) ſigned before and atteſted by the commanding officer of the ſhip, &c. or other perſons therein named (if made on ſhore); and certain other forms are alſo directed to be purſued. Theſe proviſions are extended to marines by ſtat. 32 Geo. 3. c. 34. which alſo directs (ſ. 2.) that no letter of attorney or order made by any petty officer, ſeaman, non-commiſſioned officer of marines, or marine, who ſhall have been diſcharged from the ſervice, and who ſhall be within ſeven miles of a port where ſeamen's wages are paid, ſhall be valid, unleſs it be ſigned before and atteſted by a clerk of the treaſurer of the navy at ſuch port, or by the inſpector of ſeamen's wills and powers of attorney. It alſo gives a certain form of diſcharge called a certificate, which the party muſt produce, or his perſon be identified, before he can receive his wages, &c. or before any his letter of attorney can be paſſed. Orders may be given by ſeamen, &c. in the

32 Geo. 3. c. 34.

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form preſcribed for any ſum not exceeding 7l.; and various other forms are preſcribed for different methods of paying theſe perſons; and then by ſ. 29. (32 Geo. 3. c. 34.) "if "any perſon, after the 1ſt of Auguſt 1792, ſhall falſely "make, forge, or counterfeit, or cauſe or procure to be "falſely made, &c. or willingly act and aſſiſt in the falſe "making, &c. any petition for a certificate therein-before "deſcribed or mentioned, to enable any perſon or perſons "to obtain letters of adminiſtration to any petty officer or "ſeaman, non-commiſſioned officer or private of marines, "who ſhall have ſerved on board any ſhip or veſſel of his "Majeſty, his heirs, &c. or ſhall utter or publiſh as true, "any ſuch petition, &c. or ſhall falſely make, forge, or "counterfeit, or cauſe or procure to be falſely made, &c. or "willingly act and aſſiſt in the falſe making, &c. any cer-"tificate for enabling him, her, or them to obtain probate, "or letters of adminiſtration, with the will annexed; or any "check, remittance bill, or duplicate of remittance bill, or "any certificate to the deputy paymaſter, in reſpect of "wages, prize money, and other allowances of money, not "exceeding ten pounds, herein-before ſeverally deſcribed "or mentioned, in order to receive any wages, pay, or "other allowances of money, or prize money, due or ſup-"poſed to be due for or on account of the ſervice of any "petty officer or ſeaman, non-commiſſioned officer, or pri-"vate of marines, on board any ſhip or veſſel of his Ma-"jeſty, his heirs, &c.; or ſhall utter or publiſh as true any "ſuch check, &c. in order to receive any wages, &c. due "or ſuppoſed to be due for or on account of the ſervice of "any petty officer, &c. on board, &c. knowing the ſame to "be falſe, forged, or counterfeited; then every ſuch perſon, "being lawfully convicted of any ſuch offence or offences, "ſhall be deemed guilty of felony without benefit of "clergy."

32 Geo. 3. c. 34. ſ. 29. *Perſons forging petitions for certificates to enable any perſon to obtain adminiſtration, &c. to ſeamen or marines, or any check, remittance bill, or duplicate of remittance bill, or certificate to the deputy paymaſter in order to receive the wages, &c. of ſuch ſeamen, &c. death.*

Petty officers, ſeamen, &c. attempting to receive their pay on forged certificates, or aſſiſting in forging them, to be puniſhed as in caſes of perjury.

By ſ. 30. "after the 1ſt of Auguſt 1792, if any petty "officer, or ſeaman, non-commiſſioned officer of marines, "or marine, ſhall receive his pay, or ſhall attempt to receive "the ſame, or any part thereof, upon any certificate, pur-"porting to be a certificate of ſervitude, or a certificate of "diſcharge, knowing the ſame to be forged or counterfeit-"ed, or if any ſuch petty officer by himſelf, or by employ-"ing others, ſhall aſſiſt in the forging or counterfeiting of "any ſuch certificate; every ſuch petty officer, or ſeaman, "non-commiſſioned officer of marines, or marine, being "thereof convicted, ſhall be puniſhed as in caſes of per-"jury."

Ch. XIX. § 25. *By ſtatute. Of ſeamens' and marines' certificates, &c.*

By ſtat. 32 Geo. 3. c. 67. all theſe regulations are extended to ſeamen and marines ſerving on board ſhips, and reſiding, in Ireland.

The muſter-books of the King's ſhips documented in the navy office, to which returns are regularly made by the ſeveral commanders of the names, &c. of their reſpective crews, are admitted as evidence of the perſons therein named having ſerved on board the ſeveral ſhips in the capacities there mentioned.

R. v. Rhodes, O. B. 1742. cor. Reynolds B. 1 Leach, 22. and R. v. Fitzgerald and Lee, ib. 20.

§ 26. *Priſines and poſtfines.* 32 Geo. 2. c. 14.

The ſtat. 32 Geo. 2. c. 14. directs the receiver of priſines at the alienation office to receive the poſtfine at the ſame time on every writ of covenant ſued out for the paſſing of fines in C. B., and to indorſe the receipt of the ſame thereon with his name and the mark of office. And by ſ. 9. "If any perſon or perſons after the 1ſt day of Trinity "term 1759 ſhall make, forge or counterfeit, or cauſe or "procure to be made, &c. the mark or hand of ſuch receiver "as aforeſaid, whereby ſuch receiver, or any other perſon "or perſons ſhall or may be defrauded or ſuffer any loſs "thereby; every perſon or perſons convicted of ſuch of-"fence ſhall be deemed guilty of felony without benefit of "clergy."

§ 27. *Franks of letters.* 24 Geo. 3. ſt. 2. c. 37. ſ. 9. *The laſt act altering the rates of poſtage* 42 G. 3. c. 7. ſ. 12. *incorporates all former general proviſions, and this clauſe is repeated verbatim in the laſt act* 42 G. 3. c. 63. ſ. 17. *relating to the poſtage.*

By ſtat. 24 Geo. 3. ſtat. 2. c. 37. ſ. 9. "If any perſon "whatſoever ſhall (after the end of that ſeſſion) forge or "counterfeit the hand-writing of any perſon whatſoever in "the ſuperſcription of any letter or packet to be ſent by the "poſt, in order to avoid the payment of the duty of poſt-"age; or ſhall forge, counterfeit, or alter, or procure to be "forged, &c. the date upon the ſuperſcription of any ſuch "letter or packet; or ſhall write and ſend by the poſt, or "cauſe to be written and ſent by the poſt any letter or "packet the ſuperſcription or cover whereof ſhall be forged

"or

Ch. XIX § 27. *By ſtatute. Of franks of letters.*

" or counterfeited, or the date upon ſuch ſuperſcription or " cover altered, in order to avoid the payment of the duty " of poſtage, knowing the ſame to be forged, counterfeited " or altered; every perſon ſo offending, and being thereof " convicted in due form of law, ſhall be deemed guilty of " felony, and ſhall be tranſported for ſeven years."

§ 28. *Exchequer bills, &c.* 42 Geo. 3. c. 1. ſ 41.

Alſo the forging or counterfeiting of any Exchequer bill is made a capital felony by the ſeveral acts paſſed uſually every year, authorizing the iſſue of ſuch ſecurities. And by one of the laſt acts for the iſſue of Exchequer bills, which may be taken as a modern precedent for the form of the penal clauſe; " If any perſon or perſons ſhall forge or coun- " terfeit any Exchequer bill which ſhall have been made " forth by virtue of the act (42 Geo. 3. c. 1.) before the ſame " ſhall have been paid off and cancelled, or any Exchequer " bills to be renewed or made forth in purſuance of the act, " or any indorſement or writing thereupon or therein; or " tender in payment any ſuch forged or counterfeit bill, or " any Exchequer bill with ſuch counterfeit indorſement or " writing thereon; or ſhall demand to have ſuch counterfeit " bill, or any ſuch Exchequer bill with ſuch counterfeit in- " dorſement or writing thereupon or therein, exchanged for " ready money by any perſon or perſons, body or bodies po- " litic or corporate, who ſhall be obliged or required to " exchange the ſame, or by any other perſon or perſons " whatſoever, knowing the bill ſo tendered in payment or " demanded to be exchanged, or the indorſement or writing " thereupon or therein to be forged or counterfeited, and " with intent to defraud his Majeſty, his heirs, &c. or the " perſons to be appointed to pay off the ſame or any of " them, or to pay any intereſt thereon, or the perſon or " perſons, body or bodies politic or corporate who ſhall " contract to circulate or exchange the ſame, or any of " them, or any other perſon or perſons, body or bodies " politic or corporate; then every ſuch perſon or perſons " ſo offending, being thereof lawfully convicted, ſhall be " adjudged a felon without benefit of clergy."

Iſſue debentures, 42 Geo. 3. c. 58.

Alſo by ſtat. 42 Geo. 3. c. 58. ſ. 20. " If any perſon or per- " ſons ſhall forge or counterfeit, or cauſe or procure to be " forged,

" forged, &c. or ſhall willingly act or aſſiſt in the forging, " &c. any receipt or receipts for the whole of or any part " or parts of the ſaid contributions, &c. (towards the loan to " be raiſed by that act for the ſervice of Ireland) either with " or without the name or names of any perſon or perſons " being inſerted therein as the contributor or contributors " thereto, or payer or payers thereof, or of any part or parts " thereof; or ſhall alter any number, figure, or word there- " in; or utter or publiſh as true any ſuch falſe, forged, " counterfeited, or altered receipt or receipts, with intent " to defraud the governor and company of the Bank of " Ireland, or any body politic or corporate, or any perſon or " perſons whatſoever; or ſhall forge or counterfeit any de- " benture or debentures, or alter any number, figure, or " word therein; or utter or publiſh as true any ſuch falſe, " forged, counterfeited or altered debenture, with intent to " defraud his Majeſty, &c. or any perſon or perſons; every " ſuch perſon or perſons ſo forging or counterfeiting, or " cauſing or procuring, &c., or willingly acting or aſſiſting " in the forging, counterfeiting, or altering, uttering or " publiſhing as aforeſaid, being thereof convicted, ſhall be " guilty of felony without benefit of clergy."

Ch. XIX. § 28. *By ſtatute. Of Exchequer bills, debentures, &c.*

§ 29. *Lottery tickets,* 42 Geo. 3. c. 54. ſ. 47.

By the laſt Lottery Act, " If any perſon or perſons " ſhall forge or counterfeit, or cauſe or procure to be " forged, &c. or willingly act or aſſiſt in the forging, &c. " any ſhare or ſhares, or any agreement or agreements for " any ſhare or ſhares of any ticket or tickets, divided by " virtue of this act; or alter any number, figure, word, or " ſtamp therein or thereon; or ſhall knowingly utter, vend, " barter, or diſpoſe of any ſuch forged, counterfeited, or " altered ſhare or ſhares, or agreement or agreements for " any ſhare or ſhares of any ticket or tickets, with intent to " defraud any perſon or perſons; all and every perſon and " perſons ſo offending and being duly thereof convicted " ſhall be guilty of felony, and ſuffer as a felon." By former annual acts ſuch offences were made capital.

Forging licences, &c.

By ſ. 42. of the ſame act, " If any perſon or perſons ſhall " forge or counterfeit, or cauſe to be forged or counterfeit- " ed, or aſſiſt in forging, &c. any licence authoriſed by this " act; or ſhall fraudulently alter or cauſe to be altered, or

Ch. XIX. § 29. *By ſtatute. Of Lottery tickets, &c.*

" aſſiſt in altering any ſuch licence as ſhall be really granted " under this act; or ſhall knowingly make uſe of any ſuch " forged, counterfeited, or altered licence; ſuch perſon or " perſons ſhall for every ſuch offence forfeit 500l. (half to " the Crown and half to the informer) to be recovered by " action, &c. and ſhall alſo be ſubject to impriſonment not " exceeding ſix months, as the Court in which the offender " ſhall be convicted ſhall appoint."

§ 30. *a. Receipts for duties on legacies, &c. 36 Geo. 3. c. 52.*

So the ſtat. 36 Geo. 3. c. 52. for granting duties on legacies and ſhares of perſonal eſtates, which directs the commiſſioners of the ſtamps to receive the ſame, and to give papers adapted for receipts or diſcharges to the parties applying upon payment of the duties, and that no legacies liable to the duty ſhall be paid without ſuch a receipt, containing certain particulars, and the amount of the duty payable thereon, under certain penalties; and that no receipt for any legacy ſhall be available in evidence unleſs duly ſtamped; enacts,

Penalty of 500l. for altering receipts.

Sect. 39. " That if any perſon ſhall alter any word, letter, figure, or number, in any aſſeſſment or receipt to be " made or given in purſuance of this act, for any of the " ſaid duties, after the ſame ſhall have been ſigned by the " officer appointed to ſign the ſame, according to the directions of this act; or ſhall utter or publiſh as true any " ſuch altered aſſeſſment or receipt, with intent to defraud " his Majeſty, his heirs, &c. or any other perſon or perſons; " then and in ſuch caſe every perſon ſo altering, uttering, or publiſhing as aforeſaid, ſhall forfeit and pay the " ſum of 500l."

Perſons forging ſtamps, &c. to ſuffer death.

Sect. 40. enacts, " That if any perſon ſhall counterfeit " or forge, or procure to be counterfeited or forged, any " ſtamp directed or allowed to be uſed or provided, made " or uſed, in purſuance of this act; or ſhall counterfeit or " reſemble the impreſſion of the ſame upon any vellum, " parchment, or paper, with intention to defraud his Majeſty, his heirs, &c.; or ſhall utter, vend, ſell, or expoſe " to ſale any vellum, parchment, or paper, liable to the ſaid " duty, with ſuch counterfeit impreſſion thereon, knowing " the ſame to be counterfeited; or ſhall privately or fraudulently uſe any ſtamp directed or allowed to be uſed by

" this act, with intent to defraud his Majeſty, his heirs, &c. " of the ſaid duty; every perſon ſo offending, and being " thereof lawfully convicted, ſhall be adjudged a felon without benefit of clergy."

Ch. XIX. § 30. *By ſtatute. Of Legacy receipts, &c.*

§ 31. *39 & 40 Geo. 3. c. 89. Making or procuring falſe certificates of naval or military ſtores. Vide tit. Larceny, ſ. 53 & 148.*

By ſtat. 39 & 40 Geo. 3. c. 89. ſ. 25. " The commiſſioners of the navy, ordnance, or victualling may ſell and " diſpoſe of any of the ſtores aforeſaid, marked as aforeſaid, " (i. e. by ſ. 1. any ſtores of war, or naval, ordnance, or " victualling ſtores, or any goods whatſoever marked as in " the ſtats. 9 & 10 W. 3. c. 41. and 9 Geo. 1. c. 8. are " expreſſed, or any canvas marked either with a blue ſtreak " in the middle, or with a blue ſtreak in a ſerpentine form, " or any bewper otherwiſe buntin wrought with one or " more ſtreaks of raiſed tape; the ſaid ſtores of war, or naval, ordnance, or victualling ſtores or goods, or any of " them being in a raw or unconverted ſtate, or being new " or not more than one third worn;) as they might have " done before the making of this act; and ſuch perſon " or perſons as heretofore have or ſhall hereafter buy " any ſuch ſtores, or other ſtores ſo marked as aforeſaid " of the ſaid reſpective commiſſioners, may keep the " ſame without incurring the penalty of this act or any " other law, upon producing a certificate or certificates " under the hand and ſeal of three or more of the ſaid commiſſioners that they bought ſuch goods or ſtores from them " at any time before they ſold or delivered the ſame, or before the ſame were found in their cuſtody, or a certificate " from ſuch perſon or perſons as ſhall appear to have bought " the ſaid ſtores from the ſaid commiſſioners, that the ſtores " ſo ſold or delivered by them, or ſo found in their cuſtody, " were the ſtores or part of the ſtores ſo bought of the ſaid " commiſſioners as aforeſaid; in which certificate or certificates the quantities of ſuch ſtores ſhall be expreſſed, and " the time when, and where bought of the ſaid commiſſioners; who, or any three or more of them, and alſo the " perſon or perſons afterwards ſelling the ſame, are hereby " empowered to give ſuch certificate to ſuch perſon or perſons as deſire the ſame, and have bought or ſhall buy any " of the ſaid ſtores, within thirty days after the ſale and delivery thereof." Then by ſ. 26. " If any perſon or perſons ſhall make, ſign, or give any falſe certificate, bill of

Ch. XIX. § 31. *By ſtatute. Of certificates of naval or military ſtores.*

" parcels, or other inſtrument, purporting the identity or " the ſale or diſpoſal of any goods or ſtores, as goods or " ſtores ſo purchaſed of the ſaid commiſſioners as aforeſaid; " or if any perſon or perſons ſhall utter or publiſh any ſuch " falſe certificate, &c. purporting as aforeſaid, knowing the " ſame to be falſe; every ſuch offender upon conviction ſhall " forfeit 200l. and be further corporally puniſhed by pillo- " ry, whipping and impriſonment, or by any or either of " the ſaid ways and means, in ſuch manner and for ſuch " ſpace of time as to the judge or juſtices before whom " ſuch offender ſhall be convicted ſhall ſeem meet. Pro- " vided ſuch judge, &c. may mitigate the ſaid penalty of " 200l. as they ſhall ſee cauſe. One moiety of which pe- " nalty ſhall be to the King, and the other moiety with full " coſts to the informer," &c.

Penalty 200 l. and corporal puniſhment.

1 Geo. 1. ſt. 2. c. 25. *Counterfeiters of the hand of the treaſurer, &c. to any bill, ticket, or other paper diſpoſing of naval treaſure, to be committed.*

By ſtat. 1 Geo. 1. ſt. 2. c. 25. ſ. 6. " Every perſon or per- " ſons who ſhall counterfeit the hands of the treaſurer, " comptroller, ſurveyor, clerk of the acts or of the commiſ- " ſioners of the navy, or any of them, or the hand or hands " of the ſigning or vouching officers of his Majeſty's navy, " ſhips, or yards, or of any one or more of them, to any " bill, ticket, or other papers, by virtue whereof his Majeſty's " naval treaſure is or may be paid or diſpoſed of; or ſhall " knowingly produce any ſuch counterfeit ticket, bill or other " paper; every ſuch offender ſhall and may be lawfully com- " mitted to priſon by any of the ſaid officers or commiſſioners " until he find ſurety to appear at the next general aſſizes or " quarter ſeſſions for the county, &c. where ſuch offender " ſhall be ſo committed to priſon, to be there proceeded " againſt according to law."

§ 31. *b. Land tax redemption act.* 42 G. 3. c. 116.

By the ſtat. 42 Geo. 3. c. 116. which conſolidates all the acts for the redemption and ſale of the land-tax, it is enacted (ſ. 194.) " That if any perſon ſhall forge, counterfeit, or " alter, or cauſe or procure to be forged, counterfeited, or " altered, or knowingly or wilfully act or aſſiſt in the forg- " ing, &c. any contract or contracts, for the redemption or " ſale of any land-tax, or any aſſignment or aſſignments of " any ſuch land-tax, or of any ſuch contract or contracts, " or of any portion of land-tax therein compriſed, or any " certificate or certificates of the commiſſioners of land-tax " or of ſupply, or of any chief magiſtrate authoriſed by this " act

Ch. XIX. § 31. *b. By ſtatute. Of land-tax redemption documents.*

" act to make out ſuch certificate or certificates, or of the " ſurveyor general of the land revenue of the Crown, or of " the duchy of Cornwall, or any certificate or certificates, " receipt or receipts, of the caſhier or caſhiers of the go- " vernor and company of the Bank of England, or any cer- " tificate or certificates, or atteſted copy of any certificate " or certificates directed by this act to be made out by the " proper officer; or ſhall wilfully *deliver* or *produce* to any " perſon or perſons acting under the authority of this act, " or ſhall *utter* any ſuch forged, counterfeited, or altered " contract or contracts, aſſignment or aſſignments, certifi- " cate or certificates, receipt or receipts, knowing the ſame " to be forged, counterfeited, or altered, with intent to de- " fraud his Majeſty, his heirs, &c., or any body or bodies " politic or corporate, or company, or other perſon or per- " ſons whomſoever; in every ſuch caſe, all and every per- " ſon or perſons ſo offending, and being lawfully convicted " thereof, ſhall be adjudged guilty of felony without benefit " of clergy."

6. *Private Papers, Securities, and Documents.*

§ 32.

5 Eliz. c. 14. *Forging deeds, charters, writings ſealed, court rolls, or wills, with intent to moleſt the freehold or inheritance of any.* *Vide* Pult. de pace, 45, 6.

The ſtat. 5 Eliz. c. 14. ſ. 2. enacts, " That if any perſon or " perſons ſhall of his or their own imagination or by falſe con- " ſpiracy or fraud with others, wittingly, ſubtilly, and falſely " forge or make, or ſubtilly cauſe or wittingly aſſent to be " forged or made, any falſe *deed, charter*, or *writing ſealed, court* " *roll*, or the *will* of any perſon in writing, to the intent that " the ſtate of freehold or inheritance of any perſon or perſons " of, in, or to any lands, tenements, or hereditaments, freehold " or copyhold, or the right, title, or intereſt of any perſon or " perſons of, in, or to the ſame, or any of them, ſhall or may " be moleſted, troubled, defeated, recovered, or charged; " or ſhall *pronounce, publiſh, or ſhew forth in evidence* any " ſuch falſe and forged deed, charter, writing, court roll, or " will, as true, knowing the ſame to be falſe and forged as " aforeſaid, to the ſame intent; and ſhall be thereof con- " victed either upon action or actions of forger of falſe " deeds, to be founded upon this ſtatute at the ſuit of the " party grieved, or otherwiſe according to law; he ſhall pay " unto the party grieved his double coſts and damages, to " be aſſeſſed in that court where ſuch conviction ſhall be,

Ch. XIX. § 32. *By ſtatute Of private ſecurities, &c. by 5 Eliz. c. 14.*

" and alſo ſhall be ſet upon the pillory in ſome open market " town or other open place, and there to have both his " ears cut off, and alſo his noſtrils to be ſlit and cut, and " ſeared with a hot iron ſo as they may remain for a perpe- " tual mark of his falſehood, and ſhall forfeit to the Queen " the whole iſſues and profits of his lands and tenements " during his life, and alſo ſhall ſuffer perpetual impriſon- " ment during his life," &c.

Or to the prejudice of termors.

And by ſect. 3. " If any perſon or perſons ſhall (as afore- " ſaid) wittingly, ſubtilly, and falſely forge or make, or " wittingly, ſubtilly, and falſely cauſe or aſſent to be made " and forged any falſe *charter, deed,* or *writing,* to the in- " tent that any perſon or perſons ſhall or may have or claim " *any eſtate or intereſt for term of years* of, in, or to any ma- " nors, lands, tenements or hereditaments, not being copy- " hold, or any annuity in fee ſimple, fee tail, or for term " of life, lives, or years; or ſhall as aforeſaid forge, make, " or cauſe or aſſent to be made or forged any *obligation* or " *bill obligatory,* or any *acquittance, releaſe,* or other diſcharge " of any debt, account, action, ſuit, demand, or other things " perſonal; or ſhall pronounce, publiſh, or give in evidence " any ſuch falſe and forged charter, deed, writing, obliga- " tion, bill obligatory, acquittance, releaſe, or diſcharge, as " true, knowing the ſame to be falſe and forged, and ſhall " be thereof convicted as aforeſaid; then he ſhall pay the " party grieved his double coſts and damages, to be aſſeſſed " in ſuch court where ſuch conviction ſhall be had, and " ſhall be alſo ſet on the pillory in ſome one market town " or other open place, and there to have one of his ears cut " off, and ſhall alſo be impriſoned for one year, without " bail or mainprize."

3 Inſt. 172. 1 Hawk. ch. 70. ſ. 24.

Which double damages it appears ſhall be governed by the penalty, and not by the debt appearing due in the condition.

By ſ. 5. a defendant convicted upon this act, who ſhall have received thereupon puniſhment corporal according to the act, ſhall not be impeached again for the ſame offence.

Second offence felony.

By ſ. 7. " If any perſon convicted or condemned of any " of the offences aforeſaid by any of the ways above limited " ſhall after any ſuch conviction or condemnation eſtſoons " commit

" commit any of the ſaid offences in form aforeſaid, every " ſuch ſecond offence or offences ſhall be adjudged felony, " and the parties being convicted or attainted thereof ſhall " ſuffer ſuch pains of death, and forfeiture, &c. as in caſes " of felony, without benefit of clergy." But by ſ. 8. this ſhall not take away dower or corrupt the blood.

Ch. XIX. § 32. *By ſtatute. Of private ſecurities, &c by 5 Eliz. c. 14.*

3 Inſt. 172.

The 7th ſect. includes one who, having being convicted for forging a deed, afterwards knowingly publiſhes the forged deed of another.

1 Hale, 686. 1 Hawk. ch. 70. ſ. 25. 3 Inſt. 172.

There muſt be a *conviction by judgment* of a firſt offence *before* the ſecond offence be *committed;* otherwiſe it is not felony: the record of which conviction muſt be ſet out in the indictment for the ſecond offence, in order that it may appear to be a conviction of ſuch a forgery as is within the ſtatute; but a prior conviction of any offence within the ſtatute is ſufficient.

1 Hale, 687 Cro. Eliz. 87.

Sect. 10. gives power to juſtices of oyer and terminer and of aſſize to hear and determine the offences. Under this the Judges of B. R. have juriſdiction, but not juſtices of the peace in Seſſions.

Sect. 11. repeals all former ſtatutes provided for forgery of falſe deeds, charters, muniments, or writings.

Exception as to attornies, &c.

Sect. 15. provides that the act ſhall not extend " to any " attorney, lawyer, or counſellor, who ſhall for his client " plead, ſhew forth, or give in evidence any falſe and forged " deed, charter, will, court roll, or other writing for true, " being not party or privy to the forging of the ſame, &c.; " nor (by ſ. 16.) to any perſon who ſhall plead or ſhew forth " any deed or writing exemplified under the great ſeal, or " under the ſeal of any other authentic court of this realm, " nor to any Judge or other perſon who ſhall cauſe any ſeal " of any court to be ſet to any ſuch deed, charter, or writing " enrolled, not knowing the ſame to be falſe or forged." By ſ. 12. there is a ſimilar exception in favour of proctors, &c. in the eccleſiaſtical courts.

§ 33. *Conſtruction on 5 Eliz. c. 14. Vide* Crooke's caſe, poſt. 921.

The above ſtatute of Elizabeth has now nearly fallen into diſuſe ſince the paſſing of the ſtat. 2 Geo. 2. c. 25. which extends to all deeds and wills, upon which the proſecution is eaſier and the puniſhment capital in the firſt inſtance. There are beſides ſeveral particular ſtatutes, before no-

Ch. XIX. § 33. *By ſtatute. Of private ſecurities, &c. by* 5 Eliz. c. 14.

ticed, adapted and confined to the forgery of the like inſtruments in the names of particular perſons or corporations. And it may be remarked once for all, that the ſame general rules of conſtruction will apply equally to the ſame inſtruments named in the ſeveral ſtatutes paſſed in pari materiâ, and all muſt neceſſarily be governed by the ſame principles of the common law.

3 Inſt. 170. 2. 1 Hawk. ch. 70. ſ. 18. 1 Hale, 684. Noy. 42. 2 Bac. Abr. 280. &c.

The firſt branch of the ſtatute is confined to forgeries affecting the eſtate in poſſeſſion, or the right, title, or intereſt of any perſon in or to the freehold or inheritance of the lands, &c.; as the enſuing branch is to be underſtood when the forgery is to the moleſtation of a termor. But a forgery of a rent-charge or even of a leaſe for years in the name of one who is ſeiſed of the freehold or inheritance is within the former part; and the words *for a term of years* in the ſecond branch relate to ſuch an eſtate or intereſt in eſſe before.

1 Hawk. ch. 70. ſ. 17. 22. 3 Inſt. 169. 1 Hale, 684. Taverner's caſe, Dy. 322. 15 H. 7. 16.

The words "*writing ſealed*" have been holden to extend to a falſe cuſtomary of a copyhold manor, under the ſeals of ſeveral of the tenants, containing falſe cuſtoms to the diſheriſon of the lord, and purporting to be by the conſent of all the tenants and the allowance of the lord: and ſo a ſtatute merchant or recognizance in nature of a ſtatute ſtaple is within the ſtatute, as having the ſeal of the party; though it is doubted in Rolle whether a ſtatute ſtaple be ſo, becauſe it need only have the ſeal of the ſtaple.

2 Roll. Abr. 466. (F), pl. 2, 3. 5. Ib. pl. 4. et vi. 3 Inſt. 171.

3 Inſt. 169, 170, 1. 1 Hawk. ch. 70. ſ. 19. 26. Marriott's caſe, 2 Show. 5.

By the firſt clauſe the deed, charter, or writing muſt be ſealed, and ſo it muſt appear in the indictment; but the court roll or will need not be ſealed. And this holds good alſo in the conſtruction of the ſecond branch, where the word *writing* extends to a will whereby a term for years is deviſed; as the word *will* in the firſt branch means a will concerning the freehold and inheritance. But I cannot reconcile with the words of the ſtatute what is ſaid by Lord Coke and Lord Hale, that a will in writing concerning goods only is within the ſecond branch; and the paſſage in Dyer referred to by Lord Coke does not ſupport the poſition.

3 Inſt. 171. 1 Hale, 685. Dy. 302. b.

3 Inſt. 171. 1 Hawk ch. 70. ſ. 21, 22. 3 Leon 170.

The words "any obligation or bill obligatory" in the ſame clauſe muſt be intended of ſuch as are ſealed. But the forgery of a deed containing a mere gift of perſonal chattels is not within it.

The

Ch. XIX. § 33. *By ſtatute. Of private ſecurities, &c. by* 5 Eliz. c. 14.

The forgery of a leaſe of lands in Ireland is ſaid not to be within this ſtatute, but puniſhable as a miſdemeanor at common law (*a*).

The caſe of Crooke may be referred to as a good explanation of the ſtatute. That was an indictment on the ſtat. 5 Eliz. c. 14. for forgery, wherein Garbut and his wife were ſaid to be ſeiſed of certain meſſuages lands and tenements called *Jawick*, (containing in fact 300 acres). and the conveyance forged by the defendant was of Jawick *Park*, containing 4000 acres, which was charged to be done with intention to cheat Garbut and his wife. After conviction and a motion for a new trial, which was denied, it was moved in arreſt of judgment, and the caſe was argued at great length, and was under conſideration for ſeveral terms. The Court took time to conſider of their judgment; and finally the Chief Juſtice delivered their opinion, that the act of parliament did not mean that there ſhould be a forged conveyance of the very lands; but if it were any deed whereby the party might be moleſted it was ſufficient. That in this caſe the variance was only as to the deſcription of the lands; and if ſuch a variation were to get the offender off, it would defeat the ſtatute. That it was not neceſſary that the land ſhould be really affected by the forged deed, or that the party ſhould be evicted; but if he might be diſturbed by it, it was within the intent of the act of parliament. That in this caſe it was proved that after the deed was forged the defendant ſent word that he had purchaſed Jawick, and that he had actually taken out writs againſt the tenants of Jawick in order to eject them.

R. v. Crooke, B. R. E. 4 G. 2. Maſterman's Notes, S. C. 2 Str. 901. and more fully in Fitzg. 57. and 261. *On an indictment for forgery within the ſtat.* 5 Eliz. *it is ſufficient if the party may be moleſted in his poſſeſſion, though he be not evicted: and a variance of Jawick Park for Jawick in the forged deed is not material* *Vide* the precedent of this indictment at large in Crown Circ. Comp. tit. *Forgery*, 122. (edit. 1738).

Sir J. Strange's report in ſomewhat ſtronger terms ſtates that the Court relied on the words of the act, "*to the intent* "that the ſtate of freehold, &c. of any perſon to any lands, "&c. or the right or title of, in, and to the ſame, ſhall or "may be moleſted, troubled, defeated, recovered or "charged:" By which it appeared that it was not neceſſary that there ſhould be a charge, or *a poſſibility of a charge*; it was ſufficient if it were done *with that intent*; and the jury had found that it was done with intent to moleſt Garbut and his wife in the poſſeſſion of their lands.

2 Str. 902.

Vi. poſt. what was ſaid by Lee J. on the prior day.

The defendant received judgment as directed by the ſtatute, viz. to be ſet in the pillory at Charing Croſs, to have

(*a*) 1 Hawk. ch. 70. ſ. 20. 1 Hale, 684. 3 Leon. 170.

both

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both his ears cut off, his noſtril ſlit and ſeared with a hot iron, his rents forfeited to the King for life, and to be impriſoned during life.

In the courſe of the diſcuſſion all the Judges delivered their opinions, and agreed that the intent of the party to moleſt &c. the eſtate was a matter of fact proper to be left to the jury upon the evidence, and that the *quo modo* which was evidence of ſuch intention need not be ſtated in the indictment. The principal queſtion ſeemed to be, whether it were neceſſary to bring the caſe within the ſtatute that the deed, ſuppoſing it to be genuine, ſhould be ſuch as might poſſibly have an effect; which Ld. C. J. Raymond ſeemed to think this deed could not have by reaſon of the variance; it not being laid in the indictment that Garbut was ſeiſed of Jawick Park, or that *Jawick Park* was part of *Jawick*, or that the lands were known as well by the one name as the other, or any other matter whereby to aſcertain them to be the ſame, [and there being no averment of any previous treaty concerning Jawick in conſequence whereof there was a conveyance of Jawick Park, which (if it had been a real tranſaction) would, he thought, have laid a foundation for a court of equity to decree a conveyance of Jawick: ſo that, he obſerved, the objection in all its force was reduced to this, that upon the face of the indictment no title could be made either in law or equity to the lands of Jawick.] Page J. obſerved, that the ſtatute did not require that the deed ſhould be for the conveyance of lands or any thing elſe in the poſſeſſion of the party: but it might be any deed by which the party might be diſturbed, and the intent was a matter of fact proper to be left to the jury. No ejectment would lie in this caſe; nor even if the conveyance had been of *Jawick* could it have had any effect, being a forged deed, which was no deed at all. But he ſeemed to think that if the deed had been really executed by Garbut and his wife, with that miſtake, a court of equity would have obliged them to execute a proper deed. And if they would have been liable in caſe of a true deed, they might be ſaid to be liable to be diſturbed under colour of a falſe one till it was diſcovered to be ſuch. Probyn J. alſo thought that the eſtate would have been bound in equity if it had been a true deed with ſuch a miſtake in it. Lee J. ſaid, that all that was neceſſary was to charge ſuch facts in the

MS. ante,

The words within the crotchets are taken from Fitzgibbon's Report. The reſt is taken in ſubſtance from Maſterman's MS. Notes.

the indictment as conſtituted the offence created by the ſtatute; and it was not neceſſary to lay thoſe facts which were evidence of the intention, becauſe that was proper for the jury, and they had found the intention. And though the deed as it was ſet out might not have any operation in law, yet the intention of the defendant might be as much to moleſt the poſſeſſion of Garbut as if the deed had been good.

Ch. XIX § 33. *By ſtatute. Of private ſecurities, &c. by* 5 Eliz. c. 14.

§ 34. *Forging deeds, will, bonds, bills, notes, acquittances or receipts for money or goods— capital by* 2 G. 2. c. 25. 9 G. 2. c. 18. 31 G. 2. c. 22. ſ. 78.

By ſtat. 2 Geo. 2. c. 25. made perpetual by ſtat. 9 Geo. 2. c. 18. "if any perſon ſhall falſely make, forge, or counterfeit, or cauſe or procure to be falſely made, &c. or willingly act or aſſiſt in the falſe making, &c. any *deed, will, teſtament, bond, writing obligatory, bill of exchange, promiſſory note* for payment of money, *indorſement* or *aſſignment* of any bill of exchange or promiſſory note for payment of money, or any *acquittance* or *receipt* either for money or goods, with intent to defraud any perſon whatſoever, [and by ſtat. 31 Geo. 2. c. 22. ſ. 78. with intent to defraud any corporation whatſoever]: or ſhall *utter or publiſh* as true any falſe, forged or counterfeited deed, &c. with intent to defraud any perſon (or corporation), knowing the ſame to be falſe, forged or counterfeited; every ſuch perſon being thereof lawfully convicted ſhall be deemed guilty of felony without benefit of clergy."

7 Geo. 2. c. 22. *Extending to acceptances, accountable receipts, orders for payment of money, or delivery of goods.*

The ſtat. 7 Geo. 2. c. 22. (made to ſupply the defects of the former act which it recites, and reciting further that no puniſhment is inflicted by the ſaid act on ſuch as commit the offences thereinafter ſet forth,) enacts, that "if any perſon ſhall falſely make, alter, forge or counterfeit, or cauſe or procure to be falſely made, &c.; or willingly act or aſſiſt in the falſe making, &c. any *acceptance of any bill of exchange*, or the *number* or *principal ſum* of any *accountable receipt for any note, bill, or other ſecurity for payment of money*, or any *warrant or order* for *payment of money, or delivery of goods*; with intent to defraud any perſon whatſoever, [and by ſtat. 18 Geo. 3. c. 18. with intent to defraud any corporation;] or ſhall utter or publiſh as true any falſe, altered, forged or counterfeited acceptance of any bill of exchange, or accountable receipt for any note, bill, or other ſecurity for payment of money, or warrant or order for payment of money, or delivery of goods, with intention

18 Geo. 3. c. 18.

"tion

Ch. XIX. § 34. *By ſtat.* 2 Geo. 2. c. 25, &c. *Of deeds, wills, notes, receipts, &c.*

" tion to defraud any perſon (or corporation), knowing the " ſame to be falſe, altered, forged or counterfeited; then " every ſuch perſon being thereof lawfully convicted ſhall " be deemed guilty of felony without benefit of clergy (*a*)."

In the ſtatute of 7 Geo. 2. there is no expreſs ſaving of corruption of blood as in the others: and by ſ. 4. of the ſtat. 2 Geo. 2. c. 25. the act is not to extend to Scotland.

§ 35. *Writing obligatory.*

I now proceed to note ſuch determinations as have aſcertained what ſort of inſtruments come within the deſcriptions in the abovementioned ſtatutes.

(*a*) Many of the caſes upon theſe ſtatutes have turned more upon the general principles of forgery than on the particular conſtruction of the words of the ſtatutes themſelves. Theſe therefore may be more conveniently diſtributed under the general heads of inquiry. Thus under the 4th head, concerning the validity in law of the thing forged, are noticed the caſe of Japhet Crooke, for forging a leaſe and releaſe; Coogan's caſe in 1787; Murphy's caſe in 1753; and Stirling's caſe in 1773, for forging wills in the names of living perſons; Fitzgerald and Lee's caſe in 1741, for forging the will of a deceaſed ſeaman, with a variance in the name in different parts of it. So caſes of forging Bank notes, &c. where the queſtion has turned on the degree of ſimilarity to the true one, as Jones's caſe and others. So Reading's caſe in 1793, for forging an acceptance in a different name from that of the perſon to whom the bill of exchange was directed; Moffatt's caſe in 1787, for forging a bill of exchange for a leſs ſum than 5*l.* which is diſallowed by ſtat. 17 Geo. 3. c. 30.; Wall's caſe in 1800, for forging a will of land atteſted only by two witneſſes; and Hawkeſwood's caſe in 1783, and others ſince, for forgery of bills of exchange which appeared without ſtamps.

Under the 5th head of inquiry, how far uſing a fictitious name or perſonating the true man, &c. will affect the offence. Lewis's caſe 1754, for forging a power of attorney; and Wilks's caſe in 1767, for forging a bill of exchange; Aickles's caſe, for forging a promiſſory note; Bolland's caſe, for forging an indorſement on a promiſſory note; Taft's caſe in 1777, for the like; Lockett's caſe in 1772, and Shepherd's caſe in 1781, for forging orders for payment of money; and *Taylor's* caſe in 1779, for forging a receipt for money; all forgeries in the names of fictitious perſons, whoſe characters were in ſome inſtances aſſumed by the priſoners; and Dunn's caſe 1769, for forging a promiſſory note; and the caſe of Mead v. Young, for forging an indorſement of a bill of exchange; both in the names of real perſons; and many others of the like ſort will be found.

Under the 8th head of inquiry, as to the indictment and evidence, Maſon's caſe, for uttering a forged acceptance of a bill the tenor of which was not ſet forth, and others of that ſort; Teſtick's caſe in 1774, and Hunter's caſe in 1794, for forging a receipt for money; Reading's caſe in 1793, for forging a bill of exchange; Gilchriſt's caſe in 1795, for forging an order for payment of money; Jones and Palmer's caſe in 1785, for forging a deed and a receipt for money; Dunnett's caſe in 1792, for forging a bond and writing obligatory; and various other caſes, where the queſtions have either turned on the manner of charging the offence, or the application of the evidence to the charge.

Writing-

Writing-Obligatory.

In Dick's caſe, who was indicted and convicted of knowingly uttering a forged writing-obligatory commonly called a Scotch bank note in this form;

" Five Pounds. Bond accord. Sterling.

" No. 157.

28

" Aberdeen, 1 May 1767.

" The Banking Company in Aberdeen are hereby obliged " to pay to Js. Brand or bearer on demand at their office " here, five Pounds ſterling, by order of the Directors.

" W. Brebner, " J. Burnett, } Directors. R. Sunderland, Caſhier."

the Judges were divided in opinion whether ſuch a note were within the meaning of the ſtat. 2 Geo. 2. c. 25.; and whether the uttering it in England were felony; the ſtatute (ſ. 4.) having negatively excluded Scotland; and the note being made payable locally where it was drawn. At length the priſoner received the King's pardon.

Ch. XIX. § 35. *By ſtat.* 2 Geo. 2. c. 25, &c. *Of deeds, wills, notes, receipts, &c.*

Dick's caſe, Newcaſtle, 1770. MS. Gould J. 1 Leach, 79. S.C. Qu. *Whether uttering in England a promiſſory note of a Scotch Bank payable in Scotland be within the ſtat.* 2 G. 2. c. 25.

Receipt for Money. § 36.

William Teſtick was found guilty on the ſecond count of an indictment, which charged that he feloniouſly uttered and publiſhed as true a certain falſe, forged, and counterfeited *receipt for money*, with the name " Stephen Withers of, &c. " for the ſum of 1*l.* and 4 *s.*, which laſt-mentioned falſe, " &c. receipt, is as follows," viz.

" 18th March 1773.

" Received the Contents above by me,

" Stephen Withers."

with intent to defraud R. Goadby, he the defendant at the ſaid time when, &c. well knowing the ſaid receipt to be forged, &c.

It appeared in evidence that Goadby ſold Lottery tickets and ſhares, and paid the money for prizes; and that the priſoner was employed by him to carry out the prize money with an account of the deductions to pay it to the party, and bring back his receipt. On the 16th of March 1773 the priſoner had the following account delivered to him with money to pay the balance.

Teſtick's caſe, Bodmin Sum. Aſſ. 1774, MS. Gould J. *Indictment for publiſhing a forged receipt for money in the terms of the receipt itſelf,* " *Received the* " *contents above,* " *by me, &c.*" *without ſetting forth the bill of items to which it referred, is ſufficient; for that is matter of evidence. Vide* poſt. ſ. 53.

No.

Ch. XIX. § 36. *By ſtat.* 2 G. 2. c. 25, *&c. Of deeds, &c. and receipts.*

No. 38,811.

Mr. Withers.	£.	s.	d.
One 16th of a £. 20 Prize - -	1	5	0
Deduct for expences advancing and remitting money to you - - -	0	1	0
	1	4	0

which account the priſoner on ſettling his accounts produced to Goadby, with the receipt ſtated in the indictment at the bottom of the ſaid account, and took credit for the amount, knowing that Withers had not been paid; and having made excuſes to him for the omiſſion. It was proved by Withers who had before the trial been paid the money by Goadby, that the receipt was not his hand-writing.

It was objected by the priſoner's counſel that this receipt did not correſpond with the indictment; for nothing was ſet forth but the receipt as for *the contents above:* and that together with the bill of particulars was one entire thing; and it being ſet forth, "which ſaid falſe receipt, &c. is as follows," the whole ought to have been ſet forth, and not part only. namely, "*the contents above*;" which did not appear to be the ſame, nor to be a receipt for money. And this objection was likewiſe urged after conviction in arreſt of judgment as to the inſufficiency and inconſiſtency of the indictment; in this, that it did not appear by the receipt ſet out in the indictment that it was a receipt *for money*, or what it was for; and being only for *the contents above*, and nothing ſet forth to ſhew what they were, or explain the receipt, it was unintelligible. After conviction judgment was reſpited: but in Michaelmas term 1774 the Judges were of opinion that the indictment was ſufficient; for it was "*Received* "*the contents above*," which ſhewed it to be a receipt for ſomething though the particulars were not expreſſed; and it was laid to be a forged *receipt for money* under the hand of S. W. for £. 1 4 0; and the bill itſelf was only evidence of the fact, and ſhewed it to be a receipt *for money* as charged.

(Abſent De Grey C. J. and Perrott B.; and by Serjt. Foſter's MS. Eyre B. doubting.)

Vide Taylor's caſe, poſt.

John Harriſon was accomptant to the London Aſſurance Company, who kept their caſh with the Bank of England. For which purpoſe the Bank furniſhed the company with a book, the title of which was, "Debtor, the Bank of England,

Harriſon's caſe, O. B. Sept. 1777, cor. Blackſtone J. MS. Buller J. (1 Leach, 215. S. C.

Ch. XIX. § 36. *By ſtat.* 2 G. 2. c. 25, *&c. Of deeds, &c. and receipts.*

A forged receipt for Bank notes *is not a receipt for* money *or* goods *within the ſtat.* 2 Geo. 2. c. 25. *nor is ſuch forgery with intent to defraud a* corporation *within the ſtat.* 7 Geo. 2. c. 22. *though now it is within the ſtat.* 18 Geo. 3. c. 18.

"land, with the London Aſſurance, creditor." When any money or bank note was paid into the Bank, the clerk of the Bank entered the amount on the debtor ſide, to which he ſigned his name. And on the other hand, when the company drew for money, the caſhier of the Bank *wrote off* ſo much from their bank book. This bank book was kept by the priſoner, as accomptant to the company, and ſent by him to the Bank as occaſion required. And one John Clifford the Bank clerk having entered on the debtor ſide of the account book "1777. June 16. Bank notes. C. £. 210." as ſo much received for the uſe of the Aſſurance Company, the priſoner prefixed the figure 3 to the ſum, thereby making the ſum received to be £. 3210. The priſoner was indicted for this forgery, and the indictment contained different ſets of counts, the one ſet framed on the ſtats. 2 Geo. 2. c. 25. and 31 Geo. 2. c. 22. ſ. 78. charging the priſoner with forging and uttering a certain *receipt for money*, viz. "1777. "June 16. Bank notes. C. £. 3210.", with intent reſpectively to defraud the Bank of England, and the London Aſſurance Company. The other ſet framed on the ſtat. 7 Geo. 2. c. 22. charging the priſoner with altering and uttering a certain *accountable receipt for bank notes for payment of money* (ſetting it out as before) viz. the ſaid ſum of £. 210, by prefixing the figure 3 to the ſaid figures and cypher £. 210, whereby the words, &c. "1777. June 16. Bank "notes. C. £. 210," together with the figure 3 imported that J. C. a clerk of the Bank of England had received bank notes to the amount of £ 3210, with the like intent.

It was firſt objected that the caſe was not within the firſt ſet of counts, which were framed on the ſtats. 2 & 31 Geo. 2. thoſe ſtatutes being confined to receipts for *money* or *goods*, and this being a receipt for *bank notes*, which were neither money nor goods; and that the Legiſlature had ſo thought by paſſing the ſtat. 7 Geo. 2. in which *bills*, *notes*, &c. are particularly mentioned. And the Court allowed this objection. It was next objected as to the other ſet of counts, that the ſtat. 7 Geo. 2. on which they were framed (though otherwiſe including ſuch a receipt) was confined to offences of this deſcription done with intent to defraud any *perſon*; whereas this was laid with intent to defraud the two corporations

Ch. XIX. § 36. *By ſtat.* 2 Geo. 2. c. 25, *&c. Of deeds, &c. and receipts.*

tions reſpectively named. That the Legiſlature had decided the validity of the objection by paſſing the ſtat. 31 Geo. 2. c. 22. which reciting that doubts had ariſen whether the word *perſon* extended to a corporation, re-enacts the proviſions of the ſtat. 2 Geo. 2. c. 25. as applicable to corporations, but omitted to include the offences named in the ſtat. 7 Geo. 2. This point was reſerved for the opinion of the Judges, and the priſoner was acquitted on the firſt ſet of counts and convicted on the ſecond ſet. But the Judges afterwards decided this objection alſo in favour of the priſoner, and he was diſcharged. The defect however is now ſupplied by the ſtat. 18 Geo. 3. c. 18. before ſet forth.

Ante, 923.

In the printed report of this caſe it is alſo ſaid that the Judges were clearly of opinion that the entry in the bank book as ſet forth was an *accountable receipt* within the meaning of the act, though no opinion was publicly given. The ground of this opinion was afterwards alluded to by Groſe J. in Lyon's caſe after mentioned (*a*). It does not appear whether this opinion were formed with reference to the manner in which the offence was laid in the indictment, which no otherwiſe connected the entry itſelf forged with the book in which it was made than by averring that the defendant forged, &c. " a certain receipt for money, purporting to be a receipt " given on the 16th of June 1777 by one J. C. (which ſaid " J. C. then, &c. was and ſtill is a clerk of the governor " and company of the Bank of England, entruſted and em- " ployed by the ſaid governor, &c. to give receipts on their " behalf for ſuch ſums of money, notes, &c. as he might " receive for the ſaid governor, &c.) for and on behalf of " the ſaid governor, &c. to a certain corporation called " *The London Aſſurance*, for the ſaid governor," &c. (Then after ſetting forth the tenor of the receipt as before mentioned) " which ſaid receipt for money, &c. did import, ſignify and expreſs that the ſaid J. C. as clerk of the ſaid governor, &c. had on the 16th of June 1777 received of the ſaid corporation called The London Aſſurance the ſum of £.3210, with intent to defraud," &c.

1 Leach, 218. *Forging a receipt for Bank notes in theſe words,* " 1777, *June* " 16, *Bank notes* " C. 3210 *l.*" *is an accountable receipt within the ſtat.* 7 Geo. 2. *being written in a book kept for the purpoſe of entering receipts of money for the uſe of the parties. Vide* the Precedent at large in the *Crown Circuit Aſſiſtant*, 280. and *vide* Hunter's caſe, poſt.

(*a*) P. 938.

Hunter's caſe, O. B. Dec. 1794, cor. Perryn, B. MS. Jud. (2 Leach. 711. S. C.)

William Hunter was tried on an indictment charging, that he had in his poſſeſſion a paper partly printed and partly written, called a navy bill, ſigned by Sir A. Hammond, Bart. (and others) three of the principal officers and commiſſioners

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of his Majeſty's navy; which ſaid paper is to the tenor and effect following, that is to ſay, " Extra. Received the " 20th Sept. 1799. No. 660. To Edward Wilſon, pilot " extra, in reward for his ſervice, between the 1ſt June and " the 8th Sept. 1794, in piloting his Majeſty's ſloop Lord " Mulgrave from the river Humber to the Downs, thence " to Spithead, and back to the river Humber, and attend- " ance, as appears by a certificate remaining in the comp- " troller's office, the ſum of £.25.

A. S. Hammond. S. Henſlow. Geo. Marſh."

And under which ſaid paper partly printed, &c. called a navy bill, was then and there contained a certain order in writing for payment, called an aſſignment, for payment of the ſum of money mentioned in the ſaid paper, &c. called a navy bill, bearing date 24th Sept. 1794, and ſigned by G. Marſh, Eſq. Geo. Rogers, Eſq. and Samuel Marſhal, Eſq. three of the ſaid principal officers and commiſſioners of his Majeſty's navy; and which ſaid order in writing for payment, called an aſſignment, for payment of the ſaid ſum of money mentioned in the ſaid paper partly printed, &c. called a navy bill, is to the tenor and effect following, that is to ſay, " No. 6460. to be paid out of £.2000 received 8th " Sept. 1794, and appointed to pay pilotage on the head of " wages.

" G. Marſh. G. Rogers. S. Marſhall.

" Aſſigned the 24th Sept. 94.

O. S."

Upon which ſaid paper writing was then and there contained a certain indorſement partly printed and partly written by one Wm. Davis, chief clerk to the comptroller of his Majeſty's navy in his office for bills and accounts, which ſaid indorſement is to the tenor and effect following, that is to ſay, " The certificate within mentioned is indorſed by " Ed. Wilſon payable to Mr. Wm. Thornton.

" T. Davis."

The indictment then charged that the priſoner did felonioufly forge, &c. a certain receipt for money, to wit, for the ſum of 25 l. mentioned and contained in the ſaid paper partly written, &c. called a navy bill; which forged receipt is as follows, that is to ſay, " Wm. Thornton." " Wm. " Hunter,"

It is not ſufficient in an indictment for forging a receipt to an aſſignment for payment of a certain ſum in a navy bill to ſtate ſuch navy bill and ſuch aſſignment, and then charge that the priſoner forged a receipt for money mentioned in the ſaid navy bill as follows; viz. " *Wm. Thornton,* " *Wm. Hunter;*" *becauſe the mere ſigning ſuch names, unleſs connected with the previous matter, does not neceſſarily purport on the face of it to be a receipt: but it ſhould be averred that ſuch navy bill, &c. together with ſuch ſignature, did purport to be and was a receipt, &c. and that the priſoner did feloniouſly forge the ſame.*

Ch. XIX. § 56. *By ſtat. 2 G. 2. c. 25, &c. Of deeds, &c. and receipts.*

"Hunter," with intention to defraud his Majeſty, againſt the ſtatute, &c.

A ſecond count ſtated the navy bill, the order for payment, and indorſement, in the ſame manner as in the firſt count; and then ſtated that to the ſaid laſt-mentioned paper partly written, &c. called a navy bill, was annexed and written a certain falſe, forged, and counterfeited receipt for money, to wit, for the ſum of 25 l. in the ſaid laſt-mentioned paper partly printed, &c. called a navy bill; which ſaid falſe, forged, and counterfeited receipt for money is as follows; that is to ſay, "Wm. Thornton." "Wm. Hunter." And that the priſoner did utter and publiſh as true the ſaid laſt-mentioned forged and counterfeited receipt for money, with intent to defraud his ſaid Majeſty; he well knowing the ſame to be falſe, &c. There were other ſimilar counts, ſome charging the inſtrument forged to be an *acquittance*; others ſtating the intention to be to defraud Wm. Thornton and other perſons.

On the trial it appeared that Edward Wilſon, who had been pilot of the Lord Mulgrave, having received from his captain a certificate of his ſervice, ſent it to Wm. Thornton to receive his wages. That the priſoner was a clerk in the comptroller's office; and being employed to forward the pilot's bills through the office, got into his hands the bill ſtated in the indictment, and carried it with the order for payment and indorſement upon it, which were neceſſary for receiving the money, to the caſhier of the pay-office; having wafered to one ſide of the bill, on which was written the ſum 25 l., under thoſe figures, a four-penny ſtamp uſed for receipts, on which were written the names of "Wm. Thornton, Wm. Hunter," without any words importing that they had received the money. And it was proved that the caſhier was in the habit of paying navy bills on the owner's name being written under the ſum without any other receipt. It appeared on producing the bill that the name Major Woolhead was written at the bottom of it; with reſpect to which it was proved that it was uſual to have his name to the bills, as without it they did not regularly paſs through the office; but that a bill would not be ſtopped if his name were not put to it. There alſo appeared on one ſide of the bill the initials

initials of Mr. Davis's name, T. D. which were not ſtated in the indictment. Ch. XIX. § 56. *By ſtat. 2 G. 2. c. 25, &c. Of deeds, &c. and receipts.*

After conviction, judgment was reſpited to take the opinion of the Judges on the caſe, which was argued before all the Judges (except Aſhhurſt J.) in the Exchequer-chamber, where ſeveral objections were made on behalf of the priſoner to the indictment. 1. Becauſe it did not appear by the tenor of the inſtrument as ſet forth in the indictment that it was a receipt. 2. Becauſe there was nothing ſtated in the indictment to ſhew that this could operate as an acquittance. It was argued as to the firſt, that forgery conſiſted in making a falſe inſtrument ſo as to reſemble a genuine one. That it was not ſufficient, as here, to allege generally that the priſoner forged a receipt, which was a concluſion of law, but facts muſt be ſtated to ſhew the Court that ſuch concluſion was true. Wherefore the indictment muſt ſet out the inſtrument itſelf forged, that the Court might ſee that it was ſuch as the ſtatute intended which made the forging of it felony. That here the tenor of the inſtrument ſet forth was ſimply "Wm. Thornton, Wm. Hunter," which did not import a receipt, and was ſtated as an independent inſtrument; the previous ſtatements of the navy bill, &c. having no connection with the charge, and being only ſtated as inducement. For though the ſecond count ſtated that the receipt was *annexed* to the navy bill, yet that only implied that originally the inſtrument conſidered as the receipt was ſomething independent in itſelf; and it only amounted to charging that that which was no receipt in law was ſo annexed. That this therefore was not like the caſe of an indorſement of a bill of exchange, which was always connected with and incorporated into the bill itſelf. 2. That ſuppoſing the meaning of the inſtrument need not neceſſarily appear on the face of it, ſtill this indictment was bad, inaſmuch as there was nothing which charged that the words in queſtion meant or purported (*a*) to be the receipt of any one, which was neceſſary where the inſtrument did not ſhew its meaning upon the face of it. 3. It was objected, that as 16th June 1795.

(*a*) It was aſked by Eyre C. J. Whether there were any authority to ſhew that the meaning of equivocal words could be fixed by alleging that they *purported* to be ſuch or ſuch a thing? for he conceived that the word *purport* ſignified *apparent* meaning.

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the navy bill ſet forth in the indictment had not the letters "T. D." nor the name "Major Woolhead," it varied from the navy bill proved.

It was anſwered on the part of the Crown to the two firſt objections, that it was ſufficient to ſet out the tenor of the thing forged, which here conſiſted of the name, and was averred to be a receipt for money; and the only queſtion was, whether a receipt could not conſiſt of a name, which no doubt it might, if in point of fact it were ſo intended. Then the indictment ſtated the exiſtence of the navy bill, and that to obtain payment of it the priſoner forged the name "Wm. Thornton" as a receipt, the meaning of which was properly to be aſcertained by evidence, and needed not to be ſtated on the record. 3. That the omiſſions adverted to in ſetting out the navy bill conſtituted no part of it, but were merely ſignatures or memoranda made by the clerks through whoſe offices the bill paſſed; and that they furniſhed no ground of objection in this caſe, as the navy bill was merely ſet out in the indictment by way of inducement.

In Eaſter term 1796 judgment was arreſted on the ground, that it did not appear on the face of the indictment, nor was it ſhewn by averment, that the inſtrument was a receipt. Though Buller J. thought that the ſecond count might be ſupported; conſidering this to be as much a receipt as the writing a name was an indorſement on a bill of exchange. But to this it was anſwered, that an indorſement was complete by writing the name on the bill without any thing more. Whereas the name itſelf as ſtated in the indictment was no receipt; though the name coupled with the navy bill might together form a receipt. But then it ought to be ſo ſtated; as was done in a caſe referred to in the Crown Circuit Companion, (p. 405. ed. of 1799.) which was an indictment for uttering a forged warrant for payment of a South-Sea annuity, wherein it was ſtated that one D. H. was a clerk of the S. S. Company entruſted to ſign warrants for the payment of money; and that one H. P. having in his cuſtody a certain warrant, &c. ſigned by the ſaid D. H. and directed to R. R. the caſhier of the Company for the payment of 8 *l.* to one W. D., on the back of which ſaid warrant the ſaid W. D. had ſigned his name; *which ſaid paper partly printed, &c. together with the ſaid indorſement in form aforeſaid, did purport to*

be and was a receipt, acquittance, and diſcharge, under the hand of the ſaid W. D. for the ſaid ſum of 8 *l.*, he the ſaid H. P. did feloniouſly alter, &c. (*a*)

Ch XIX. § 36. *By ſtat.* 2 G. 2, c. 25, *&c. Of deeds, &c. and receipts.*

James Lyon was indicted for forging a ſcrip receipt for 2000*l.* 3 per cent. conſ., which was charged to be *a receipt for money*, in this form:

Lyon's caſe, O. B Dec. 1793, 2 Leach, 681.

A ſcrip receipt with the blank for the name not filled up with the name of the ſubſcriber, and therefore not purporting to be a receipt of the ſum therein mentioned from any perſon, is not a receipt for money within the ſtatutes.

"£. 2000 three per cent. annuities 1793.

"By virtue of a reſolution of the Houſe of Commons for "raiſing £. 4,500,000 for the ſervice of the year 1793.

"Received of the ſum of £. 144 for "the depoſit of £. 10 per cent. on £. 1440, ſub- "ſcribed by him in purſuance of the aboveſaid "reſolution; and upon due payment of the remain- "ing £. 90 per cent. of the ſaid ſum of £ 1440, "the ſaid ſubſcriber or his aſſigns by indorſement "hereon will in exchange for this *receipt* become "entitled to £. 2000 joint ſtock of 3 per cent. an- "nuities, which were conſolidated at the Bank of "England by certain acts, &c., the intereſt to com- "mence from the 5th January 1793, &c. Witneſs "my hand this 4th April 1793. } £. 144

"Entered. W. Johnſon. T. Thompſon."

"31ſt May.

"Received £. 144 for ſecond payment.

"Entered. W. Smart. T. Thompſon."

(Setting forth like receipts for other payments to the fifth inclusive;) With intent to defraud the governor and company of the Bank of England.

There were other counts laying the intent to be to defraud other parties, and for uttering the ſame (*b*). To this there was a demurrer on the ground that the inſtrument forged was not *a receipt* for money within the ſtatutes, inaſmuch as it was not filled up with the name of the ſubſcriber or perſon from whom the money was received. And after argument by counſel, and conſideration of the caſe by all the Judges to whom it was referred, they were all of opinion that the priſoner was entitled to judgment. Groſe J. in delivering the opinion of the Judges obſerved, that the inſtru-

(*a*) *Vide* 2 Leach, 719. where the opinion of the Judges as delivered by Mr. Juſtice Groſe at the O. B. in May 1796 is ſtated.

(*b*) Another indictment charged a ſimilar offence as a forgery of a *ſcrip* receipt; to which there was alſo a demurrer.

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ment, the tenor of which was neceſſarily ſet forth in the indictment, was not *a receipt* for money in contemplation of law, within the meaning of the ſtatute 2 Geo. 2. c. 25, &c. That it was the duty of the caſhier, appointed by the Bank to receive ſuch ſubſcriptions, to fill up the receipts with the names of the ſubſcribers or perſons from whom they originally received the money; and until the blank left in the printed form were ſo filled up, the inſtrument did not become an acknowledgment of payment, or in other words a *receipt* for money. While in ſuch a ſtate it was no more a receipt than if the ſum profeſſed to be received were omitted. That in Rex v. Harriſon, the book in which the entry was made imported to be a book containing receipts for money received by the Bank from their cuſtomers, and therefore ſhewed that the money was received from the party to whom the book belonged.

Ante, 928.

Thomas's caſe, O.B. Sept. 1800, cor. Le Blanc J. MS. Jud

On an indictment on the ſtat. 2 G. 2. c. 25. for uttering forged receipts or acquittances for money, proof that the defendant (who was the repreſentative of one C. deceaſed, who had contracted with the Navy board,) produced forged receipts or vouchers, as if from the perſons employed by C., to ſupply the articles wanted, with intent to induce the board to paſs C.'s accounts, is an offence within the ſtatute; though the perſons whoſe receipts were ſo forged were only accountable to C., and not to the Navy board.

George Thomas was indicted for forging, and for uttering knowing to be forged, a variety of acquittances and receipts for money. The firſt count charged that the priſoner on, &c. feloniouſly did utter and publiſh as true a certain falſe, forged, and counterfeited *acquittance and receipt for money*, (to wit) for 3l. 12s., in the words, &c. following, (viz.) "Received the 8th of May 1794 of John Collinridge the "ſum of three pounds twelve ſhillings for wheelwright's "work for the honourable commiſſioners of his Majeſty's "navy.

"£. 3 : 12. William Clarke."

Alſo a certain other falſe, forged and counterfeited acquittance and receipt for money, to wit, for 1l. 5s., in the words, &c. following; (and ſo ſtated in like manner 22 other receipts of different dates, for different ſums, purporting to be ſigned by different perſons, as received of the ſaid John Collinridge;) with intent to defraud our Lord the King; he the defendant at the time of uttering, &c. well knowing the ſame to be falſe, forged, and counterfeited, againſt the ſtatute, &c. There was a ſecond count for uttering, &c. one acquittance and receipt only (ſetting it out) with the like intent; and a third count for forging and counterfeiting the ſame acquittance and receipt (ſetting it out) with the like intent, againſt the ſtatute, &c.

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On a count for uttering ſeveral of ſuch forged receipts, the Court will not put the proſecutor to his election on which receipt to proceed, if they be all uttered at the ſame time.

Before the caſe was opened on the part of the proſecution, the priſoner's counſel applied to the Court that the proſecutor might be put to elect on which of the ſeveral receipts ſtated in the firſt count he would proceed, and might be reſtrained from proceeding on more than one. But Le Blanc J. denied the application, as the receipts were charged to have been uttered at one and the ſame time, and might conſtitute only one offence of uttering many forged receipts (*a*). And accordingly it was proved that the ſeveral receipts there ſtated were forged, and were uttered at one and the ſame time, in one bundle, by the priſoner, by his giving them in to the ſolicitor of the navy board as vouchers to verify an account of the expenditure of one Collinridge, a public accountant deceaſed, for the purpoſe of getting ſuch account paſſed at the navy board. And the jury found him guilty of the whole.

An objection was then ſtated by the priſoner's counſel, that the forging or knowingly uttering the receipts in queſtion was not under the circumſtances an offence within the meaning of the ſtatute 2 Geo. 2. c. 25. ſ. 1. as they purported to be receipts given to Collinridge by perſons employed by him, for money therein ſtated to have been paid to them for work and materials done and provided for the buſineſs in which he was employed under the navy board, and were produced by the priſoner as vouchers to accompany and verify Collinridge's accounts, in order to get them paſſed by the navy board; which accounts the priſoner had taken upon himſelf after Collinridge's death to get paſſed, in order to get rid of an extent which had iſſued againſt Collinridge's eſtate and effects. And it was urged in ſupport of the objection, that theſe workmen were ſolely employed by Collinridge and not by the navy board; and that he and not the navy board were anſwerable to them. That therefore the board had nothing to do with theſe receipts, and it was indifferent to the board whether theſe ſums had been paid to theſe ſeveral perſons or not (*b*).

(*a*) *Vide* R. v. Young and others, 3 Term Rep. 98.

(*b*) The fact here aſſumed in the terms of the objection did not appear upon the evidence. On the contrary, it was underſtood that Collinridge was employed as agent to the board, and was to be paid what ſums he had expended.

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Judgment being reſpited, in order to ſubmit theſe objections to the conſideration of the Judges, on the 6th of November 1800 they all [abſent Lawrence J.] held the conviction right; and that the receipts as ſtated were within the ſtatute. And they alſo agreed that the proſecutor was not bound to proceed on one receipt only.

Vide Jones and Palmer's caſe, poſt, f. 60. S. P.

Warrant or Order for Payment of Money or Delivery of Goods.

§ 37.

7 G 2. c. 22. Ante, 923.

It ſeems now ſettled that if the *warrant* or *order* mentioned in the ſtat. 7 Geo. 2. c. 22. do not purport on the face of it, or be ſhewn by proper averment, to be made by one having authority to command the payment of the money or direct the delivery of the goods, and to be compulſory on the perſon having poſſeſſion of the ſubject matter of it; but only purport to be a requeſt to advance the money or ſupply the goods on the credit of the party applying, which the other may comply with or not as he ſees proper, it is not a warrant or order within the ſtatute.

Rex v. Mary Mitchell, Kent, 1754, Foſt. 119. *A note in the name of an overſeer of the poor to a ſhopkeeper, deſiring him to let the priſoner have certain goods which he would ſee him paid for, is not a* warrant *or* order *(which are uſed as ſynonymous terms) for delivery of goods within the ſtatute.*

The defendant was indicted for uttering and publiſhing the following falſe, forged, and counterfeited warrant and order for the delivery of goods:

" Mr. Jefferys, Oct. 16th, 1755.

" I deſire you to let this woman have ſix yards of ordi-
" nary ſtuff, one pair of ſtockings, one ſhift, one apron,
" one handkerchief; and I will ſee it all paid for. Witneſs
" my hand,

" George May."

With intent to defraud W. Jefferys, &c.

The fact was, that the priſoner, pretending to be entitled to parochial relief in the pariſh of Maidſtone, went to the ſhop of Jefferys with the order, pretending to have brought it from May, the overſeer of the poor, and deſiring him to let her have the articles on the credit of it. Jefferys ſuſpecting the forgery had her ſecured. The priſoner was convicted; but Mr. Juſtice Foſter reſpited judgment on a doubt whether ſuch a writing were a warrant or order for the delivery of goods within the act; ſince if it had been genuine it would have amounted to no more than a requeſt from May for the delivery of the goods on his credit, and an undertaking on his part to ſee them paid for. And on a conference of the Judges in July 1754, nine of them were clearly of

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of opinion that the writing was not a warrant or order for the delivery of goods within the act; conſidering that the words *warrant, or order*, as they ſtand in the act are ſynonymous, and import that the perſon giving ſuch warrant or order has or at leaſt claims an intereſt in the money or goods which are the ſubject matter of it, and has or at leaſt aſſumes to have a diſpoſing power over them, and takes on him to tranſfer the property or at leaſt the cuſtody of them to the perſon in whoſe favour ſuch warrant or order is made. And though this caſe muſt fall within the miſchief, yet in the conſtruction of an act ſo penal the ſtrict letter of it ought not to be departed from. One of the Judges doubted, but acquieſced. Another of them (Sir Sydney Stafford Smythe) diſſented from the majority; conſidering that the ſtat. 7 Geo. 2. was made on purpoſe to take in caſes which had not been provided for by the former act of the 2 Geo. 2., and therefore ought to receive a liberal conſtruction. That the word *order* was in daily uſe among traders in a larger ſenſe than was then contended for; extending to letters or meſſages between them, where one deſires the other to ſend him a quantity of goods in the way of trade, without pretending to have any intereſt in or diſpoſing power over them. That, had the order been genuine, and the goods delivered on the credit of it, May would have been liable, and Jefferys would have been defrauded. That therefore the caſe came within the miſchief and the words of the act. The remaining Judge was abſent. The priſoner was diſcharged.

Williams's caſe, Southampton Sum. Aſſ. 1775, cor. Nares J. MS Crown Caſ. Reſ. and MS. Gould J. (Serjt. Forſter's MS. and 1 Leach, 134. S. C.) *A note to a tradeſman to let the bearer have certain goods is no* order *for delivery of them within the ſtatute* 7 Geo. 2 *the writer having no previous intereſt in ſuch goods.*

George Williams was indicted for forging the following order for delivery of goods.

" Monday, 3 July 1775.

" Sir,

" Pleaſe to let the bearer Capt. Geo. Williams have 12
" barrels of tar; and in ſo doing you'll oblige your humble
" ſervant to command,

" To Mr. Guildmore, Wm. Robinſon.
" Goſport."

With intent to defraud H. Lys, J. S., and N. Guildmore.

It appeared that Robinſon, though a cuſtomer of Meſſrs. Lys and Co., was not the owner of or had any ſpecial intereſt in the goods in queſtion, or any others in their hands; nor had any authority to ſend any ſuch order, if it had been

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genuine. The priſoner was found guilty, but Nares J. reſpited judgment on the queſtion, whether this were an order within the ſtatute? And all the Judges (abſent De Grey C. J. and Willes J.) in Michaelmas term 1775, agreed that it was not within it, upon the authority of Mitchell's caſe: though moſt of them ſaid they ſhould have doubted the propriety of that determination had it been res integra: but having been ſo long acquieſced in, they thought it could not now be departed from.

Elliot's caſe, O. B. May 1784, 2 Leach, 363.

So, a note in theſe terms, "Meſſrs. Songer, pleaſe to "ſend £. 10 by the bearer, as I am ſo ill I cannot wait on "you. Eliz. Wery;" was holden not to be an order within the ſtature.

Clinch's caſe, O. B. Jan. 1791, cor. Perryn B. & Thomſon B. MS. Jud. (2 Leach, 611. S. C.) *An indictment ſtating an order to deliver goods, purporting to be ſigned by one who was alleged to be the ſervant of the owner, but not ſtating that ſuch ſervant had authority to make ſuch order, is bad.*

In Clinch's caſe the indictment, which was on the ſame ſtatute, for forging an order for the delivery of goods, ſtated in ſubſtance that on the 7th December 1790 James Lewis Deformeaux, ſilk-dyer, delivered to Frances Purſer, ſilk-dyer, 78lb. of raw ſilk called Piedmont raw ſilk, of the goods and chattels of him the ſaid J. L. D., to be ſorted for dying; and that the priſoner well knowing the premiſes, feloniouſly forged, &c. a certain warrant or order for delivery of goods, with the name of L. Deſemockex thereunto ſubſcribed, purporting (*a*) to have been ſigned by one Lewis Deformeaux, by the name and deſcription of L. Deſemockex, he the ſaid Lewis Deformeaux then and there being the ſervant of the ſaid J. L. D. in his ſaid buſineſs of a ſilk-dyer, and purporting to be a warrant or order from the ſaid Lewis Deformeaux as ſuch ſervant of the ſaid J. L. D. for the delivery of 8lb. of the ſaid raw ſilk, called, &c. parcel of the ſaid 78lb. &c. to the bearer of the ſaid warrant and order; the tenor of which, &c. is as follows;

"Pleaſe to ſend by the bearer 8lb. of that whorpe hun "market.

"L. Deſemockex."

With intent to defraud the ſaid J. L. D. &c. A 2d count was for uttering the ſame, and a 3d and 4th for forging and uttering it with intent to defraud Purſer.

The proſecutor J. L. D. was a ſilk-dyer in Spitalfields, with whom the priſoner had lived a fortnight before the tranſaction happened as a journeyman or under ſervant in the warehouſe, and James (the huſband of Frances) Purſer

(*a*) *Vide* poſt. t. 56.

was

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was another ſervant. The proſecutor's buſineſs was in general, but particularly in his abſence, under the direction of his ſon Lewis D., who was apprenticed to his father. On the 7th Dec. 1790 James Purſer delivered the 78lb. of ſilk tied up in a bag to his wife, with directions to prepare it for dying. A few hours after, the priſoner called at Purſer's houſe and aſked for 8lb. of the ſilk, ſaying that he had been ſent by Mr. Deformeaux to her for it, and producing at the ſame time the order in queſtion. Mrs. Purſer not knowing the perſon of the priſoner looked at the order, and aſked him who wrote it? To whom he replied, Mr. Lewis Deformeaux; and ſhe not knowing his hand-writing nor the manner in which he ſpelt his name, but believing the order to have come from him, knowing he had the management of this part of his father's buſineſs, delivered the 8lb. of the ſilk unwarped to the priſoner, underſtanding the words of the order *hun market* to mean ſilk without the threads round it. It was proved that no ſuch order had ever been given either by the proſecutor or his ſon; and that the priſoner had converted the ſilk to his own uſe.

Several objections were urged on behalf of the priſoner; 1ſt, that to bring the offence within the act, the order muſt purport to be made by a perſon who had an authority, or at leaſt claimed an intereſt in the ſubject matter of it; and who takes upon him to tranſfer it to the perſon in whoſe favour the order is made. That it was not averred in the indictment that L. Deformeaux, whoſe order it purports and is averred to be, had any authority over or intereſt in the goods in queſtion, or any authority to make ſuch an order, which ought to have been expreſsly alleged. It ſtates that another perſon was the owner, namely the father J. L. D., to whom the ſon was only a ſervant; and it cannot be inferred from that circumſtance that the ſon had authority over the goods; and the want of ſuch an averment cannot be ſupplied by parol evidence: on the contrary the order appears to have been made by an apprentice who was not ſui juris and had no diſpoſing power. 2. That the inſtrument in queſtion was not an order but a bare requeſt. 3. That it was not directed to any perſon, and conſequently was not upon the face of it compulſory upon the holder of the goods. 4. That further it ought to have appeared on the face of the

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the indictment that the order was to the holder of the goods. The jury having found the priſoner guilty, judgment was reſpited to take the opinion of the Judges on theſe points; and on the 11th of May 1791 they held the conviction bad. The printed report ſtates that at the June ſeſſions following Mr. Baron Perryn, in delivering the opinion of the Judges, ſtated, 1ſt, that on the conſtruction of the ſtatute the forged warrant or order for the delivery of the goods muſt purport to be the order of the owner, or of ſome perſon who has or at leaſt claims an intereſt in, or who has or at leaſt aſſumes to have a diſpoſing power over the goods, and takes upon him to transfer the property or cuſtody of them to the perſon in whoſe favour ſuch order is made. For which he referred to Mitchell's caſe, Williams's caſe, and Jones's caſe. Again, that the order muſt be directed to the holder of or perſon intereſted in or having poſſeſſion of the goods. Now the order ſet forth in the indictment was not directed to any perſon whatſoever; but merely expreſſed a deſire that 8lb. of ſilk ſhould be delivered to the bearer of it, without any direction from whom it was to be received. On that ground therefore the Judges were of opinion that this was not a warrant or order within the ſtatute. 2dly, As to the form of the indictment, that it ought to have appeared in the indictment that the perſon whoſe name was ſubſcribed to the order had an authority to make it; but that could not be collected by any legal inference from the words of the preſent indictment; for L. Deſormeaux, the perſon whoſe name is forged, is ſtated to be the *ſervant* of the owner, which excludes every idea that he had or could claim any intereſt in the goods which were the ſubject of the order: it ought to have been expreſsly averred that he had authority to make it. That on this ground the Judges were of opinion that judgment muſt be arreſted.

2 Leach, 611.

Vide Seſſ. Pap. of June 9th, 1791.

(It is ſufficient however if the order on the face of it purport that the party making it had ſuch authority, though in truth he had it not; *vide infra*, and Mitchell's caſe, Foſt. 119.)

§ 38. *Order made by one who has no right.*

But if it purport to be an order which the party has a right to make; although in truth he had no ſuch right, and although no ſuch perſon exiſted in fact as the order purports to be made by, it falls within the penalty of the act.

Rex v. Lockett, O.B. June 1772, MS. Crown Caſ. Reſ. 40. and MS. Buller J.

Charles Lockett was convicted of knowingly uttering a forged order for the payment of money in theſe words: "Meſſrs. Neale, Fordyce, and Down, pay to Wm. Hop-

"wood or bearer £. 16: 10: 6. Rt. Venneſt." With intent to defraud John Scoles.

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The caſe was, that the priſoner applied to Scoles a colourman, and agreed to purchaſe goods to the amount of £. 10: 0: 6, which he was to ſend for; and he took away with him a little Pruſſian blue. He came again, pretending to be in a hurry, and preſented this note, which he ſaid was a good one; and Scoles gave him 6l. 10s., being the difference. No ſuch perſon as Rt. Venneſt kept caſh with Meſſrs. Neale and Co.; nor did it appear that there was any ſuch man exiſting. The queſtion ſubmitted to the Judges was, whether this were an order within the ſtatute, being in the name of a fictitious perſon? the doubt ariſing on what is ſaid in Mitchell's caſe. The Judges after very long conſideration at laſt agreed in Trin. term 1774 that this was forgery. They thought it quite immaterial whether ſuch a man as Venneſt exiſted or not; or if he did, whether he had kept caſh at the banking houſe of Meſſrs. Neale and Co.: it was ſufficient that the order aſſumed thoſe facts, and imported a right on the part of the drawer to direct ſuch a transfer of his property.

(1 Leach, 110. S. C.) *A forged order on a banker for the payment of money, purporting to be made by one who kept caſh with him, is within the ſtatute, though made in a fictitious name, or in the name of one who had no authority to draw on him.*

A like caſe occurred in all its circumſtances in the April ſeſſions 1774, at the Old Bailey, in the caſe of one Abraham Abrahams, wherein judgment was reſpited, as Lockett's caſe was then undetermined. They were both decided at the ſame time, and the priſoners received judgment of death in the July following.

Abraham's caſe, O. B. April 1774, Serjt. Forſter's MS.

§ 39. *What is a ſufficient ſpecification of the goods.*

It does not appear neceſſary that the particular goods ſhould be ſpecified in the order, provided it be conceived in terms intelligible to the parties themſelves to whom ſuch order is addreſſed.

Jones's caſe, O. B. 1764, cor. Smythe B. Lord Mansfield, and Bathurſt J. 1 Leach, 63. *Forging an order in the name of a ſilverſmith for redelivery of plate from Goldſmiths'-hall in theſe terms, "Pleaſe to deliver my work," is within the ſtatute.*

John Jones was indicted for forging an order for the delivery of goods to this purport; "Sept. 23d, 1764. Sir, "pleaſe to deliver my work to the bearer. Lydia Bell, "Fleet-ſtreet, London;" with intent to defraud the wardens and company of Goldſmiths.

Mrs. Bell, a ſilverſmith, ſent ſeveral articles of plate to Goldſmiths'-hall to be marked. The form of the order was the ſame as is uſually ſent upon ſuch occaſions; except that in

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in ſtrictneſs and by the rule of the plate-office the ſeveral ſorts of work with the weight of the ſilver ought to have been mentioned in it. The fact of the forgery was proved; and the priſoner was convicted. And upon reference to the Judges, after a motion in arreſt of judgment, on the form of the order, the conviction was affirmed: but the priſoner was pardoned on condition of tranſportation.

M'Intoſh's caſe, O. B. Sept. 1800, cor. Le Blanc J. MS. Jud.

James M'Intoſh was convicted of forging, and uttering knowing to be forged, a certain order for payment of money in the words and figures following: "Petersfield, 6th Auguſt 1799. Sir, Pleaſe to pay on demand to Mr. Hugh Young or order all my proportion of prize-money, due to me for my ſervices on board his Majeſty's ſhip Leander, for which this ſhall be your authority. Witneſs my hand,

"John Johnſon,

"To Alexr Daviſon Eſq. ×

"No. 21, Milbank-ſtreet, Weſtminſter. his mark.

"Signed before us,

"Walter Noble, miniſter.

"John Williams, } church-

"Francs Gibbons, } wardens."

"Pleaſe to pay to Y. &c. all my proportion of prize-money due to me for my ſervices on board," &c. ſigned in the name of a ſeaman on board the ſhip, is an order for payment of money or bill of exchange, the forgery whereof is felony. And this though the ſtat. 32 Geo. 3. c. 34. ſ. 2. enacts that no ſuch order made by any ſeaman diſcharged from the ſervice, and within ſeven miles of the port where his wages are payable at the time of ſuch order made, ſhall be good and valid, and ſufficient for receiving the money; and it appeared that the party whoſe name was forged was in fact in that predicament when the order bore date; but the order itſelf purported on the face of it to be made at another place beyond the limited diſtance.

In two counts it was called an order for payment of money; and in two other counts a bill of exchange; and it was ſtated to have been forged and uttered with intent to defraud John Johnſon. Four other counts charged the offence to have been committed with intent to defraud Alexander Davidſon.

The evidence of the priſoner having actually forged as well as uttered and received the money, viz. 14l. 10s. 6d. from the prize agent under the above order was clearly proved. But it was objected on the part of the priſoner, firſt, that this was not a bill of exchange, nor an order for payment of money, within the ſtat. 7 Geo. 2. c. 22.; becauſe no ſum of money was mentioned; and it was not certain that any money would be due to Johnſon. And ſecondly, that this inſtrument was void under the ſtat. 32 Geo. 3. c. 34. ſ. 2., which enacts, "that no letter of attorney or order "made or executed by any petty officer, ſeaman, &c. who "ſhall have been diſcharged from the ſervice of his Majeſty, "and who ſhall be at or within the diſtance of ſeven miles "from any of the ports where ſeamen's wages are paid for "ſuch

"ſuch ſervice at the time of making ſuch letter of attorney, "ſhall be good and valid, and ſufficient for receiving the "whole or any part of the wages, prize money, or other "allowances of money due or to grow due to ſuch petty "officer, ſeaman, &c. for ſuch ſervice; unleſs ſuch letter "of attorney or ſuch order ſhall be ſigned before and at-"teſted by a clerk of the treaſurer of the navy at ſuch port, "or by the inſpector of ſeamen's wills and powers of "attorney."

Ch. XIX. § 39. *By ſtat. 7 G. 2. c. 22. Of warrant or order for money or goods.*

It appeared from the evidence of Johnſon, whoſe name had been forged, and who had ſince been paid all his prize money by the agent, that at the time when the inſtrument bears date, viz. 6th Auguſt 1799, he was not diſcharged from his Majeſty's ſervice, but was on board a ſhip on his paſſage home from Minorca; and that he did not arrive at Portſmouth till the firſt of October, when he was diſcharged from the ſervice, and had ſince reſided in Scotland: this evidence put an end to the objection in point of fact. But after the cloſe of the ſeſſion a certificate was ſent to the learned Judge who tried the priſoner from the office for ſick and wounded ſeamen, which ſtated that John Johnſon was received on ſhore at Haſler from his Majeſty's ſhip Leander on the 3d of Auguſt 1799, and diſcharged out of the ſervice on the 5th of Auguſt 1799. The report of the priſoner's caſe was therefore deferred, in order that the opinion of the Judges might be taken, whether ſuppoſing the fact to have been that John Johnſon, the perſon whoſe name was forged, was diſcharged from the ſervice at the time the inſtrument bears date, and was within 7 miles of a port where ſeamen's wages were paid, the forging ſuch inſtrument not ſigned or atteſted according to the ſtat. 32 Geo. 3. c. 34. ſ. 2. would be felony? As alſo on the firſt point, whether it be either an order for payment of money or bill of exchange. The caſe ſtood over for conſideration; and afterwards the Judges held the conviction proper.

§ 40. *Inſtruments of other ſpecific denominations may be laid as warrants or orders, if in effect ſuch.* Ante, 940.

And even thoſe inſtruments which in the commercial world have peculiar denominations, yet if they fall within theſe terms and are in truth warrants or orders for payment of money, may be laid to be ſuch: of this Lockett's caſe before mentioned is an example.

In

Ch. XIX. § 40. *By ſtat.* 7 G. 2. c. 22. *Of warrant or order for money or goods.*

In Shepherd's caſe the form of the forged inſtrument was as follows: "Green-ſt. 31ſt July 1791. Sirs, Pray pay to "Mr. John Atkins or bearer the ſum of ſix pounds ſix "ſhillings, value received. Yours, &c. H. Turner. "Meſſrs. Brown, Collinſon, and Co. Lombard-ſtreet."

Rex v. Shepherd, O. B. Sept. 1781, MS. Crown Caſ. Ref. 117. and MS. Gould and Buller Js. (1 Leach, 265. S. C.) *Vide* poſt, f. 50. S. C. more at large on another point. *A bill of exchange may be laid as an order for payment of money.* *Vi.* 1 Bl R. 485.

Which was laid in the indictment to be an order for payment of money; and one of the objections was, that it ought to have been laid to be a bill of exchange, according to the caſe of Grant and Vaughan. But in Michaelmas term 1781, the Judges were unanimouſly of opinion that it was properly laid: and it was obſerved that the indictment and draft were the ſame as in Lockett's caſe, where all the Judges held the conviction proper; and that every bill of exchange ſeemed to be an order for payment of money, though not vice verſâ.

In Willoughby's caſe mentioned in another place the following inſtrument, which had been ſtolen out of a letter, was laid in the indictment and holden to be a warrant for payment of money.

Willoughby's caſe, Warwick Lent Aſſ. 1783, *Vide* S. C. ante, tit. Larceny, &c. p. 581, 2. MS. Crown Caſ. Ref. MS. Gould and Buller Js. and MS. Jud. *A bill of exchange or banker's draft may be charged as an order for payment of money.*

"Poſt Bill.

"No. 6127. Birmingham, 13 Febry 1783.

"Sir Wm. Lemon, Bt. and Co. Bankers, London,

"Pay 5 Gns to Mr. Richd. Moore or bearer, on de- "mand, value received.

"Recd 5 Gns Robt Coales.

"Entd R. Moore."

After conviction, this was contended not to be a warrant for payment of money, but a note or bill of exchange, which are mentioned in the ſtat. 2 Geo. 2. c. 25. the omiſſions in which the ſtat. 7 Geo. 3. c. 22. on which the indictment was framed, was meant to ſupply. But in Eaſter term 1783 (*a*) the Judges all finally concurred in opinion that the indictment

(*a*) Upon adverting to the ſtat. 7 Geo. 2. c 22. I find that Mr. Juſtice Buller's obſervation on it in the note of his own opinion before given in p. 581, 2. upon this caſe is not quite accurate; for he laid ſtreſs upon the words "*other* warrant," which he ſuppoſed to be uſed in the act, as ſhewing that the legiſlature muſt have intended ſome *other* warrant for payment of money than a bill of exchange: but no ſuch words are to be found in the act coupled together; though perhaps a ſimilar argument may be drawn from the true wording of it; for it enumerates ſpecific inſtruments, amongſt others, *bills of exchange*, as included in the ſtat. 2 Geo. 2. which it recites; and further recites that *no puniſhment is inflicted by the ſaid*

indictment was well laid; for though it was a bill of exchange, it was alſo a warrant for the payment of money; it was, if genuine, a voucher to the bankers or drawees for the payment.

Ch. XIX. § 40. *By ſtat.* 7 G. 2. c. 22. *Of warrant or order for money or goods.*

§ 41. *Not confined to commercial tranſactions.*

It appears from the caſe of M'Intoſh before mentioned that the ſtatute is not confined to commercial tranſactions. This was once preſſed and overruled in the caſe of George Graham, who was indicted and convicted for forging an order for payment of money, which appeared to be an order of a juſtice of peace for the county of Middleſex upon the high conſtable of a diviſion, or the treaſurer of the county, to pay a reward of 10s. to the priſoner for the apprehenſion of a vagrant under the ſtat. 17 Geo. 2. c. 5. ſ. 5. Another objection however which was there taken ſeems to have been entitled to a different conſideration from what it is ſtated to have received, namely, that the 18th ſ. of the ſtat. expreſsly ſubjects the party forging ſuch an order to a penalty of 50l. which was contended to be a repeal as to ſuch orders of the prior ſtat. 7 Geo. 2. The priſoner was notwithſtanding convicted and received judgment. But the jury recommended him to mercy (*a*). A ſimilar objection to the laſt was made and prevailed in the caſe of Davies, upon the acts againſt deer ſtealing.

Ante, 942. R. v. Graham, O. B. Oct 1778, cor. Blackſtone J. and Eyre B. and the Recorder Serjt Foſter's MS.

Ante, 609. But ſee ſtat. 42 G. 3 c. 107. ſince paſſed.

§ 42. *Banker's notes, &c.*

Beſides the general acts of the 2 & 7 Geo. 2. already mentioned, reſpecting the forgery of bills of exchange and promiſſory notes, &c. further proviſion has been made with reſpect to ſecurities of this nature in the caſe of bankers uſing certain printed forms of ſuch ſecurities, or paper of a particular deſcription.

The ſtat. 41 Geo. 3. c. 57. intitled "an act for the bet- "ter prevention of the forgery of the notes and bills of ex- "change of perſons carrying on the buſineſs of bankers," reciting that whereas it is expedient to prevent the crime of forgery in all parts of the united kingdom of Great Britain

41 G. 3. (U. K.) c. 57. *Making, &c. frame or mould for making paper, with the name or firm of any banker uſible in the buſ-*

ſaid act on ſuch as forge *any warrant or order for payment of money*, &c. which, according to his argument, muſt therefore mean ſomething elſe than a bill of exchange, ſuch, he obſerved, as warrants from ſome of the public boards for payment of money, which were ſpecific things differing from bills of exchange, &c.

(*a*) Qu. What became of the caſe?

Ch. XIX. § 42. *By ſtat.* 41 G. 3. c. 57. *Of Bankers notes, &c.*

and Ireland, it is enacted, "That if any perſon or perſons "in any part of the united kingdom of Great Britain and "Ireland (after the 10th of July 1801) ſhall make, or cauſe or "procure to be made, or knowingly aid or aſſiſt in the making "or uſing of any frame, mould, or part of any frame or "mould, for the making of paper, with the name or firm "appearing viſible in the ſubſtance of the paper, of any "perſon or perſons, body corporate, or other banking com-"pany or partnerſhip, carrying on the buſineſs of bankers, "without an authority in writing for that purpoſe from "ſuch perſon or perſons, body corporate, or other banking "company or partnerſhip, or from ſome perſon or perſons "duly authoriſed to give ſuch authority; or ſhall manufac-"ture, make, vend, expoſe to ſale, publiſh, or diſpoſe of, or "cauſe or procure to be manufactured, made, vended, or "expoſed to ſale, publiſhed, or diſpoſed of, any paper having "the name or firm, appearing viſible in the ſubſtance of the "paper, of any perſon or perſons, body corporate, or other "banking company or partnerſhip whatſoever, carrying on "the buſineſs of bankers; or if any perſon or perſons, with-"out ſuch authority, ſhall by any art, means, myſtery, or "contrivance, cauſe or procure, or ſhall knowingly aid or "aſſiſt in cauſing or procuring, the name or firm of any "perſon or perſons, body corporate, or other banking com-"pany or partnerſhip, carrying on the buſineſs of bankers, "to appear viſible in the ſubſtance of the paper whereon "the ſame ſhall be written or printed; every perſon or per-"ſons ſo offending in any of the caſes aforeſaid, and being "convicted thereof, ſhall for the firſt offence be impriſoned "for any time not exceeding two years, nor leſs than ſix "months; and for the ſecond offence be tranſported to "any of his Majeſty's colonies or plantations for 7 years."

ſtance of it, without a written authority for that purpoſe; or vending or expoſing to ſale, &c. ſuch paper; or by any means procuring, &c. ſuch name or firm ſo to appear viſible in the ſubſtance of any paper wherein the ſame ſhall be written, &c. 1000 *years impriſonment for firſt offence, and for ſecond offence tranſportation for ſeven years.*

The like puniſhments for engraving, &c. without authority any bill or note of any banker, or uſing plate ſo engraved; or knowingly having ſuch in cuſtody, or uttering, &c. ſuch bill, &c.

(Sect. 2.) enacts, "That if any perſon or perſons, in any "part of Great Britain and Ireland (after the 10th of July "1801) ſhall engrave, cut, etch, ſcrape, or by any other "means make, or ſhall cauſe or procure to be engraved, "&c. or by any other means or device made, or ſhall "knowingly aid or aſſiſt in the engraving, &c. or by any "other means or device making, in or upon any plate "whatſoever, any bill of exchange, promiſſory note, or "other note for the payment of money, or part of any "bill of exchange, promiſſory note, or other note for the

"pay-

"payment of money, purporting to be the bill of exchange, "promiſſory note, or other note for the payment of money, "of any perſon or perſons, body corporate, banking com-"pany or partnerſhip, carrying on the buſineſs of bankers, "without an authority in writing for that purpoſe from "ſuch perſon or perſons, body corporate, banking company, "or partnerſhip, or ſome perſon or perſons duly authoriſed "to give ſuch authority; or ſhall uſe any ſuch plate ſo en-"graved, cut, etched, ſcraped, or by any other means or "device made, or ſhall uſe any other device for the making "or printing any ſuch bill of exchange, promiſſory note, or "other note for the payment of money, without ſuch au-"thority in writing as aforeſaid: or if any perſon or perſons "ſhall (after the ſaid 10th of July 1801), without ſuch au-"thority as aforeſaid, knowingly have in his her or their "cuſtody any ſuch plate or device, or ſhall without ſuch "authority as aforeſaid knowingly and wilfully publiſh, "diſpoſe of, or put away, any ſuch bill of exchange, pro-"miſſory note, or other note for the payment of money, or "part of ſuch bill of exchange, promiſſory note, or other "note for the payment of money; every perſon ſo offend-"ing in any of the caſes aforeſaid, and being convicted "thereof, ſhall for the firſt offence be impriſoned for any "time not exceeding two years nor leſs than ſix months, "and for the ſecond offence be tranſported to any of his Ma-"jeſty's colonies or plantations for the term of ſeven years."

Ch. XIX. § 42. *By ſtat.* 41 G. 3. c. 57. *Of Bankers notes, &c.*

Sect. 3. enacts, "That if any perſon or perſons in Great "Britain and Ireland (after the 10th of July 1801) ſhall en-"grave, cut, or etch, or by any other means or contrivance "trace with a hair ſtroke or other mode of delineation "or (*a*) any plate whatſoever any of the ſubſcriptions ſub-"joined to any bill of exchange, promiſſory note, or other "note for the payment of money, of any perſon or perſons, "body corporate, or other banking company, or partnerſhip "carrying on the buſineſs of bankers, to be payable to "bearer on demand; or ſhall have in his her or their poſ-"ſeſſion any plate with the hair ſtrokes or other delineation "of any ſubſcription traced thereon, ſubjoined to any bill of "exchange, promiſſory note, or other note for the payment "of money, purporting to be the bill of exchange and pro-"miſſory note, or other note for the payment of money, of "any perſon or perſons, body corporate, or other banking

Engraving, &c. on plate any ſubſcriptions ſubjoined to any bill, &c. of any bankers payable to bearer on demand, purporting to be the bill, &c. of ſuch bankers; or knowingly having ſuch plate in poſſeſſion, &c. for firſt offence impriſonment (from 12 months to 7 years), *and for ſecond offence tranſportation for ſeven years.*

(*a*) Miſprinted for or.

Ch. XIX. § 42. *By ſtat* 41 G. 3. c. 57. *Of bankers notes, &c.*

" company or partnerſhip, carrying on the buſineſs of " bankers, and to be payable to the bearer on demand, and " ſhall not be able to prove that ſuch plate came into his her " or their poſſeſſion without his her or their knowledge or " conſent; every perſon ſo offending in any of the caſes " aforeſaid, and being convicted thereof, ſhall for the firſt " offence be impriſoned for any time not exceeding three " years, nor leſs than twelve months; and for the ſecond " offence be tranſported to any of his Majeſty's colonies or " plantations for the term of ſeven years."

§ 43. ## IV. *How far the Validity in Law of the Thing forged, ſuppoſing it were genuine, is eſſential to Forgery.*

2 MS. Sum. 342. 1 Hawk. ch. 70. ſ. 7.

It is ſaid to be no way material whether a forged inſtrument be made in ſuch a manner as, were it true, it would be of any validity or not. But this I conceive muſt be underſtood where the falſe inſtrument carries on the face of it the ſemblance of that for which it is counterfeited, and is not illegal in its very frame. Upon this ground it has been adjudged that the forgery of a protection in the name of one as being a member of parliament, who in truth was no member at the time, is as much an offence at common law as if he were ſo.

R. v. Deakins, 2 Sid. 152.

Japhet Crooke's caſe, ante, 921. And *vide* King's caſe, 1 Keb. 803 & 3 Keb. 51.

In Japhet Crooke's caſe before mentioned, who was indicted upon the ſtat. 5 Eliz. c. 14. where the conveyance deſcribed the eſtate intended to be affected by a wrong name: and was therefore conſidered to be ineffectual at law, if genuine, to paſs the property intended, (though ſome of the Judges thought that equity would have decreed a proper conveyance,) yet the forgery was holden to be indictable upon the ſtatute.

Coogan's caſe, O. B. 1787. MS. Buller J. (2 Leach, 503. S. C.)

Coogan was indicted (*a*) and convicted for knowingly publiſhing as true, &c. a certain falſe will and teſtament of one James Gibſon, late a ſeaman belonging to a merchant

(*a*) It is obſerved in 2 Leach, 503. that the indictment was framed on the ſtat. 2 Geo. 2. c. 25. and not on the ſtat. 31 Geo. 2. c. 10. ſ. 2. which is confined to ſeamen on board the king's ſhips. This laſt ſtatute has the words "*laſt will*," the other the word "*will*" only.

veſſel,

veſſel, &c. The fact was clearly proved, but it appeared that J. G. was *living*: and therefore it was objected that the caſe was not within the ſtatute, inaſmuch as during the life of the party his will was ambulatory, and could have no validity as a will till his death; and ſo could not properly be called the laſt will and teſtament of J. G.; and there cannot be a forgery of a thing which neither did nor could exiſt at the time of the forgery. But in Michaelmas term 1787 all the Judges held the conviction proper. It was ſufficient, they conſidered, that it purported on the face of it to be a will. That the objection was only applicable to the effect which a will has in law, and not to the fact of making it. It was obſerved then, and afterwards more largely at the time of delivering the opinion of the Judges on the caſe, that every will muſt be made in the lifetime of the party whoſe will it was. It exiſted as a will in his lifetime, though not to take effect till his death: and that the making a falſe inſtrument importing on the face of it to be a will was equally forgery whether the perſon whoſe will it purported to be were dead or alive at the time of making it. That a contrary doctrine would operate as a repeal of the law; for if the act of making the will were not forgery at the time, a publication afterwards would not make it ſo. Buller J. thought that the very definition of forgery decided the doubt, for it was the making a falſe inſtrument with intent to deceive. That here the intention to deceive had been eſtabliſhed by the jury, and the inſtrument purporting to be a will was clearly falſe. Alſo ſeveral expreſs authorities were referred to, where the forgery was holden to be committed during the life of the perſon whoſe will the forged inſtrument purported to be. In 3 Inſt. 170. it is laid down that if one who writeth the will of a ſick perſon inſerteth therein a clauſe concerning the deviſe of lands falſely, without any warrant or direction of the deviſor; albeit he did not forge or falſely make the whole will, yet he is puniſhable by the ſtat. 5 Eliz. c. 14., the words of which are the ſame to this purpoſe as the ſtatute in queſtion: and it is apparent that in ſuch a caſe the forgery muſt be committed during the life of the perſon whoſe will it purports to be. Again, in the caſe of Timothy Murphy, who was

Ch. XIX. § 43. *Validity in law of the thing forged, if genuine.*

Forging the will of a perſon living is a capital offence within the ſtat.

(R. v. Murphy, 1 St. Tr. 183.)

Ch XIX. § 43. *Validity in law of the thing forged, if genuine*

tried at the Old Bailey in January 1753, upon a ſtatute ſimilar to the 31 Geo. 2. c. 10. for forging a ſeaman's will who it appeared was ſtill alive, and had returned to England two years after the prize money had been received by the priſoner under the forged will; he was convicted without any queſtion or doubt. So alſo in Rex v. Sterling, Mrs. Shutter, whoſe hand-writing to her ſuppoſed will was forged by the priſoner, appeared in court at the trial, and gave evidence, and the priſoner was convicted and hanged. The priſoner Coogan in conſequence received ſentence of death at the Seſſions in June 1787.

(R. v. Sterling, O. B. Sept. 1773. (*a*).)

Vide 2 Leach, 505.

Upon the ſame principle have all thoſe caſes turned which will be particularly conſidered under the next head of inquiry, where different inſtruments have been forged in the names of perſons who had no exiſtence, and which conſequently could by no poſſibility have any legal operation; becauſe upon the face of them they purported to be valid inſtruments.

§ 44. *Degree of ſimilarity between the true and counterfeit inſtrument.*

I have before had occaſion to remark, that in order to conſtitute forgery it is not neceſſary there ſhould be a perfect reſemblance between the falſe inſtrument and that which is intended to be imitated: if they be ſo far alike that the deception is calculated to impoſe upon perſons in general it is ſufficient; though it would not impoſe on perſons having particular experience in ſuch matters. This was ſo ruled in a very late caſe by Le Blanc J. upon an indictment againſt one Hooſt for forging, &c. bank notes. A perſon from the Bank, by whom the forgery was proved, ſaid, that he could not have been impoſed upon by the counterfeits, the difference between thoſe and the true notes being to him ſo apparent

R. v. Hooſt, Exeter Sp. Aſſ. 1802, MS.

(*a*) In the printed report of this caſe, 1 Leach, 117. it is noted that the probate was not recalled at the time of the trial. This was obſerved with reference to the caſe of R. v. Vincent, as reported in 1 Stra. 481. (and *vide* the ſame book, 671. and R. v. Rhodes, ib 703. and 1 Wilſ. 75.) where on an indictment for forging a will of perſonal eſtate the probate was holden to be concluſive evidence in ſupport of the will. But ſee the obſervations made on Vincent's caſe by the counſel for the proſecution in the caſe of the Ducheſs of Kingſton, 11 St. Tr. 224, 3, &c. and the caſes there oppoſed to it.

parent in ſeveral particulars pointed out by him. But in the ſame caſe it appeared that others had been deceived at firſt by them, though the counterfeits were very ill executed.

Ch. XIX. § 44. *Validity in law of thing forged, if genuine.*

James Elliot was indicted for forging the following note:

Elliott's caſe, Maidſtone 1775, MS. Crown Caſ. Reſ. 84. Serjt. Foſter's MS. (1 Leach, 210. S. C.) *A counterfeit Bank note without the water-mark is a forged promiſſory note for the payment of money within the ſtats.* 2 G. 2. c. 25. & 31 G. 2. c. 22. *though the word* Pounds *be omitted in the body of it, which was ſupplied by the "£. Fifty" in the margin.*

"No. 17. 73.

"I promiſe to pay Mr. Joſ. Crook or bearer, on demand, the ſum of Fifty

"London, 20 June 1775.

"£. Fifty. For the Govr & Company of the Bank of England.

"Entd C. Blewart. Thos Thompſon."

In ſome of the counts the inſtrument was ſtated to be a bank note, in others a note in the form of a bank note; but the 5th count, which was the one relied on, and on which the queſtion turned, charged that the priſoner feloniouſly forged, &c. "a certain promiſſory note for the payment of "money, with the name of Thomas Thompſon thereto ſub-"ſcribed, purporting to bear date, &c. and to have been "ſigned by one Thomas Thompſon for the governor and "company of the Bank of England for the payment of 50l. "to Mr. J. C. or bearer on demand, (the tenor of which "was ſet forth as above), with intent to defraud the gover-"nor and company of the Bank of England."

It appeared in evidence that the note in queſtion both in paper and print much reſembled a real bank note, but that in the fabrick of the paper, which was rather thicker than the bank paper, there was wanting what is called the water-mark, namely the words "Bank of England;" that the number was not filled up; and that in the body of the note the promiſe was only to pay the ſum of "fifty," the word "pounds" not being added in writing, as is uſually done in ſuch notes as have not the word *pounds* engraved therein, being calculated for the inſertion of broken ſums; but at the bottom of the note there was engraven £.50. The fact of the forgery was brought home to the priſoner, though the note was never publiſhed, it having been found in his poſſeſſion at the time he was ſeized; and he was convicted. But on theſe circumſtances it was urged that this was not a note reſembling a bank note for want of the water-mark;

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neither was it a note for fifty *pounds*, as the word *pounds* was not inserted: and on these doubts judgment was respited for the opinion of the Judges; who in Michaelmas term 18 Geo. 3. were clearly of opinion that the conviction was proper. For first, in forgery there need not be an exact resemblance; it is sufficient that the instrument is primâ facie fitted to pass for a true one. Secondly, the major part inclined to think that the omission of *pounds* in the body of the note, had nothing else appeared, would not have exculpated the prisoner; but it was matter to be left to the jury, as was done in this case, whether it purported to be a note for 50l. or any other sum; but all agreed that the £.50 in the margin removed every doubt, and shewed that the *fifty* in the body of the note was intended for *pounds*.

(Absent De Grey C. J. and Smythe C. B.)
Vide ante, f. 6.

§ 45. *The counterfeit must substantially and essentially answer the description in the indictment of the instrument alleged to be forged.*

But though a similarity to a common intent be sufficient, yet it is necessary that the forged instrument should in all essential parts have upon the face of it the similitude of a true one; so that it be not radically defective and illegal in the very frame of it.

Jones's case, ante, 883.

In Jones's case one set of counts laid the forged instruments to be a paper writing purporting to be *a bank note*. In another set it was charged as purporting to be a promissory note for payment of money. The note was, "I promise "to pay *for self and company of my bank in England*," &c. without any signature; and the court of B. R. held clearly that the prisoner was entitled to an acquittal

Fawcett's case, ante. 862.

So one of the objections in Fawcett's case was, that the instrument forged (which was an order in the name of a creditor to the gaoler for the discharge of a debtor who was in prison under an attachment for a contempt) was a mere nullity in itself, even if genuine: though it does not appear whether the Judges decided the case on that ground: for at any rate the indictment was holden good as for a cheat.

Reading's case, post, f. 56.

In Reading's case the bill was directed to John *Ring*, and the acceptance was by *John King*. The indictment stated that the bill purported to be directed to John *King* by the name of John *Ring*, and that the prisoner forged the acceptance in the name of John King; but judgment was arrested because *Ring* could not purport to be *King*.

Ante, 938.

Yet it seems that a mere literal mistake in the framing of the instrument itself, if well laid in the indictment, will make no

no difference. In Clinch's case, where the prisoner in forging an order for the delivery of goods blundered in spelling the name of *Desmockex* instead of *Deformeaux*, no stress was laid on this, though on other grounds the indictment was holden bad.

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R. v. Fitzgerald and Lee, O. B. Sept. 1741, 1 Leach, 24.

Fitzgerald and Lee were indicted for forging the will of *Peter* Perry, late a seaman on board his Majesty's ship Lancaster, with intent to defraud the King. The will began, "I *Peter* Perry," and ended

his
"John ⋈ Perry,
mark."

It appeared in evidence that Fitzgerald had carried the will to the proper officer, who on observing the difference of the christian names required him to account for the error before the probate could be granted. He accordingly produced the other prisoner Lee; who in the name of Welch swore that he was one of the subscribing witnesses: that the name of the deceased was *Peter* Perry, who had made his mark to and delivered the will: that he Welch had by mistake written the name of *John* instead of Peter; upon which the probate was granted. It was objected that this was no forgery of the will of PETER Perry as laid in the indictment; and the case was reserved for the opinion of the Judges, and considered by them in Michaelmas term 15 Geo. 2. Their opinion was never publicly delivered; but the prisoners were afterwards executed pursuant to their sentence.

Wall's case, Worcester Sp. Aff. 1800, cor. Thomson B. MS. Jud.

But where Thos. Wall was convicted upon an indictment for forging and knowingly uttering a will of land (*a*) of one John Skidmore deceased, attested by only two witnesses; and it did not appear in evidence (*b*) what estate the supposed testator

(*a*) The will set out was of this tenor: "Dec. 6th, 1795. I John Skidgmer "give and bequeath to Thos. Wall all the said premises belonging to the said "John Skidmer which he bought of the said Thos. Wall and Sarah Hasten. He "pays rent to long as mee and my wife lives, and at our deces he shall have all "the said premises again. He shall not mortgeg nor sell the said premises so "long as he lives, to be left to his children if the be the longest livers, or eles to "the nereſt friend he has—John Skidmore—

"Witness my hand, John Collett and Richd. Wall."

(*b*) It was suggested to be only leasehold, but no proof was given of it. Skidmore died in August 1794 without issue, and his widow died in 1795; after whose death

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There can be no forgery of a will of land attested only by TWO *witnesses.*

teſtator had in the land ſo deviſed, or of what nature it was; wherefore it might be preſumed to be freehold, and therefore the will void and of none effect by the expreſs enactment of the ſtatute of frauds, (29 Car. 2. c. 3. ſ. 5.) for want of the atteſtation of three witneſſes; the Judges on conference in Eaſter term 1800 held the conviction wrong; for as it was not ſhewn to be a chattel intereſt, it was to be preſumed to be freehold. The following caſe was referred to as decided upon the ſame principle.

Moffatt's caſe, O. B. Jan. 1787, MS. Buller J. (2 Leach, 483. S. C.) *Forgery of a* bill of exchange, *as ſuch, cannot be committed, where it is drawn for more than* 20*s. and leſs than* 5 l. *without mentioning the place of abode of the payee and having a ſubſcribing witneſs thereto, being in ſuch caſe declared abſolutely* void *by ſtat.* 17 Geo. 3. c. 30.

John Moffatt was indicted for knowingly uttering as true a forged acceptance, purporting to be the acceptance of Geo. Peters on a bill of exchange, the tenor of which was as follows:

" Navy Office, 21ſt Dec. 1786.

" Sir, Seven days after date pleaſe to pay to Mr. John " Moffatt or his order £. 3 : 3. and place the ſame to the " account of, &c. Walter Stirling.

" To George Peters Eſq. Bank of England.

" Acc[d] George Peters."

with intent to defraud W. Ball.

The bill produced agreed with the indictment. But the queſtion was whether this amounted to forgery, the bill in queſtion not ſpecifying the place of abode of the payee, nor being atteſted by any ſubſcribing witneſs; under which circumſtances the bill being for leſs than 5 l. is by ſtat. 17 Geo. 3. c. 30. ſ. 1. declared to be void; and after conviction all the Judges in Hilary term 1787 held the conviction wrong: for if it had been a genuine inſtrument, it would have been abſolutely void, and nothing could have made it good. And ſince the ſtatute ſuch an inſtrument is no bill, and has not the appearance or ſemblance of one. And this was diſtinguiſhed, on the conference, from Hawkeſwood's caſe after mentioned, where the holder of the bill had a right to get it ſtamped, and the ſtamp-act only ſays that it ſhall not be uſed in evidence till ſtamped.

death the priſoner, who was then in poſſeſſion as tenant to Skidmore of ſome ſmall premiſes at the rent of about 30*s.* per ann. (of which premiſes he had formerly been the owner) applied to one Joſeph Buſton, who had married a niece of the widow, to continue tenant to him at the old rent; to which Buſton agreed. And in Sept. 1798 the priſoner produced and proved the will in queſtion in the eccleſiaſtical court at Worceſter; on which adminiſtration with the will annexed was granted to him as univerſal legatee.

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Hawkeſwood's caſe, Worceſter Sp. Aſſ. 1783, MS. Buller J. and MS. Crown Caſ. Ref. 140. (1 Leach, 292. (S. C.) *Forgery may be committed of a bill of exchange on unſtamped paper.*

Hawkeſwood was indicted for forgery of a bill of exchange; and objection was taken that not being ſtamped it was no bill of exchange by ſtat. 22 Geo. 3. c. 33. and prior acts: and that this was an objection apparent upon the face of it; and no perſon could be deceived or defrauded thereby, unleſs he took it without looking at it, which would be groſs negligence. But as the ſtamp act was merely a revenue law, and did not purport in any way to alter the crime of forgery; and as the falſe inſtrument had the ſemblance of a bill of exchange, and was negotiated by the priſoner as ſuch; Buller J., before whom he was tried, over-ruled the objection, but reſpited judgment. And in Eaſter term 1783 all the Judges were of opinion that the priſoner was properly convicted: for the ſtamp act in ſaying that a bill without a ſtamp ſhall not be pleaded or given in evidence, or be available in law or equity, means only that it ſhall not be made uſe of to recover the debt: and beſides, the holder might get it ſtamped after it was made.

Morton's caſe, York Sum. Aſſ. 1795, MS Jud. *Forgery may be committed of a promiſſory note on unſtamped paper even ſince the ſtat.* 31 Geo. 3. c. 25. ſ. 19. *which prohibits the ſtamp to be affixed afterwards.*

The above caſe was confirmed in Rex v. Morton, which was an indictment for knowingly uttering a forged promiſſory note, as it appeared at the trial, on unſtamped paper. The caſe underwent much conſideration, and was debated by the Judges in Michaelmas term 1795, and in Hilary and Eaſter terms 1796, on the principal point, as well as upon the queſtion, whether the ſtat. 31 Geo. 3. c. 25. ſ. 19., which paſſed after Hawkeſwood's caſe, and prohibits the ſtamp to be affixed afterwards, had made any difference. And though two or three of the Judges doubted at firſt the propriety of Hawkeſwood's caſe if the matter were res integra, yet they all agreed that being an authority in point they muſt be governed by it; and that the ſtat. 31 Geo. 3. c. 25. ſ. 19. made no manner of difference in the queſtion; for that the only thing to be regarded was the ſtate of the note at the trial, and not what might be its ſtate afterwards. And moſt of the Judges maintained the principle of Hawkeſwood's caſe to be well founded: for they held that the acts of parliament which had been referred to and relied on, being mere revenue laws, meant to make no alteration in the crime of forgery, but only to provide that the inſtrument ſhould not be available for the purpoſe of recovering on it in a court of juſtice; but it might be received in evidence for a collateral

pur-

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purpoſe: and inſtances of this might occur under the 6th ſect. of the ſtat. 31 Geo. 3. by which perſons drawing bills on unſtamped paper were chargeable with the duties; and alſo under the 10th ſect. of the ſame act, by which they are made liable to a penalty of 20*l*, in both which caſes the note or bill muſt be uſed in evidence. That it was not neceſſary to conſtitute forgery that the inſtrument ſhould be available That though a compulſory payment by courſe of law could not have been inforced for want of the proper ſtamp, yet a man might equally be defrauded by a voluntary payment being loſt to him. That if this were a ſufficient defence, forged ſecurities might be publiſhed on improper ſtamps with impunity; which would carry the miſchief to an alarming extent. That the ſtamp itſelf might be forged; and it would be a ſtrange defence to admit in a court of juſtice that becauſe a man had forged the ſtamp he ought to be excuſed for having forged the note itſelf; which would be ſetting up one fraud in order to protect him from the puniſhment due to another.

2 Leach, 811. The deciſion in this caſe determined two others under the like circumſtances, Rex v. John Roberts alias Colin Reculiſt, tried before Thomſon B. at the O. B. January 1796, and Rex v. Charles Davies, before Groſe J. Surry ſpring aſſizes 1796. And the ſame principle was again recognized in Teague's caſe in Mich. term 1802.

Poſt. f. 55.

In truth if the matter be duly conſidered, the words of the ſtamp acts before mentioned can only be applicable to a true inſtrument; for a forged inſtrument, when diſcovered to be ſuch, never can be made available though ſtamped. The acts therefore can only be underſtood as requiring ſtamps on ſuch inſtruments as were available without a ſtamp before thoſe acts paſſed, and which would be available afterwards with a ſtamp.

Invalidity of the inſtrument muſt appear on the face of it to found an objection.

M'Intoſh's caſe, ante, 942.

It is alſo clear that it is no objection to the charge of forgery that the inſtrument is not available by reaſon of ſome collateral objection not appearing upon the face of it; as in M'Intoſh's caſe before mentioned, where the order for payment of prize money bore date at a period when the ſeaman whoſe name was forged was in fact within ſeven miles of the port where he was diſcharged, and where his wages, &c. were payable; in which caſe it is declared by ſtat. 32 Geo.

Geo. 3. c. 34. ſ. 2. that no ſuch order ſhall be valid; the order itſelf purporting to bear date at a more diſtant place.

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V. *How far uſing a fictitious Name, or perſonating the true Man or fictitious Character aſſumed at the Time, will affect the Offence.* § 46.

Firſt, It is a clear propoſition that the making of any falſe inſtrument which is the ſubject of forgery with a fraudulent intent, although in the name of a non-exiſting perſon, is as much a forgery as if it had been made in the name of one who was known to exiſt, and to whom credit was due.

Anne Lewis's caſe, O. B. 1754, Poſt. 116. *Forging a power of attorney to receive a ſeaman's wages in the name of a ſuppoſed child, adminiſtratrix of ſuch ſeaman who died childleſs, is within the ſtatute.*

The priſoner was indicted on the ſtat. 2 Geo. 2. c. 25. for knowingly uttering a forged deed, purporting to be a power of attorney from Elizabeth Tingle, adminiſtratrix of her father Richard Tingle deceaſed, late a marine belonging to his Majeſty's ſhip Hector, to F. P. of, &c. impowering him to receive prize money, &c. The priſoner was convicted on clear evidence of the fact; but it appearing that R. Tingle had died childleſs, a doubt was conceived whether as there was no ſuch perſon exiſting as Elizabeth Tingle the caſe amounted to forgery? The doubt aroſe on the paſſage in the 3 Inſt. 169. where Lord Coke ſays, that forgery is properly taken *when the act is done in the name of another perſon.* But in Trinity term 1754 eleven of the Judges were very clearly of opinion that the caſe was within the letter and meaning of the act, which in deſcribing this offence ſpeaks only of a falſe deed, and does not ſay the deed *of any perſon* or *of another.* That Lord Coke's definition was apparently too narrow. That the main ingredients to conſtitute the crime is the falſity of the inſtrument, and the intention to defraud; both which concurred in this caſe.

Ante, f. 1.

Geo. Wilks's caſe, Bodmin, 1767, 2 MS. Sum. 346.

In the caſe of George Wilks, then a priſoner at Launceſton, which was ſtated to the Judges by Mr. Juſtice Gould, they were all of opinion that a bill of exchange drawn in fictitious names, when there are no ſuch perſons exiſting as the bill imports, is a forged bill within the ſtatute 2 Geo. 2.

Mr.

Ch. XIX. §46. *In fictitious names or false characters aſſumed.*

Bolland's caſe, O.B. Feb 1772, 1 Leach, 97. *One who had put his name as indorſer on a true note, finding that his name diſcredited the note and prevented its negotiation, ſtruck out all but the initials and made it another name, and then procured another to diſcount it, deſcribing to him the ſuppoſed indorſer as a perſon of credit (there being in truth no ſuch perſon,) and when he was afterwards called on to make good the note on the failure of the drawer and payee, he denied having diſcounted the note or having any knowledge of or concern in the tranſaction, though the diſcounter then inſinuated his knowledge of the whole: held forgery.*

Mr. Juſtice Yates accordingly tried the priſoner at Bodmin, in 1767, but the jury acquitted him.

James Bolland was indicted for forging an indorſement in the name of James Banks, on the back of a promiſſory note for 100l., drawn by Thomas Bradſhaw, and indorſed by Samuel Pritchard; which note was ſet forth in the indictment, and the offence laid to be done with intent to defraud F. L. Cardeneaux. There was another count for uttering the ſame. The drawer and payee were real perſons, and Bolland into whoſe hands the note came indorſed it with his own name, and attempted to negotiate it in that ſtate to one Jeſſon, with whom he had had money tranſactions. Jeſſon ſaid that he knew Bradſhaw, and conſidered him as a good man, but that he ſhould not be able to negotiate the note with Bolland's indorſement on it; on which Bolland ſaid he could take his name off, and immediately another perſon in company began eraſing the name. After he had ſcratched off all but the initial letter B, Bolland ſaid don't ſcratch it all out; it may diſfigure or cancel the note; I will think of ſome other name that begins with a B, and immediately made the name *Banks*. Jeſſon then took the note, and ſaying that he ſhould be aſked who James Banks was, Bolland ſaid he was a publican of Rathbone-place. Jeſſon ſoon afterwards applied to Cardeneaux to diſcount the note, and obtained from him ſome money on the credit of it; and being preſſed by Bolland ſhortly after for the amount of the note, he took him to Cardeneaux and introduced him as the owner of the note. Cardeneaux inquired who Banks was, and Bolland informed him he was a man of property who dealt largely in wines and ſpirits, and lived in Rathbone-place; on which Cardeneaux gave him the value in notes and caſh. Cardeneaux never deſired Bolland to indorſe the bill, becauſe Jeſſon had before told him that it was better that his name ſhould not appear on it, as he had been a ſheriff's officer, and the note would not paſs properly with his name on it. Bradſhaw and Pritchard having become bankrupts before the bill was payable, Cardeneaux applied to Bolland, who denied having diſcounted any bill with him, and ſaid that his name was James Bolland, that he had never ſeen Cardeneaux before in his life, and that he had no bill with his indorſement on it; and when Cardeneaux inſinuated that

that he was acquainted with his having altered his name, he diſregarded it. After the priſoner was taken up ſome perſon paid the 100l. to Cardeneaux in the name of James Banks; but no ſuch perſon as James Banks of Rathbone-place appeared to exiſt. The jury found the priſoner guilty. After conviction and judgment of death the caſe was referred to the Judges: and the priſoner was afterwards ordered for execution, and ſuffered accordingly.

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To theſe may be added the caſes of Lockett and Abrahams which have been before mentioned; and the caſes of Taft in 1777, of Taylor in 1779, and of Shepherd in 1781, hereafter noticed.

Ante, f. 38.

Poſt. f. 47.

§47. *Immaterial whether any additional credit be gained by the forgery, or whether the falſe name be aſſumed by the party himſelf for the occaſion.*

Further, It makes no difference whether the making of the falſe inſtrument or ſignature be really neceſſary to the advantage ſo fraudulently attempted to be obtained by the party, or gain him any additional credit; it is ſufficient if it be made with ſuch fraudulent intent.

Taft's alias Tuft's caſe, Leiceſter Lent Aſſ. 1777, MS. Crown Caſ. Ref. 97. & Serjt. Forſter's MS. (1 Leach, 206. S. C.) *Forgery, where one unknown indorſed on a bill a different name as for his own.*

Edward Taft was indicted for forging an indorſement on a bill of exchange in the name of John Williams. The bill, which was for 50l., was drawn payable to the order of Meſſrs. Renwicke and Mee, by whom it was indorſed generally. It afterwards became the property of William Wheewall, out of whoſe pocket it was picked at Leiceſter races on the 16th of September 1776. The priſoner endeavoured to negotiate it the ſame night at Leiceſter, but without effect, though he offered a conſiderable premium. He then went to Market Harborough, where he bought a horſe of the innkeeper, and offered him this bill to change, who carried it to a banker's in the town, whither the priſoner afterwards accompanied him, and the clerk offered to diſcount it if the priſoner would indorſe it, which he was informed was the invariable rule of the houſe. The priſoner immediately indorſed it by the name of *John Williams*, which was not his name, and received the value of it in caſh. He was found guilty; but his caſe was reſerved for the opinion of the Judges; who on the 13th June 1777 were all of opinion that this was forgery within the ſtatute. For though the fictitious ſignature was not neceſſary to his obtaining the money, and his intent in writing a falſe name was only to conceal through whoſe hands the bill had paſſed, yet it was a fraud

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Ante, 940.

John Taylor's case, O. B. Oct. 1779, MS. Buller J. & Serjt. Forster's MS. (1 Leach, 255. S. C.) *Giving to the drawer of a bill of exchange a receipt in a false name as for the prisoner's own name, for the contents of the bill, which was indorsed in blank, is forgery; although no additional credit was thereby gained to the prisoner; being done fraudulently and to escape detection. Vide* S. C. post, f. 53.

a fraud both on the owner and on the person discounting it, as the one lost the chance of tracing it, and the other the benefit of a real indorser: and the forging a name either of a real or fictitious person with intent to defraud was in Lockett's case holden to be forgery.

Taylor was indicted for that he having in his possession a bill of exchange, viz.

"Tamworth, 2d Aug. 1779.

"Sir,

"One month after date please to pay to my order the "sum of £.20 val. recd &c.

"To Mr. Josh. Cuff. "Thos. Harper."
"Whitechapel, London."

forged, &c. a receipt and acquittance for the said sum of 20l. as follows: "*Recd W. Wilson;*" with intent to defraud the said J. C. Another count was laid with intent to defraud H. Sutton. The bill was indorsed in blank, and delivered to Sutton, out of whose possession the prisoner obtained it by some undue means, (how did not appear) and presented it for payment. The bill then wanted two or three days of becoming due; but the prisoner said he would give a trifle to adjust the difference, and accordingly gave Cuff 1s. for the discount. Cuff desired him to write a receipt on the back of the bill, which he did by writing the receipt in question in the fictitious name of Wilson. It was contended on behalf of the prisoner that this was not a receipt for money within the meaning of the act. That the receipt here was unnecessary, the possession of the bill being a sufficient discharge to the payer, and his discharge was not strengthened by the words written by the prisoner; consequently the act of the prisoner was of no effect. That he was not compellable to give any receipt. That he gained no additional credit by the name he assumed. That the writing on the back of the bill was in truth a mere memorandum, and did not operate as an acquittance against any person but the man himself who received it, who would be equally estopped by it as if he had written his own name. Mr. Justice Willes and Mr. Baron Eyre, before whom he was tried, were of opinion that the prisoner's case was within the letter and meaning of the statute; that this was a receipt evidently false; and the only question was, whether he intended

tended to defraud any person? The prisoner knew he had fraudulently acquired the possession of the bill; that it was necessary to elude any inquiry after him that he should conceal his name; and his intention to defraud the owner of the bill was manifest from his whole conduct. The prisoner was convicted: and upon reference afterwards to the Judges in Mich. term 1779, all of them (except Buller J. who doubted) were of opinion, that though the prisoner did not gain any additional credit by signing the name he put to the receipt, as the bill was not by the indorsement made payable to the person whose name was used, but indorsed in blank; yet still it was a forgery; for it was done with intent to defraud the true owner of the bill, and to prevent a probability of tracing the person by whom the money was received.

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§48. *Personating the true man or fictitious character.*

The next consideration, and that which seems to have involved in it the greatest difficulty, is how far personating the true man or assuming a fictitious character at the time will affect the offence.

Eliz. Dunn's case, 1765, 2 MS. Sum. 245. & post. f. 49.

And first it may be proper to advert to certain principles which were laid down in the case of Elizabeth Dunn in 1765 after mentioned. 1st, That if a person give a note or other security as his own note or security, and the credit thereupon be personal to himself without any relation to another, his signing such a note with a fictitious name may indeed be a cheat, but will not amount to forgery: for in that case it is really the instrument of the party whose act it purports to be, and the creditor had no other security in view. But 2dly, that if a note be given in the name of another person either really existing or represented so to be, and in that light it obtain a superior credit, or induce a trust which would not have been given to the party himself, it is then a false instrument, and punishable as forgery (*a*). 3dly, That the law would be the same, though the note or security were thus falsely subscribed in the presence of him who lent his money upon it, if the impostor and the party whose name is made use of were both strangers to him; for then he could not

(*a*) So if one use another name than his own for the purpose of fraud, and more easily eluding responsibility, Shepherd's case, post. 967.

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know that such impostor was not really the person whose name he assumed, and therefore the other would be equally deceived.

How far the first proposition above laid down is to be taken in its utmost latitude has been the subject of much difference of opinion, which I shall now proceed to consider. It is necessary however to pursue the subject by steps.

§ 49. *Assuming to be the real person in whose name forgery is committed.*

And first I take it to be clearly settled that in the case of forgery committed in the name of a person really existing, it matters not whether the offender pass himself off upon the parties at the time for such person, and receive credit from them as such: for in truth the credit in that case is not given to the impostor personally, without any relation to another, but to that other person whom he represents himself to be.

Eliz Dunn's case, O. B. Sept. 1765, MS. Crown Cas. Res. 16. MS. Gould J. (1 Leach, 68. S. C.) *Forgery, by giving a note in the name of another as the prisoner's own, and assuming to be such other person. The indictment setting forth the tenor of the note and including the witness's name at the end, and also the words "Mary Wallace her mark," held well; though the evidence proved that these additions were made after the prisoner had subscribed the note, but at the same time.*

Elizabeth Dunn was indicted for forging a promissory note for the payment of money, the tenor of which is as follows:

"London, 27th July 1765. I promise to pay to Mr. "Edwd Hooper the sum of *three* (omitting the word pounds) "13 shillings and 6d., or order, seven days after date, "value received by me

her
"Witness John Whettal." "Mary ✕ Wallace,
mark."

With intent to defraud Edward Hooper. The second count stated it to be with intent to defraud the person entitled to the wages due for the service of John Wallace deceased, a seaman on board the King's ship the Epreuve. In June 1765 the prisoner applied to Hooper at his office for receiving seamen's wages, calling herself Mary Wallace, and desired him to advance her money to pay the fees for the probate of her husband's will which was in the hands of a proctor. She returned soon after with the probate of the will of John Wallace, therein described to be a seaman on board the Epreuve; when Hooper required her to produce a certificate to prove that she was the Mary Wallace named in the will. In a few days having brought a certificate, she pressed him to lend her money on the credit of the wages due

due to J. Wallace. Accordingly he let her have three guineas and a-half, and wrote the body of the promissory note in question, to which she subscribed her mark; after which his clerk attested it. And being asked what name he was to put to her mark, she answered you know my name, you may write Mary Wallace; which he did. It was proved clearly that her name was Elizabeth Dunn, and that the whole account was a fabrication. The Recorder directed the jury, that if they believed that the prisoner subscribed the note produced in a false name, either by a mark intended by her to express such false name, or by words at length, with intent to defraud Hooper; [for as to the second count he thought that could not be supported]; they should find her guilty; which they did accordingly. But judgment was respited on a doubt, whether as the note, though made by the prisoner in an assumed name and character, was her own note, made and offered as her own, and not as the note of another in contradistinction to herself, the offence amounted to forgery. In Michaelmas term 1765, present Lord Mansfield, Lord C. B. Parker, Clive J., Symthe B., Bathurst J., Wilmot J., Gould J., Perrott B., Yates J., and Aston J.; all but Aston J. were of opinion that this was a case within the words and intention of the stat. 2 Geo. 2. c. 25., and therefore that the prisoner was properly convicted.

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Vide post. f 53. for a previous objection.

(Absent Lord Camden and Adams B.)

So in a late case it was laid down that if a bill of exchange payable to A. or order get into the hands of another person of the same name with the payee; and such person, knowing that he is not the real payee in whose favour it was drawn, indorse it for the purpose of fraudulently possessing himself of the money, he is guilty of forgery.

Mealy v. Young, M. 31 Geo. 3. 4 Term Rep. 28. *Vide* post. 965.

Parkes' and Brown's case, O. B. Sept. 1796, cor. Rooke J. MS. Jud. *Uttering a note as the note of another, though made in the prisoner's own name, is within the statutes against forgery.* (2 Leach, 898. S. C.)

Mathias Parkes and Thomas Brown were indicted for forging and uttering the following promissory note.

"No. 248. B. Ringhton, Salop, 20th April 1796.
"*I promise to pay to bearer on demand,* at Messrs. Down,
"Thornton, and Co. bankers, London, *the sum of Five*
"*Guineas for value received.*
"*For self and Co.*
"Five Guineas. Thos. Brown.
"Entered T. B."

[The words in *italics* were printed in the note.]

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With intent to defraud Wm. Hulls. Other counts were laid with intent to defraud the bankers.

The prisoner Thomas Brown uttered the note to Hulls a shoemaker in part payment for a quantity of boots and shoes which he bought, under pretence that he was a Captain Brown of the 17th regiment, and going immediately to the West Indies. The prisoner Brown when he bargained for the articles at Hulls' shop desired Hulls to send his boy with him, and he would send back the money. Hulls however chose rather to go with the prisoner; and on their way Brown stated that his brother was agent to the 17th regiment, and would buy all the shoes Hulls had. When they came to a public house Brown invited Hulls in, saying, he should see his brother presently; and after some conversation about his brother's large fortune to the amount of 15,000l. which he had lodged in the hands of Messrs. Down and Co., he appeared to be disappointed at not seeing his brother, and said, I am sorry he does not come, I must give you my brother's draft. He then gave Hulls the note in question, who asked if it was on the money lodged with Down and Co., The prisoner said yes, and added, that his brother and he always paid in that manner on demand, for they wanted no credit. He then appointed Hulls to meet him in the afternoon at another place, where he would pay him the balance. The note was soon discovered to be a forgery, and Hulls could hear nothing more of the prisoner. It appeared that Parkes and Brown were connected together; and when Parkes was taken up more than forty of these five guinea notes in blank were found upon him, dated Rinton, Salop. A few of the same sort of notes were also found concealed under a vice board in a shop where the prisoner Brown was arrested, and which it was probable he had thrust there. The note in question was proved to be filled up in the hand-writing of Parkes. The name Thomas Brown was also in the hand-writing of Parkes. In Parkes' pocket-book was found a receipt under a cover addressed to Thomas Brown at the Compter (to which prison Brown was committed) for 21l. for four five guinea bills. Down and Co. had no such customer as Thomas Brown of Rinton in Shropshire, and there was no evidence that the prisoner Thomas Brown had any residence or connexion there. The jury found

found both guilty: and on being asked, declared that they thought Parkes signed the note in question with Brown's assent, and that Brown uttered it under a representation that it was his brother's, knowing it was not so, with intent to defraud Hulls. Ch. XIX. § 49. *In fictitious names or false characters assumed.*

The counsel for the prisoner made the following objections to the conviction: 1st, That the name *Thomas Brown* was the real name of one of the prisoners. 2. That it was no forgery in Parkes to sign the name of Thomas Brown with his consent. 3. That if Parkes were not guilty of forgery, Brown could not be guilty of uttering the note knowing it to be forged. 4. That the subsequent misrepresentations of Brown ought not to affect Parkes, as there was no evidence that he was aware of the fraudulent circumstances under which Brown would utter the note. That misrepresentations do not amount to forgery, or make that a forgery which was not so at the time of the original making. Judgment was respited to take the opinion of the Judges on these points.

The case was argued in the Exchequer-chamber in 1797 before all the Judges; and at length the conviction was holden wrong as to Parkes (on a distinct ground hereafter stated). But as to Brown, all the Judges held the conviction right; for he uttered it as the note of another person and not as his own; and it being in the same name as his own could not make any difference. Post, f. 61.

At the December session following, Grose J., who delivered the opinion of the Judges, after stating the objections made, observed as to the 1st, that the definition of forgery was "the false making a note or other instrument with intent to defraud:" which might be done either by using the name of one who did not exist or of one who did exist, without his consent. That this was of the former description; being uttered by the prisoner as the note of his brother, no such person as his brother of that name appearing to exist: and that the circumstance of its being made in the same name as his own could not make any difference, being uttered as the note of another and not his own. The same answer applied to the second objection. As no such person existed to whom the name of Thomas Brown, *as the signer of the note*, applied, there could be no consent given to sign the name. It was signed by the authority of *a* Thomas Brown, but *Vide* 2 Leach, 909. *Vide* ante 963.

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but not of *the* Thomas Brown, for whose note it purported to be given. For the person in whose name the note was made was, according to the description of him in the note, then a resident at Ringhton in Salop; and it imported that he was a correspondent of Down, Thornton, and Co. and had money in their hands; and he was also represented to be the brother of the prisoner. But no such person of that name and description appeared to exist. And all this was proved and found to be done for the purpose of fraud. 3dly, That the indictment did not charge that Brown uttered the note knowing it to have been forged *by Parkes*, but only knowing it to have been *forged:* and therefore let it have been forged by whomsoever it might, it was equally an offence in Brown to utter it.

Hevey's case, O.B. Jan. 1782, ante, f. 5.

But where one merely assumed to be the person of a real indorser, though in concert with him, and for the purpose of fraud, it was holden to be no forgery, though a cheat; for there was no false making.

Personating others by statute.

This offence however of personating others for fraudulent purposes, which is often blended with forgery, is in many instances made a substantive offence by the statute law, and will be treated of separately in the next chapter.

§ 50. *Assuming to be a supposed character in whose name forgery is committed.*

Secondly, I take it to be equally clear that forgery may be committed in the name of a supposed character who does not exist, but is assumed by the offender for the purpose of the fraud. In Dunn's case above mentioned it was agreed to be totally immaterial whether such a person as Mary Wallace existed or not. The character which the prisoner represented herself to be was different from her own, and she obtained the credit by being supposed to be a different person from what she really was. The cases also of Taft in 1777, and Taylor in 1779, stand on this ground. In both the offenders assumed to be the identical persons whose names they subscribed, though they obtained no additional credit on that account. It is true that in Taft's case the bankers would not discount the bill without the indorsement of the prisoner, to whom in that respect it may be said that some personal credit was given, however slight; yet his person being unknown, little or no stress can be laid on that.

Ante, 962.

Ante, 959, 960.

This

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This matter seemed once to have been put out of doubt by the case of John Shepherd, who was indicted for forging an order for the payment of money with the name of H. Turner subscribed thereto, with intent to defraud James Elliott. The order was to pay John Atkins or bearer 6 guineas, and was directed to Brown, Collinson, and Co. The prisoner came to Elliot's shop, and after selecting several articles of silver, pulled out his purse as if going to pay for them, but said he had not cash enough about him, but had a draft upon a banker, which was the same thing as money, and would be paid when presented. Elliott looked at the draft, and seeing it was upon a house he knew, he took it, the sum being a small one, and the prisoner having a genteel appearance. He then desired Elliott to send him a pair of spurs, who took out his memorandum-book to take down the prisoner's direction, and supposing his name to be the same as was signed to the draft, (for he said he looked upon it as *his* draft,) he wrote down the name *H. Turner* as the prisoner's name. The prisoner looked over him as he wrote, and said he must add "jun. Noah's Row, Hampton Court." He then went away. The draft was refused payment by the bankers, no such person as H. Turner keeping cash with them. The prosecutor also inquired in Green-street from whence the draft was dated; but neither there nor at Hampton Court could he hear of any such person, nor could he hear of any such place as Noah's Row. The prisoner was found guilty; but judgment was respited upon a doubt whether as Elliott had proved that he gave credit to the prisoner, and not to the draft; having expressly said that he looked upon it to be *his* (the prisoner's) draft, though not written at the time he took it, the case amounted to forgery (*a*). In Michaelmas term 1781 all the Judges held that this was forgery and the conviction right; for it was a false instrument not drawn by any such person as it purported to be; and the using a fictitious name was only for the purpose of deceiving. And the case of Taylor in Michaelmas term 1779, that of Locket in 1771, and that of Elizabeth Dunn in Michaelmas term 1765, were relied on.

Rex v. Shepherd, O.B. Sept. 1781, MS. Gould and Buller Js. MS. Crown Cas. Res. 117. (1 Leach, 265. S. C.) *Drawing a draft upon a banker in a fictitious name, assumed by the party at the time for the purpose of fraud and to avoid detection, is forgery, though the credit were given to his person.*

(*a*) Another objection was taken as to the form of the indictment. *Quod vide* ante, f. 40.

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In the abovementioned case of Shepherd the credit was indisputably given to the prisoner personally, the security tendered being considered as his alone: and it is agreed that the Judges were unanimous in adjudging the offence to amount to forgery. And yet I find it very difficult to distinguish this case upon principle from a subsequent one where the Judges were much divided in opinion: This was the case of

Aickles's case, O.B. Feb. 1787, MS. Gould and Buller Js. and MS. Jud. (2 Leach, 492. S. C. reports the case materially differently.)

John Henry Aickles, who was indicted for forging a promissory note as follows:

London, Dec. 18th, 1786.

"Three months after date I promise to pay to H. Byron, "Esq. or order £.25 : 10 : 0 value received.

"£.25 : 10 : 0 John Mason,

"No. 4. Argyle-street, Oxford Road."

With intent to defraud R. H. Gedge. There was a second count for uttering it knowing it to be forged.

Qu. *Where one had a month before taken the house where he lived in the name of J. M. and passed off a promissory note in that name, which he avowed to be his, dated some time before, but not payable till after the time of his trial; but the jury found that he assumed the name by which he was never before known, for the purpose of the fraud; whether this be forgery?*

It appeared that the note in question was on the 9th of January 1787 tendered by Byron to Gedge's shopman in payment for some linens that were shewn by him to Byron. Upon being asked who John Mason was, Byron described him as a gentlemen of fortune with whom he was concerned in a coal-mine, living at No. 4. Argyle-street. The shopman declined leaving the goods with him, but promised to send them if upon inquiry the note were good. He immediately went to No. 4. Argyle-street, and inquired for Mr. Mason. The prisoner appeared, and said his name was John Mason, and that the note was drawn by him, and should be paid when due. It was proved that before the 9th of January the prisoner had taken the house No. 4. Argyle-street, in the name of John Mason, Esq., by which description also inquiry had been made by the person letting the house concerning his character at the British Coffee-house, which was a favourable one. It was then proved that he had always passed by the name of John Henry Aickles, and had been tried several times at the Old Bailey, and was known by that name since the year 1780 until the present time. Grose J. entertaining a doubt upon this evidence, directed the jury that the only ground on which they could convict the prisoner was, if they believed that this note was drawn by the prisoner in consequence of a concerted

certed scheme between him and Byron to defraud Gedge. That the prisoner had never gone by the name of John Mason before; and had assumed it for the purpose of this fraud: in which case they might find these facts, and he would state them to the Judges. Thereupon they found specially, that the prisoner intended to defraud Gedge, and assumed the name of Mason for the purpose of this fraud: that he had never gone by that name before: and that they disbelieved a witness on the part of the prisoner who had deposed that two years before he was inquired for and known by that name at the British Coffee-house. On this a verdict of guilty was taken by consent, subject to the opinion of the Judges on the case.

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This case was adjourned from Easter to Trinity term, but in the mean time Mr. Justice Ashhurst had given judgment at the O. B. (*a*) that it was not forgery; conceiving that the Judges had so decided. Many of them indeed seemed to entertain such an opinion, but several thought otherwise; and they never came to any final resolution on the matter.

MS. Gould and Buller Js. and MS. Jud.

It appears that the prisoner at this time was under sentence of transportation for a former offence, and had been tried for having been found at large without lawful cause before the expiration of the term. Upon some favourable circumstances appearing in his case he was acquitted of the latter charge, and remanded upon his former sentence.

Vide 2 Leach, 494.

Mr. Justice Gould (and other Judges coincided in opinion with him) thought the case amounted to forgery. There was an apparent design for fraud in general, and the jury were satisfied that the prisoner had assumed the name of Mason, which was not his name, nor had ever been used by him before, but always Aickles, with intent to defraud Gedge. He therefore made the note in the name of another as if his own, and clearly with an intent to defraud. Whether there existed a person of that name or not was immaterial; the felony consisted in the intent to defraud under the falsity. One might assume a feigned name, and make a draft in it, and yet innocently; as if he concealed himself to avoid arrest, and had appointed his friend on whom he drew to pay

MS. Gould J.

(*a*) This accounts for the statement given in the printed report, 2 Leach, 494.

his

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his bills; or giving notes took care to pay them when due. But the priſoner having no ſuch intention, but on the contrary to defraud the party by making the note under ſuch diſguiſed name, by which after he left the place of concealment he could nót be traced, the caſe amounted to forgery. There was no ground, he thought, to diſtinguiſh this from the common caſe where a draft is made in the name of a perſon who does not exiſt. It was in reality a deeper fraud, becauſe the entity of ſuch drawer would at once be diſavowed at the place of his ſuppoſed reſidence; whereas in the preſent caſe of a note, there would be no circumſtance to find out the maker when he quitted the place where he made the note.

MS. Buller J.

The Judges who inclined againſt the conviction went on the doubt whether to conſtitute forgery it was not neceſſary that the inſtrument ſhould be made as the act of another, according to the definition of Lord Coke, whether that other exiſted or not. Whereas here the note was made as the priſoner's own, and avowed by him to be ſo; the credit was given to the perſon and not to the name; and the perſon and not the name was the material thing to be conſidered.

I cannot help ſuſpecting that much of the difficulty in theſe caſes ariſes from miſtaking matters of fact for matters of law, and confounding the two together. It ſeems very difficult to diſtinguiſh the laſt caſe from Shepherd's before mentioned. It may be ſaid that in Shepherd's caſe the priſoner had not been known by the name of H. Turner previous to the tranſaction; but merely aſſumed to be ſuch a perſon at the inſtant for the purpoſe of the fraud; and that in truth no perſon was found to anſwer the deſcription of the man he pretended to be. But if this matter be accurately conſidered, it muſt appear that the length of time during which the fictitious name has been adopted previous to the fact is only evidence of the intent, any more than the true deſcription of the party's place of abode. If the party for other purpoſes have adopted another name by which he is known, and iſſue his ſignature accordingly, it may be a good reaſon with the jury for finding that he really intended at the time to iſſue it as his own inſtrument, and did not adopt the name then with a view to ſhift the future reſponſibility of it from himſelf under the colour of its being the act of another. But the finding of the jury in Aickles's caſe ſeems to have

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have concluded that queſtion; for they found that the priſoner aſſumed the name by which he had never been known before for the purpoſe of defrauding Gedge; unleſs indeed it may be ſaid that ſuch a finding does not neceſſarily include that the fraud was intended to be effected at the time by diſowning the note afterwards as the act of another and not of himſelf. I do not ſtop to inquire whether this were a proper finding under all the circumſtances, becauſe it is not my intention to diſcuſs a mere matter of evidence, or a deduction of fact. But aſſuming the concluſion of the jury to be right, the doubt is as applicable to the former caſe of Shepherd as to this of Aickles. Shepherd did no more than aſſume the name of H. Turner, by which he had never been known before, for the purpoſe of defrauding Elliott: Aickles did the like under the aſſumed name of Maſon. It is poſſible therefore that the Judges who doubted in the latter caſe went upon the ground, that it did not appear from the evidence that Aickles made uſe of the name of Maſon with a deceitful intention at the time of afterwards diſowning the act in order to avoid the reſponſibility and eſcaping detection; but intended at the time to abide by the act as his own, and meet the conſequences as well as he could. Where an impoſtor aſſumes the name and character of an exiſting perſon for ſuch a purpoſe, the very act is deciſive of ſuch an intent. Where a particular character is aſſumed, though not exiſting in reality, as the executor of another who is in truth alive, the intent appears equally plain. But in the bare aſſumption of a fictitious name without any particular deſignation of character annexed to it, it may be more difficult upon occaſion to fix this intention upon the party; becauſe the act itſelf is of a more equivocal nature. Yet it cannot be conceived but that if a rogue knowing that he cannot obtain credit under his real name, aſſume another for the purpoſe of practiſing his impoſition more eaſily, and under ſuch aſſumed name negotiate a note, intending at the time to ſkulk from his reſponſibility under pretence that it was not his proper act; ſuch a caſe would fall ſtrictly under the definition of forgery; although he may, the better to colour his purpoſe, have aſſumed ſuch fictitious name ſome little time previous.

I obſerve that in Aickles' caſe the note was dated the 18th of December 1786, and made payable three months after date,

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date. He was tried in February 1787, which was before the note became due. It does not appear but that he continued to pass by the same name of Mason to the time of his apprehension, as he had certainly done for some time (how long does not appear) before the 9th of January when the note was negotiated, and probably at the time it bore date: there was no opportunity of knowing whether he meant to disavow his act at the time of payment, which might have been evidence of his original intent; though such intent might certainly be collected from preceding and intermediate acts. The Judges who were disposed to acquit the prisoner of forgery probably thought that there was no evidence of any such intent. The intent however is strictly a matter of fact for the jury to pronounce upon under all the circumstances; and if properly left to them must conclude the question.

But to consider the matter truly, does not the very act of changing his name for such a fraudulent purpose carry in itself intrinsic evidence, that the party wishes to be thought a different person from what he really is, and consequently to pass off his act as the act of another. The instrument is false; and if the intention be to deceive and defraud, it falls expressly within the definition of forgery. And if it be part of that definition that the act should be done in the name of another, such a change of name may under circumstances furnish evidence of its having been so done. Though it may be doubted how such an amended definition will square with the case of a party antedating a deed of conveyance in his own name in order to give it a fraudulent priority over another, or with any cases of fraudulent alterations of instruments by the parties themselves who made them, in prejudice of the rights of other persons; which are all admitted to be forgeries.

Ante, f. 1.

§ 51.

VI. *What is a publishing or uttering.*

3 Inst. 171.

To pronounce or publish, says Lord Coke, is when one by words or writing pronounceth or publisheth the instrument to any other as true. It extends no doubt to every other manner of exhibiting it as a true instrument. But in order to constitute such an offence, it must be done with knowledge of the forgery; which knowledge may come by the relation of another

another as well as by the party's own observation. If, says Lord Coke, A. inform B. that such a deed is forged, and yet B. will publish it; if the deed be false, this is within the words (i. e. of stat. 5 Eliz.) "knowing the same to be forged." But such relation is not conclusive evidence of the fact of knowledge; it must be left to the jury upon the whole matter; for possibly there might be circumstances which might invalidate or weaken the credit of the person relating it, or of his relation itself, though it afterwards appear to be true. This is an offence distinct from, though connected with, the act of false making or forgery, as was before shewn; and therefore it is the common practice to indict persons who knowingly utter forged instruments as principals; and there may be accessaries before to such offence, as in the case of Soares and others stated in the ensuing section.

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1 Hawk, ch. 70. s. 3.
1 Hale, 685.

Ante, f. 4. *Vide* the case of Parkes and Brown, ante, 963. and Reeves' case, 2 Leach, 492. 3 Inst. 171. and O'Brian's case, 2 Sess. Cas. 369.

VII. *What shall make a Person assisting or Accessary.*

§ 52. *Aiders and accessaries.*

Lord Coke, speaking with great critical nicety, says, that *to cause* is to procure or counsel one to forge; *to consent* is to agree at the time of the procurement or counsel; and he in law is a procurer; *to assent* is to give his assent or agreement afterwards to the procurement or counsel of another. But this must be understood of an assent to the design of forging before the fact of the forgery committed; for according to Lord Hale, an assent afterwards makes not the party guilty or principal in the forgery; but it must be a precedent or concomitant assent. And in forgery it is laid down generally in the books that all are principals; and that whatever would make a man accessary before in felony, will make him a principal in forgery. But this must I think be understood of forgery at common law, and where it is considered only as a misdemeanor. For though Bothe's case where it was so resolved was an indictment for felony for the second offence upon the stat. 5 Eliz., yet that was not the principal point in judgment. Nor indeed does it appear how the question arose there, as none other than the prisoner appears to have been indicted. Therefore there seems no reason for taking this case out of the general rule, that when a statute makes a new felony, it incidentally and necessarily draws after it all

3 Inst. 169.

1 Hale, 624.

Bothe's case, Moor, 666. MS. Tracy, 145. 2 Hawk. ch. 29. s. 2. 1 Sid. 312. R. v. W. Hales and Kinnersley, O. B. Jan. 1729. cor. Ld. C. B. Pengelly, Reynolds J. and others, 9 St. Tr. 77. 92. and R. v. Robt. Hales, Hil. 2 Geo. 2. B. R. on a trial at bar, Mastermann's Notes.

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all the concomitants of felony, namely, accessaries before and after. This reason seems to be confirmed by the following case, which has lately occurred:

Soares, Atkinson, and Brighton's case, Winchester Spring Assizes 1802. cor. Le Blanc J. MS. Jud. *Those who were privy to the uttering of a forged note, by previous concert with the utterer, but were not present at the fact of uttering, cannot be indicted as* Principals, *but only as* Accessaries before.

Samuel Soares, William Atkinson, and John Brighton were tried at Winchester on an indictment charging them with feloniously uttering and publishing as true a certain false, forged, and counterfeit bank note for 5l., knowing it to be forged, &c. with intent to defraud the governor and company of the Bank of England. There were the other usual counts for forging and for disposing of and putting away the note, with the like intent; and similar counts stating the intent to be to defraud the person to whom it was offered in payment. It was proved that Brighton offered the note in question in payment for a pair of gaiters at the shop of one Newland at Gosport, on Saturday the 1st of August 1801, about 5 o'clock in the afternoon. The other two prisoners *Soares and Atkinson were not with Brighton at the time he so offered the note in payment*, nor were they at the time *in Gosport*, but both of them were waiting *at Portsmouth* till Brighton should return to them, it having been *previously concerted between the three prisoners* that Brighton should go over the water from Portsmouth to Gosport for the purpose of passing the note, and when he had passed it, should return to join the other two prisoners at Portsmouth; they all three *knowing* that it was a forged note, and having been concerned together in putting off another note of the same sort, and in sharing among them the produce.

The counsel for the prisonets Soares and Atkinson objected on their behalf, that on the above evidence they were not guilty as charged by this indictment, not being present at the time the other prisoner uttered the note, nor so near as to be able to aid and assist him: that they could be charged only as *accessaries before* the fact. The jury found that the forged note was uttered by the prisoner Brighton by concert with the other two prisoners, and found them all three guilty. The prisoner Brighton was left for execution: but judgment was respited as to the other two; the counsel for the Bank desiring to have an opportunity of arguing it, if on consideration they should think the indictment maintainable against the two who were not present. On the report of this case to all the Judges in Easter term following, they had no doubt but that the two prisoners Soares and Atkinson were entitled to

to an acquittal on this indictment charging them as principals, they not being present at the time of the uttering; and therefore required the prosecutor to state on what grounds the contrary was meant to be argued: and no suggestion of the kind being made, the two prisoners were recommended to a pardon.

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The words of the stat. 5 Eliz. are *cause or assent to*: those of most of the subsequent statutes are *cause or procure*, or *act or assist in*, or *aid or assist in*: the Legislature seem to have varied the expression, in describing accessaries before, and aiders and abettors at the fact.

Vide Post. 130.

VIII. *Some general Rules touching the Manner in which the Offence is to be laid in the Indictment, and proved in Evidence.*

§ 53. *Indictment and evidence.* For other general matters *vide* the head of Indictments.

It is essentially necessary to an indictment for forgery that the instrument alleged to be forged should be set forth in words and figures; though there be no technical form of words for expressing that it is so set forth.

Mason's case, Northumberland Sum. Ass. 1792, MS. Buller J. and MS. Jud. *Indictment for publishing a forged instrument must set it forth in words and figures.* (*Vide* Lyon's case, 2 Leach, 696. S. P.)

Mr. Baron Thomson reported to the Judges that James Mason was tried and convicted before him, upon an indictment, which set forth that he, having in his custody and possession a certain inland bill of exchange, purporting to have been signed and subscribed with the name of one Robert Brown, and to bear date at, &c. and to be directed to certain persons by the name and description of E. H. W. and Co., thereby requiring them to pay to J. A. or order 91 l. 19s. 6d. two months after date, value received, and to place it to the account of certain persons by the name and description of Messrs. J. T. A. and Co., as advertised by the said R. B., and purporting to have been indorsed by J. A., together with a false, forged and counterfeited acceptance of the same bill of exchange, written upon the same bill, and purporting to have been written by the said E. H. for and on behalf of himself and his said company, did feloniously utter and publish as true the said false, forged, and counterfeited acceptance, with intent to defraud one J. W.; he the said defendant well knowing the said acceptance to be false, forged, and counterfeited. Judgment was respited on a doubt whether the indictment were sufficient, as it did not set forth the bill of exchange and the acceptance in their words and figures. The case was adjourned from Michaelmas term 1792 to Easter term 1793, and again to Trinity term

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term following, when all the Judges agreed that the indictment was bad.

A ſimilar determination was made in Lloyd's caſe (*a*) by all the Judges, upon an indictment for ſending a threatening letter, which omitted to ſet out the letter itſelf.

Eliz. Dunn's caſe, ante, f. 49. M. Crown Caſ. Reſ. 16. *Indictment ſtating* tenor *of a note ſuſtained by proof that the atteſtation of the witneſs and the words* M. W. her mark *were added after the priſoner's ſignature, though on the ſame occaſion.*

In Elizabeth Dunn's caſe ſome doubt was at firſt entertained by the Recorder whether the indictment were proved; becauſe it included the *atteſtation* of the witneſs, and the words "Mary Wallace her mark," in the tenor of the note charged to have been forged by the priſoner; the fact being that when the priſoner ſubſcribed the note, thoſe parts of it were not then written, and therefore ſhe had forged a note differing in the tenor of it from that charged in the indictment. But Mr. Baron Perrott and Mr. Juſtice Aſton, whom the Recorder conſulted, being of opinion that in this reſpect the indictment was well proved, the Recorder directed the jury upon the principal charge.

Rex v. Powell, O.B. May 1771, 2 MS. Sum. 346 (2 Blac. Rep. 787. & 1 Leach, 90. S. C.) *Setting out the inſtrument* as follows, *ſufficient, without naming the word* tenor. *It muſt be ſet out in* figures *as well as words.*

Robert Powell was indicted on the ſtat. 2 Geo. 2. for forging a certain receipt for money *as follows*; [ſetting forth the receipt in the words and figures] with intent to defraud Joſ. Sykes. Other counts laid the intent to defraud Taylor Barrow. The fact was, that Powell had perſonated Barrow in the ſale of 400l. Eaſt-India ſtock to Sykes, and had ſigned in his name the uſual receipt upon the transfer. Several objections were made in arreſt of judgment, which were argued before all the Judges at Serjeants' Inn on 30th of Nov. 1771. 1ſt, That the indictment ſhould have ſet forth the receipt according to "the tenor following," which the words "as follows" do not import. But reſolved by all the Judges that the words were to be taken the ſame as "according to the tenor following," or "in the words and "figures following;" and that if the proſecutor had failed in evidence in proving the receipt verbatim as laid, it would have been a fatal variance. 2dly, It was objected that in the receipt ſome of the ſums are in *figures*, which muſt not be in an indictment. But held that the receipt muſt be purſued exactly as it is, or it would be a variance. The priſoner was executed. It was laid ſimilarly in Hart's caſe.

Vide S. C. poſt, 1 ſeq. for another point.

Smith's caſe, Salk. 342.

After theſe authorities I cannot but queſtion Smith's caſe, E. 2 Ann., where it is ſaid in the report, that where a deed with the mark of J. S. was forged, the indictment need not ſet out the mark.

(*a*) Lloyd's caſe, Trin. term 1767, 2 MS. Sum. 329.

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Yet even the ſetting out the very ſubject matter which has been forged will not in all caſes be ſufficient, if it do not purport on the face of it and without reference to ſome other ſubject matter to be the thing prohibited to be forged: but the purport and meaning of the forgery with relation to ſuch other ſubject matter ſhould be expreſsly averred to be the thing ſo prohibited. Thus in Hunter's caſe before mentioned, who was indicted for forging a receipt to an aſſignment of a certain ſum in a navy bill, the tenor of which receipt ſet forth in the indictment merely conſiſted of the ſignature of the party; it was holden inſufficient, becauſe the mere ſigning of ſuch name unleſs connected with the previous matter did not purport on the face of it to be *a receipt:* but it ought to have been averred that ſuch navy bill, &c. together with ſuch ſignature did purport to be and was a receipt, &c. and that the priſoner did feloniouſly forge the ſame. And yet in Teſtick's caſe, where the tenor of the receipt ſet forth in the indictment was in theſe words, "Received the contents above by me," &c. it was holden ſufficient without ſetting forth the bill to which it referred, or connecting the receipt by averment with ſuch bill, but only averring it to be a receipt for money. But there by the very terms of the writing itſelf it purported to be a receipt for ſomething, though not ſpecifically for *money*, as it was averred to be, in order to bring it within the ſtatute 2 Geo. 2. c. 25. Again, in Taylor's caſe, which was for forging a receipt for 20l. due upon a bill of exchange in theſe words, "Received, W. Wilſon," the indictment ſet forth the bill for 20l., and then averred the forging of a receipt for the *ſaid* ſum of 20l.; but there was no averment that the writing forged together with the bill purported to be or was a receipt. But there alſo the forged writing in itſelf purported to be a receipt for ſomething.

Hunter's caſe, ante, f. 36.

Teſtick's caſe, ante, f. 36.

Taylor's caſe, ante, f. 47.

§ 54. *Literal variance.*

In ſetting forth however the tenor of an inſtrument a mere literal variance will not vitiate the indictment; as in the following caſe.

Hart's caſe, Worceſter Lent Aſſ. 1776, MS. Gould J. and MS. Crown Caſ. Reſ. 57. (1 Leach, 172. S. C.)

Thomas Hart was indicted for forging a bill of exchange, which the indictment ſet forth as follows, (that is to ſay,)

"No. 215. £.42:0. Hull, April 24th, 1775.

"Two months after date pleaſe to pay Mr. Thos.

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" Jones or order the ſum of forty-two pounds value " *received*, and place the ſame to account, &c.

" George Prince.

" Meſſrs. Halliday and Co. Bankers, London."

Received *for* reiceved *held not a material variance, being ſtill the ſame word. Vide* 2 Stra. 889.

The bill produced in evidence correſponded with that ſet forth in the indictment, except that it was written " value " reiceved." The priſoner was convicted; but judgment was reſpited upon the queſtion whether this literal variance were material, the words ſounding the ſame. And on the 7th of June 1776 all the Judges [De Grey C. J. and Willes J. abſent] were of opinion that the variance was not material, as it did not change the word. And by Gould J., if the word had been written *receiv'd* or *recev'd*, the *e* in the one inſtance and the *i* in the other muſt have been neceſſarily underſtood. In Rex v. Bear, Carth. 408. the Court agreed that where an inſtrument is laid in the indictment according to the tenor, &c. the very *words* laid, and not the ſubſtance and effect of them, muſt be proved. The queſtion then is as to the *word* and not the *letter*, unleſs by *addition*, *omiſſion*, or *alteration* it becomes another word; as in the Queen v. Drake, which proceeded upon its being a different word, *nor*, for *not*. And Powys J. ſays, in the report of the ſame caſe in Holt Rep. 350. that he did not mark this to be ſo ſmall a variance of a letter as if it happened *in falſe ſpelling* or *abbreviations*, which poſſibly might not hurt.

(R. v. Bear (*a*).)

(Reg. v. Drake,) Salk. 661.

§ 55. *Where true inſtrument in part altered.*

If any part of a true inſtrument be altered, the indictment may lay it to be a forgery of the whole inſtrument.

Dawſon's caſe, Mich. 3 Geo. 1. Ld. King's MS. cited from Serjt. Forſter's MS. (1 Stra. 19. S.C.)

The priſoner altered the figure of 2 in a bank note to 5 (220l. to 520l.); and ten Judges agreed that this was forging and counterfeiting a bank note; forgery being the alteration of a deed or writing in a material part to the prejudice of another, as well as when the whole deed or writing is forged; and that 3 Inſt. 171, 172. was not law in this reſpect; for non aſſumpſit might be pleaded to ſuch a note.

(*a*) In Lord Holt's MS. note of this caſe, which is very fully reported, it is ſtated generally, that laying an indictment for a libel juxta *tenorem* ſequentem imports that the indictment ſets forth the *words* of the libel, and not merely the *effect* of it. The indictment there ſet forth the libel *juxta tenorem et ad effectum ſequentem.*

John

Ch. XIX. § 55. *Indictment and evidence.—Alteration of true bill.*

Teague's caſe, Hereford Sum. Aſſ. 1802, cur. Le Blanc J. MS. Jud. *One who alters a true inſtrument may be indicted capitally on the ſtat.* 7 Geo. 2. c. 22. *for forging the inſtrument (viz. a bill of exchange); though the ſtatute has the word* alter *as well as* forge; *for every alteration of a true inſtrument makes it a forgery of the whole; and it is no leſs a forgery though the inſtrument altered (a* 10*l. bill of exchange) had been re-iſſued before three times, without being re-ſtamped; and was therefore not available in a civil action at the time of ſuch alteration.*

John Teague was tried on an indictment charging him with feloniouſly, &c. *making, forging, and counterfeiting* a certain bill of exchange as follows, viz. " No. 2-621. £.50. " Brecon, 24th June 1799. On demand pay to the bearer " £.50. value received. For Wilkins, Jeffreys, Wilkins, " and Williams. (Signed) Walter Jefferies," (and addreſſed to) " Meſſrs. Miles, Vaughan, and Co., Bankers, " Briſtol;" with intent to defraud W. W. &c. againſt the ſtatute. There was a ſecond count for uttering the ſame knowing it to be forged. Two other ſimilar counts ſtated the intent to be to defraud T. Powell. It appeared that the bill was drawn and iſſued by Walter Jeffreys, one of the partners of the houſe, for 10*l. only*, on a *ſixteen-penny* ſtamp, which is the proper ſtamp for *promiſſory notes* of 10l. which are to be re-iſſued after they ſhall have been paid. That this bill of exchange had been re-iſſued three times as a 10l. bill. That it had been altered by changing the 10l. into 50l. in the part of the bill where the ſum is expreſſed in figures, as alſo in the part where it is expreſſed in letters; and ſo altered had been paſſed by the priſoner to Thomas Powell. The jury found the priſoner guilty of uttering it, knowing it to be forged: but judgment was reſpited on two objections made by the priſoner's counſel; firſt, that this being a forgery by *altering* the ſum in a *genuine* bill, it ſhould have been ſo ſtated in the indictment; the ſtat. 7 Geo. 2. c. 22. making it a diſtinct offence *to alter*, viz. " If any perſon " ſhall falſely make, *alter*, forge or counterfeit, or utter or " publiſh as true any *falſe*, *altered*, forged or counterfeited " acceptance of any bill of exchange," &c. Secondly, that the act permitting the re-iſſuing of *notes* after the ſame ſhall have been paid relates only to *promiſſory notes*, but this is *a bill of exchange*, and could not be legally re-iſſued without a freſh ſtamp; and having been re-iſſued three times before it was altered, it was not a valid bill for 10l. at the time it was altered to 50l., and therefore it was not that ſpecies of forgery which conſiſts in altering a true and valid bill.

At a conference of the Judges in Michaelmas term following, they all held the conviction right. For that the queſtion as to the *alteration* of the bill was governed by the caſe of the King v. Dawſon abovementioned: and every alteration of a true inſtrument for ſuch a purpoſe made it when altered a

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Vide the cases before cited, p. 955, &c.

forgery of the whole inſtrument. That as to the objection on the ſtamp, it had been decided that the ſtamp acts had no relation to the queſtion of forgery: but that ſuppoſing the inſtrument forged to be ſuch on the face of it as would be valid provided it had a proper ſtamp, the offence was complete.

Ante, f. 36.

Poſt. p. 986.

It has been more uſual however hitherto to lay forgeries of this ſort, as was done in Harriſon's caſe before, and in Elſeworth's caſe after mentioned, by ſtating the particular alteration, at leaſt in one count.

§ 56. *Purport.*

Though it be doubtleſs ſufficient to charge that the defendant forged ſuch an inſtrument, naming it, and ſetting forth the tenor; yet certainly the laying it to be *a paper writing*, &c. *purporting* to be ſuch an inſtrument (as the ſtatute on which the indictment is framed deſcribes) is good; and indeed in ſtrictneſs of language there may be more propriety in ſo laying it, conſidering that the purpoſe of the indictment is to diſaffirm the reality of the inſtrument.

Birch and Martin's caſe, O. B. Sept. 1771, 2 Blac Rep. 790. 2 MS. Sum 347. *Indictment for forging* a paper writing, purporting to be the will *of another, in good.*

Birch and Martin were indicted and convicted of publiſhing, "as a true will, a certain falſe, forged and counterfeited "*paper writing, purporting to be the laſt will* of Sir Andrew "Chadwick," &c.; the tenor of which was ſet out. The matter was debated before all the Judges at Serjeants' Inn on the 30th of November 1771, when it was objected, 1ſt, that it ſhould have been laid that they forged a certain *will*, and not *a paper writing purporting*, &c.; for the ſtatute ſays, "ſhall forge *a will*." But a variety of precedents being produced in which it was laid in that manner, the Judges held it to be good either way. 2dly, It was objected that it was not ſtated that it purported to be atteſted by three witneſſes: but to this it was anſwered and holden, that as the will was ſet forth *in hæc verba*, and the three names appeared as witneſſes, that was ſufficient. 3dly, That it was only laid, "they knowing it to be forged," &c.; whereas it ſhould have been that "they and each of them knowing," &c. ſed non allocatur. And the priſoners were executed.

Poſt, 983.

But in all caſes the word *purport* imports what appears *on the face of the inſtrument;* for want of attending to which many indictments have been ſet aſide.

In

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Jones's caſe, ante, p. 883.

In Jones's caſe in 1779, the inſtrument was laid in ſome counts to be *a paper writing purporting to be a bank note:* but the Court were of opinion, that as it did not purport on the face of it to be a bank note, the counts could not be ſupported; and that the repreſentation of the priſoner at the time, who paſſed it off as ſuch, could not vary the purport of the inſtrument itſelf.

Reading's caſe, O B. Sept. 1793, MS. Buller J. and MS. Jud. Ante, 952. (2 Leach, 672. S. C.) *Indictment charging that defendant being poſſeſſed of a bill of exchange,* purporting *to be directed to* J. King *by the name, &c. of* J. Ring, *forged the acceptance of the ſaid* J. King, *it bad; for* Ring *does not* purport *to be* King.

Jeremiah Reading was indicted, for that he having in his cuſtody and poſſeſſion a certain bill of exchange with the name John White thereunto ſubſcribed, *purporting* to be ſigned by one John White, and *to be directed to one John King, by the name and deſcription of one John Ring Eſq.*, Berkley-ſtreet, Portman-ſquare, London, for the payment of the ſum of 80l. to him the ſaid defendant, or order, forty days after date, &c., which ſaid bill of exchange is to the tenor and effect following:

"Briſtol, Feb. 21ſt, 1792.

"Forty days after date pay to Mr. Jeremiah Reading, or "order, the ſum of £. 80. for value received, and place it "to the account of "John White.

"To John Ring Eſq. Berkley-ſt., Portman-ſquare, Lond."

he the ſaid defendant on, &c. did falſely make, forge and counterfeit, &c. upon the back of the ſaid bill of exchange an acceptance in writing, *purporting to be the acceptance of the ſaid John King*, of the ſaid bill of exchange, which ſaid falſe, forged and counterfeited acceptance is to the tenor and effect following, viz. "John King, A." with intent to defraud W. D. &c. There was a ſecond count for uttering the ſame.

It was proved that the priſoner negotiated the bill, which was directed to John *Ring*, and accepted on the back of it by John *King;* and that he told Mr. Dalby the proſecutor who advanced money upon it, that Mr. King was a gentleman living in Berkley-ſtreet, Portman ſquare, and a man of opulence. It appeared in evidence that there was no perſon of that name living there. The priſoner was found guilty; but Mr. Juſtice Groſe reſerved the caſe for the opinion of the Judges, whether the bill of exchange were properly deſcribed in the indictment, and whether the offence laid in it were proved. In Hilary term 1794 judgment was arreſted,

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O B. Feb. 1794, *vide* 2 Leach, 674.

because the bill did not in fact *purport* to be drawn on J. *King*, as laid in the indictment.

Buller J. in delivering the opinion of the Judges afterwards at the O. B. observed, that the indictment as drawn was absurd and repugnant in itself; for the name and description of one person or thing could not purport to be another. That the drawer of the indictment was led into the blunder by not recollecting that the bill, though drawn on John Ring, might have been accepted by John King; as if he had accepted it for the honour of the drawer, &c. But he observed, that the judgment being arrested for the informality of the record, the prisoner might be again indicted for the offence he had been guilty of.

Gillchrist's case, O. B. 1795, MS. Buller J. and MS. Jud. (2 Leach. 753. S. C.) *The word* purport *imports what appears on the face of the instrument. Therefore indictment for forging an order for payment of money, stating that it* purported *to be directed to* A. B. C. *by the names of* A. C. D. *and setting forth the tenor as directed to* A. C. D., *held bad.*

And lastly, in the case of one Anselmo Robinson Gillchrist, who was indicted for forging "*a paper writing, purporting to be an order for payment of money, dated* 11*th September* 1794, with the name Thos. Exon thereunto subscribed, *purporting* to have been signed by Thos. Exon, clerk, and *to be directed to George Lord Kinnard*, Wm. Moreland, and Thos. Hammersley of, &c. bankers and partners, *by the name and description of Messrs. Ranson, Moreland, and Hammersley*, for the payment of the sum of 10l. &c.;" the tenor of which said false writing, &c. is as follows, viz.

"Messrs. Ranson, Moreland, and Hammersley, please
"to pay to Mr. Brooks, or bearer, the sum of Ten
"Pounds, for
"Sept. 11th, 1794. Thos. Exon."

with intent to defraud the said Geo. Ld. K. &c. There was a second count for uttering it; and other counts charging an intent to defraud other persons.

An objection was made in arrest of judgment, that the direction of the bill was improperly described in the indictment; and the above case of Reading was relied on. And upon a conference of the Judges in Easter term 1795, it was resolved by ten Judges present, that the judgment should be arrested accordingly, because the word *purport* imports what appears on the face of the instrument. It means the *apparent* and not the *legal* import. And that this could not purport to be directed to Lord Kinnard, because his name did not appear on the face of the bill. And Jones's case and Reading's case were referred to.

Buller

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Buller J., who delivered their opinion at the O. B. in July following, observed, that old cases had given rise to much learning and argument on the words *purport* and *tenor*, and on the necessity of using one or other of those terms; but that no judicial determination that he was aware of had ever required that the *purport* and *tenor* should both be stated in any case whatever. That the purport of an instrument meant the substance of it, as it appeared on the face of the instrument to every eye which read it. The tenor of an instrument meant the exact copy of it; and where that was stated the purport of it must necessarily appear. That the forms of indictments for forgery had differed in different instances, and of late years had become more complicated than they used to be, and in his opinion very improperly so. In one, which he had seen, it was stated that the prisoner forged a false writing in the names of J. S. &c. *bearing the form of a warrant of attorney, which said writing follows in these words, &c.* If an indictment stated merely that the prisoner forged a paper writing to the tenor and effect following, and set out the instrument verbatim, which on the face of it appeared to be a bill of exchange or other instrument within the statute; as then advised, he saw no objection to it: and at all events if it stated that he forged a paper writing in the name of T. E., purporting to be a bill of exchange, to the tenor and effect following, and then set out the bill; he thought it would be good and unexceptionable: for the words "purporting to be a bill of exchange," could only be necessary for the purpose of shewing which of the instruments mentioned in the statute the prisoner had forged; and in order to do that it could not be necessary under the word *purport* to state all the contents of the bill. The bill itself shewed all those things, and the law had required that an exact copy of the bill should be stated upon the indictment, in order that the Court might see upon the record that it was in form such an instrument as fell within the words and meaning of the statute. That the blunder in this case had arisen from the circumstance that Lord Kinnard and Messrs. Moreland and Hammersley had carried on the business of bankers under the firm of Messrs. Ranson, Moreland, and Hammersley: and the person who drew this indictment, forgetting that it was wholly immaterial whe-

Ante, 980.

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ther such a firm as Ranson, Moreland, and Hammersley ever existed, or who were the persons who constituted that firm, had taken great pains to shew that the bill drawn on Ranson, Moreland, and Hammersley, was drawn on Lord Kinnaird, Moreland, and Hammersley: and in order to do that, he had averred that the bill *purported* to be drawn on Lord Kinnaird, Moreland, and Hammersley. But it purported that alone which appeared on the face of the bill: and upon the face of the bill Lord Kinnaird's name was not mentioned; and therefore it did not purport to be drawn on him. The consequence was, that the indictment was repugnant and defective, and the prisoner was discharged from it. But as the objection went only to the form of the indictment and not to the merits of the case, he was remanded to prison till the end of the sessions, that the prosecutor might be at liberty to prefer another and a better indictment against him if he thought fit.

Edsall's case, Southampton Sp. Ass. 1798, cor. Thomson B. MS. Jud. *ad idem.*

Again, in Edsall's case, who was convicted on an indictment which charged him with forging a certain paper writing, *purporting* to be an inland bill of exchange, and to be drawn by one C. W. Wright, bearing date, Winchester, 14th Nov. 1796, and to be *directed* to *Richard Down, Henry Thornton, John Freer, and John Cornwall the younger*, bankers, London, by the name and description of Messrs. Down, Thornton, and Co. bankers, London, requiring them ten days after date to pay to Mr. Wm. Simmons or order 81. 10s. &c. and then setting out the tenor by which the bill appeared, as the fact really was, to be directed "to *Messrs. Down,* "*Thornton, and Co.*, bankers, London." The Judges, upon reference to them, held the indictment bad, upon the authority of Gilchrist's case; though Buller J. disapproved much of that determination; which however he admitted could not be distinguished from the present case (*a*).

Trin. Term, 1798.

Isaac

(*a*) *Vide* Reeve's case, O. B. Jan. 1708, 2 Leach, 933. the consideration of which was pending before the Judges when the last mentioned case was referred for their opinion. One of the objections there was that the indictment charged that the prisoner forged a certain scrip receipt, "with the name C. Olier thereunto "subscribed, *purporting* to have been signed by one *Christopher* Olier," &c. whereas C. Olier did not necessarily purport to be *Christopher* Olier, but might be Charles, &c. The objection was for the present over-ruled by the Court, (consisting of Heath and Lawrence Js. and Thomson B.) thinking there was a shade of distinction between this and Gilchrist's case; there being no such absolute repugnance here upon the face of the indictment as in that case; but they reserved the point for the opinion of the Judges. But it does not appear what that opinion was; for there were other objections taken to the conviction; and finally the prisoner was capitally convicted on another indictment pending for a similar offence.

(*a*) The Latin words formerly in use were *fabricavit et contrafecit. Vide* Mariot's case, 2 Ley. 221. and Dawson's case, 1 Stra. 19.

Ch. XIX. § 56. *Indictment and evidence. Purport.*

But where Isaac Carter was indicted for forging and knowingly uttering a bill of exchange, described in the indictment to be "a certain bill of exchange requiring certain persons by "the name and description of Messrs. Down, &c. 20 days after "date to pay to the order of R. Thomson the sum of 315l. "value received, *and signed by Henry Hutchinson* for T., G., "T., and H. Hutchinson, which bill of exchange so falsely "made and counterfeited is as follows, (setting out the bill) "&c. with intent to defraud G. Hutchinson," &c. On proof that the signature to the bill "*Henry Hutchinson*" was a forgery, it was objected that the indictment averring it to have been *signed by him*, (and not merely that it *purported* to have been signed by him), which was a substantial allegation, was disproved: and so the Judges held on reference to them, after conviction.

Carter's case, York Sum. Ass. 1800, cor. Graham B. MS. Jud. *An indictment for forging a bill of exchange, stating it to be signed by* H. H., *instead of* purporting *only to be so signed, the signature itself being a forgery, is bad.*

§ 57. *What technical words at common law.*

It is usual to charge that the party *falsely* forged and counterfeited, &c.; but it is said to be enough to allege only that he *forged* or *counterfeited* (*a*), without adding *falsely*, which is sufficiently implied in either of those terms; particularly in the verb to *forge*, which as was first mentioned is always taken in an evil sense in our law. In like manner as it was adjudged in Warbell's case, 2 Rol. Abr. 82. that where a fact laid in the indictment appears plainly to be unlawful, there is no need to say *illicitè*.

Savage's case, Sty. 12. Ante, f. 1.

§ 58. *Indictment should bring the offence within the words of a statute.*

It is a general rule applicable to this as to other offences, that an indictment on a statute must in general set forth the charge in the very words of the statute describing the offence; for equivalent words are not sufficient. Besides which, as was before shewn, the instrument itself must be set forth, that it may appear to the Court to be what it is alleged to be.

2 Hawk. ch. 25. s. 110. 1 Hawk. ch. 70. s. 26. 3 Inst. 13.

But a superfluous description does not appear to be objectionable; as in John Dunnett's case, who was charged

Dunnett's case, O.B. Dec. 1792, MS. Buller J. and MS. Jud.

with

Ch. XIX. § 58. *Indictment and evidence, on ſtatutes.*

Indictment for forging a bond, laying it to be a bond AND writing obligatory, *is good upon the ſtat.* 2 Geo. 2. c. 25., *though both terms be uſed in the ſtatute; a bond being a writing obligatory, though the converſe do not hold generally.*

with uttering and publiſhing as true "a certain falſe, "forged and counterfeited *bond and writing obligatory,*" purporting to have been ſigned by P. R. &c. as follows: "Know all men, that we P. R., W. G., and W. L., of L., "are held and firmly bound to J. Dunnett of, &c. in 2510l. "to be paid to the ſaid J. D., &c. by us, &c.; therefore we "are firmly bounden to the ſaid J. D. in the ſaid ſum, &c." dated 20th November 1790, &c., ſigned P. R., &c., and ſealed and delivered, &c. knowing it to be forged, &c. The indictment was founded on the ſtat. 2 Geo. 2. c. 25. ſ. 1. which has both deſcriptions, *bond*, and *writing obligatory*: and the objection taken was, that as the act of parliament in enumerating the ſeveral inſtruments, the forgery of which it prohibits, mentions both; the indictment ought to have deſcribed the offence more particularly either as a forgery of the one or the other, and ſhould not have called it *a bond and writing obligatory;* but in the preſent caſe ſhould have deſcribed the inſtrument as a *writing obligatory*, and not as a *bond;* having neither a defeaſance nor penalty annexed to it: and that although a bond were a writing obligatory, yet that the converſe did not hold; therefore they were not convertible terms. After conviction, judgment was reſpited to take the opinion of the Judges on this point; who in Eaſter term 1793 held that the inſtrument was well deſcribed, and the conviction proper.

Elſworth's caſe, York Lent Aſſ. 1780, cor. Willes J. MS. Buller J. and MS. Crown Caſ. Ref. *Indictment on ſtat.* 2 Geo. 2. c. 25. *charging that the priſoner feloniouſly* altered *a bill of exchange,* by falſely making, forging, and adding *a cypher, &c held good; though the words of the ſtatute are* "if "any perſon ſhall "falſely make, "or forge, coun- "terfeit," *&c.*

An indictment ſtated, that an inland bill of exchange was drawn on the 23d of November, 20 Geo. 3. by Thomas Leach, and directed to Meſſrs. Mildred and Walker, bankers, London, requiring them to pay to J. Harrock or order 8l. two months after date, for value received (ſetting out the tenor of the bill). That Thomas Elſeworth (the priſoner) on, &c. the ſaid bill of exchange did feloniouſly *alter* and cauſe to be altered *by falſely making, forging, and adding* a cypher 0, to the letter and figure £.8 in the ſaid bill, and alſo by *falſely making, forging, and adding* the letter *y* to the word *eight* in the ſaid bill mentioned, whereby the letter and figure £.8 before written in the ſaid bill became £.80, and the ſaid word *eight* before written in the ſaid bill became *eighty;* by reaſon and means of which ſaid forgeries and additions the ſaid bill of exchange, ſo drawn as aforeſaid for eight pounds, became and purported to be a bill of exchange

Ch. XIX. § 58. *Indictment and evidence, on ſtatutes.*

for eighty pounds; with intent to defraud Henry Garforth, &c. The ſecond count ſtated, that certain perſons unknown altered the bill (in the manner ſtated in the firſt count), and that the defendant on, &c. had in his cuſtody and poſſeſſion the ſaid falſe, forged, and altered bill, and did feloniouſly utter and publiſh the ſame as true, with the like intent, knowing it to be forged, &c.

The priſoner being convicted, it was moved in arreſt of judgment, that as this was an indictment on the ſtat. 2 Geo. 2. c. 25. ſ. 1. the words of it muſt be ſtrictly purſued in charging the forgery; which words were, "if any "perſon ſhall falſely make, forge, or counterfeit;" (whereas the forgery alleged was, that perſons unknown did alter and cauſe to be altered, *by falſely making, forging, and adding* the cypher 0 to the letter and figure £.8 &c.); that it ought to have been charged that they *falſely made, forged, and counterfeited* the ſaid bill of exchange by falſely altering and adding, &c.; and that if the forgery itſelf were not alleged with ſufficient preciſion, the charge of uttering and publiſhing was alſo defective; becauſe the allegation was, that he feloniouſly uttered and publiſhed the *ſaid* falſe bill of exchange with reference to the preceding charge of forgery. That ſeveral of the ſtatutes againſt forgery had the word *alter* in them, *viz.* 8 & 9 W. 3. c. 20. *altering* or raſing the indorſement on any bank bill. 9 Ann. c. 21. ſ. 57. forging, counterfeiting, or *altering* a bond of the South-ſea company. 11 Geo. 1. c. 9. ſ. 6. *altering*, forging, or counterfeiting any bank bill; and ſtat. 15 Geo. 2. c. 13. forging, counterfeiting, or *altering* any bank bill of exchange. But that the word *alter* was not uſed in the ſtatute on which this indictment was founded. That in framing indictments on ſtatutes the conſtant practice had been in the charging part to follow ſtrictly the words of the acts, and ſo were the precedents. The counſel for the Crown admitted that this indictment was rather informally drawn; but contended that there was ſufficient alleged for the conviction of the priſoner on the ſecond count. That the falſe and fraudulent alteration of a writing to the prejudice of another man's right, was a ſufficient deſcription of a forgery at common law; and that the uttering or publiſhing, of which the priſoner was found guilty, was charged in the preciſe words of the ſtatute,

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viz. that he felonioufly uttered and publiſhed a falſe, forged, altered, and counterfeited, &c. bill of exchange as true, knowing the ſame to be falſe, &c. Execution being reſpited by Willes J. in order to take the opinion of the Judges; on the 12th of April 1780 all held that the indictment was good; and the offence ſufficiently proved upon the ſecond count: for there was no difference in ſubſtance or in the nature of the charge, whether the indictment were for felonioufly altering by falſely making and forging, or for felonioufly making and forging by falſely altering, &c.

Vide S. C. poſt, 989. for another objection.

Crutchfield's caſe, ante, 895.

So in Crutchfield's caſe, who was indicted for forging a ſtamp on foreign muſlins; the indictment, ſtating the duty to be chargeable *for, on, and in reſpect of* foreign muſlin, was holden good; though the words of the ſtatute in the clauſe impoſing the duty are *for and upon*, in other clauſes *for*, in others *on*, in others *upon*.

Stocker's caſe, Salk. 342. 5 Mod. 137. Walcot's caſe, Holt's Rep. 345.

But where the indictment ſtated that the defendant forged *or* cauſed to be forged a bill of lading, it was holden bad for uncertainty.

§ 59. *Intent to defraud*, ante, 854.

The intent to defraud, which has been touched upon before, muſt be ſtated in the indictment, and pointed at the particular perſon or perſons againſt whom it is meditated; and the proof muſt tally with ſuch averment, otherwiſe the priſoner will be entitled to an acquittal.

Rex v. Harriſon, O. B. 1777, MS. Buller J. (1 Leach, 215. S. C.) Ante, f. 36. S.C. on another point.

Harriſon was indicted for forging a receipt upon the ſtat. 7 Geo. 2. which makes it felony to forge ſuch receipt with intent to defraud *any perſon*. Some of the counts in the indictment laid the offence to be with intent to defraud the London Aſſurance Company and the Bank of England alternately. It was objected, that a company or corporation was not a perſon: and that the Legiſlature had ſo decided by paſſing the ſtat. 31 Geo. 2. c. 22. ſ. 78. which after reciting that doubts had ariſen whether the word *perſon* in the ſtat. 2 Geo. 2. c. 25. extended to corporations or companies, enacted, that they who were convicted of the offences in that ſtatute ſhould have the ſame puniſhment if they committed them againſt a company or corporation as if againſt any perſon: but it did not mention the offences compriſed in the ſtat. 7 Geo. 2. The Court reſerved this point for the opinion of all the Judges, who decided in favour of the priſoner,

ſoner; and he was diſcharged. Shortly after the ſtat. 18 Geo. 3. c. 18. was paſſed to remedy this defect.

Ch. XIX. § 59. *Indictment and evidence. Intent to defraud.*

But the indictment need not ſtate the manner in which the party is to be defrauded, for that is matter of evidence.

Manner of defrauding.

In Powell's caſe one of the objections was, that it was not averred that T. Barrow, whoſe name appeared to be ſigned to the forged receipt, meant Taylor Barrow, with intent to defraud whom the forgery was laid in one of the counts. That the manner in which the forged receipt of ſtock was to operate in prejudice of Mr. Barrow ought to have been averred in the indictment; which ſhould have ſtated that Taylor Barrow was the proprietor of ſo much ſtock; that the priſoner perſonated him in the ſale and transfer, &c., and transferred it to ſuch a perſon in his name, &c.; and it was not ſufficient merely to ſtate that the forgery was committed with intent to defraud T. B. generally. But it was holden ſufficient by the Judges that the offence was deſcribed in the words of the act: and that whether it were or were not meant to defraud Taylor Barrow was matter of evidence, which the jury had found. Beſides there was a ſecond count, wherein it was laid with intent to defraud one Sykes. If therefore there were no ſuch perſon as Taylor Barrow, or if he had no ſtock, yet as the receipt had in form the conſtituent parts of a receipt for the transfer of Eaſt India ſtock, that was ſufficient.

Powell's caſe, ante, f. 53.

Elſworth's caſe, ante, f. 58. *In Indictment for uttering and publiſhing a forged bill of exchange it need not be averred that the bill was tendered to the party, with intent to defraud whom the offence is laid to have been committed, nor in what other manner he could be defrauded, though his name did not appear on the bill; for that is matter of evidence.*

So in Elſworth's caſe before mentioned, Buller J. upon the conference ſtarted a ſimilar objection, that it was not ſtated that the bill was uttered or tendered to the perſons whom it was laid the priſoner meant to defraud; and therefore that it did not appear to the Court on the face of the indictment that the tranſaction was ſuch as thoſe perſons could be defrauded by it; which always was the caſe where the name of a drawer, acceptor, or indorſer is forged. But all the other Judges held that the indictment was good alſo in this reſpect; for it was ſufficient to purſue the words of the act which conſtitute the offence, and it was matter of evidence whether the priſoner intended to defraud the perſons named by tendering the bill in payment to them, or how otherwiſe.

As

Ch. XIX. § 60. *Indictment and evidence. Perſons defrauded.*

§ 60. *Deſcription of perſons defrauded, &c.*

R. v. Lovell, O.B. Sept. 1782, MS. Gould and Buller Js. MS. Crown Caſ. Ref. and MS. Jud. (1 Leach, 282. S. C.) *An indictment ſtating that a forged order was directed to* Meſſrs. Drummond and Company, *by the name of, &c. is ſufficiently certain.*

As to the manner of deſcribing the perſons againſt whom the forgery is intended to operate, the following caſes have occurred.

Henry Lovell was indicted for forging an order for payment of money, purporting, as the indictment deſcribed, to be an order under the hand of Henry Harvey Aſton, and directed to *Meſſrs. Drummond and Company*, Charing-croſs, by the name of Mr. Drummond, Charing-croſs, by which ſaid order, &c. *the ſaid Meſſrs. Drummond and Company* were required to pay the bearer, or order, the ſum of £. 10:10; which ſaid order, &c. is as follows, viz.

" Mr. Drummond, Charing-croſs. 25th Auguſt 1782.

" Pleaſe to pay the bearer, or order, on demand £. 10:10

" and place it to account, per me, H. H. Aſton."

with intent to defraud H. H. Aſton. The ſecond count was for uttering the ſaid order, and laid like the firſt. The third and fourth counts were like the preceding ones, but laid with intent to defraud Robert Drummond and the other partners in the houſe by name. There were other counts, laid as the firſt in manner above ſpecified. After conviction a motion was made in arreſt of judgment, that the indictment charged the note to be drawn on *Drummond and Company* by the name of *Mr. Drummond, Charing-croſs*, whereas the names of the reſpective partners ought to have been mentioned, inſtead of giving the ſhort deſcription of *Drummond and Company:* and it was alleged that on ſearch of precedents none could be found of an indictment drawn in this form. At a conference of the Judges on 6th Nov. 1782, they all held the indictment good. The queſtion was, whether any perſon or perſons were deſcribed by the words, " *Meſſrs. Drummond and Company*," or whether they were totally unintelligible, and a deſcription of nobody. The Judges ſaid they muſt underſtand them as every body elſe did, namely, as meaning the partners in the partnerſhip in the banking houſe, it being a ſenſible and certain pointing out of the perſons intended by the draft; and it was not neceſſary to ſtate by name who thoſe partners were in that part of the indictment. Gould J. ſaid, that to require the particularizing of all the partners would be of dangerous conſequence to ſuch proſecutions; ſome of them might not be known. And it alſo ſeemed to Buller J. and other Judges

Judges that if the words " Meſſrs. Drummond and Com- " pany, Charing-croſs, by the name of," had been omitted, and the indictment had only ſtated, according to the fact, that the bill was directed to Mr. Drummond, Charing-croſs, it would have been ſufficient: and as the indictment was framed, the only queſtion was, whether Drummond and Company were meant by the priſoner, which was eſtabliſhed by the verdict.

Ch. XIX. § 60. *Indictment and evidence. Perſons defrauded.*

Jones and Palmer's caſe, O.B. 1785, cor. Eyre B. 1 Leach, 405. *Indictment for forging an indenture of apprenticeſhip and a receipt for money, with intent to defraud A. B. C., &c. the ſtewards of the feaſt of the Sons of the Clergy ſuſtained by proof that the ſtewards had the diſpoſition of a charitable fund raiſed by voluntary contribution, out of which the apprentice fee ſought to be obtained by the forgery was to be taken.* Vide Thomas's caſe, ante, f. 36.

Mary Jones and Henry Palmer were indicted for forging an indenture of apprenticeſhip, and alſo a receipt for money, with intent to defraud A. B., &c. *the ſtewards of the feaſt of the ſons of the clergy.* The charitable fund of the ſons of the clergy is raiſed by voluntary contributions, and allotted by the ſecretary equally among all the ſtewards, to be diſpoſed of by them to the widows and children of deceaſed clergymen, according to their diſcretion. The priſoner Jones was a clergyman's widow, and pretending by means of theſe indentures and the receipt indorſed thereon that ſhe had placed her ſon as an apprentice, ſhe obtained in concert with the other priſoner an order from one of the ſtewards on the treaſurer of the ſociety for 20l. as an apprentice fee. The forgeries were clearly proved, and the priſoners found guilty. But it was ſubmitted that the offence amounted only to a miſdemeanor at common law, and that this was not ſuch a ſpecies of property as fell within any of the acts relating to forgery. But by Eyre B. forgery is the falſe making of an inſtrument, which purports on the face of it to be good and valid for the purpoſes for which it was created, with a deſign to defraud any perſon or perſons. The ſtatutes 31 Geo. 2. c. 22. ſ. 78. and the ſtat. 18 Geo. 3. c. 18. were made to prevent any doubt whether the aggregate members of a corporation, which is a body politic, were included under the words " *perſon or perſons;*" for where there is an incorporation, the money becomes the property of the whole body, and not of the individual members who compoſe it. But in the preſent caſe the ſeveral ſtewards were the abſolute owners of their reſpective ſhares of the fund: it was their money, put into their hands upon a truſt, and if they had ſunk it improperly or paid it wrongfully, they would perhaps be anſwerable: but unqueſtionably it was their money as againſt all the world, except the ſubſcribers.

It

Ch. XIX. § 61. *Indictment and evidence.*

§ 61. *Proof of the act of forgery within the county*

It ſeldom happens that direct proof can be given of the very act of forgery; and where the forger is not the utterer, a difficulty has ſometimes occurred as to what ſhall be deemed ſufficient evidence of the fact of forging *within the county laid*, a difficulty which does not occur upon the iſſue of non aſſumpſit, in an action upon ſuch an inſtrument, the action being tranſitory.

Parkes' and Brown's caſe, ante, f. 49. MS. Jud. *Finding a note forged by* A. *in the hands of* B. *who uttered it in the county of* M., *in which alſo* A. *was, though not preſent at the fact of the uttering, is no evidence of the note having been forged by* A. in that county; *though other notes of the ſame kind were there found upon him.*

Parkes and Brown, whoſe caſe was before noted for another point, were indicted, the firſt for forging, the other for uttering a forged promiſſory note for five guineas. There was no doubt of Parkes having forged the note in the ſame name as the other priſoner, and with his concurrence, but pretended by the latter when he uttered it to be the note of his brother, whom he repreſented as a man of fortune in a lucrative employment. The venue was laid in Middleſex, but the only evidence which was offered to ſhew that the forgery was committed there, was that Brown, between whom and Parkes an intimate connexion was proved to exiſt, had uttered it in Middleſex, (Parkes not being preſent at the time, nor for aught appeared cognizant of the fact); and that upwards of forty of the ſame ſort of five guinea notes in blank, without any ſignature, were found upon Parkes in the ſame county; all of which notes as well as the one in queſtion were dated "Ringhton, Salop;" and alſo a receipt was found upon Parkes under cover, addreſſed to Brown, for 21. for 4 five guinea bills. Both the priſoners were convicted. But after argument in the Exchequer-chamber a majority of the Judges held the conviction wrong as to Parkes; there being no evidence that the forgery was committed by him *in Middleſex*, where it was laid. For they thought that the bare fact of the note being uttered there by the other priſoner, taking him even to be an accomplice, was no evidence of the forgery itſelf having been committed there. But ſome of the Judges were not ſatisfied with this opinion, thinking that the fact of finding the forged inſtrument in the county, in which alſo it appeared that the forger himſelf was, was evidence, in the abſence of other proof, of the fact of the forgery having been there committed. The majority agreed that it was a queſtion of evidence for the jury; but thought that there was no proof in this caſe to warrant the concluſion.

IX. *As*

Ch. XIX. § 62. *Witneſſes.*

IX. *As to the Competency of Witneſſes to the Fact of the Forgery.*

§ 62. *Witneſſes.* Watt's caſe, Hard. 332. pl. 7. 3 Salk. 172. pl. 4. *Vi.* 2 MS. Sum. 346.

There is ſome difficulty upon this point, not in aſcertaining the practice which has long prevailed; for that has been uniform in rejecting every witneſs who is intereſted, at the time of his examination, in ſetting aſide the inſtrument alleged to be forged, upon which if genuine he would be liable to be ſued; but in reconciling that practice in all caſes with the principle laid down in Abrahams v. Bunn, Bent v. Baker, Smith v. Prager, and that claſs of caſes, by which it is now ſettled as a general rule that unleſs the witneſs is to derive an immediate advantage from the verdict, if favourable, or can give it in evidence on his own behalf in any other ſuit to which he is a party, the objection of intereſt only goes to his credit and not to his competency. The rules of evidence are ſaid to be the ſame in criminal as in civil caſes; and as the object muſt be the ſame in both, to arrive at truth, there is nothing in reaſon to eſtabliſh a difference, unleſs where the neceſſity of the caſe furniſhes an exception in admitting the party injured to give evidence againſt an offender from whoſe conviction he is to derive ſome advantage to himſelf, ne maleficia remaneant impunita. That reaſon however does not hold in the preſent caſe for the admiſſibility of the witneſs whoſe hand-writing has been forged; for although he muſt neceſſarily know with more certainty than any other, whether the inſtrument be or be not of his own making; yet as in many inſtances he has a direct intereſt in ſetting it aſide, and as the fact of his hand-writing may be aſcertained with reaſonable certainty by others, the common and primary rule of law prevails, that where ſuch intereſt appears the party is incompetent to depoſe to any fact which goes to diſprove the genuineneſs of the inſtrument.

4 Burr 2255. 3 Term Rep. 27. 308 & 7 Term Rep. 60.

Attorney-General v. Le Merchant, Exch. Dec. 1772. 2 Term Rep. 201. n.

If it were even admitted that this practice is in ſome inſtances not altogether reconcileable with the rule before mentioned, as laid down in Bent and Baker and the other caſes, it might be ſufficient to ſay that the long continuance and univerſality of ſuch practice has now fully eſtabliſhed the caſe of forgery as an exception to that rule. But it is not ſo

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clear that the rejection of the witneſs in this caſe furniſhes ſuch an exception. For without entering into the queſtion how far a *conviction* in a criminal caſe, founded on diſintereſted teſtimony, would be evidence, at leaſt primâ facie, againſt the convict, or thoſe claiming under him in a civil ſuit upon the ſame inſtrument, where the fact of the forgery was directly in iſſue, (a point upon which the diſtinctions taken by Lord C. B. Gilbert and his reaſonings thereon, as well as the opinions of others, are deſerving of great conſideration before it is ruled in the negative ;(*a*)) yet in all caſes of felony, at leaſt, where the forgery is of ſuch ſort that the party accuſed might, if the writing were genuine, have his remedy thereon againſt the witneſs, or the latter loſe his remedy againſt him, it is clear that the witneſs has a direct intereſt in the conviction ; becauſe the ſecurity itſelf as well as the remedy is loſt to the offender by the attainder and forfeiture (*b*); and it cannot be preſumed that the Crown, at whoſe inſtance the conviction was procured on the very ground of the falſity of the writing, would be ſo inconſiſtent with itſelf as to attempt to ſet it up again, even if it were not legally eſtopped by its own act on record (*c*). And even in other caſes of felony, where the forgery was committed for the benefit of a third party, an intereſt ſtill exiſts in the witneſs, who is bound by the writing, if genuine, to procure a conviction : for independent of the diſcredit thereby thrown on the inſtrument, which is inſiſted on by ſome as a ſufficient reaſon in itſelf (*d*) for excluding ſuch teſtimony ; although the conviction would in that caſe be no legal evidence to avoid the inſtrument in a civil action by or againſt ſuch third perſon, to whom the rule of res inter alios acta would juſtly apply ; yet the difficulty of ſuing thereon or ſetting it up again would at leaſt be increaſed from the known uſual practice of the court to impound inſtruments found by the verdict of a jury to be forged : and the difficulty of proof alſo to the third party intereſted in the civil action might poſſibly be inhanced by the conviction of the fabricator for forgery, which being a ſpecies of the crimen falſi renders him in all inſtances an incompetent witneſs.

(*a*) Gilb. L. of Evidence, 25. &c. (laſt edit.), and 2 Bac. Abr. 614. &c. and *vide* Bull. N. P 245. Watt's caſe, Hardr. 332. Per Holt C. J. at Guildhall, 14 Geo. 3. and S. P. 5 Ann. in C. B. 3 Com. Dig. 281. Strickland v. Ward, Wincheſter Sum. Aſſ. 1767, cor. Yates J. cited from his MS. in 7 Term Rep. 633. n. 6 Mod. 186. S. P., and Cook. v. Sholl, 5 Term R. 256. and 12 Vin. Abr. 55.

(*b*) *Vide* 2 Hawk. ch. 49 ſ. 9, 10.

(*c*) *Vide* Co. Lit. 352. *a.* & *b.* and 2 Inſt. 39.

(*d*) *Vide* 2 Hawk. ch. 46. ſ. 24. and 2 MS. Sum. 346. *Sed vide* R. v. Bray, Rep temp. Hardw. 358. and Smith v. Prager, 7 Term Rep. 63.

Vide Co. Lit 6. *b.*

§ 63. *Intereſted witneſſes not admiſſible.*

But on whatever grounds the intereſt of the party whoſe hand is forged may be ſuppoſed to reſt, if he be in fact intereſted

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tereſted in ſetting aſide the inſtrument, ſuppoſing it genuine, either as againſt the priſoner or any other, all the caſes eſtabliſh that his evidence is, to the point of the forgery at leaſt, inadmiſſible. I ſhall begin with ſome of the earlieſt.

In Watt's caſe, upon an information for forgery, it was holden that no perſon who could have any advantage by the conviction could be a witneſs for the King. Watt's caſe, Hardr. 331, 2. 3 Salk. 172.

In Ruſſel's caſe, who was indicted on the ſtat. 2 Geo. 2. c. 25. for forging a certain acquittance and receipt with intent to defraud Roger Gately a ſolicitor, (the receipt containing ſeveral items of account between them for money diſburſed, &c.), Mr. Gately was ruled to be no witneſs to prove the forgery of his name ſubſcribed. Ruſſel's caſe, O. B. Feb. 1737, cor. Page J. and Carter B. 1 Leach, 10.

In Peter Caffy's caſe, upon an indictment for forging the indorſement of "Joſeph Gardiner" upon a promiſſory note made payable to him or order, held per Raymond C. J., Denton J., and Hale B., that Gardiner could not be a witneſs to prove that the hand-writing was not his, being a party intereſted. Caffy's caſe, O. B. Oct. 1729, Denton's MS. cited in Serjt. Forſter's MS.

In Rhodes's caſe, upon an indictment for forging a letter of attorney to transfer ſtock in the name of Heyſham the proprietor, Mr. Juſtice Forteſcue rejected Heyſham as a witneſs to prove the forgery. Rhodes's caſe, 2 Stra. 728.

There is another caſe in print of one Robert Rhodes, before Mr. Baron Reynolds, which ſeems to have carried the rejection of a witneſs on the ground of intereſt a great way. The priſoner was tried for the forgery of a will of one Thompſon, *dated* 1736, in which he was named executor; and in order to diſprove the hand-writing of Thompſon, one Carter was called, who claimed as executor under a ſubſequent will dated 1737. His competency was objected to, becauſe he had an intereſt in eſtabliſhing the latter and invalidating the former will. To this it was anſwered, and apparently with ſome weight, that he had no manner of intereſt in overturning the firſt will; for whether it were a true or a falſe one the laſt was equally valid, if ſufficient in itſelf: and its ſufficiency could in no event depend upon the reſult of the impending trial, allowing all the weight to the verdict which it might be ſuppoſed to have; but it muſt ſtand or fall upon its own ground. The witneſs R. v. Robt. Rhodes, O. B. 1742, cor. Reynolds B. 1 Leach, 31.

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was however rejected; but for what reaſon does not appear. Perhaps it would be difficult to ſhew how far even the credit of ſuch a witneſs was affected.

Vide Bull N. P. 284.

And if the executor be a bare truſtee, claiming no beneficial intereſt under the will, I conceive that the ſame rule which governs in civil caſes would prevail in this.

§ 64. *Incompetency as to other evidence of the fact of forgery.*

Incompetency ariſing from intereſt in the event of the verdict, where it really exiſts, extends to preclude the party from giving other evidence as well as that of negativing the hand-writing, which tends to prove the fact of the forgery. Therefore the executor of a perſon, whoſe promiſſory note had been forged, was by Mr. Baron Adams rejected as a witneſs to prove what the priſoner ſaid to him when he tendered him the note for payment.

Rex v. Geo. Bunting, Thetford, March 1767, Serjt. Forſter's MS.

§ 65. *Proof of identity or non-exiſtence of perſon whoſe name is forged.*

It being eſſential to prove the identity or non-exiſtence of the perſon whoſe name is charged to be forged, ſo far as to ſhew that it is not the hand-writing of the ſame perſon which it purports to be; it has been often in queſtion by whom, and in what manner, ſuch fact can be proved.

Sponſonby's caſe, O. B July 1784, 1 Leach, 374.

John Sponſonby was indicted for forging an indorſement in the name of William Pearce on a bill of exchange, drawn by Richard Davis in favour of William Pearce on Crofts and Co. for four guineas. The report ſtates that William Pearce, the ſuppoſed payee, was an intimate acquaintance of Davis the drawer, and had received a letter of advice, ſignifying that ſuch a bill had been remitted to him, and deſiring him as an act of friendſhip to pay the produce to one Coles in diſcharge of a debt which Davis owed him. The bill never having come into Pearce's hands, and he having no demand on Davis for the amount, it was agreed that he was a competent witneſs to prove that the indorſement was not his hand-writing. But it being alſo neceſſary to ſhew that he was the identical William Pearce to whom the bill was made payable; and as Davis the drawer, whoſe teſtimony was conſidered as the beſt evidence of the fact, was not preſent to atteſt it; the letter of advice which Pearce had received from him was holden inſufficient for the purpoſe; and Pearce's teſtimony to ſhew the hand-writing to be forged was finally rejected: for though it might not be his hand-

writing, yet it might be the hand-writing of another Wm. Pearce to whom the bill might be payable.

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Without conſidering any other point of evidence which occurred in this caſe, it may be doubted whether the fact of this Wm. Pearce being an intimate acquaintance and correſpondent of the drawer, and no evidence being given of the exiſtence of any other Wm. Pearce, to whom it might be ſuppoſed that the bill was made payable, was not ſufficient evidence of the identity of the payee: and as far as that goes his teſtimony would rather preſs againſt his intereſt than for it; though it is otherwiſe as to the falſification of the indorſement. For taking him to be the Wm. Pearce to whom the bill was made payable, if the indorſement had been genuine he would have been liable to an action at the ſuit of Davis; not having applied the money according to his order. It ſeems therefore that he had no manner of intereſt, but rather the contrary in proving himſelf to be the real payee; but that he had an intereſt or rather a bias in proving that the indorſement was not his hand-writing.

Vide Parr's caſe, poſt.

Vide Birt and others, Aſſignees of Glover, v. Kerthaw, 2 Eaſt's R. 458.

And in a ſubſequent caſe in the ſame book it is reported that Iſaac Hart, a proprietor of ſtock, whoſe perſon and ſignature were aſſumed by the priſoner Parr in endeavouring to receive the dividend due to him, was examined as a witneſs to prove his identity, by teſtifying the amount of the ſtock he had at the Bank, and that the ſum for which the priſoner had obtained the dividend warrant was the exact ſum due to him at the time. But he was not examined to the falſity of the ſignature.

Parr's caſe, O. B. 1787, 2 Leach, 487—491. Poſt. tit. *Falſe perſonating* S. C. for another point.

James Downes was tried upon ſeveral charges of forging, and uttering a bill of exchange in the name of Andrew Helme, with intent to defraud one Anthony; and alſo of forging and publiſhing an indorſement in the name of John Sowerby on a bill of exchange purporting to have been drawn by the ſaid A. Helme, dated 12th May 1789, and payable two months after date to the order of the ſaid John Sowerby for £. 14: 6: 6, with the like intent. Some letters of the priſoner's, written after he was apprehended, were produced, from whence it clearly appeared that the name of the drawer A. Helme was forged. One of theſe letters directed to Andrew Helme, the priſoner's uncle, containing an application from the priſoner to him to beg his uncle to

Downes's caſe, Lancaſter Sum. Aſſ. 1789, cor. Wilſon J. MS. Buller J. *The drawer's name appearing to be forged on a bill as well as the indorſer's, it is no objection that the drawer was not called to prove upon whom the bill was drawn, there being two of the name at the place; and it may be ſhewn by other evidence who the priſoner meant by*

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the perſon whoſe name be forged as the payee and indorſer.

acknowledge that it was his ſignature, in order to ſave him (the priſoner) from his impending fate, and promiſing to ſave his uncle harmleſs from the payment. In the ſame manner it appeared from the letters that the John Sowerby whoſe indorſement was intended to be counterfeited by the priſoner, was the ſon of another perſon of the ſame name in Liverpool. Anthony Bennett proved that the priſoner owing him ſome money offered him the bill in queſtion, with the indorſement thereon: and that on queſtioning him, the priſoner ſaid that the drawer Andrew Helme was a gentleman of credit at Liverpool, *and the indorſer a cheeſemonger there*, who had received the bill in payment for cheeſes; and that he might depend on it, it was a good bill. Whereupon he took it; and afterwards paid it away, and fourteen days after it became due it was returned to him as good for nothing. John Sowerby the father was then called, who ſwore that the indorſement was not his hand-writing: that he had lived 36 years in Liverpool, and knew no other perſon of the ſame name there, either a cheeſemonger or otherwiſe, except his ſon, who had left him about four months before, and afterwards carried on the ſame buſineſs of a cheeſemonger in Dean-ſtreet. That his ſon had failed, and was lately gone to Jamaica. That the indorſement was not at all like his ſon's hand-writing, and he did not believe it to be his. That the priſoner and his ſon were acquainted, and the priſoner had bought corks of him. Another witneſs alſo proved that the indorſement was not like the hand-writing of the ſon, and he did not believe it to be his.

It was objected on the part of the priſoner that A. Helme the drawer of the bill had not been called to prove what John Sowerby it was in whoſe favour the bill was drawn, as he beſt knew that fact, and therefore that his was the beſt evidence, and ſuch as the law requires. The evidence given was however left to the jury by Mr. Juſtice Wilſon, and the priſoner was thereupon found guilty. But judgment was reſpited to take the opinion of the Judges on the objection taken. In Michaelmas term 1789 all the Judges held the conviction proper; and the following reaſons were

(Buller J.)

aſſigned by the learned Judge by whom ſentence was afterwards paſſed. "The objection ſuppoſed that there was a genuine

genuine drawer of the bill, who it was inſiſted ought to have been called as a witneſs to prove what John Sowerby it was in whoſe favour the bill was drawn. But to this there were two anſwers. Firſt, it was apparent that the name of the drawer as well as that of the indorſer was forged by the priſoner, for he acknowledged as much in the letter under his own hand to his uncle A. Helme the ſuppoſed drawer. And if no real drawer exiſted, and the objection were allowed, it would be to excuſe one forgery becauſe another had been committed. But 2dly, the priſoner himſelf had aſcertained who was intended by the John Sowerby whoſe indorſement was forged; for when he negotiated the bill he repreſented him to be a cheeſemonger at Liverpool; and by another letter of the priſoner's it was clear that he meant Sowerby the ſon; for therein he requeſted his uncle to go to Sowerby's mother, and deſire her to ſay nothing about it, whether he had any concern or not, or whether he indorſed it or not. Then it being proved that the indorſement was not the hand-writing of Sowerby the ſon, the evidence of the forgery was full and complete, and the conviction right."

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§ 66. *Competency of witneſs whoſe hand-writing is forged where he has no intereſt.*

But if the party whoſe hand-writing is forged have no intereſt in invalidating the inſtrument in queſtion, there is no doubt but that he is a competent witneſs: and ſome caſes appear to go the length of eſtabliſhing, that being the beſt he is the only witneſs, if living, to prove the forgery: but that is not confirmed by the current of authorities to ſuch an extent; though the teſtimony of ſuch an one, when diſintereſted, muſt doubtleſs be the moſt ſatisfactory of any on the queſtion of his own hand-writing.

Uſher's caſe, O. B. 1759, cor. Lord Mansfield C. J. Smythe B. and Wilmot J. 1 Leach, 57. *One who paid a forged bill on account of the ſuppoſed acceptor, and debited his account with the payment, being afterwards ſatisfied of the for-*

On an indictment againſt Thomas Uſher for forging an acceptance to a bill of exchange, purporting to be drawn on Anthony Merry, a merchant in London, by Thomas Quilty and Co. at Malaga, and to be accepted by Mr. Merry, payable at Sir Charles Aſgill's and Co. The priſoner was proved to have received the money for the bill at the houſe of Aſgill and Co., who then believing it to be genuine had charged Mr. Merry's account with the payment; but being afterwards fully perſuaded that it was a forgery, they had given Mr. Merry's account credit for the ſame ſum. Mr. Merry

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himſelf was called to prove the acceptance in his name to be forged, which was objected to on behalf of the priſoner without a releaſe from Aſgill and Co. The Court however admitted his teſtimony, on the ground that having been allowed the money in account with Aſgill's houſe, with a knowledge of all the circumſtances, there could be no demand upon him for the amount whether the priſoner were convicted or acquitted, and therefore he was not intereſted in the event.

So in Teſtick's caſe before mentioned, the perſon in whoſe name the receipt was forged, having been paid the money by the debtor in fraud of whom the forgery was committed, was admitted as a witneſs.

Again, where one was indicted for forging a receipt, and the perſon whoſe name was forged had before recovered the money from the priſoner, he was admitted as a witneſs by Lord C. J. Willes to prove the forgery.

In the caſe of Captain Smith, who was tried for uttering a forged receipt of one George Maughan a butcher, at the iſland of Grenada, upon a bill for butcher's meat ſupplied to the ſhip of which the priſoner was captain; the charge was for altering the figures in the quantity of meat, and in the ſums they amounted to, with intent to charge one Trinder, the owner of the ſhip, with larger diſburſements than the captain had really laid out. And to prove that theſe alterations were forgeries, and not the hand-writing of Maughan, one Greenwood his partner was produced, as one who was acquainted with Maughan's hand. Sir Fletcher Norton, for the priſoner, objected, that Maughan himſelf ought to be produced, or ſome reaſon given why he could not. The proſecutor alleged that he was dead, but on the ſingle hearſay of Greenwood, who left him alive about two years and a half before. Gould and Yates Juſtices were of opinion that ſuch evidence was no ſufficient proof of Maughan's death; and that without that proof no evidence but *his* could in this caſe be admitted of the forgery: for Maughan's teſtimony would certainly be the beſt, as he could ſay poſitively whether the hand-writing were his or not; but Greenwood could only ſpeak from opinion: and it was an eſtabliſhed rule, that in all caſes the beſt evidence be given which the caſe will admit of, and leſs than that was

gery, and having credited the account with the ſame ſum, thereby rendered the acceptor a competent witneſs to prove the acceptance a forgery without a releaſe to him.

Teſtick's caſe, 1774, ante, f 36. 12 Mod. 338. S. P.

Wells's caſe, at Oxford, Bull. Ni. Pr. 289. and *vide* Lord C. J. Treby's opinion in Dean's caſe, E. 8 W. 3. 12 Vin. Abr. 23.

§ 67.

Captain Smith's caſe, O. B. 16th Jan. 1768, 2 MS. Sum. 503. *One whoſe voucher is forged for the purpoſe of impoſing on a third perſon, with whom he had no dealing, and to whom he could in no event be reſponſible, is the proper witneſs to prove the forgery of his own hand-writing.*

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was never to be received, if it appeared that a better might have been had. And in this caſe there was not the ſame reaſon for not producing Maughan which commonly occurred in proſecutions for forgeries, which were generally by the party himſelf whoſe hand was forged, and were pointed at an intention to defraud that party: and in thoſe caſes there was certainly no neceſſity that the perſon whoſe hand-writing was forged ſhould himſelf appear to prove the forgery; but the fact might be proved by others who were acquainted with his hand. That the reaſon was, becauſe in ſuch proſecutions the party himſelf, whoſe hand-writing was forged, would be no competent witneſs, being intereſted in the queſtion: and therefore the teſtimony of thoſe who were acquainted with his hand was really the beſt evidence which the caſe would admit of. As, therefore, the party himſelf could not be examined if he were preſent, it was a ſufficient reaſon for not producing him at all on the part of the proſecution. But in the preſent caſe Maughan had no degree of intereſt at ſtake: whatever was the true amount of the bill he had been paid it, and had no demand at all ſubſiſting. The queſtion was only between the priſoner and Trinder; whether the priſoner had overcharged his diſburſements, and had produced falſe vouchers in his accounts with Trinder: and upon ſuch a queſtion Maughan might certainly have been a competent witneſs, and he certainly could give the beſt and moſt ſatisfactory evidence, whether the alterations in his bill were corrections of his own, or were forged by ſome other hand. Accordingly the evidence of Greenwood was rejected, and the priſoner was acquitted.

In Coogan's caſe, Gibſon, the ſuppoſed teſtator, proved the will to be a forgery. So it was in Stirling's caſe, where Mrs. Shuter appeared in court, and gave evidence of the forgery.

Coogan's caſe, O. B. 1787, MS. Buller J. ante, f. 43 (2 Leach, 503. S. C.)

Stirling's caſe, O. B. 1773, ante, f. 43. and Murphy's caſe, ibid.

§ 68.

Newland was indicted for forging a bank note, ſigned "Wm. Lander. For the Govr. and Company of the Bank "of England." Lander, who was a caſhier of the Bank, properly authoriſed to ſubſcribe ſuch notes with his own name, for the governor and company, and who had given ſecurity to them for the faithful performance of this duty, was

Rex v. Abraham Newland, O. B. Feb. 1784, 1 Leach, 350.

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The caſhier of the Bank who ſigns notes for the Governor and Company, is a competent witneſs to prove his hand-writing a forgery.

was called as a witneſs to prove the forgery of the bank note, and that the name "*Wm. Lander*" ſubſcribed thereto was not his hand-writing. His competency was objected to, upon the intereſt which he was alleged to have in the event of the proſecution: for upon a ſuppoſition that he had ſigned the note, without carrying it to the account of the Bank, he would be liable as well to a criminal proſecution for the fraud, as to a civil action on his ſecurity bonds, &c. To this it was anſwered on the part of the proſecution, that the witneſs had no direct intereſt in the queſtion: for whether the note were genuine or not, he could never be reſponſible for the payment of it. That the very objection was founded upon the preſumption of a breach of truſt, which could not be entertained upon any legal principle; and therefore an intereſt could not be inferred from ſuch a preſumption. Mr. Baron Perryn and Mr. Serjeant Adair, Recorder, admitted the witneſs, upon the ground that he was in no event reſponſible for the payment of the note in queſtion. They ſaid that the intereſt muſt be apparent upon the face of the inſtrument itſelf, or ariſe immediately from the nature of the tranſaction, or from the acknowledgment of the party himſelf. That in the preſent caſe, unleſs criminality were preſumed, no intereſt could be inferred, and ſuch a preſumption was repugnant to law.

Hughes's caſe, Exeter Sp. Aſſ. 1802.

But in Hughes' caſe, on a ſimilar proſecution, Le Blanc J. held that the hand-writing of the caſhier of the Bank might be diſproved by any other perſon who was acquainted with his hand-writing. And in the caſe of Dennis M'Guire, a conviction for forging a bank note was eſtabliſhed on reference to the Judges, without the aid of the caſhier's teſtimony to diſprove his hand-writing, the forgery of which was eſtabliſhed by other evidence, which ſhewed that the inſtrument was falſe in all its parts, in the texture of the paper, the water mark, the engraving, the ink, and the written date of the year, which was 1798, though the printed date under the Britannia was 1799; being altogether proved to be ſuch as the Bank never made or iſſued.

M'Guire's caſe, Lancaſter Sp. Aſſ. 1801. cor. Chambre J MS. Jud.

§ 69. *Releaſe, &c.*

But whatever might have been the intereſt of the party in the tranſaction at firſt, there is no doubt but if he be diveſted of ſuch intereſt by releaſe, payment, or otherwiſe, at

at the time he is ready to be ſworn, it is no objection to his competency, whatever it may be, under certain circumſtances to his credit. Therefore a releaſe from the holder of a promiſſory note to the ſuppoſed drawer, in whoſe name it was forged, there being no other name on the note to whom the drawer could be liable, made him a competent witneſs to prove the forgery of his hand-writing upon an indictment againſt the priſoner, who had paſſed it off to ſuch holder without any indorſement. In Dr. Dodd's caſe, the Earl of Cheſterfield, the ſuppoſed obligor of the forged bond, was admitted to diſprove his ſignature, on producing a releaſe from Fletcher, the ſuppoſed obligee.

Ch. XIX. § 69. *Witneſſes.*

Akehurſt's caſe, Suſſex Sum. Aſſ. 1776, cor. Ld. Mansfield C. J. 1 Leach, 178.

Dr. Dodd's caſe, O. B. Feb. 1777, 1 Leach, 187.

X. *Judgment and its Conſequences.* § 70.

In a variety of inſtances, the forgery of particular inſtruments has been made felony by ſtatute, for the moſt part excluding the benefit of clergy: theſe have been ſeverally mentioned under their appropriate heads. In all other caſes the offence muſt be taken at this day to reſt in miſdemeanor, puniſhable at common law by fine, impriſonment, and ſuch other corporal puniſhment as the Court in their diſcretion ſhall award; and by ſtatute alſo with certain puniſhments of the ſame kind in particular inſtances, which have alſo been pointed out.

Vide ante, f. 1. 1 Hawk. ch. 70. f. 1. 4 Blac. Com. 247. 3 Bac. Abr. 277.

One of the conſequences of any judgment for this offence is an incapacity to be a witneſs, until reſtored to competency by the king's pardon, under the great ſeal, &c.

5 Com Dig. Teſtmoignt, A. 3, 4. Co. Lit. 6. *b.*

Alſo by ſtat. 12 Geo. 1. c. 29. in caſe perſons convicted of forgery ſhall afterwards practiſe as attornies, ſolicitors, or law agents, the Court where the ſuit or action is brought ſhall, on complaint, examine the matter ſummarily, and cauſe the offender to be tranſported for ſeven years.

12 Geo. 1. c. 29. *Attornies, &c. practiſing after conviction for forgery to be tranſported.*

CHAP. XX.

FALSELY PERSONATING ANOTHER.

Aſſimilated to Forgery. - - § 1.

1. *Falſely perſonating the Proprietors of Stock* claſſed with Forgery, and made a capital Felony by Statute. *ib.*

What *an Endeavour to receive* the Money of Stockholders by falſe perſonating, under the ſeveral Statutes. - - - - § 2.

The real Proprietor *a Witneſs* to prove his holding the Stock. *ib.*

2. *Perſonating Seamen, &c. and Out-Penſioners of Greenwich Hoſpital*, made capital Felonies by Statutes. § 3.

Such perſonating muſt be in order to receive Wages, &c. due, or ſuppoſed to be due. *ib.*

It muſt be a perſonating of an exiſting Perſon entitled, or who primâ facie might be entitled to ſuch Wages, &c. - - - - § 4.

3. *Acknowledging any Fine, Recovery, Deed enrolled, Statute, Recognizance, Bail, or Judgment in another's Name*, without his Aſſent, Felony by Stat. 21 Jac. 1. c. 26. - - - - § 5.

Extended to bail before Commiſſioners or Juſtices of Aſſize by Stat. 4 & 5 W. & M. c. 4. *ib.*

Conſtruction thereof. *ib.*

4. In all other Caſes, though done for fraudulent Purpoſe, not more than *Miſdemeanor at common Law*, grounded on Conſpiracy and Cheating, or under Circumſtances affecting the Public. - § 6.

Falſely perſonating another.

§ 1.

Falſely perſonating proprietors of public ſtocks claſſed with forgery.

THIS offence, committed for the purpoſe of cheating another, by impoſing on him a falſe name or character, for the purpoſe either of gaining a new credit or preventing

venting detection, is in its nature nearly allied to forgery, with which it is uſually accompanied, to give it efficacy. They have been accordingly claſſed together by the legiſlature in various inſtances, which have been already mentioned, with reſpect to perſonating the proprietors of government ſtocks, or the ſtocks of the different public companies; all which are made capital felonies. By referring to the terms of the ſtats. 8 Geo. 1. c. 22. ſ. 1. 31 Geo. 2. c. 22. ſ. 77. the 4 Geo. 3. c. 25. ſ. 15. and other acts, it will be ſeen that the actual completion of the fraud by the transfer of the ſtock or the receipt of the dividends, is not neceſſary to conſtitute the offence. It is ſufficient if the offender "falſely and deceitfully perſonate any true and "real proprietors of the ſaid ſhares in ſtock annuities and "dividends (*a*), or any of them, or any part thereof, *and* "*thereby tranſferring*, or *endeavouring to tranſfer*, the ſtock, "or *receiving*, or *endeavouring to receive* the money of ſuch "true and lawful proprietor, as if ſuch offender were the "true and lawful owner thereof," &c.: in which caſe every offender is by the ſeveral acts made guilty of felony without benefit of clergy.

Ch. XX. § 1.

Vide ante, tit. *Forgery*, p. 853. and ſ. 46. to 50. inclusive.

Ante, tit. *Forgery*, ſ. 9. 25. 28.

Vide 8 Geo. 1. c. 22. &c. ante, tit. *Forgery*, ſ. 9. p. 867.

§ 2.

What is an endeavour to receive, &c. by falſe perſonating.

As to what amounts to an *endeavour to receive*, &c. by falſe perſonating under theſe acts.

Parr's caſe, O.B. 1787, MS. Buller J. (2 Leach, 487. S. C.)

Francis Parr was indicted on the ſtat. 31 Geo. 2. c. 22. ſ. 77. for perſonating Iſaac Hart, the real proprietor of 3900l. capital ſtock in the 3 per cent. conſol. ann., and thereby *endeavouring to receive* 58l. 10s., half a year's dividend on the ſaid ſtock, being the money of the ſaid I. H.

Obtaining a dividend warrant in the name of a real proprietor is an endeavouring to receive the money of ſuch proprietor, within the ſtat. 31 Geo. 2. c. 22. ſ. 77.; *though the party were apprehended before he had taken any ſubſequent ſtep towards obtaining the actual payment of the money made payable thereby at the pay-office.*

The caſe in proof was, that the priſoner had applied to the clerk, whoſe buſineſs it was to iſſue the dividend warrants upon that ſtock, in the name of Iſaac Hart, for a warrant for half a year's dividend. The words uſed by the priſoner were, "Iſaac Hart £. 3900;" and he ſigned the book "Iſaac Hart." Being aſked of what place, he ſaid of Windſor; which agreeing with the deſcription in the book, a warrant was made out for 58*l.* 10*s.*, to which he again ſigned "*Iſaac Hart*," and which was then delivered to him,

(*a*) This by ſtat. 31 Geo. 2. c. 22. ſ. 77. extends as well to ſtocks and funds thereafter to be eſtabliſhed by authority of parliament, as to thoſe then eſtabliſhed.

Ch. XX. § 2. *Stockholders.*

him, and entitled the bearer to receive that sum at the pay-office. He was apprehended some minutes after, without its appearing that he had made any application at the pay-office, or had even gone towards it, or taken any step whatever after receiving the dividend warrant towards obtaining the actual payment of the money made payable thereby; which it was objected by the prisoner's counsel was necessary to the completion of the offence. The jury found him guilty, subject to the opinion of the Judges on the question, whether these circumstances amounted to *an endeavour to receive the money* of I. H. within the true intent and meaning of the act? And in Hilary term 1787 all the Judges held the conviction right.

Vide 2 Leach, 490.

Mr. Justice Gould, in delivering their opinion at the O. B. in February 1787, observed that the very object of the Legislature was to prevent the completion of the mischief, if possible, by prohibiting even the *endeavour* to obtain the property of others in the funds. That the very statement of the facts shewed that the prisoner, by personating the proprietor and by obtaining and indorsing the warrant as such, thereby made an *endeavour*, as far as it went, towards receiving the dividend.

Witness. *Vide* tit. *Forgery*, p. 997.

In that case it is to be remarked, that Isaac Hart the proprietor was examined as a witness to prove the identity of the person intended to be defrauded.

§ 3. *Personating seamen, &c.* Ante, ch. 19. s. 25. 31 G. 2. c. 10. s. 24.

It has also been shewn that "whosoever willingly and "knowingly shall personate or falsely assume the name or "character of, or procure any other to personate or falsely "to assume the name or character of any officer, seaman, or "other person entitled or supposed to be entitled to any "wages, pay, or other allowance of money or prize money, "for service done on board of any of the King's ships or "vessels, or the executor, or administrator, wife, relation, "or creditor, of any such officer or seaman, or other per-"son, in order to receive any wages, pay, or other allow-"ance of money, or prize money, due, or supposed to be "due or payable, for or on account of the services of any "such officer, or seaman, or other person, as aforesaid; "shall (on conviction) be deemed guilty of felony without

"benefit of clergy," by stat. 31 Geo. 2. c. 10. s. 24. and other acts. In addition to which,

Ch. XX. § 3. *Seamen and marines, &c.*

Out-pensioners of Greenwich Hospital. 3 Geo. 3. c. 16.

By stat. 3 Geo. 3. c. 16. s. 6. "Whosoever willingly and "knowingly shall personate, or falsely assume the name or "character of, or procure any other to personate, or falsely "to assume the name and character of, any person entitled, "or supposed to be entitled, as an out-pensioner, to any "out-pension or allowance of money from the commission-"ers or governors of Greenwich Hospital, in order to re-"ceive the money due or supposed to be due on such out-"pension, every such person so offending, and being lawfully "convicted of any such offence, shall be deemed guilty of "felony without benefit of clergy."

§ 4. *The false personating must be in order to receive the wages, &c. due or supposed to be due.*

By the words of the several statutes last above referred to, the false personating must be done *in order to receive the wages*, &c. of some seaman, &c. *entitled or supposed to be entitled* thereto: there must therefore be some evidence to shew that there was such a person of the name and character assumed, who was either entitled, or might primâ facie at least be supposed to be entitled to receive on board such a ship the wages, &c. attempted to be acquired.

Brown's case, Winchester Sp. Ass. 1800, MS. Jud. *The personating must be of some existing person entitled or who primâ facie might be entitled to receive the wages, &c. therefore it not appearing there was any such seaman on board as a certain ship as the character assumed, a conviction on the statute was holden wrong.*

Charles Brown was indicted on the stat. 31 Geo. 2. c. 10. for that he willingly, knowingly, and feloniously personated and falsely assumed the name and character of Wm. Wheeler, a person supposed to be entitled to certain prize-money for service done on board his majesty's ship Terpsichore, in order to receive certain prize-money, supposed to be due and payable for and on account of the services of the said William as aforesaid, against the statute, &c. A second count charged that the prisoner feloniously forged and counterfeited, and procured to be forged and counterfeited, a certain paper-writing, purporting to be an authority from one William Wheeler, a person supposed to be entitled to certain prize-money on board of the said ship Terpsichore, in order to receive such prize-money, supposed to be due to the said William Wheeler as aforesaid; which said forged and counterfeited paper-writing is as follows; viz. "I do "hereby authorize all whom it may concern to pay to the "order of Mr. J. Jacob, No. 2. St. George-square, Portsea, "navy agent, the prize-money due to me as a marine on

"board

Ch. XX. § 4. *Seamen and marines, &c.*

" board his majesty's ship Terpsichore, for the capture " of all prizes between 26th Nov. 1793 till 13th August " 1798; dated 10th January 1800; for which this shall be " a sufficient warrant.

his

" Wm. ⋈ Wheeler,

mark."

against the statute, &c. A third count was for knowingly uttering the same, with intent to defraud Judah Jacob; against the statute, &c.

It appeared in evidence that on the 10th of January 1800 the prisoner came to Judah Jacob's house, who was a navy-agent at Portsea, and told his wife that his name was William Wheeler, and that he was entitled to prize from the Terpsichore. He produced a certificate to that effect, from which she filled up an order in the usual form, and gave it to him to take to the dock-yard to sign. He accordingly took it away, and afterwards brought it back, (being the order set forth in the second count), saying it had been signed by him, and a gentleman in the dock-yard had witnessed it; and pleading distress, he received from her 5 s. in advance. The certificate produced by the prisoner was proved to have been signed by the proper officer, but he did not know the prisoner's person at the trial. It appeared afterwards that his name was Brown. Being convicted on the two first counts, it was objected, first, that there was no evidence that William Wheeler ever served on board the Terpsichore in any capacity, or indeed that any such person existed. Secondly, that the personating intended by the statute was a personating in order to the party's personally receiving the money of those who had authority to issue it, and not as in this case an assumption of the character in the act of forging an authority for another to receive it, with intent to cheat such third person. Thirdly, that there was an omission in the second count of the word witness, under which the attesting witness's name was to have been written, which word was in the paper signed by the prisoner. The Judges on conference in Easter term 1800 held that the conviction was wrong; there being no evidence that there was any such person as Wm. Wheeler who either was entitled or at least primâ facie entitled to prize-money, as a seaman on board the Terpsichore.

(*Vide* 9 Geo. 3. c. 30. s. 6.)

A similar

A similar case of one Charles M'Annelly was submitted to the consideration of the Judges at the same time, and received a like determination.

Ch XX. § 4. *Seamen and marines.*

§ 5. *Acknowledging deeds, fines, bail, &c. in another name.* 21 Jac. 1. c. 26.

By stat. 21 Jac. 1. c. 26. s. 2. " All and every person " and persons who shall acknowledge or procure to be ac- " knowledged any fine, recovery, deed enrolled, statute, " recognizance, bail, or judgment, in the name or names " of any other person or persons not privy or consenting to " the same; and being thereof lawfully convicted or at- " tainted, shall be adjudged felons, without benefit of " clergy;" (saving corruption of blood and loss of dower). Sect. 3. provides that the act " shall not extend to any " judgment acknowledged by any attorney of record for " any person against whom any such judgment shall be " given."

4 Blac. Com. 128. 4 W. & M. c. 4.

This act extended only to proceedings in the courts themselves: and therefore by stat. 4 W. & M. c. 4. s. 1. the Chief Justices of B. R. and C. B., and the Chief Baron, may respectively, together with one other Judge of their respective courts, appoint commissioners (other than common attornies and solicitors) in every shire and county within England, Wales, &c. to take recognizances of special bail or bail pieces in actions and suits depending in their several courts. And by s. 3. any Judge of assize in his circuit is empowered to take such recognizances. Then by s. 4. " any person or persons who shall, before any person or " persons empowered by virtue of this act as aforesaid to " take bail or bails, represent or personate any other person " or persons, whereby the person or persons so represented " and personated may be liable to the payment of any sum " of money for debt or damages to be recovered in the " same suit or action wherein such person or persons are " represented and personated, as if they had really acknow- " ledged and entered into the same; being lawfully con- " victed thereof, shall be adjudged felons, and suffer, &c. " as felons," &c.

1 Hawk. ch. 45. s. 10. 1 Hale, 696. Timberly's case, 2 Sid. 90.

Under the act of King James, it has been holden that the bare personating of bail before a Judge at chambers, or the acknowledging thereof in another name, is no felony unless the

Ch. XX. § 5. *Bail.*

the bail be filed; but only a misdemeanor. But in Beasly's case, though the bail-piece were filed at Westminster, the trial was had in London, the county where the bail was personated; though according to the report of the same case in Ventris, Twisden J. said that it must be tried in Middlesex where the bail-piece was filed; the entry being, venit coram domino rege, &c. Where bail was put in under feigned names, there being no such persons, it was holden not to be within the act; but the court of C. B. ordered the bail and the attorney to be set in the pillory.

Beasley's case, O. B. 28 Car. 2. T Jones, 64. *Sed vide* 2 Ventr. 301. S. C.

Anonymous, 1 Stra. 384.

§ 6. *At common law.*

In all other cases, not made felony by statute, the bare fact of personating another, though for the purpose of fraud, can in no instance amount to more than a cheat or misdemeanor at common law, and punishable as such. It was so considered in the case of John Hevey, who was acquitted on the first indictment against him for forgery; it appearing that he had merely passed himself off for the person whose real signature appeared on the instrument, in concert with that person. Neither indeed did the second indictment against him for the misdemeanor turn singly on the fact of such false personating for a fraudulent purpose, but was framed against him and his associates for the conspiracy as well as cheat, upon which they were all convicted.

Ante, *Forgery*, s. 5. p. 856.

Rex v. Robinson and Taylor, O. B cor. Lord Ch. J. Willes, Foster J. and Reynolds B. 2 Leach, 44.

So where a woman living in the service of her master conspired with another man that he should personate her master, and in that character should solemnize a marriage with her; which was accordingly done, for the purpose of afterwards raising a specious title to the property of the master; the gist of the indictment was for the conspiracy, and the conviction was founded on that ground. And such I have before shewn was the true ground of the judgment in the case of Macarty and Fordenbourgh.

Ante, p. 825, 4.

Dupee's case, M. 12 Geo. 1. 2 Sess. Cas. 11.

In Dupee's case, however, where the indictment only charged that he personated one A. B., clerk to H. H., a justice of the peace, with intent to extort money from several persons in order to procure their discharge from certain misdemeanors for which they stood committed; the Court

Court would not quash it on motion, but put the defendant to demur to it. Ch. XX. § 6. *At common Law.*

It might probably have occurred to the Court that this was something more than a bare endeavour to commit a fraud by means of falsely personating another; it was an attempt to pollute and render odious the public justice of the kingdom, by making it a handle and pretence for corrupt practices.

CHAP. XXI.

ARSON.

At Common Law.

The malicious and voluntary burning the Houſe of another. - - - § 1.

By Statute. - - - - § 2.

The Stat. 23 H. 8. c. 1. and 25 H. 8. c. 3., ouſting Clergy from Arſon, repealed by Stat. 1 Ed. 6. c. 12.; but Acceſſaries before ouſted of Clergy by Stat. 4 & 5 Ph. & M. c. 4. and by Implication the Principals. *ib.*

By Stat. 43 Eliz. c. 13. burning any Barn or Stack of Corn or Grain in the northern Counties, Felony without Clergy. *ib.*

By Stat. 22 & 23 Car. 2. c. 7. burning *in the Night Time* any Ricks or Stacks of Corn, Hay, or Grain, Barns, or other Outhouſes or Buildings, or Kilns, Felony; but Offender may avoid Death by chuſing to be tranſported. *ib.*

But by Stat. 9 Geo. 1. c. 22. ſetting Fire to any Houſe, Barn, or Outhouſe, or to any Hovel Cock, Mow, or Stack of Corn, Straw, Hay, or Wood; or reſcuing any Perſon in Cuſtody for the ſame; or by Gift or Promiſe, &c. procuring another to join in ſuch unlawful Act; Felony without Clergy. *ib.*

So the burning of any Mill, by Stat. 9 Geo. 3. c. 29. *ib.*

1. *The Burning muſt be malicious and wilful.* § 3.

If by Negligence or Miſchance, though amounting to a Treſpaſs, no Felony. *ib.*

Aliter, if maliciouſly intending to burn one Houſe he burn another. *ib.*

Although the Intention were only to burn his own. *ib.*

But by Stat. 6 Ann. c. 31. a Servant *negligently* ſetting Fire to Houſe or Outhouſe forfeits 100l. and to be ſent to Houſe of Correction for 18 Months. *ib.*

2. *There muſt be an actual Burning of Part at leaſt of the Houſe.* - - § 4.

"*Setting Fire to*" in the Stat. 9 Geo. 1. c. 22. means a *Burning*. *ib.*

Burning Paper in Paper-Mill, not ſufficient. *ib.*

3. *What the Houſe, &c.* - - § 5.

Extends to Outhouſes, Parcel of the Dwelling-houſe. *ib.*

So burning a Barn having Corn or Hay in it, Arſon at common Law. *ib.*

But ſufficient, though empty, under Stat. 9 Geo. 1.; and it is not material under that Statute whether the Fact be done in the Night or by Day. *ib.*

A common Gaol, the Entrance to which was through the Gaoler's Dwelling-houſe, held *a Houſe* within Stat. 9 Geo. 1. *ib.*

A detached Building, though Parcel of a Manſion in Law, may be charged as an *Outhouſe* under the Stat. 9 Geo. 1. *ib.*

4. *What the Houſe, &c. of another.* - § 6.

To conſtitute Felony either at common Law or by Statute, the Burning muſt be of a Houſe, &c. *in Poſſeſſion* of *another*. *ib.*

The Offence therefore cannot be committed by a Leſſee for Years, or a Mortgagor in Poſſeſſion. *ib.*

But one entitled only to Dower may commit Arſon of the Houſe in Poſſeſſion of a Leſſee; and ſo it ſeems may a Reverſioner in Fee. *ib.*

A Pauper put into a Houſe by Pariſh Officers to inhabit as a Servant may commit Arſon of it. *ib.*

But one maliciouſly burning his own Houſe, a Miſdemeanor, eſpecially if near other Houſes or Property thereby endangered. - - § 7.

And if others in fact burnt, Felony. - § 8.

Principals and Acceſſaries—Clergy. - § 9.

Principals ouſted of Clergy in all Caſes within Stat. 9 Geo. 1. c. 22. if not by prior Statutes. *ib.*

So, if required by Order of the King in Council, and neglecting to ſurrender in 40 Days. *ib.* - §9.
Acceſſaries before to wilful burning of any Dwelling-houſe, or Barn, having Corn or Grain in it, ouſted of Clergy by Stat. 4 & 5 Ph. & M. c. 4. *ib.*
Acceſſaries after entitled to Clergy, except after the King's Proclamation as above. *ib.*

Trial. - - - §10.
May be in any County in England.

Indictment and Evidence. - §11.
At common Law, Offence muſt be laid to be done *wilfully (or voluntarily) and maliciouſly*, as well as *felonioufly*. *ib.*
Indictment on the Stat. 9 Geo. 1. c. 22. laying the burning of *a Houſe*, good enough, without ſaying *Dwelling*-houſe. *ib.*
If the Burning be of an *Outhouſe*, it need not be ſhewn of what Deſcription, under the Stat. 9 Geo. 1. *ib.*
The Houſe muſt be charged to be *burned* or *ſet Fire to*. *ib.*
As to the *Intent*. *ib.*
Muſt ſhew it to be the Houſe *of another*, and ſtate to whom belonging. *ib.*
The Property muſt be laid in the actual Tenant, though only ſuch by Sufferance. *ib.*
Though laid to be done in the *Night-time*, yet not material to be proved. *ib.*
Evidence of Part of the Goods in the Houſe fired being afterwards found concealed in the Priſoner's Houſe, admitted as a Circumſtance to ſhew his Preſence at the Fact. *ib.*

Arſon.

THE offences which follow next in order are ſuch as are committed againſt property, not merely lucri cauſa, as thoſe already noticed, but from a miſchievous or vindictive motive;

motive; and may for the moſt part be properly claſſed under the general deſcription of *malicious miſchief*, as an excellent writer has done. Of theſe the principal is the wilful and malicious burning of houſes, which is known in the law by the appropriate denomination of Arſon. And as many ſtatutes have paſſed againſt the offence of wilful and malicious burning, which have a direct reference to, and are engrafted upon, arſon properly ſo called; I ſhall here touch upon ſuch of them as are neceſſary for the elucidation of the preſent ſubject, leaving the conſideration of others till I come to treat of *malicious miſchief* in general. Ch. XXI. § 1. 4 Blac. Com. 244

§ 1. *Arſon at common law.*

Arſon, which was felony at common law, and anciently puniſhed with death, is deſcribed to be the malicious and voluntary burning the houſe of another. 3 Inſt. 66. M. 11 H. 7. fo. 1. 1 Hale, 566. 1 Hawk. ch. 39. Sum. 85. Staundf. lib. 1. c. 33. 2 Inſt. 148. 4 Blac. Com. 220.

This definition will be examined in all its parts;
1. *As to what ſhall be ſaid to be malicious and voluntary.*
2. *What a burning.*
3. *What the houſe or other deſcription of property compriſed in this offence at common law, or in the ſtatutes after-mentioned.*
4. *What the houſe, &c. of another.*

But firſt it will be proper to collect in one view the ſeveral ſtatutes which have been paſſed relating to the ſubject more immediately under conſideration as they ſerve to throw light upon ſome parts of it; and the ſame illuſtration will frequently apply both to the common and ſtatute law.

§ 2. *By ſtatute.* 23 Hen. 8. c. 1. 1 Hale, 571

By the ſtat. 23 Hen. 8. c. 1. ſ. 3. "No perſon or perſons found guilty (amongſt other offences) for wilful "burning of any dwelling-houſes or barns wherein any "grain of corns (*a*) ſhall happen to be; nor any perſon or "perſons being found guilty of any abetment, procurement, "helping, maintaining, or counſelling, of or to ſuch felonies, "ſhall be admitted to the benefit of clergy, &c. except "perſons in holy order of ſubdeacon or above." This was

(*a*) Lord Hale, 1 vol. 571. cites the ſtatute in theſe words, "grain *or* corn." So the ſtat. 25 H. 8. c. 3. (I quote from Runnington's edition) recites the former ſtatute as having the words "*grain or corn.*" This latter is again recited in the ſtat. 5 & 6 Ed. 6. c. 10. with the words "grains of corn." And again, the ſtat. 4 & 5 Ph. & M. has the words, "corn or grain."

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25 Hen. 8. c. 3.

extended by ſtat. 25 H. 8. c. 3. ſ. 2. to ſuch as ſtand mute, challenge peremptorily above twenty, or will not directly anſwer.

But theſe ſtatutes were certainly repealed, as to the ouſting of clergy from the offence in queſtion, by the ſtat. 1 Ed. 6. c. 12. ſ. 10. which, after taking away clergy from ſeveral felonies by name, *omitting this*, enacts that "in *all other* "caſes of felony, other than ſuch as were before mentioned," offenders ſhould "enjoy the benefit of clergy in the ſame "manner as before the firſt year of Hen. 8th." Some have thought that clergy was again ouſted, in the inſtances before enumerated, by the operation of the ſtat. 5 & 6 Ed. 6. c. 10. ſ. 4. entitled "an act for the avoiding of clergy from divers perſons;" which reciting the ſtat. 23 H. 8. c. 1. and that it was defective in not extending to caſes where perſons guilty of robbery and burglary in one county were taken with the goods in another county, and there tried and convicted of larceny; and reciting that this defect had been ſupplied by the ſtat. 25 H. 8. c. 3.; and reciting further that the act of the 1 Ed. 6. c. 12. (which omits as well to ouſt clergy from burglars and robbers taken with the goods in another county, and there tried, as from the offence of wilful burning of houſes, &c.); had reſtored clergy in all other caſes than thoſe therein mentioned, as before the firſt of H. 8., "by reaſon of which "article and clauſe the ſtat. 25 H. 8. which did put *ſuch* "felons and burglars from their clergy, that do ſuch offence "in one county, and after are taken with the goods ſtolen "in another county and there indicted, &c. was made void; "by reaſon whereof divers perſons that ſince the ſaid 1 H. 8. "have committed *ſuch robberies and burglaries* in one county, "and after have been taken with the mainer in another "county, and there indicted, &c. have had their clergy, "which they could not have had in caſe the ſaid act of the "25 H. 8. had ſtood in force; for redreſs whereof enacts, "that the ſaid ſtat. 25 H. 8. touching the putting of *ſuch* "offenders from their clergy, and every article, clauſe, or "ſentence contained in the ſame touching clergy, ſhall "from thenceforth touching *ſuch* offences remain in full "ſtrength and virtue, in ſuch manner and form as before "the making of the ſaid ſtat. 1 Ed. 6." &c.

Alex. Poulter's caſe, 11 Rep. 33—5. 1 Hale, 572. 2 Hawk. ch. 33. ſ. 42.

5 & 6 Ed. 6. c. 10.

But

But the opinion that this ſtat. revived the ſtats. 23 & 25 H. 8. in toto, as to the offence of wilful and malicious burning, is very ably controverted by Mr. Juſtice Foſter, and by Lord Hale himſelf in the ſecond part of his work; and both agree with the third reſolution in Poulter's caſe, that the ſtat. 3 & 4 Ph. & M. c. 4. after mentioned, by taking away the benefit of clergy from the acceſſary before, by neceſſary conſtruction took it from the principal in the like inſtances. But quâcunque viâ datâ, ſays Lord Hale, the law ſtands ſettled that clergy is taken away in all caſes from the principal in wilful burning of a dwelling-houſe, or a barn with corn. However, the doubt in this reſpect probably ſuggeſted the precaution of enacting the proviſion in the ſtat. 9 Geo. 1. c. 22.

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11 Rep. 35. Foſt. 330. &c. 2 Hale, 347. and *vide* 1 Hale, 572. 4 Blac. Com. 222.

The ſtat. 4 & 5 Ph. & M. c. 4. enacts "That all and "every perſon and perſons who ſhall maliciouſly command, "hire, or counſel, any perſon or perſons wilfully to burn "any dwelling-houſe, or any part thereof, or any barn "then having corn or grain in the ſame; that then every "ſuch offender being outlawed thereof, or being thereof "arraigned and found guilty, or being otherwiſe lawfully "attainted or convicted of the ſame offence, or being "arraigned thereof, do ſtand mute, or challenge peremp-"torily above 20, or will not anſwer directly to ſuch offence, "ſhall not have the benefit of clergy."

4 & 5 Ph. & M. c. 4. *Acceſſaries before.*

The ſtat. 43 Eliz. c. 13. ſ. 2. enacts, "That whoever "ſhall wilfully and of malice burn, or cauſe to be burned, "or aid, procure, or conſent, to the burning of any barn "or ſtack of corn or grain, within Cumberland, Northum-"berland, Weſtmorland, or Durham, and ſhall be indicted "thereof and convicted, or ſhall ſtand mute, or challenge "peremptorily above 20, before the juſtices of aſſize, gaol-"delivery, oyer and terminer, or of the peace, &c. ſhall "be adjudged felons, and ſuffer death without benefit of "clergy."

43 Eliz. c. 13. *Burning on the Northern borders.*

By ſtat. 22 & 23 Car. 2. c. 7. ſ. 2. "Where any perſon or "perſons ſhall in the night-time maliciouſly, unlawfully, and "willingly burn, or cauſe to be burned or deſtroyed, any "*ricks* or *ſtacks* of corn, hay, or grain, barns, or other houſes "or buildings, or kilns of any perſon or perſons whatſo-"ever; every ſuch offence ſhall be adjudged felony:" but by

22 & 23 Car 2. c. 7. *Malicious burning in the night.*

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by ſ. 3. " without corruption of blood," &c.: And by ſ. 4. " If any perſon who ſhall be convict or attainted of any " offence hereby made felony (to avoid judgment of death " or execution thereupon) ſhall make his election to be *tranſ-* " *ported*, &c. then the juſtices of aſſize, oyer and terminer, " gaol delivery, and of the peace, before whom ſuch offender " ſhall be convict or attaint by virtue of this act, reſpective- " ly, ſhall cauſe judgment to be entered againſt every ſuch " offender, that he be tranſported beyond the ſeas to ſome " of his majeſty's plantations in the ſaid judgment to be " particularly mentioned and expreſſed, there to remain for " ſeven years: And if any ſuch offender ſhall return into " this kingdom before the expiration of the ſaid ſeven years, " he ſhall ſuffer death as a felon, and as if no ſuch election " to be tranſported had been made by him." By ſ. 7. offenders under this act muſt be proceeded againſt within ſix months after the offence committed.

Vi. Haſſell's caſe, 1 Leach, 1—6.

It never was doubted but that burning *one rick*, &c. was within the ſtatute, though in the plural.

9 Geo. 1. c. 22. *(Black Act.)* *Burning at any time.* Made perpetual by ſtat. 31 G. 2. c. 42.

But the principal ſtatute is the 9 Geo. 1. c. 22. which enacts (ſ. 1.) that " if any perſon or perſons ſhall (*a*) ſet fire " to any houſe, barn, or outhouſe, or to any hovel, cock, " mow, or ſtack of corn, ſtraw, hay, or wood; or ſhall " forcibly reſcue any perſon being lawfully in cuſtody of any " officer or other perſon for any the offences before mention- " ed; or if any perſon or perſons ſhall by gift or promiſe of " money or other reward procure any of his majeſty's ſub- " jects to join him or them in any ſuch unlawful act; every " perſon ſo offending, being thereof lawfully convicted, ſhall " be adjudged guilty of felony, without benefit of clergy."

By ſ. 2. of the ſame act, offenders not ſurrendering on proclamation are alſo ouſted of clergy.

Judd's caſe, 2 T. Rep. 255.

Henry Judd was bailed by the court of King's Bench on a warrant of commitment for ſetting fire to a *parcel* of unthreſhed wheat, the fact as charged not being felony within this ſtatute.

9 Geo. 3. c. 29 ſ. 2. *Burning mills.*

By ſtat. 9 Geo. 3. c. 29. ſ. 2. " Whereas no effectual " proviſion hath heretofore been made for preventing the

(*a*) The words " *unlawfully and maliciouſly*," and " *wilfully and maliciouſly*" which reſpectively occur in the paragraphs deſcribing other offences before and after this in the ſame clauſe, are omitted in this paragraph. Sed *vide* poſt. ſ. 3.

" burning of mills, be it enacted, that if any perſon or per- " ſons ſhall (after the 1ſt July 1769) wilfully or maliciouſly " burn or ſet fire to any wind-ſaw-mill, or other wind-mill, " or any water-mill, or other mill; ſuch perſon ſo offend- " ing, being lawfully convicted thereof, ſhall be adjudged " guilty of felony without benefit of clergy."

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Limitation. By ſ. 4. " No perſon ſhall be proſecuted by virtue of this " act for any offence committed contrary to the ſame, un- " leſs ſuch proſecution be commenced within 18 months " after the offence committed."

§ 3. *Malicious and voluntary.* 1 Hale, 567. 569. 3 Inſt. 67. Poſt. ſ. 21.

1. It muſt be a malicious and voluntary burning, otherwiſe it is not felony, but only a treſpaſs; and therefore no negligence or miſchance amounts to it. As, if an unqualified perſon by ſhooting at game happen to ſet fire to the thatch of a houſe; or even if a man were ſhooting at the poultry of another. In this caſe however it ſhould ſeem to be underſtood that he did not intend to ſteal the poultry, but merely to commit a treſpaſs; for otherwiſe the firſt intent being felonious, the party muſt abide all the conſequences.

1 Hale, 569. 3 Inſt. 67. 1 Hawk. ch. 39. ſ. 5. Plowd. 475. *Vide* poſt, ſ. 8.

If A. have a malicious intent to burn the houſe of B., and in ſetting fire to it burn the houſe of C. as well as of B., or the houſe of B. eſcape by ſome accident, and the fire burn the houſe of C.; though A. did not intend to burn C.'s houſe, yet in law it ſhall be ſaid to be a malicious and wilful burning of the houſe of C. And ſo, ſays Plowden, If one command another to burn the houſe of J. S., and he do ſo, and the fire thereof burn another houſe, the commander is acceſſary to the burning ſuch other houſe.

2 MS. Sum. 327. 2 Blac. Rep. 843. 4 Blac. Com. 222. *Vide* Minton's caſe, poſt, 1021.

And in this reſpect the ſtat. 9 Geo. 1. makes no difference; for the offences there mentioned muſt be done *wilfully and maliciouſly*, though not ſo expreſſed in the ſtatute; for the malice makes the crime. They are not neceſſary however to be expreſſed in a declaration againſt the hundred for damages, as was holden by the court of C. B. in the caſe of Allan v. The Hundred of Kirton, though they thought it probable that the offence muſt be ſo charged in an indictment for the felony.

6 Ann. c. 31. *Negligent burning by ſervants.*

But by ſtat. 6 Ann. c. 31. any ſervant *negligently* ſetting fire to a houſe or outhouſes, ſhall, on conviction before two juſtices of the peace, forfeit 100l., or be ſent to the houſe of correction for 18 months.

Ch. XXI § 4. *What a burning.*

§ 4. *What a burning* 3 Inſt. 66. 1 Hale, 568. Sum. 85. 1 Hawk. ch. 39. ſ 4. 2 MS. Som. 3:9. 4 Blac. Com. 222. R. v. Sarah Maſing, O.B. 1761.

2. To conſtitute arſon at common law there muſt be an *actual burning* of the houſe, or of ſome part of it; though it be not neceſſary that any part be wholly conſumed, or that the fire ſhould have any continuance, but be put out or go out of itſelf. But merely putting fire into or towards a houſe, however maliciouſly, if either by accident or timely prevention the fire do not take, and no part be burned, does not amount to arſon at common law. The ſtat. 9 Geo. 1. c. 22. does indeed in enacting the felony make uſe of the words "*ſet fire to;*" but I am not aware of any deciſion which has put a larger conſtruction on thoſe words than prevails by the rule of the common law; and the contrary opinion may be collected from what was ſaid in Spalding's caſe, and Breeme's caſe, and in the following caſe of Sarah Taylor.

Poſt. ſ. 6.

Taylor's caſe, Rocheſter, 1760, cor. Legge B. 1 Leach, 58.

Sarah Taylor was indicted for ſetting fire to an outhouſe, commonly called a paper-mill. It appeared that ſhe had ſet fire to a large quantity of paper which was drying in a loft annexed and belonging to the mill; but no part of the mill itſelf was conſumed; and therefore the Judges thought the caſe not within the ſtatute on that ground; though another doubt was ſtarted whether a *mill* were an *outhouſe* within the meaning of the act.

§ 5. *The houſe.* 1 Hale, 567, 570. Sum. 86. 3 Inſt. 67. 69. 1 Hawk. ch. 39. ſ. 1, 2. 4 Blac. Com. 221.

3. What is underſtood by *the houſe*. This extends at common law not only to the very *dwelling-houſe*, but to all *outhouſes* which are *parcel thereof*, though not adjoining thereto, nor under the ſame roof. And yet the indictment need not charge the burning to be of a *manſion-houſe*, but only of *a houſe*. What conſtitutes an outhouſe to be parcel of the dwelling-houſe was conſidered at large in treating of burglary, to which I refer. But the burning of a barn, though no part of the manſion, if it have corn or hay in it, is felony at common law. And it has alſo been ſaid, that at common law arſon extended to the burning of a ſtack of corn: but ſince the paſſing of the ſeveral ſtatutes above referred to, it is become unneceſſary to diſcuſs this and other doubtful queſtions of the like nature.

Ante, 492.

Donnevan's caſe, Lancaſter, 1770, 2 Blac. Rep. 682. (1 Leach, 81. S. C.)

Upon the conſtruction of the ſtat. 9 Geo. 1. c. 22. it has been holden that a common gaol is a houſe within the meaning of it. The entrance to the priſon was through the dwelling-houſe of the gaoler, and the priſoners were ſometimes allowed to lie in it. All the Judges held that the dwelling houſe was to be conſidered as part of the priſon, and the whole priſon was the houſe of the corporation to whom it belonged. One ſet of the counts there laid it to be the houſe of the corporation, another of the gaoler, and a third of the perſon whom the gaoler ſuffered to live in the dwelling-houſe.

Ch. XXI. § 5. *The houſe.*

Minton's caſe, Hereford Spring Aſſ. 1786, cor. Buller J. MS. Gould and Buller Js. and MS. Jud. *Though an indictment for ſetting fire to a barn ſtate it to be in the night, yet that is not material to be proved under the ſtat.* 9 G. 1. *nor is it neceſſary that the indictment ſhould ſtate that there was corn or hay in the barn. But though the word* maliciouſly *be not in the ſtatute, Qu. if it muſt not be laid in the indictment?* (Ld. Mansfield C. J. and Nares J. abſent.)

In Suſanna Minton's caſe, the indictment charged that ſhe feloniouſly and maliciouſly, &c. in the night-time ſet fire to a barn of Paul Gwatkin, and burned the ſame. It was proved that there was hay and corn in the barn; but it was not ſo ſtated in the indictment, which was drawn on the ſtat. 22 & 23 Car. 2. c. 7. The jury found the priſoner guilty of ſetting fire to and burning the barn, but not in the night-time. It was objected that this verdict amounted to a complete acquittal, and that no judgment could be given againſt the priſoner; upon which the judgment was reſpited. In Eaſter term 1786, ten Judges preſent, all held that the priſoner was properly convicted; for though the indictment laid the offence to be done *in the night-time*, which would have been neceſſary to have brought the caſe within the ſtat. 22 & 23 Car. 2. yet that that fact was immaterial on the ſtat. 9 Geo. 1. which does away any ſuch diſtinction, and extends generally to all barns of other perſons, whether having hay or corn in them, or being empty; and whether burnt in the day or night-time. Note, It ſeemed to be the opinion of all, that ſuppoſing it to be neceſſary that there ſhould be hay or corn in the barn, it muſt have been ſo ſtated in the indictment. So, though the word *maliciouſly* be not in the ſtatute, Q. if it muſt not be ſtated in the indictment?

2 MS. Sum. 327. MS. Buller J.

North's caſe, York Sum. Aſſ. 1795, MS. Jud. *Indictment for ſetting fire to an* outhouſe *is good and ſufficient to ouſt the offender of clergy under the ſtat.* 9 G. 1. *though it may in point of law form part of the dwelling-houſe, the burning of which is arſon at common law.*

North was indicted for feloniouſly, wilfully, and maliciouſly, againſt the form of the ſtat. (9 Geo. 1. c. 22.) ſetting fire to a certain outhouſe of John Taylor, ſituate at Knareſborough in the county of York. It appeared in evidence that the priſoner had ſet fire to and burnt part of a building of the proſecutor, which was ſituated in a yard of his at the back of his dwelling-houſe, which was in the ſtreet of the town of Knareſborough. The building was about four or five yards diſtant from the dwelling-houſe, but not joined to

Ch. XXI. § 5. *The houſe.*

to it. The yard was incloſed on all ſides, in part by the dwelling-houſe, in another by a wall, in a third by a railing which ſeparated it from a field, and in the remaining part by a hedge. The proſecutor kept a public houſe, and alſo carried on the buſineſs of a flax-dreſſer. The buildings ſet fire to, and in part burnt, conſiſted of a ſtable, and a chamber over it, which was uſed by the proſecutor as a ſhop for keeping and dreſſing flax. It was objected on behalf of the priſoner, that this building was not an *outhouſe* within the ſtat. 9 Geo. 1. c. 22. as that muſt be underſtood to mean outhouſes which in contemplation of law were not part of the dwelling-houſe; which it was inſiſted this was, and that the indictment ſhould have been for arſon at common law. The jury found the priſoner guilty, and the point was reſerved for the opinion of the Judges. On the 6th of *November* 1795 (Hotham Baron abſent), all the Judges agreed that the verdict was right. It was obſerved, that though for ſome purpoſes this might be part of the dwelling-houſe; yet ſtill it was in fact an outhouſe. And 3 Inſt. 67. was referred to, where it is laid down, that to burn a ſtable and the like, parcel of the manſion-houſe, is felony; but that in the indictment it is ſufficient to ſay domum, viz. a barn, malt-houſe, or the like, without ſaying manſionalem. And in Breeme's caſe it was conſidered that the ſtat. 9 Geo. 1. c. 22. did not alter the nature of the crime, or create any new offence, but only excluded the principal from clergy more clearly than he was before; which till then was only by inference from the ſtat. 4 & 5 Ph. & M. which took it from the acceſſary before the fact.

Poſt.

§ 6. *The houſe of another.* Poſt. f. 11.

4. It remains to be conſidered what is *the houſe of another* within the definition above laid down; for the dwelling-houſe or other deſcription of property muſt be laid and proved to be in the poſſeſſion ſuo jure of ſome other than the priſoner himſelf at the time of the fact committed. This inquiry is the more neceſſary, becauſe in this particular it has been recently holden in Spalding's caſe, Breeme's caſe, and Pedley's caſe hereafter mentioned, that the ſtat. 9 Geo. 1. c. 22. and the other ſtatutes make no difference in the nature of the offence; they being all confined to a burning the property of another. Upon this head Holmes's caſe

caſe is the firſt and leading determination, founded as it ſhould ſeem upon the ancient definition of this offence. He was indicted, for that being poſſeſſed of a houſe in London under a leaſe for ſix years, remainder to another for three years, reverſion in fee to another, he vi et armis, feloniouſly, maliciouſly, &c. burned the ſaid houſe, with intent the ſame dwelling-houſe, and alſo divers other dwelling-houſes of divers liege ſubjects of the King then and there ſituate and being, contiguous and adjacent to the ſaid dwelling-houſe of the defendant, then and there feloniouſly, wilfully, and maliciouſly to burn and conſume with fire, againſt the peace, &c. Being convicted, and the record removed by certiorari into B. R. before judgment, it was holden by three Judges againſt Croke that it was not felony to burn a houſe whereof the party was in poſſeſſion under a leaſe for years; for it muſt be the houſe of another, which could not be ſaid in the caſe of a leſſee for years in poſſeſſion at the time of the burning. Wherefore, (as the report improperly ſtates,) the priſoner was diſcharged of the *felony:* but becauſe of the heinouſneſs of the offence he was ſeverely fined and impriſoned, ſet in the pillory, and bound for his future good behaviour for life. Upon the ſuppoſition that this was an indictment for felony, in which the priſoner had judgment as for a miſdemeanor, the judgment, as ſuch, is juſtly diſapproved of by Lord Hale; becauſe the priſoner was thereby deprived of thoſe advantages for his defence which he would otherwiſe have had: and it has been ſince condemned in Weſtbeer's caſe. But that is an inaccurate view of the caſe, the true account of which is to be found in Kelyng; by whom it is obſerved, that all the ſpecial matter being laid in the indictment, and the defendant found guilty of the charge as laid; it being in law no felony, he was conſequently found guilty of the treſpaſs and miſdemeanor, for which he had judgment; and Lord Mansfield explained it in the ſame manner in Scofield's caſe.

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R. v. Holmes, Cro. Car. 376. & W. Jones, 351. 4 Blac. Com. 221. 1 Hale, 568. *Vide* Bract. lib. 3. 146. b. Britt. 16. Flet. lib. 1. c. 35. Mirr. c. 1. ſ. 8. 3 Inſt. 66.

2 Hale, 172. (Sed *vide* a ſatisfactory explanation in Scofield's caſe, Cald. 401. & Kel. 29.)

R. v. Weſtbeer, T. 13 & 14 G. 2. *Vi.* 2 Stra. 1137.

The principal point in Holmes's caſe has been alſo called in queſtion by Mr. Juſtice Foſter in the caſe of Elizabeth Harris. The priſoner, who was a girl of 14 years of age, but of ſufficient underſtanding for her age, was indicted for maliciouſly ſetting fire to and burning a dwelling-houſe in the poſſeſſion of Edward Stokes; and Ann Courſe, the mother

Harris's caſe, Aylesbury Lent Aſſizes, 1763, cor. Denniſon J. Foſt. 113. *One entitled only to dower out of a*

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houſe, which was leaſed to another, may commit arſon of it; and ſo it ſeems if the legal reverſion had been in the priſoner.

ther of the priſoner by a former huſband, J. Harris, was indicted as an acceſſary before the fact. J. Harris died, ſeiſed of the equity of redemption of this and another houſe adjoining, ſubject to a mortgage term, which equity deſcended to his eldeſt ſon, who was left with other children under the care of their mother Anne. Anne was entitled to dower out of theſe houſes, but it was never aſſigned; and ſhe let them to Stokes, and received the rent. But having a large family, ſhe was obliged to aſk relief of the pariſh, which the overſeers refuſed, unleſs they were let into the receipt of the rent. On this ſhe made frequent declarations that ſhe would burn the houſes down, which was at length effected by means of her daughter *Elizabeth*, whom ſhe employed for that purpoſe. Both the priſoners being found guilty, their caſe was reſerved for the conſideration of the Judges, who unanimouſly agreed that it was felony in both. The only doubt was with regard to the intereſt which the priſoner Anne had in the houſe, which was grounded on the reaſoning in Holmes's caſe; for unleſs ſhe were guilty of felony, the charge againſt the priſoner Elizabeth, who acted by her directions, muſt alſo have failed. Of Holmes's caſe it was ſaid that he had the poſſeſſion by legal title, and during the continuance of his leaſe could maintain his poſſeſſion againſt all mankind; and therefore the houſe might in a limited ſenſe be called his own. But in the preſent caſe the poſſeſſion was in Stokes under a demiſe from Anne on behalf of her ſon; and her title to dower, had Stokes's intereſt been out of the caſe, did not ſo much as give her a right of entry, it being a bare right of action. It was alſo ſaid in the debate of this caſe by ſome of the Judges, and not denied by any, that had Anne been ſeized of the freehold and inheritance of the houſe, and Stokes in poſſeſſion under a leaſe, it would have been felony in Anne to have burned it. The principle that three of the Judges went upon in Holmes's caſe, adds Mr. Juſtice Forſter, ſeems to warrant this opinion: they conſidered the houſe as Holmes's *own houſe*, by reaſon of the eſtate he had in it under his leaſe. Croke J. did not diſpute the principle, though he argued againſt the concluſion the other Judges drew from it. And if this be ſo, Mr. Juſtice Foſter ſays, he does not ſee why it may not with ſtrict legal propriety be ſaid of a reverſioner,

4 Blac. Com. 221. S. P.

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reverſioner, who ſhould maliciouſly ſet fire to houſes in the poſſeſſion of his tenants under leaſes, that he ædes alienas combuſſit. In Holmes' caſe, he adds, the houſe might with ſtrict legal propriety have been conſidered as the houſe of the landlord: both landlord and tenant have a property, one temporary and limited, the other abſolute and perpetual. Both the priſoners were afterwards ſentenced to death, but Elizabeth, being young, and acting under her mother's direction, was reprieved and recommended to mercy on condition of tranſportation.

Notwithſtanding, however, the weight juſtly annexed to the opinion of Mr. Juſtice Foſter, the point ruled in Holmes' caſe has ſince been determined to be law, and the precedent adopted in ſeveral late determinations.

Spalding's caſe, Bury Spr. Aſſ. 1780, cor. Buller J. MS. Buller J. and Gould J. (1 Leach, 258. S. C.) *Mortgagor in poſſeſſion burning his own houſe, no arſon either at common law or by ſtat.* 9 Geo. 1. c. 22.

William Spalding was indicted in the firſt count for feloniouſly, wilfully, and maliciouſly ſetting fire to and burning his own houſe at Harteſt, againſt the peace, &c. and in the ſecond count for feloniouſly, voluntarily, and maliciouſly ſetting fire to his own houſe, againſt the form of the ſtatute. The priſoner's houſe, which had been previouſly inſured by him, was in the village of Harteſt in Suffolk, not adjoining to, but within two or three yards of other houſes on each ſide; and in conſequence of his ſetting fire to it, of which there was no doubt, ſome part of the timber and thatch was burned. It appeared that the priſoner had before inſured the houſe and goods for 100 l. and that in 1776 he had ſurrendered the premiſes, being copyhold, to the uſe of one Nott, to ſecure 60 l. lent thereupon; but Nott was never admitted. The priſoner being convicted of the fact, Buller J. reſpited the judgment, and ſubmitted to the Judges, 1ſt, Whether the indictment were properly adapted to the caſe; 2dly, Whether evidence reſpecting the inſurance and the mortgage ought to have been received; 3dly, Whether the offence proved amounted to arſon. Upon the firſt queſtion all the Judges (abſent De Grey C. J. and one place being vacant) were of opinion that the indictment was bad: for that arſon at common law was the burning of the houſe of another, according to the reſolution in Holmes' caſe, which muſt govern: and that the ſtat. 9 Geo. 1. c. 22. did not create a new offence, but only excluded the principal from clergy more clearly in reſpect of what was arſon at common law: it being doubtful before that ſtatute, whether

12th April 1780.

Vide 4 Blac. Com. 222, 3.

and Alexander Poulter's caſe, 11 Co. 29. Foſt. 330. to 336.

ther

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ther or not the principal, or at leaſt perſons in holy orders, were entitled to the benefit of clergy in arſon.

Breeme's caſe, O. B April 1780, cor. Eyre B. MS. Buller J. (1 Leach. 261. S. C.) and 2 MS. Sum. 319. *No arſon by leſſee to burn the houſe in his poſſeſſion under the leaſe.*

Andrew Breeme was indicted for arſon of a houſe at common law, and upon the ſtatute 9 G. 1.; and the indictment, which contained ſeveral counts, reſpectively charged it to be the houſe of William Bolton, of Stone Tuppen, and of the priſoner himſelf. The jury found him guilty, and alſo found that the priſoner wilfully and maliciouſly ſet on fire and burnt the houſe mentioned in the indictment, which was in leaſe to him from Stone Tuppen for the term of three years, who was poſſeſſed of it for a term of 99 years under Bolton. On the 26th of May 1780, the Judges (Lord Mansfield and De Grey C. Js. abſent, and one place vacant,) debated this caſe, and all but Nares J., who the next day alſo concurred, held that the priſoner was not guilty of felony. They ſaid, as in Spalding's caſe, that arſon is the burning the houſe *of another*: that it is an offence immediately againſt *the poſſeſſion*: and that therefore, if a perſon in poſſeſſion of a houſe as tenant, however ſhort his term may be, ſet fire to it, it is not arſon. They all thought that Holmes' caſe could not be departed from, though ſome thought that poſſibly it might have been otherwiſe determined at firſt. Others, however, held the principle of that caſe to be right, conſidering the offence to be created for the protection of the party in poſſeſſion. And all the Judges again held that the ſtat. 9 Geo. 1. did not vary the offence, but was paſſed to exclude clergy from the principal more clearly than it was before; and particularly adverted to a clauſe at the end of that act for ſecuring damages to the party injured.

MS. Gould T

Rex v. Pedley, B. R. Trin. 22 Geo 3. MS. (Cald. 218. and 1 Leach, 277. S. C.) *Vide* 1 Hale, 568.

Theſe caſes were again recognized in that of Pedley, who, in one amongſt other counts of the indictment, was charged with burning his own houſe. Though Ld. Mansfield ſaid that if Holmes' caſe had been a new queſtion he ſhould not have been ſingly of a contrary opinion. Pedley was alſo charged with ſetting fire to his own houſe, with intent to burn the houſe of Richard Coombe, and (in another count) of the mayor of Briſtol, near to the priſoner's own houſe, by which the ſaid houſe of R. Coombe, &c. was ſet on fire and burned. The ſpecial verdict ſtated that the houſe had been demiſed by the mayor of Briſtol to Coombe for 99 years, by him to one Parry for a year, and ſo from year to year, and by Parry to

to one John Landry for three months, who was in poſſeſſion of it at the time of its being burned. And there being no count ſtating it to be the houſe of John Landry, the Court, who held that arſon was an offence againſt *the poſſeſſion of another*, gave judgment for the priſoner; but remanded him to cuſtody, as he had not been tried for burning the houſe of the tenant.

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Gowen's caſe, Bury Sum Aſſ. 1786, cor. Lord C. B. Skinner. MS. Buller J. and MS. Jud. *One put by overſeers of the poor into a houſe to live there is merely a ſervant, and his poſſeſſion is their's, and he may commit arſon by burning it.*

But it is not a mere reſidence in a houſe without any intereſt therein which will bring a party within the principle of the above caſes. In William Gowen's caſe, it appeared that the houſe which had been burnt by him at Laxfield in Suffolk was rented by one Richard Dobney, named in the firſt count as the owner, and let by him from year to year to the pariſh officers of Laxfield, who paid the rent for it, and who were at the time of the burning the houſe the perſons named (individually) in the third count of the indictment, which was framed as well at common law as on the ſtat. 9 Geo. 1. The priſoner was a poor man maintained by the pariſh, and had ſome time before the burning of the houſe been put by the pariſh officers to live there, and was reſident therein with his family at the time of the fact being committed, and had the ſole poſſeſſion and occupation of it, without payment of any rent. The priſoner was found guilty; and on reference to the Judges in Michaelmas term 1786, they all held the conviction to be proper; for the priſoner had no intereſt in the houſe, but was merely a ſervant, and therefore it could not be ſaid to be *his* houſe; but the overſeers had the poſſeſſion of it by means of his occupation.

Vide Rickman's caſe, poſt, c. 11. S. P.

Other nice queſtions have occurred in caſes where the poſſeſſion has been ambiguous, as againſt whoſe houſe the indictment ſhould charge the offence to have been committed; but theſe will more properly come under conſideration when I treat of the form of the indictment, and the proof neceſſary to ſupport it.

Poſt. c. 11.

§ 7. *Burning a man's own houſe.*

1 Hawk. ch. 39. ſ. 1. 2 Hale, 568, 9. Holmes' caſe, Cro. Car. 377. Sum 85. 4 Blac. Com. 221.

But though arſon can only be committed by burning the houſe of another, yet even the burning of a man's own houſe in a town, or ſo near to other houſes as to create danger to them, is a great miſdemeanor, and may be puniſhed with fine and impriſonment, pillory and finding ſureties,

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ſuteties, as was done in Holmes' caſe before mentioned. In ſome caſes the indictment has laid the fact to be with intent to burn ſuch other houſes: but however ſuch an intent may aggravate the offence, it is clearly not neceſſary to be laid or proved: ſuch an act muſt in its nature create great danger and terror to the neighbourhood, be the intent what it may. And in Proberts' caſe, after mentioned, no other matter was laid in aggravation but the contiguity of other houſes, which were thereby endangered.

Poſt. 1030.

It is alſo a great aggravation if one burn his own houſe in any ſituation with intent to defraud inſurers: but I find no inſtance of an indictment ſuſtained on that ground alone as the giſt of the offence: it was otherwiſe laid in the caſes of *Proberts* and *Iſaac* after-mentioned.

Scofield's caſe, Hil. 24 Geo. 3. B. R. Cald. 397. *Arſon is an injury only to the actual poſſeſſion, and muſt be ſo laid. Where an indictment charges an act to have been done with a felonious intent, and the jury find a verdict of guilty; if the charge, as laid, do not amount to felony, but amounts in law to a miſdemeanor, the Court will pronounce judgment as for that offence.*

John Scofield was tried before Lord Mansfield, at the ſittings at Weſtminſter after Michaelmas term, 24 Geo. 3. on an indictment which contained ſix counts. The firſt count ſtated that the priſoner wickedly, unlawfully, and maliciouſly intending and contriving to feloniouſly ſet fire to, burn, and conſume a certain houſe of one James Ramſey there ſituate, (of which houſe he the priſoner was *then poſſeſſed*, for a certain term of years then and yet to come and unexpired,) on, &c. with force and arms, at, &c. a certain lighted wax candle, which he the ſaid priſoner had then lately before ſet fire to and lighted, did unlawfully, wickedly, and maliciouſly fix and put in a certain cloſet under and adjoining certain wooden ſtairs called the kitchen ſtairs, in the aforeſaid houſe of the ſaid James Ramſey; which ſaid houſe was then ſituate in a certain neighbourhood and ſtreet there called New Bond-ſtreet, and contiguous and adjoining to certain dwelling-houſes thereof, and belonging to divers liege ſubjects, &c.: and that he the priſoner did then and there unlawfully, wickedly, and maliciouſly put and place about, unto, and againſt the ſaid lighted candle, ſo fixed and put by him in the ſaid cloſet as aforeſaid, divers matches, &c. and other combuſtible materials, *with a wicked and malicious intention, by means thereof then and there feloniouſly to ſet fire to the aforeſaid houſe of the ſaid James Ramſey, and to burn and conſume the ſame*, to the great damage, &c. The ſecond count no otherwiſe varied the charge than by deſcribing the houſe to be the dwelling-houſe of the priſoner himſelf. The third count ſtated that the

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the priſoner ſet fire to certain matches, &c. in a certain other houſe of the ſaid James Ramſey, &c. under certain wooden ſtairs, &c. by means thereof feloniouſly to ſet fire to the ſaid *laſt-mentioned houſe*, &c.: without ſtating, that it was in the poſſeſſion of the priſoner, or that he had any term in it. The fourth count charged the offence to have been committed in the ſame manner, in the houſe of the priſoner. The fifth count charged an attempt to ſet fire to the houſe of the ſaid James Ramſay; and the ſixth count, an attempt to ſet fire to the houſe of the priſoner. All the counts in like manner charged the act to have been done with a wicked and malicious intention *feloniouſly* to ſet fire to the houſe, &c. but none of them charged an intent of ſetting fire to the adjoining houſes. The jury having found the priſoner guilty; it was afterwards moved to arreſt the judgment; 1ſt, becauſe the indictment having charged the offence to have been done feloniouſly, it could only be ſuſtained by ſhewing it to be a felony. 2dly, That if it were no felony the fact was not indictable at all, as it was merely an attempt to commit a miſdemeanor. After argument, the Court took time to conſider their judgment; and on the 11th of Feb. 1784

Lord Mansfield C. J. delivered their opinion. He began by obſerving that the third count was clear of all objection: for there it was ſtated to be the houſe of J. Ramſay, without alleging that it was in the priſoner's poſſeſſion; and as it would have been felony to have burnt ſuch a houſe, the intent was there properly charged to be felonious. But as the evidence did not ſupport that count, the judgment of the Court was founded on the firſt count. Then as to the firſt objection urged againſt the firſt count; it was certainly true that it could be no *felony* in the defendant to burn *a houſe of which he was in poſſeſſion;* and that fact appearing upon the face of the indictment, by which the Court muſt ſee that the offence charged was not a felony, the word *feloniouſly* was repugnant to the legal import of the offence charged, and muſt be rejected as ſurpluſage; and then judgment ought to be pronounced againſt the defendant as for the offence of which he ſtood convicted; according to the precedent in Holmes' caſe, which was an authority expreſsly in point, and when examined and rightly underſtood was not liable to the objection made to it by Lord Hale. [He then explained the true ground of that judgment in the manner before

ante, 1023.

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before ſtated]. In anſwer to the ſecond objection, he obſerved that the offence did not reſt in bare intention, which without an act done was not puniſhable by our law; but here was an act done, and then the law might judge not only of the act itſelf, but of the intent with which it was done; and that if the act were coupled with an unlawful and malicious intent, though in itſelf the act would otherwiſe have been innocent, the intent being criminal, the act became criminal and puniſhable. And that there was no difference in the deſcription of the offence, though there was in the degree of guilt, whether the act were done with intent to commit a felony, or with intent to commit only a miſdemeanor. And he referred to ſeveral authorities as ſupporting the general principle.

Proberts' caſe, B. R. Mich. 40 G. 3. MS. *Burning a man's own houſe contiguous to others, indictable as a miſdemeanor at common law. If done with intent to defraud inſurers, and other houſes be burned in conſequence, the latter is felony.*

The ſame doctrine was laid down in the caſe of William Proberts. He was indicted for a miſdemeanor in having unlawfully, wilfully, and maliciouſly ſet on fire and burnt a certain houſe of William Bramwell, ſituate in the pariſh of St. Ann within the liberty of Weſtminſter, then in the occupation of the defendant, which ſaid houſe was contiguous and adjoining to certain dwelling-houſes belonging to divers liege ſubjects ſituate in the ſaid pariſh, by means whereof the dwelling-houſes of divers liege ſubjects were in great danger of being burned; to the damage terror and affrightment of all liege ſubjects near the ſaid houſe of the ſaid William Bramwell inhabiting and dwelling, to the great damage of the ſaid W. Bramwell, and againſt the peace, &c. The ſecond count laid it to be the defendant's own houſe. The defendant was tried and found guilty at the ſittings in Trinity term 1799 before Ld. Kenyon C. J.; and being brought up for judgment in Michaelmas term following was ſentenced by the Court to two years impriſonment in Newgate, and during that time to ſtand once in the pillory at Charing-Croſs, and to give ſecurity for his good behaviour for ſeven years from the expiration of his impriſonment, himſelf in 500l., and two ſureties in 50l. each. In paſſing ſentence Groſe J. ſaid, that though by a lenient conſtruction of the law of arſon this offence was holden not to be felony, yet it was a miſdemeanor of great magnitude, and deſerving of the moſt exemplary puniſhment. And that if it had ſo happened that any of the neighbouring houſes had been ſet

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on fire in conſequence of the defendant's wilful and malicious act in ſetting fire to his own houſe, (which was proved to be done in order to cheat the inſurance office,) it would clearly have amounted to a capital felony, and his life would have paid the forfeit.

§ 8. *Intent to burn a man's own houſe, and thereby burning another's. Vide* ante, f. 3. and 6 St. Tr. 222.

Hence it appears that though the primary intention of the party were only to burn his own houſe, yet if in fact others were burnt, being adjoining and in ſuch a ſituation as that the fire muſt in all probability reach them, the intent being unlawful and malicious, and the conſequence immediately and neceſſarily flowing from the original act done, it is felony. This has been before adverted to with another view, to ſhew that the malice ſhall be applied to the conſequential act, and is alſo confirmed by an expreſs deciſion on the point.

Iſaac's caſe, Spr. Aſſ. 1799, cor. Buller J. MS.

John Iſaac was indicted for a miſdemeanor in having unlawfully, wilfully, and maliciouſly ſet on fire and burnt a certain houſe of Thomas Iſaac, being in the occupation of the ſaid John Iſaac: which houſe the indictment alleged was contiguous and adjoining to certain dwelling-houſes of divers liege ſubjects, &c.; by means whereof the ſame were in great danger of being ſet on fire and burnt. There was a ſecond count which differed only in charging that the houſe ſet on fire was the priſoner's own houſe.

The counſel for the proſecution opened that the charge to be proved againſt the defendant, though laid as a miſdemeanor, was, that he wilfully ſet on fire his own houſe in order to defraud the Phœnix fire-inſurance office; and that in fact his own and ſeveral *other perſons' houſes* adjoining were *burnt* down. Upon which Buller J. ſaid, that if other perſons houſes were in fact burnt, although the defendant might only have ſet fire to his own, yet under theſe circumſtances the priſoner was guilty, if at all, of felony; the miſdemeanor being merged; and he could not be convicted on this indictment; and therefore directed an acquittal. 4 Blac. Com 221.

Principal and Acceſſary, and Clergy.

§ 9. *Principals and acceſſaries, or their clergy.* 2 Hawk. ch. 33. ſ. 43. 1 Hale, 570. &c. 2 Hale, 333 & ch. 46. Foſt. 192. 331. &c.

Whatever doubt may formerly have been entertained, whether the ſtats. 23 H. 8. c. 1. ſ. 3. and 25 H. 8. c. 3. ſ. 2. ouſting clergy from the principals in arſon, which had been repealed by 1 Ed. 6. c. 12. ſ. 10., were revived in toto by ſtat. 5 & 6 Ed. 6. c. 10.; or whether the principals in arſon

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were virtually excluded by the ſtat. 4 & 5 Ph. & M., which excluded the acceſſary before, it is unneceſſary to conſider; becauſe clergy is now expreſsly denied to the principal in all caſes within the ſtat. 9 Geo. 1. c. 22. But Lord Hale and Mr. Juſtice Foſter are decidedly of opinion that the ſtat. 4 & 5 Ph. & M. had ſuch an operation.

4 Blac. Com 222. 11 Rep. 34. Plowd. 475. Ante, f. 2.

Vide Proceſs to bring in the party.

By the further proviſion of the ſtat. 9 Geo. 1. c. 22. the offender may be required by order of the King in council to ſurrender within 40 days in the manner ſet forth at large in another place, in default of which the Court may award execution.

In addition to the above, the general ſtat. of the 3 W. & M. c. 9. ſ. 2. enacts that "If any perſon or perſons whatſoever be "indicted of any offence, for which by virtue of any former "ſtatute he or they are excluded from the benefit of clergy "if he or they had been thereof convicted by verdict or "confeſſion; if he or they ſtand mute, or will not anſwer "directly to the felony, or ſhall challenge peremptorily "above 20, &c., or ſhall be outlawed thereupon, ſhall not "be admitted to the benefit of his or their clergy."

1 Hale, 573.

Acceſſaries after ſtand upon the ſame footing as in other felonies, and are not deprived of clergy by any ſtatute, except after an order of the King in council, as abovementioned, in which caſe after the time limited in the order is expired, "ſuch as conceal, aid, abet, or ſuccour ſuch "offender, knowing him to have been ſo charged and ſo "required to ſurrender, being lawfully convicted thereof, "are ouſted of clergy."

Trial.

§ 10. *Trial* 9 Geo. 1. c. 22.

By the 14th ſect. of the ſtat. 9 Geo. 1. c. 22. "For the "better and more impartial trial of any indictment or in-"formation which ſhall be found, commenced, or proſecuted "for any of the offences againſt this act," it is enacted, "That every offence which ſhall be done or committed "contrary to this act ſhall and may be inquired of, exa-"mined, tried, and determined in any county within that "part of Great Britain called England, in ſuch manner and "form as if the fact had been therein committed." Saving corruption of blood, loſs of dower, and forfeiture of lands, goods and chattels.

In

In Mortis's caſe it was holden to be at the option of any private proſecutor to proſecute in another county.

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Mortis's caſe, 2 Blac. Rep. 733.

Indictment and Proof.

§ 11. *Indictment and proof.*

The indictment for arſon at common law muſt lay the offence to have been done *wilfully* (or *voluntarily*) *and maliciouſly*, as well as *feloniouſly*. And in Cox's caſe, where the indictment which was for perjury at common law, charged the offence to have been committed "falſely, maliciouſly, wickedly, and corruptly," all the Judges held that thoſe words implied that it was done wilfully. And though the ſtat. 9 Geo. 1. has not the words "wilful and malicious," &c., yet it ſeems they are equally neceſſary to an indictment under the ſtatute; for malice is of the eſſence of the offence: and ſo it was conſidered by ſeveral of the Judges in Suſan Minton's caſe; though that point was not neceſſarily under conſideration.

1 Hawk. ch. 39. ſ. 5. 2 MS. Sum. 319. 327. Ante, f. 3. Rickman's caſe, poſt. 1034. Cox's caſe, 1 Leach, 82. S. Minton's caſe, ante, 1021. MS. Buller J.

It is agreed however, that laying the burning to be of *a houſe* is ſufficient even at common law, without ſaying a *dwelling*-houſe. In Glandfield's caſe after mentioned, the indictment, which was framed on the ſtat. 9 Geo. 1., ſtated the burning to be of *outhouſes* generally, which was ruled by Heath J. to be ſufficient, without ſtating of what denomination of outhouſes, ſuch being the deſcription in the ſtatute 9 Geo. 1.

1 Hale, 567. Sum. 86. 2 Hawk. ch. 39. ſ. 1. 3 Inſt. 67. poſt. 1034.

So it is ſufficient to charge the burning of an *outhouſe*, if it be ſuch in fact, though in point of law it be parcel of the dwelling-houſe, as being within the curtilage.

North's caſe, ante, 1021.

At common law it was neceſſary, as before obſerved, to ſtate an actual burning; but the ſtat. 9 Geo. 1. uſing the term "*ſet fire to*" the houſe, it is now become common to ſtate both, though in effect meaning the ſame thing.

Ante, f. 4.

Where, in order to convict a party of a miſdemeanor for burning his own houſe, it is neceſſary that the act ſhould be founded upon ſome ſpecial evil intent to the property of others, it is neceſſary to lay ſuch intent in the indictment. But whether or not ſuch intent be a neceſſary conſtituent part of the offence, if it be laid and proved, it is a circumſtance highly aggravating againſt the offender.

Ante, f. 7.

But

Ch. XIX. § 11. *Indictment and proof.*

But where one intending only to burn the houſe of A. thereby burns the houſe of B., the indictment may charge him with the malicious and wilful burning of B.'s houſe.

1 Hale, 569.

Whoſe houſe. Ante, f. 6. per tot.

From what has been ſaid before it is plain that an indictment for arſon muſt upon the face of it appear to be of the houſe *of another;* and it muſt alſo ſtate whoſe houſe; and with that the proof muſt agree. An indictment charged that the priſoners, Martha Rickman, and Sarah Rickman, "feloniouſly, voluntarily, and maliciouſly ſet fire to *a certain houſe ſituate in the pariſh of Ellingham*, &c.; and by ſuch firing as aforeſaid feloniouſly, voluntarily, and maliciouſly burnt and conſumed the ſame houſe, &c." againſt the form of the ſtatute, &c. The priſoners were convicted; but judgment was reſpited. And afterwards, in Michaelmas term 1789, all the Judges held the conviction wrong, becauſe the indictment did not ſtate to whom the houſe belonged. And it having been proved in that caſe that the houſe belonged to the pariſh, and that they ſuffered one Thomas Early to live in it; but who were the truſtees, or in whom the legal eſtate was veſted, was wholly unknown; the Judges agreed that the houſe might have been laid to be the property of the overſeers, or of perſons unknown.

Rickman's caſe, Winchester Sum. Aſſ. 1789, cor. Buller J. MS. Buller J. and MS. Jud.

Ante, 1027.

It could not be ſaid to be Early's houſe, on the ſame principle as in Gowen's caſe beforementioned: he was merely a ſervant of the pariſh.

It requires great nicety in ſome caſes to diſtinguiſh the perſon, who may be ſaid to occupy ſuo jure, and againſt whom the offence muſt be laid to have been committed. In Glandfield's caſe it appeared that the outhouſes burned were the property of Blanche Silk, widow, but were only made uſe of by John Silk her ſon, who lived with her after his father's death in the dwelling-houſe adjoining the outhouſes, and took upon him the ſole management of the farm, with which theſe outhouſes were uſed, to the loſs and profit of which he alone ſtood, though without any particular agreement between him and his mother; and he paid all the ſervants, and purchaſed all the ſtock: but the legal property both in the dwelling-houſe and farm was in the mother, and ſhe alone repaired the dwelling-houſe and the outhouſes in queſtion. Heath J. held, that as to the ſtable, pound,

Glandfield's caſe, Exeter Spr. Aſſ. 1795, cor. Heath J. MS.

pound, and hogſties which the ſon alone uſed, the indictment muſt lay them to be in his occupation; and as to the brewhouſe, (another of the outhouſes burned,) the mother and ſon both occaſionally paying for ingredients, the beer being uſed in the family, to the expences of which the mother in part contributed, though without any particular agreement as to the proportion, that the ſame ſhould be laid in their joint occupation. The priſoner was afterwards convicted on a ſecond indictment (*a*) drawn agreeably to this opinion; the firſt having improperly laid the whole premiſes as in the ſole occupation of the mother; and he was executed.

Ch. XXI. § 11. *Indictment and proof.*

In Minton's caſe before ſtated, though the indictment, which was framed on the ſtat. 22 & 23 Car. 2. c. 17. charged the burning to have been *in the night-time*, and the fact was proved to have been committed by day, yet the conviction was holden proper; that circumſtance being immaterial on the ſtat. 9 G. 1. c. 22.

Minton's caſe, ante, 1021.

In the caſe of the two Rickmans above mentioned, the proof adduced by the firſt witneſs of the priſoners' having been preſent in the houſe and implicated in the fact was, that a bed and blankets were afterwards found in their poſſeſſion, which had been taken out of the houſe at the time it was fired, and concealed by them from that time. Buller J. doubted at firſt whether ſuch evidence of another felony could be admitted in ſupport of this charge: but as it ſeemed to be all one act, although the priſoners came twice to the houſe fired, which was adjoining to their own, he admitted this amongſt other evidence.

Rickman's caſe, ante, 1034.

(*a*) The ſecond indictment contained two counts, the firſt laying the occupation in the ſon alone, the other laying it in the mother and ſon.

CHAP. XXII.

MALICIOUS OR FRAUDULENT MISCHIEF.

References to Offences *ejuſdem generis* under other appropriate Titles. - - § 1.

Arſon. Burning of all *Buildings, Stacks, &c. of Corn, Straw, Hay*, or *Wood. ib.*

Pulling down or beginning to demoliſh Houſes, Mills, and Chapels by Rioters, referable to *Riot. ib.*

Nuſances, Maims, Spoiling Cloaths, Piracy, referable to other general Heads.

1. *In the Northern Counties.* - § 2.

Making Prey or Spoil of Perſons or Goods on deadly Feud or otherwiſe, or taking or giving *Blackmail*, or *burning* Barns or Stacks of Corn, Felony without Clergy by Stat. 43 Eliz. c. 13. *ib.*

Moſs Troopers puniſhable capitally or by Tranſportation, by Stat. 18 Car. 2. c. 3. *ib.*

2. *By burning Grig, Ling, Heath, Furze, Goſs, or Fern.* - - - § 3.

A Miſdemeanor, by Stat. 4 & 5 W. & M. c. 23. and in Part inquirable before Juſtices of Peace by Stat. 28 Geo. 2. c. 9. paſſed for the better Preſervation of the Game. *ib.*

3. *By Hunters,* - - - § 4.

Offences by ſuch referable in Part to Larceny. *ib.*

Killing, wounding, or deſtroying, &c., or attempting to kill, &c. Deer in incloſed Grounds, Felony and Tranſportation by Stat. 42 Geo. 3. c. 107. *ib.*

The ſame in *open Ground*, a Forfeiture of 50l. &c. for firſt Offence, and for ſecond Offence Felony and Tranſportation for 7 Years. - - § 4.

Carrying offenſive Weapon where Deer kept, with Intent to hunt, &c., or *reſiſting Keepers*, &c. Felony and Tranſportation. *ib.*

4. *By burning Timber-Trees, Woods, Underwoods, Coppices, &c. Roots, Plants, &c.* § 5.

The Statutes.

i. Barking *Fruit-Trees*, treble Damages to Party grieved, and Fine to the King, by Stat. 37 H. 8. c. 6. *ib.*

Damages recoverable againſt the Pariſh, &c. for the Deſtruction of *Trees* by Stat. 1 Geo. 1. ſt. 2. c. 48., the ſame as by Stat. 13 Ed. 1. ſt. 1. c. 46. for Hedges, &c. overthrown *in the Night. ib.*

ii. Malicious burning any *Wood, Underwood, or Coppice*, Felony by Stat. 1 Geo. 1. ſt. 2. c. 48. ſ. 4. *ib.*

Damages recoverable as by Stat. 1 Geo. 1. ſt. 2. c. 48. for the Deſtruction or ſpoiling of all Woods or Underwoods, Coppices, Trees, Poles, Springs of Wood, Thorns, and Quickſets, and for breaking down and deſtroying, &c. of all Gates, Pails, Rails, Fences, Ditches, Banks, &c. or other Incloſures of ſuch Woods, &c. whether by Day or Night, by Stat. 6 Geo. 1. c. 16. explaining and amending the former Act. *ib.*

iii. By ſ. 2. of Stat. 6 G. 1. c. 16. deſtroying, burning, ſpoiling, &c. in open or clandeſtine Manner, or wrongfully and maliciouſly, all ſuch *Woods, Springs of Wood, Underwood or Coppice*, or deſtroying, &c. *Hedges, &c.* or *Incloſures of ſuch Woods, &c. Plantations, Timber, Fruit-Tree or other Trees, Thorns*, or *Quickſets*, inquirable before Juſtices of Peace in or out of Seſſions, who on Conviction may award the ſame Penalties and Puniſhments as under Stat. 1 Geo. 1. ſt. 2. c. 48. *ib.*

Damages given to Party grieved by former Statutes extended to Trees in New Incloſures by Stat. 29 Geo. 2. c. 36. - - §5.

iv. Stat. 29 Geo. 2. c. 36. gives the like Juriſdiction to Juſtices of Peace to inquire of the ſame *Treſpaſſes* againſt New Incloſures as before given by Stat. 6 Geo. 1. c. 16. *ib.*

Obſervations on the abovementioned Statutes. - §6.

v. The unlawful and *malicious* Deſtruction of *ornamental, uſeful, or profitable Trees*, in any *Avenue, Garden, Orchard, or Plantation*, a capital Felony by Stat. 9 Geo. 1. c. 22. ſ. 1. - - §7.

Trial in any County. *ib.*

vi. The deſtroying or ſpoiling *in the Night* of *Timber-Trees, or Trees likely to become ſuch*, in open or incloſed Grounds, made a ſimple Felony and Subject to Tranſportation by Stat. 6 Geo. 3. c. 36. *ib.*

Extended to *Roots, Shrubs, or Plants* of 5s. Value in Garden Grounds, &c. *ib.*

Includes *Aiders* and *Abettors*. *ib.*

The Owner of the Trees muſt be named in the Indictment. *ib.*

vii. Spoiling or deſtroying *Timber-Trees or Trees likely to become ſuch*, 1ſt Offence a Penalty; 2d Offence Felony and Tranſportation by Stat. 6 Geo. 3. c. 48. *ib.*

Plucking up, ſpoiling, or deſtroying *Roots, Shrubs, or Plants* in cultivated Lands; 1ſt and 2d Offence a Penalty; 3d Offence Felony and Tranſportation. *ib.*

Cutting, ſplitting, ſpoiling, damaging, or deſtroying, &c. any Kind of *Wood, Underwood, Poles, Sticks of Wood, Green Stubs*, &c. or having the ſame in Cuſtody without good Account, for 1ſt and 2d Offence Penalties; for 3d Offence to be deemed an incorrigible Rogue. *ib.*

General View of the ſeveral Statutes. - §8.

viii. By Stat. 37 H. 8. c. 6. burning *Heaps of Wood* prepared for making *Coals, Billets*, &c. treble Damages and Fine. - - - §9.

5. *By*

5. *By maliciouſly burning Wains and Carts laden with Goods.* - - §10.

Puniſhable by the laſt-mentioned Statute in like Manner.

6. *By deſtroying or damaging Fences and Incloſures.* - - - §11.

Damages to be recovered againſt adjoining Towns for Hedges and Dikes overthrown, by 13 Ed. 1. ſt. 1. c. 46. *ib.*

Indictable Offence. *ib.*

Setting Fire to, deſtroying, or damaging *Incloſures* under any Act of Parliament, Felony and Tranſportation by Stat. 9 Geo. 3. c. 28. *ib.*

Pulling down, or deſtroying *Pales*, &c. of Grounds where *Deer* kept, Penalty or Impriſonment, &c. by Stat. 16 Geo. 3. c. 30. ſ. 8. and other Statutes. *ib.*

7. *In reſpect of Fiſh-Ponds.* - §12.

Breaking down the *Head or Mound of any Fiſh-Pond*, whereby the Fiſh be loſt or deſtroyed, *from Malice to Owner*, a capital Felony by Stat. 9 Geo. 1. c. 22. *ib.*

Trial in any County. *ib.*

Similar Offence, or cutting Heads or Pipes of Conduits, puniſhable as Miſdemeanor by Stat. 37 H. 8. c. 6. *ib.*

By Stat. 5 Eliz. c. 21. breaking, &c. Heads or Dams of Ponds, &c. *to ſteal Fiſh*, Impriſonment and treble Damages. But if done with Intent only to *ſteal* the Fiſh, not within the Stat. 9 Geo. 1. *ib.*

8. *In reſpect of Hops.* - - §13.

Maliciouſly cutting *Hop-binds* growing on Poles in Plantations, a capital Felony, by Stat. 6 Geo. 2. c. 37. ſ. 6. *ib.*

General Proviſions of the Black Act extended to it by Stat. 10 Geo. 2. c. 32. *ib.*

9. *In*

9. *In obſtructing the free Paſſage of Grain; or deſtroying Places where Grain is kept.* § 14.

Uſing Violence to any—or breaking or cutting Carriage or Harneſs of Horſes conveying it—or injuring Horſes—or cutting Sacks—or ſcattering ſuch Grain; —Impriſonment on ſummary Conviction for firſt Offence, and Felony for ſecond, by Stat. 38 Geo. 3. c. 9. and 11 Geo. 2. c. 22. *ib.*

Alſo Felony and Tranſportation to deſtroy *Granary* or other *Place where Grain kept*, or carrying away or ſcattering or ſpoiling *Grain*, *Flour*, *Meal*, *or Malt*. *ib.*

Returning from Tranſportation before the Term, ouſted of Clergy. *ib.*

10. *To Cattle.* - - § 15.

Cutting out Tongue of tame Beaſt alive puniſhable by treble Damages and Fine, by Stat. 37 H. 8. c. 6. *ib.*

By Stat. 22 & 23 Car. 2. c. 7. killing *Horſes*, *Sheep*, *or other Cattle*, Felony and Death, but tranſmutable for Tranſportation. *ib.*

If Cattle not killed, puniſhable by treble Damages. *ib.*

But by Stat. 9 Geo. 1. c. 22. the *maliciouſly killing*, *maiming*, or *wounding any Cattle*, Felony ouſted of Clergy. *ib.*

Extends to Aiders and Abettors, and ſuch as do not ſurrender on Proclamation, &c. *ib.* (& ſ. 19.)

The *Malice* muſt be againſt the *Owner*, not againſt the *Animal*. - - - § 16.

Proof of the Priſoner's Diſlike to the Horſe injured, and Threat to do the Miſchief if his Maſter would not let him have another, which was not complied with, not ſufficient to bring the Caſe within the Black Act. *ib.*

So maiming Sheep, becauſe they overleapt Bounds, not within the Act. *ib.*

But ſemble, that Evidence of *previous* exiſting Malice againſt the Owner not neceſſary, if on the Whole the Act appear to be done from Malice to him. *ib.*

No

No Indictment lies at common Law for unlawfully *with Force and Arms* maiming a Horſe: but ſome ſpecial Force muſt be ſhewn. - § 17.

What CATTLE are within the Black Act. § 18.

Horſes are ſo. *ib.* and - - § 19.

Wounding Cattle, though *the Injury be only temporary*, is within the Act, if done from Malice to Owner. § 20.

11. *In reſpect to Manufactures.* - § 21.

i. Breaking into *Houſe*, &c. *with Intent* to cut or deſtroy *Woollen Goods* in the Loom, or *Tools*, or *cutting* or *deſtroying* ſuch, a capital Felony by Stat. 22 Geo. 3. c. 40. *ib.*

ii. The ſame as to *Silk*. - - § 22.

iii. The ſame as to *Linen* and *Cotton*. - § 23.

Extended to ſuch Goods put out to bleach or dry, by Stat. 4 Geo. 3. c. 37. *ib.*

iv. *Plate Glaſs*. - - - § 24.

Malicious Miſchief to ſuch in any Houſe, &c. belonging to the Plate Glaſs Company, Felony and Tranſportation. *ib.*

12, 13, & 14. *In reſpect to Highways, Turnpikes, and Bridges.* - - § 25.

i. *Highways.* Miſchief to ſuch puniſhable as Nuſance at common Law, or on ſummary Conviction before Juſtices of Peace by General Highway Act 13 Geo. 3. c. 78. *ib.*

ii. *Turnpikes.*

Deſtroying *Turnpike Gates*, *Poſts*, *Rails*, &c. or *Engines for weighing*, &c. Felony and Tranſportation, or Impriſonment for 3 Years, by Stat. 13 Geo. 3. c. 84. - - § 26.

iii. *Bridges.* Nuſances to ſuch puniſhable as Miſdemeanor at common Law, and alſo by Stat. 13 Geo. 3. c. 78. on ſummary Conviction for certain petty Injuries. - - - - § 27.

Certain Bridges protected by particular Statutes. *ib.*

15. *To Mines and Engines.* - - § 28.

Coal Mines.

Burning ſuch, a capital Felony by Stat. 10 Geo. 2. c. 32. *ib.*

General Proviſions of the Black Act extended thereto. *ib.*

Drowning ſuch, ſubjects Party only to treble Damages. *ib.*

Deſtroying *Engines* for draining Mines of *Coal, Lead, Tin, Copper, or other Mineral,*—or *Bridge, Waggon-ways, or Trunks* for carrying ſuch, &c. Felony and Tranſportation. - - - § 29.

Pulling down, filling up, &c. *Airway, Waterway, Drain, Pit, Level, or Shaft,*—or damaging *Railway, Tram Road, or other Road* to ſuch Mine, &c. a Miſdemeanor ſubject to Impriſonment. - § 30.

Extends to *Acceſſaries before and Aiders. ib.*

Exception in Favour of Owners of adjoining Mines. *ib.*

16. *To Sea Banks and River Banks.* § 31.

Breaking down, &c. ſuch, maliciouſly, a capital Felony by Stat. 6 Geo. 2. c. 37. *ib.*

General Proviſions of Black Act extended to theſe Offences by Stat. 10 Geo. 2. c. 32. *ib.*

Unlawfully deſtroying, or taking away from Sea Banks, Piles, Chalk, or other Materials, 20l. Penalty on ſummary Conviction. *ib.*

Summary Juriſdiction given by Stat. 19 Geo. 2. c. 22. as to Rubbiſh thrown in Harbours, &c. *ib.*

17. *To Locks and other Works on navigable Rivers.* - - - § 32.

Maliciouſly demoliſhing ſuch, Felony and Tranſportation by Stat. 1 Geo. 2. ſt. 2. c. 19. *ib.*

Returning from Tranſportation before the Term, ouſted of Clergy by Stat. 5 Geo. 2. c. 33. *ib.*

Expences

Expences of Proſecution to be defrayed by the Truſt. § 32.

Clergy ouſted from principal Offenders and Reſcuers by Stat. 8 Geo. 2. c. 20. *ib.*

Trial and *Pardon. ib.*

By Stat. 4 Geo. 3. c. 12. the maliciouſly damaging or deſtroying Banks, Sluices, or other Works on Rivers made navigable by Act of Parliament; or opening Flood-gates, &c., or doing *any other wilful Hurt or Miſchief to ſuch Navigation,* or *obſtructing* the carrying it on or completing it, &c.; is made Felony and liable to Tranſportation. *ib.*

18. *In reſpect to Drainage, and Works for the Preſervation of particular Places.* § 33.

i. *Powdike in Marſhland,* by Stat. 22 Hen. 8. c. 11. *ib.*

ii. *The Bedford Level,* by Stat. 27 Geo. 2. c. 19. and other Statutes. - - - § 34.

iii. Certain Marſhes in Norfolk, by Stat. 42 Geo. 3. c. 22. - - - § 35.

iv. Certain Lands bordering on the Sea in Devon, by Stat. 42 Geo. 3. c. 32. - - § 36.

19. *To the Weſt-India Docks in the Port of London.* - - - § 37.

Burning any of the Works, or any Veſſel lying within them, Felony without Clergy by Stat. 39 Geo. 3. c. 69. *ib.*

Deſtroying, &c. any ſuch Works, or Veſſels, puniſhable by Fine and Impriſonment, or Tranſportation. *ib.*

So cutting, &c. or in any Manner deſtroying any Rope by which any Veſſel lying in the Docks, &c. *or in any Place in the Thames between London Bridge and the Mouth of the River Lea,* is ſubjected to Penalty. *ib.*

20. *To the King's Ships, Dock-Yards, Stores, &c.* - - - § 38.

Wilfully firing or otherwiſe deſtroying ſuch, Felony without Clergy by Stat. 12 Geo. 3. c. 24. *ib.*

Trial. ib.

21. *To private Ships, Wrecks, &c.* § 39.

Deſtroying Ships by Maſter, or Mariners, &c. belonging to ſuch, Felony by Stat. 22 & 23 Car. 2. c. 11. *ib.*

By Stat. 1 Ann. ſt. 2. c. 9. ſuch Perſons wilfully caſting away, burning, or otherwiſe deſtroying Ships, to the Prejudice of their Owner, or any Merchant having Goods on board, excluded Clergy. *ib.*

Trial reſerved to Admiralty, if Offence within its Juriſdiction. *ib.*

Stat. 12 Ann. ſt. 2. c. 18. provides for aſſiſting Ships ſtranded, or in danger of being ſo. *ib.* And that Perſons entering ſuch Ships without Leave, or moleſting others in ſaving ſuch, ſhall make double Satisfaction to Party grieved, or be ſent to Houſe of Correction for 12 Months. - § 40.

Making Holes, or ſtealing Pumps, or wilfully doing any Thing tending to immediate Loſs of Ship, Felony without Clergy. - - § 41.

By 4 Geo. 1. c. 12. if Owner, Maſter, or Mariner belonging to any Ship, wilfully caſt away, burn, or otherwiſe deſtroy it—or procure the ſame to be done, to the Prejudice of Underwriters on the Ship, or Merchants having Goods laden on board, Felony, and ouſted of Clergy by Stat. 11 Geo. 1. c. 29. *ib.*

Trial. ib.

Conſtruction on Statutes. - - - § 42.

What *a caſting away* or *deſtroying? ib.*

Muſt be to defraud *Inſurer* on the *Ship*, not on *Goods*, within that Branch. *ib.*

One who is Acceſſary to a felonious Shipwreck is not within Stat. 4 Geo. 1. c. 12. unleſs he belong to the Ship. *ib.*

But

But Plunder or Deſtruction, *by any Perſon*, of Goods on board Ship in Diſtreſs is within Stat. 12 Ann. ſt. 2. c. 18. - - - - § 43.

And they are puniſhable as *Pirates* by Stat. 8 Geo. 1. c. 24. *ib.*

And by Stat. 26 Geo. 2. c. 19. deſtroying Effects belonging to Ships in Diſtreſs, wrecked, ſtranded, or caſt on Shore, or any Part of *Furniture*, *Tackle*, *Proviſion*, or *Part of ſuch Ship*,—or *obſtructing the Eſcape* of any Perſon,—or *putting out falſe Lights* to bring Ships into Danger, Felony without Clergy. *ib.*

Trial. ib.

By Stat. 2 Geo. 3. c. 28. cutting or damaging Cordage, &c. fixed to Veſſels at Anchor or Mooring in the *River Thames*, liable on Conviction to Tranſportation. - - - - § 44.

So obſtructing Execution of the Act. *ib.*

The King's Ships wilfully or negligently running down others, or hazarding them, &c. Offenders puniſhable with Death, or other leſs Puniſhment, by a Court Martial. - - - § 45.

Seamen and others *ſetting Fire* to any Ship, Keel, or other Veſſel, Felony without Clergy by Stat. 33 Geo. 3. c. 67. - - § 46.

Otherwiſe deſtroying or damaging the ſame, Felony and Tranſportation. *ib.*

Trial, and *Limitation* of Proſecution. *ib.*

Malicious or Fraudulent Miſchief.

§ 1.

I HAVE before adverted to this general claſs of offences in the introductory part of the laſt chapter upon arſon, which conſtitutes one of the moſt prominent of the claſs. In treating of that offence I had occaſion to mention alſo the burning of buildings of all deſcriptions, whether forming part of the dwelling-houſe or otherwiſe; as alſo the burning of ſtacks, &c. of corn, grain, ſtraw, hay, and wood, which are connected with the ſame ſubject by ſeveral ſtatutes, the conſtruction of which was more properly and conveniently conſidered

Reference to ſimilar offences ejuſdem generis, under other titles.

Burning of buildings.

Stacks, &c. of corn, ſtraw, hay, and wood.

Vide 2 Term Rep. 255.

Ch. XXII. § 1.

conſidered together. Malice againſt the perſon of the owner ſeems to be the only probable motive to the commiſſion of all thoſe offences. But it often happens that a violent, lawleſs, and deſtructive ſpirit, however generally attributable to perſonal malignity and revenge, is often incited by and accompanied with a luſt for plunder, regardleſs of the means, and hardened againſt the conſequences. Some of the offences which remain to be deſcribed are of this ſort, originating from a mixture of malice and fraud; where the end in contemplation is ſome undue gain, to be obtained by ſome violent and deſtructive means.

Pulling down or beginning to deſtroy houſes, mills, chapels.

Other offences, which might properly be claſſed under this general head, thoſe of pulling down or otherwiſe beginning to deſtroy houſes, mills, or chapels, &c. by perſons *riotouſly* aſſembled, will more conveniently be conſidered when I come to treat of *Riots*, with which they are particularly connected by the *riot*-act, and other acts in pari materiâ; the riotous aſſembly of ſuch offenders at the time being a neceſſary ingredient in the conſtitution of the offence.

Ripping, breaking, &c. iron or lead, &c. fixed to houſes.

So the mere ripping, cutting, or breaking, (if done *with intent to ſteal,*) of any lead, iron bar, iron gate, iron paliſadoe, or iron rail, or of any copper, braſs, bell-metal, utenſil, or fixture, fixed to any dwelling-houſe, outhouſe, &c. are made ſubſtantive offences, though the theft or robbery were not actually accompliſhed, by the ſtats. 4 Geo. 2. c. 32. and 21 Geo. 3. c. 68. before ſet forth in the chapter upon larceny and robbery.

Ante, 590, 2.

Nuſances.

Some few offences of leſs malignity will be noticed under the head of nuſances, to which they alſo relate.

Maims. Ante, 392.

Others again, which are of a perſonal nature, ſuch as *maims*, have been already mentioned under the head of *Mayhem*: and another of them, that of *ſpoiling cloaths*, being connected with the perſonal aſſault on the wearer, has been treated of under the claſs of *Aſſaults*, &c.

Spoiling cloaths. Ante, 424.

Piracy. Ante, 792.

And Piracy will be found to comprehend other offences of this deſcription.

1. *In*

Ch. XXII. § 2. *In Northern counties.*

1. *In the Northern Counties.*

§ 2. 43 Eliz. c. 13. *Vide* ante, 430 and 650.

By the ſtat. 43 Eliz. c. 13., which has been in part before recited, for reſtraining incurſions, robberies, burning of towns, and houſes, within the counties of Cumberland, Northumberland, Weſtmoreland, and the biſhoprick of Durham, and the impriſonment and cruel treating of the inhabitants, unleſs redeeming themſelves by great ranſoms called blackmail, it is enacted that "whoſoever ſhall at any "time hereafter, without lawful authority, *take* any of the "queen's *ſubjects* againſt his or their will, and carry them "out of the ſame counties, or to any other place within "any of the ſaid counties, or detain, force, or *impriſon* *Impriſoning.* "him or them as priſoners, or againſt his or their wills, to "ranſom them, or to make a *prey* or *ſpoil* of his or their *Making prey or ſpoil of perſons or goods upon deadly feud or otherwiſe.* "*perſon* or *goods*, *upon deadly feud or otherwiſe*: or whoſoever "ſhall be privy, conſenting, aiding, or aſſiſting unto any "ſuch taking, detaining, or carrying away, or procure the "taking, &c. of any ſuch perſon or perſons priſoners as "aforeſaid: or whoever ſhall *take*, receive, or carry to the *Taking or giving blackmail.* "uſe of himſelf, or wittingly to the uſe of any other, any "money, corn, cattle, or other conſideration, commonly "called blackmail, for the protecting or defending of him "or them, or his or their lands, tenements, goods, or "chattels, from ſuch thefts, ſpoils, and robberies, as afore-"ſaid: or whoſoever ſhall *give* any ſuch money, &c. called "blackmail, for ſuch protection as aforeſaid; or ſhall wil-"fully and of malice *burn*, or cauſe to be burned, or aid, *Burning barns or ſtacks of corn. Vide* ante, *Arſon*, "procure, or conſent to the burning of any barn or ſtack ſ. 2. "of corn or grain, within any of the ſaid counties or places "aforeſaid: and ſhall be of the ſaid ſeveral offences or any "of them indicted, and lawfully convicted, or ſhall ſtand "mute, or challenge peremptorily above 20, before the "juſtices of aſſize, gaol delivery, oyer and terminer, or of "the peace, within any of the ſaid counties at ſome of their "general ſeſſions, &c. ſhall be adjudged felons, without *Death.* "benefit of clergy."

Authority is given to the Court by a ſubſequent ſtatute of the 18 Car. 2. c. 3. before noticed, to execute or tranſport for life certain of theſe offenders, known in Northumberland and Cumberland by the name of moſs troopers.

18 Car. 2. c. 3. Ante, 650. made perpetual by 31 Geo. 3. c. 42. ſ. 1. *Tranſportation.*

2. *By Burning Heath, Furze, Fern, &c.*

§ 3. *Burning heath, &c. 4 & 5 W. & M. c. 23.*

By ſtat. 4 & 5 W. & M. c. 23. ſ. 11. it is "provided and "enacted that for the better preſerving the red and black "game of grouſe, commonly called heath-cocks or heath-"polts, no perſon whatſoever, on any mountains, hills, "heaths, moors, foreſts, chaces, or other waſtes, ſhall "preſume to burn, between the 2d of *February* and 24th "of *June*, any grig, ling, heath, furze, goſs, or fern, upon *Miſdemeanor.* "pain that the offender or offenders ſhall be committed to "the houſe of correction for any time not exceeding one "month, and not leſs than ten days, there to be whipped "and kept to hard labour."

This proviſion is to be found in an act made for the general preſervation of game, which in other clauſes gives a ſummary method of proſecution and conviction before one juſtice of the peace, who, in default of the offender's paying a certain penalty, is enabled to direct the ſpecific puniſhment above deſcribed to be inflicted on him: and it is probable that the ſame method of proceeding was intended to be applied to offences deſcribed in the 11th ſection. Yet as ſuch ſummary juriſdiction is not expreſsly given to juſtices *Vide* Burn's Juſtice, tit. *Game*, ſ. 6. of peace, the common opinion has been, that the trial and conviction muſt be at the aſſizes, or in the ſuperior courts. Though if the fact be wilfully done, there ſeems no reaſon why the juſtices in ſeſſions may not take cognizance of it as a nuſance, or in ſome caſes even as a breach of the peace.

28 Geo. 2. c. 19. *Summary juriſdiction to inquire and puniſh.*

The ſubſequent act of the 28 Geo. 2. c. 19. ſ. 3. does not affect to repeal the above-mentioned clauſe; but, merely reciting that the laws then in being were not ſufficient to prevent the offences, enacts, "that if any perſon or perſons, "not having a right or legal licence to do the ſame, ſhall, "after the 1ſt of *Auguſt* 1755, ſet fire to, burn, or deſtroy, "or ſhall abet, aid, or aſſiſt in or at the burning or deſtroy-"ing of any goſs, furze, or fern (*a*), growing or being in "or upon any foreſt or chace (*b*) within England, without "the licence or conſent of the owner or proprietor, or the "perſon chiefly entruſted with the care, overſight, and "cuſtody of ſuch foreſt or chace, or ſome part thereof," &c. The ſtatute then proceeds to give a ſummary juriſdiction to one or more juſtices of the peace, to convict the perſon

[(*a*) Omitting the word *ſtrath*, which is, however, mentioned in the margin of Rumpington's edit of the Stats.] [(*b*) Omitting the other general deſcription of places in the ſtat. of Wm.]

ſon ſo offending in a certain penalty, and to commit him to gaol in default of payment for a given time.

3. *By Hunters.*

§ 4. *By hunters.*

Although the ſeveral ſtatutes againſt unlawful hunters of deer include many other offences than thoſe which amount in law to larceny; yet as the acquiſition of the property is the ultimate end of every ſpecies of violence and miſchief deſcribed by thoſe ſtatutes, I thought that they might with moſt propriety be treated of under the head of Larceny and Rob- Ante, 608. bery: but ſince that part of the work was printed, a very recent act of parliament has paſſed, reviſing the ſubject, and again reſtoring to the claſs of felonies many of the offences before enumerated, which were formerly made ſuch by the Black Act, but which by the conſtruction put upon the ſtat. 9 Geo. 1. c. 22. 16 Geo. 3. c. 30. in Davies' caſe before referred to were Davies' caſe, ante, 609. reduced to miſdemeanors by the latter ſtatute, puniſhable in the firſt inſtance by a pecuniary forfeiture.

The act in queſtion is the 42 Geo. 3. c. 107. intitled 42 G. 3. c. 107. "An act more effectually to prevent the ſtealing of deer." The firſt ſection of which enacts, "that if any perſon or per- *Hunting, &c. or taking in toil, or killing, wounding, or deſtroying deer in incloſed ground, felony and tranſportation for ſeven years.* "ſons ſhall wilfully courſe or hunt, or take in any ſlip, "nooſe, toil, or ſnare, or kill, wound, or deſtroy, or ſhoot "at, or otherwiſe attempt to kill, wound, or deſtroy, or ſhall "carry away, any red or fallow deer, kept or being in the "incloſed part of any foreſt, chaſe, purlieu, or ancient "walk, or any incloſed park, paddock, wood, or other in-"cloſed ground, wherein deer are, have been, or ſhall be "uſually kept, without the conſent of the owner of ſuch "deer, or without being otherwiſe duly authorized, or ſhall "knowingly be aiding, abetting, or aſſiſting therein or there-"unto; every perſon ſo wilfully offending as aforeſaid, in "any of the caſes above mentioned, ſhall be deemed and "taken to be guilty of felony, and, being lawfully convicted "thereof upon indictment, ſhall be adjudged to be tranſ-"ported for the term of ſeven years."

Sect. 2. enacts, "that from and after the paſſing of this *In open ground a miſdemeanor, and penalty for firſt offence.* "act, (26th June 1802,) if any perſon ſhall wilfully courſe "or hunt, or take in any ſlip, nooſe, toil, or ſnare, or kill, "wound, or deſtroy, or ſhoot at or otherwiſe attempt to kill,

Ch. XXII. § 4. *By hunters.*

" kill, wound, or deſtroy, or ſhall carry away, any red or " fallow deer, kept or being in the unincloſed part of any " foreſt, chaſe, purlieu, or ancient walk, without the con- " ſent of the owner of ſuch deer, or without being otherwiſe " duly authoriſed, or ſhall knowingly be aiding, abetting, " or aſſiſting therein or thereunto; every perſon ſo offending " ſhall, for every ſuch act of wilful courſing or hunting, " and for every ſuch attempt to kill, wound, or deſtroy, " and for every deer ſo taken, or killed, wounded, or de- " ſtroyed, or ſhot at, or carried away as aforeſaid, in or " from any unincloſed part of any foreſt, chaſe, purlieu, " or ancient walk, forfeit and pay the ſum of fifty pounds; " and if the offender in any of the caſes aforeſaid ſhall be " a keeper of or perſon in any manner entruſted with the " care or cuſtody of deer in the foreſt, chaſe, purlieu, or " ancient walk, wherein the offence ſhall be committed, " he ſhall for every ſuch offence forfeit and pay double the " penalty herein-before enacted to be paid by other offen- " ders."

2d offence felony and tranſportation for ſeven years.

Sect. 4. enacts, " that if any perſon or perſons, after " having been duly convicted of any offence for which a " pecuniary penalty or forfeiture is impoſed, either by this " act or by the ſaid act made in the ſixteenth year of the " reign of his preſent majeſty, ſhall offend a ſecond time by " committing any offence againſt this act, for which a " pecuniary penalty or forfeiture is herein-before impoſed; " ſuch ſecond offence, whether it be the ſame offence as " the firſt offence, or be any other of the ſaid offences, " ſhall be deemed and taken to be a felon, and the perſon " or perſons guilty thereof, being lawfully convicted upon " indictment, ſhall be adjudged to be tranſported for the " term of ſeven years."

Firſt conviction to be recorded.

Sect. 5. enacts, " that the juſtice before whom any per- " ſon ſhall be convicted, for the firſt time, of any offence " againſt this act, for which a pecuniary penalty or for- " feiture is impoſed, ſhall tranſmit ſuch conviction under " his hand and ſeal to the quarter ſeſſion which next after " ſuch conviction ſhall be holden for the county, riding, or " diviſion, city, town, or place, wherein ſuch firſt offence " was committed, there to be filed by the clerk of the peace " or other proper officer, and kept amongſt the records of " the

" the court; and ſuch conviction ſo filed, or a true copy " thereof, certified by ſuch clerk of the peace or other offi- " cer, or proved to be a true copy, ſhall be ſufficient evi- " dence to prove the conviction for ſuch offence as afore- " ſaid." Ch. XXII. § 4. *By hunters.*

Sect. 6. enacts " that from and after the paſſing of this " act, ſo much of the ſaid act made in the 16 Geo. 3. " (c. 30. ſ. 1.) as impoſes or inflicts a penalty, forfeiture, or " puniſhment, on any perſon who ſhall hunt or courſe, or " take in any ſlip, nooſe, toil, or ſnare, or kill, wound, or " deſtroy, or ſhoot at or otherwiſe attempt to kill, wound, " or deſtroy, or carry away, any fallow deer in any foreſt, " chaſe, purlieu, or ancient walk, whether incloſed or not, " or in any incloſed park, paddock, wood, or other incloſed " ground, where deer were or had been or ſhould be " uſually kept, without the conſent of the owner, or with- " out being otherwiſe duly authoriſed, or who ſhall be aid- " ing, abetting, or aſſiſting therein, ſhall, with reſpect to " the ſaid offences, committed after the paſſing of this act, " be and the ſame is hereby repealed." *Repeal of* 16 G. 3. c. 30. ſ. 1.

By ſ. 3. the general proviſions of the ſtat. 16 Geo. 3. c. 30. as to the ſeizing, apprehending, and conviction of offenders, or for recovery, &c. of penalties, &c. and the *time* of bringing actions or *proſecutions*, &c. and as to pleading, and coſts, &c. ſhall, as far as the ſame reſpectively are applicable, be in force, in ſeizing, apprehending, and convicting offenders againſt this act, and in the recovery, application, and diſpoſal of the penalties, and with reſpect to the time and manner of appealing from convictions, &c.

By ſ. 7. this act is not to extend to Scotland or Ireland.

There are however other clauſes in the ſtatute 16 Geo. 3. which are ſtill in force, touching theſe offenders. One againſt the wilful deſtruction of pales or walls incloſing deer, which I ſhall preſently notice. 16 Geo. 3. c. 30. Poſt. ſ. 11.

Alſo by ſ. 9. of the ſame ſtatute, " If any perſon or per- " ſons carrying any gun, or other fire arms, or any ſword, " ſtaff, or other offenſive weapon, ſhall come into any foreſt, " chace, purlieu, or ancient walk, or into any incloſed " park, paddock, wood, or into any other ground where " deer are uſually kept, be the ſame incloſed or not in- " cloſed, 16 Geo. 3. c. 30. ſ. 9. *Carrying arms where deer are kept with intent to hunt, &c. or reſiſting keepers, &c. felony and tranſportation.*

Ch. XXII. § 4. *By hunters.*

Vide 39 & 40 Geo. 3. c. 50. as to ſuch acts done with intent to kill game.

" cloſed, with an intent unlawfully to ſhoot at, courſe, or " hunt, or to take in any ſlip, nooſe, toil, ſnare, or other " engine, or to kill, wound, deſtroy, or take away, any red " or fallow deer; it ſhall be lawful for every ranger or " keeper, or perſon entruſted with the care of ſuch deer, to " ſeize and take from ſuch perſon and perſons, in and upon " ſuch foreſt, chace, purlieu, ancient walk, park, paddock, " wood, or other ground, to and for the uſe of the owner " thereof reſpectively, all ſuch guns, fire-arms, ſlips, nooſes, " toils, ſnares, or other engines, and all dogs there brought " for courſing deer, in the ſame and like manner as the " gamekeepers of manors are empowered by law within their " reſpective manors to ſeize and take dogs, nets, or other " engines in the cuſtody of perſons not qualified by the laws " to keep the ſame: and if any ſuch perſon or perſons ſhall " there unlawfully beat, or wound, any ranger or keeper, or " his or their ſervants or aſſiſtants in the execution of his " or their office or offices; or ſhall attempt to reſcue any " perſon in the lawful cuſtody of any ſuch ranger, keeper, " ſervant, or aſſiſtant; every perſon ſo offending ſhall be " adjudged guilty of felony, and on being lawfully con- " victed on indictment ſhall be tranſported to one of his " Majeſty's Plantations in America for the ſpace of 7 years."

Pardon.

Offenders againſt this act diſcovering any other offender againſt the ſame, ſo as ſuch offender be duly convicted, ſhall by ſ. 17. be diſcharged of all forfeitures and penalties of the act previous to ſuch diſcovery. And by ſ. 25. " Every

Limitation of proſecution.

" proſecution for any offence againſt this act ſhall be com- " menced within 12 calendar months, but not after, from " the time of the offence committed." By ſ. 28. the act is not to extend to Scotland.

4. *In reſpect to Timber and other Trees, Woods, Coppices, &c. and other Wood in general; Roots, Plants, &c.*

§ 5. *Trees, wood, underwood, &c.*

The next claſs of offences, relating to the injury or deſtruction of timber, and other trees, woods, underwoods, &c. has engaged much of the attention of the Legiſlature at different periods, and ſome confuſion has ariſen for want of a more connected and general view of the ſubject. I ſhall firſt

firſt give the principal ſtatutes in order of time, and then point to the leading diſtinctions to be obſerved in them.

Ch. XXII. § 5. *Timber, wood, &c.*

By the ſtat. 37 Hen. 8. c. 6. " If any perſon or perſons " maliciouſly, willingly, or unlawfully bark any apple trees, " pear trees, or other fruit trees of any other perſon or per- " ſons, every ſuch offender ſhall not only forfeit unto the " party grieved treble damages for ſuch offence or offences, " the ſame to be recovered by action of treſpaſs, but alſo " ſhall forfeit to the King 10l. in the name of a fine."

37 H. 8. c. 6 *Vide* ante. *Barking fruit trees, treble damages, and fine.*

Damages againſt the pariſh, &c. where fruit trees, timber, or other trees deſtroyed. 1 G. 1. ſt. 2. c. 48.

The ſtat. 1 Geo. 1. ſt. 2. c. 48. after providing that if any perſon ſhall maliciouſly break down, cut up, pluck up, throw down, bark, or otherwiſe deſtroy, deface, or ſpoil any timber tree or trees, fruit tree or trees, " or any other tree " or trees," the party injured ſhall recover damages againſt the inhabitants of the pariſh, vill, &c. or place where ſuch tree, &c. ſhall be ſo maliciouſly broken down, &c. in the ſame manner and form as damages are to be yielded for hedges and dikes overthrown by perſons in the night by the ſtat. 13 Ed. 1. ſt. 1. c. 46.; and providing (ſ. 2.) for the conviction and puniſhment of the offenders for the treſpaſſes and offences aforeſaid by two or more juſtices of the peace in or out of Seſſions; and reciting (ſ. 4.) that " whereas " divers woods, underwoods, and coppices have been here- " tofore and lately ſet on fire, or burnt, to the great diſ- " couragement of planting; enacts and *declares*, that if any " perſon or perſons ſhall after the 24th of June 1716 ma- " liciouſly ſet on fire or burn, or cauſe to be burnt, any " wood, underwood, or coppice, or any part thereof, ſuch " malicious ſetting on fire, burning, or cauſing to be burnt, " ſhall be and is hereby declared and made felony; and the " offender and offenders ſhall ſuffer and be liable to all the " penalties and forfeitures as other felons by the law now " are."

Burning wood, underwood, and coppices, felony.

Vide ſt. 7 Ann. c. 21. as to Scotland.

Offences of this nature were before this treated only as treſpaſſes and miſdemeanors by ſeveral ſtatutes. And ſoon after the paſſing of the above law another act paſſed, the recital and proviſions of which are not eaſily to be reconciled with the 4th clauſe of it, except upon the ground hereafter ſuggeſted with reſpect to the black act.

Vide ſt. 35 H 8. c. 17. 43 Eliz. c. 7. 15 Car. 2. c. 2. and 22 & 23 Car. 2 c 7.

Ch. XXII. § 5. *Timber, wood, &c.*

6 Geo. 1. c. 16. *Extending damages againſt pariſh, &c. for deſtruction of woods, &c. and fences and incloſures of the ſame, whether done by day or night.*

The ſtat. 6 Geo. 1. c. 16. entitled, "An act to explain "and amend" the former act, reciting certain miſchiefs after mentioned; and that "ſome doubts have ariſen whe- "ther the offences committed *in the day-time* mentioned in "that act are puniſhable by the ſaid act. And whereas "there is no proviſion made in the ſaid act for puniſhing "the offences committed by perſons who ſhall break open, "throw down, level, or deſtroy the hedges, gates, poſts, "ſtiles, railing, fences, ditches, banks, walls, or other in- "cloſures of ſuch woods, wood grounds, plantations, and "coppices: therefore, for the explaining and amending the "ſaid act, and for remedying the ſeveral miſchiefs herein- "before mentioned, and for the better preſerving of all ſuch "wood ſprings, or ſprings of wood, poles, quick-woods, "plantations, underwoods, coppice woods, gates, poſts, "ſtiles, railing, fences, hedges, walls, and other incloſures "of woods, from being unlawfully cut, taken, ſpoiled, "broken, burnt, deſtroyed, defaced, or carried away; and "for the better diſcovering and more effectual puniſhment "of ſuch offenders therein, their aiders and abettors; and "for the providing ſatisfaction for the damages the reſpec- "tive proprietors thereof ſhall ſuſtain thereby," enacts, "that if any perſon or perſons after the 24th of June 1720 "ſhall either by day or by night cut, take, deſtroy, break, "throw down, bark, pluck up, *burn*, deface, ſpoil, or carry "away, any wood ſprings or ſprings of wood, trees, poles, "*wood*, tops of trees, *underwoods*, or *coppice woods*, thorns, "or quickſets, without the conſent of the owner of ſuch "woods, wood grounds, parks, chaces, or coppices, planta- "tions, timber trees, fruit trees, or other trees, thorns, or "quickſets, or of the perſons chiefly entruſted with the care "and cuſtody thereof; or ſhall break down, throw down, "level, or deſtroy any hedges, gates, poſts, ſtiles, railing, "walls, fences, dikes, ditches, banks, or other incloſures of "ſuch woods, wood ground, parks, chaces, or coppices, "plantations, timber trees, fruit trees, or other trees, "thorns, or quickſets," the party grieved ſhall recover damages againſt the pariſh, &c. in the ſame manner and form as for dikes and hedges overthrown by perſons *in the night*, or at another ſeaſon when they ſuppoſe not to be eſpied, as is provided by the ſtat. 13 Ed. 1. ſt. 1. c. 46.

Then

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Deſtroying woods, underwoods, coppices, plantations, trees, &c. inquirable by juſtices of peace, and puniſhable as under ſtat. 1 Geo. 1. ſt. 2. c. 48.

Then by ſ. 2. it is further "enacted and *declared*, that "if any perſon or perſons, at any time after the ſaid 24th "of June, in a riotous, open, tumultuous, or in a ſecret and "clandeſtine manner, forcibly, or wrongfully, and *malici- "ouſly*, and without the conſent of the proprietor, wood- "reeve, wood-keeper, or perſon chiefly intruſted with the "care, overſight and cuſtody of ſuch *woods*, *wood-grounds*, "parks, chaces, *coppices* or plantations, ſhall cut down, de- "ſtroy, break, bark, throw down, *burn*, take, deface, ſpoil, "or carry away, any *wood* or ſprings of *wood*, *underwood*, or "*coppice wood*; or ſhall in ſuch a riotous, forcible, tumul- "tuous, ſecret, or clandeſtine manner as aforeſaid, malici- "ouſly break open, throw down, level or deſtroy any "hedges, gates, poſts, ſtiles, rails, fences, ditches, banks, or "incloſures of ſuch woods, wood grounds, coppices, planta- "tions, timber trees, fruit trees, or other trees, thorns, or "quickſets; that then it ſhall and may be lawful to and "for any two or more juſtices of the peace of the county, "&c. wherein any ſuch offence or offences ſhall be com- "mitted, or for the juſtices in open ſeſſions, upon complaint "to them made by any inhabitant of the aforeſaid pariſh, "&c. or place, or of the owner of ſuch tree or trees, "woods, wood grounds, parks, chaces, coppices, or plan- "tations, or of any other, to cauſe ſuch offender or offen- "ders to be apprehended for the *treſpaſſes* and offences "aforeſaid, or any of them, and to hear and finally deter- "mine and adjudge all and every the offence and offences "aforeſaid. And if ſuch juſtices ſhall convict any perſon "or perſons of all or any of the treſpaſſes and offences afore- "ſaid, then ſuch juſtices, immediately after ſuch convic- "tion, ſhall and are hereby required to inflict *all and every "the ſame penalties and puniſhments in the ſaid act of the firſt "Geo. 1. herein-before mentioned*, as fully and largely, and in "the ſame manner, for all and every the crimes and "offences herein-before expreſſed, although not contained "in the ſaid act, as if the ſame were here again repeated "and re-enacted."

In like manner the ſtat. 29 Geo. 2. c. 36. which enables the proprietors of waſtes, woods, and paſtures, wherein any others have common of paſture, with the aſſent of the major part in number and value of the owners, &c. to in-

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cloſe the ſame for the growth and preſervation of timber or underwood, and gives an appeal in certain caſes to the parties grieved, by

29 Geo. 2. c. 36. ſ. 6. *Damages againſt the pariſh, &c. extended to trees in new incloſures.*

Sect. 6. enacts, that "if any perſon, from and after the "time hereby limited for bringing ſuch appeal againſt any "ſuch agreement for the incloſure of any part of ſuch "waſtes, woods, or paſtures, ſhall either by day or by night "unlawfully cut, take, deſtroy, break, throw down, bark, "pluck up, burn, deface, ſpoil, or carry away, any trees "growing within ſuch incloſure, without the conſent of the "owner or owners thereof, ſuch owner or owners ſhall have "ſuch remedy, and have and receive ſuch ſatisfaction and "recompence of and from the inhabitants of the pariſhes, "&c. or places adjoining to ſuch incloſures, and recover "ſuch damages againſt the inhabitants of ſuch pariſhes, "&c. and in the ſame manner and form, as is directed for "dikes and hedges overthrown by the ſaid act made in the "13th Edward I.; unleſs the offender or offenders ſhall be "convicted of ſuch offence within the ſpace of ſix months "next after the commiſſion thereof." And then by ſ. 7. "It ſhall and may be lawful for any two juſtices of the "peace of the county, &c. wherein any ſuch offence ſhall "be committed, or for the juſtices in ſeſſions, &c., upon "complaint to them made, to cauſe every ſuch offender to "be apprehended for ſuch *treſpaſs*, and to hear and deter-"mine the ſame, and to inflict the like penalty and puniſh-"ment on every offender by them convicted as is directed "to be inflicted on offenders by the ſtat. 6 Geo. 1. c. 16." And by ſ. 8. "If any perſon after the 1ſt of July 1756 ſhall "unlawfully cut, take, deſtroy, break, throw down, bark, "pluck up, burn, deface, ſpoil, or carry away, any tree "growing in any waſte, wood, or paſture in which any "perſon or perſons, or body or bodies politic or corporate, "have right of common, every ſuch offender ſhall and may "be in like manner convicted of ſuch offence, and ſhall in-"cur the like penalty."

Vide the explanatory act of 31 Geo. 2. c. 41. *and juriſdiction of ſuch treſpaſſes given to juſtices of peace as under ſtat.* 6 Geo. 1. c. 16.

§ 6. *Conſtruction of ſtatutes.*

Upon theſe proviſions it may be obſerved, that although the doubt recited in the preamble of the ſtat. 6 Geo. 1. c. 16. ſeems principally to refer to the offences mentioned in the firſt ſection of the ſtat. 1 Geo. 1. ſt. 2. c. 48., which were made

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made puniſhable by the ſecond ſection as treſpaſſes upon ſummary conviction before two magiſtrates; and not to relate to the offences declared to be felony by the 4th ſection of the laſtmentioned ſtatute; becauſe the doubt there expreſſed could have no reference to ſuch 4th ſection; yet the offences deſcribed in that ſection ſeem to be, in part at leaſt, included in the 2d ſection of the ſtat. 6 Geo. 1. c. 16. wherein they are again treated as *treſpaſſes*, and ſubjected to the ſummary juriſdiction of two magiſtrates. But what is more remarkable, ſuch juſtices of the peace have power given them to inflict "*all and every the ſame penalties and puniſh-*"*ments* in the ſaid act of the 1 Geo. 1. therein before men-"tioned, as fully and largely, and in the ſame manner, *for* "*all and every the crimes and offences herein before expreſſed*, "although not contained in the ſaid act, as if the ſame "were here again repeated and re-enacted." Yet it is hardly to be imagined that the Legiſlature meant to enable two juſtices of the peace out of ſeſſions to convict a perſon of felony, or to ſubject a perſon to the pains and penalties of felony for any offence which as a treſpaſs is referred to the cognizance of ſuch ſummary juriſdiction.

§ 7. 9 Geo. 1. c. 22. ſ. 1. *Unlawfully and maliciouſly deſtroying ornamental, uſeful, or profitable trees in avenues, &c. a capital felony.*

Again, by the Black Act 9 Geo. 1. c. 22. ſ. 1. "If any "perſon or perſons (whether armed or diſguiſed as men-"tioned in the preceding part of the clauſe, or not) ſhall "unlawfully and maliciouſly cut down or otherwiſe deſtroy "any trees planted in any avenue, or growing in any gar-"den, orchard, or plantation, for ornament, ſhelter, or pro-"fit; or ſhall forcibly reſcue any perſon being lawfully in "cuſtody of any officer or other perſon for any the offences "before mentioned; or if any perſon or perſons ſhall by "gift or promiſe of money or other reward procure any of "his majeſty's ſubjects to join him or them in any ſuch "unlawful act; every perſon ſo offending, being thereof "lawfully convicted, ſhall be adjudged guilty of felony "without benefit of clergy."

Ante, tit. *Arſon*, and 2 Blac. Rep. 753.

By ſ. 14. the trial may be in any county in England; and this is at the option of any private proſecutor.

This act was made perpetual by ſtat. 31 Geo. 2. c. 42.

6 Geo. 3. c. 36. *Deſtroying or ſpoiling of timber*

The ſubſequent ſtatute of the 6 Geo. 3. c. 36. (which takes no notice of the laſt-mentioned law) after reciting that "divers

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trees, or trees likely to become ſuch, in open or incloſed grounds, a ſimple felony.

" divers perſons have of late years *wilfully and maliciouſly* " cut down, barked, or otherwiſe deſtroyed, timber trees, " and trees ſtanding for and likely to become timber, grow- " ing as well in the ſeveral foreſts, chaces, and other open " grounds, as in the woods, and plantations, and incloſed " grounds, within this kingdom, to the great detriment of " the owners of ſuch trees, and to the diſcouragement of " planting," &c.; and reciting further the practice of plundering nurſery grounds, &c. of valuable roots, ſhrubs, and plants; enacts, " that after the 2d of June 1766 " all and every perſon and perſons who ſhall *in the night-* " *time* lop, top, cut down, break, throw down, bark, *burn*, " or *otherwiſe ſpoil* or *deſtroy*, or carry away, any oak, beach, " aſh, elm, fir, cheſnut, or aſp, timber tree, or other tree " or trees ſtanding for timber, or likely to become timber, " without the conſent of the owner or owners thereof firſt

Extended to root, ſhrub, or plant, of 5 s. value. Vide poſt, 6 Geo 3. c. 48.

" had and obtained; or ſhall *in the night-time* pluck up, dig " up, break, ſpoil, or deſtroy, or carry away, any root, " ſhrub, or plant, roots, ſhrubs, or plants, of the value of " 5 s., and which ſhall be growing, ſtanding, or being in the " garden ground, nurſery ground, or other incloſed ground " of any perſon or perſons whomſoever, ſhall be deemed " and conſtrued to be guilty of felony; and every ſuch per- " ſon or perſons ſhall be ſubject and liable to the like pains " and penalties as in caſes of felony: and the Court before " whom ſuch perſon or perſons ſhall be tried, ſhall and " hereby have authority to tranſport ſuch perſon or perſons " for ſeven years to any of his majeſty's plantations in " America, in like manner as other felons are directed to " be tranſported by the laws and ſtatutes of this realm.

Transportation for ſeven years.

Aiders and abettors.

" And all and every perſon and perſons who ſhall be *wil-* " *fully* aiding, abetting, or aſſiſting in ſuch cutting down, " breaking, throwing down, barking, burning, or otherwiſe " ſpoiling, or deſtroying, or carrying away, any ſuch oak, " beach, aſh, elm, fir, cheſnut, or aſp, timber tree, or other " tree or trees ſtanding for timber, or likely to become " timber, as aforeſaid; or in ſuch plucking up, digging up, " cutting, breaking, ſpoiling, or deſtroying, or carrying " away, ſuch root, ſhrub, or plant, roots, ſhrubs, or plants, " as aforeſaid, of the value aforeſaid; or who ſhall buy or " receive ſuch root, ſhrub, or plant, roots, &c. of the value

" aforeſaid, knowing the ſame to be ſtolen, ſhall be ſubject " and liable to the ſame puniſhment as if he, ſhe, or they " had ſtolen the ſame, any law to the contrary in any wiſe " notwithſtanding."

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The name of the owner of the trees muſt be truly ſtated in the indictment, otherwiſe it is fatal.

R. v. Patrick and Pepper, O. B. Feb. 1783, cor. Buller J. and Perryn B. 1 Leach, 287.

By another act paſſed in the ſame ſeſſion of parliament, " Every perſon who ſhall *wilfully* cut or break down, bark, " burn, pluck up, lop, top, crop, or otherwiſe deface, da- " mage, ſpoil, or deſtroy, or carry away, any timber tree or " trees, or trees likely to become timber, or any part there- " of, or the lops or tops thereof, without the conſent of the " owner or owners thereof firſt had, or in any of his ma- " jeſty's foreſts or chaces, without the conſent of the ſur- " veyor or ſurveyors, or his or their deputy or deputies, or " perſon or perſons entruſted with the care of the ſame," ſhall on conviction before one or more juſtices of the peace for the firſt offence forfeit not exceeding 20 l., together with the charges of ſuch conviction, &c., and on non-payment to be committed to the common gaol not exceeding 12 nor leſs than 6 months, or until the penalty and charges be paid: for 2d offence a ſum not exceeding 30 l. and charges, and on non-payment to be committed not exceeding 18 months nor leſs than 12 months, or until the penalty and charges ſhall be paid; " and if any perſon ſo convicted ſhall be " guilty of the like offence a third time, and ſhall be thereof " convicted in like manner (*a*), ſuch perſon ſhall be deemed " guilty of felony; and the Court before whom he ſhall be " tried ſhall and hereby have authority to tranſport ſuch " perſon or perſons for 7 years to any of his majeſty's plan- " tations in America, in like manner as other felons " are directed to be tranſported by the laws and ſtatutes of " this realm."

6 Geo. 3. c. 48. *Spoiling or deſtroying timber trees, &c.; for 1ſt offence fine and impriſonment; felony and tranſportation for 2d offence.*

By ſ. 2. " All oak, beech, cheſnut, walnut, aſh, elm, cedar, " fir, aſp, lime, ſycamore, and birch trees, ſhall be deemed " and taken to be timber trees within the true meaning " and proviſion of *this* act." To which the ſtat. 13 Geo. 3. c. 33. adds " poplar, alder, larch, maple, and hornbeam," in the ſame manner as if inſerted in the laſt mentioned act.

13 Geo. 3. c. 33.

(*a*) *Vide* the obſervation on the words " *in like manner*," ante, 590.

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6 Geo. 3. c. 48. *Plucking up, ſpoiling, or deſtroying roots, ſhrubs, or plants in cultivated lands; 1ſt and 2d offence a penalty, 3d offence felony, tranſportation.* *Vide* ante.

Again, the 3d ſection of the ſtat. 6 Geo. 3. c. 48. enacts alſo generally, "that after the 24th of June 1766 all and "every perſon who ſhall pluck up, or cut, ſpoil, or deſtroy, "or take or carry away, any root, ſhrub, or plant, roots, "ſhrubs, or plants, out of the fields, nurſeries, gardens, or "garden-grounds, or other cultivated lands of any perſon "or perſons whomſoever, without the conſent of the owner "or owners thereof firſt had, and ſhall be thereof convicted, "&c. before any one or more juſtice of the peace, &c. "ſhall for the firſt offence forfeit ſuch ſum as to the juſtice, "&c. ſhall ſeem meet, not exceeding 40s., together with "the charges, &c.; for the ſecond offence a ſum not ex-"ceeding 5l. together with the charges, &c.; and if any "perſon ſo before convicted ſhall a third time commit the "like offence, and ſhall be thereof convicted, ſuch perſon "ſo convicted ſhall for ſuch third offence be deemed guilty "of felony, and the Court before whom he ſhall be tried "ſhall and hereby have authority to tranſport ſuch perſon "for 7 years to any of his Majeſty's plantations in America, "in like manner as other felons are directed to be tranſport-"ed by the laws and ſtatutes of this realm."

ſ. 4. *Cutting, ſplitting, ſpoiling, damaging, or deſtroying, &c. any kind of wood, underwood, poles, ſticks of wood, green ſtubs, &c.*

Alſo by ſ. 4. of the ſame act, reciting "that diſorderly "perſons have made a practice of going into the woods, "underwoods, and wood-grounds of others, and there cut "and carried away great quantities of young wood of vari-"ous kinds, for making of poles and walking-ſticks, and "various other uſes; and in beech and other woods and "underwoods, under pretence of getting firewood, have "cut down, boughed, ſplit off, or otherwiſe damaged or "deſtroyed the growth of the ſaid woods, &c.; and that "the laws in being were not ſufficient to remedy the evil;" it is enacted "that all and every perſon and perſons who "after the 24th of June 1766 ſhall go into the woods, un-"derwoods, or wood-grounds of any of his Majeſty's ſub-"jects, not being the lawful owner or owners thereof, and "ſhall there cut, lop, top, or ſpoil, ſplit down, or damage, "or otherwiſe deſtroy, any kind of wood or underwood, "poles, ſticks of wood, green ſtubs, or young trees, or carry "or convey away the ſame," or ſhall have the ſame in their cuſtody, and ſhall not give a ſatisfactory account how they came by the ſame, and ſhall be thereof convicted before one or

or having ſame in cuſtody, without good account, miſdemeanor.

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more juſtices of the peace, &c.; ſhall for the firſt offence forfeit a ſum not exceeding 40s. with the charges, &c.; for the ſecond offence a ſum not exceeding 5l. and charges, &c.; and for the third offence ſhall, being duly convicted thereof according to law, be deemed an incorrigible rogue, and ſhall be puniſhed as ſuch.

§ 8. *General view of the ſeveral ſtatutes.*

It is extraordinary that the two acts of the 6 Geo. 3. c. 36. and c. 48. ſhould have paſſed in the ſame ſeſſion of parliament upon the ſame ſubject matter, without any reference to each other, enacting ſuch different proviſions. This diſtinction however was before remarked between them on another occaſion, that if any of the offences therein mentioned be committed *in the night-time*, it is felony by the firſt-mentioned act; otherwiſe it is no more than a miſdemeanor puniſhable in the manner deſcribed in the ſecond act, except upon a third offence after two former convictions, in which caſe alſo it is made felony by the ſecond act. In the caſe of Hitchcock and Howe there referred to, the Judges held it to be diſcretionary in the Court to paſs ſentence of tranſportation on the offender under the firſt act, or any other ſentence which could be paſſed for a ſingle felony, or to ſuperadd tranſportation to the latter.

Ante, tit. *Larceny*, 588, 9.

R. v. Hitchcock and Howe, MS Jud. Ante, 588.

It is no leſs ſingular that the offences created by the Black Act before deſcribed ſhould be altogether overlooked in the latter ſtatutes (*a*), the wording of which approximates ſo nearly to the Black Act, and though the offences created by the latter ſtatutes are ſo much leſs penal than thoſe named in the other. The offences in the Black Act, which conſiſt in "cutting down, or otherwiſe deſtroying any *trees* planted "in any *avenue* or growing in any *garden*, *orchard*, or *planta-*"*tion*, for *ornament*, *ſhelter*, or *profit*," muſt be charged to be done "*unlawfully and maliciouſly*," in the words of the act: theſe words are not to be found in the enacting part of the ſtat. 6 Geo. 3. c. 36. which deſcribes the acts therein prohibited to be done in general terms; but the words "*wilfully and maliciouſly*" are annexed to the deſcription of the ſame offences deſcribed in the preamble; and therefore

Ante, 1057.

Vide ante, 638.

(*a*) The only reference to the Black Act is in ſ. 9. of the ſtat. 29 Geo. 2. c. 36. which was to obviate any concluſion that the remedies given by ſtats. 1 & 6 Geo. 1. againſt the pariſh, &c. for damages were intended to be repealed by the Black Act giving a like remedy againſt the hundred.

Ch. XXII. § 8. *Timber, wood, &c.*

Ante, 598. 615. and tit. *Arſon*, (22 & 23 Car. 2, and *vide* Haffel's caſe, 1 Leach, 1.

it may be doubtful whether they do not enter into the neceſſary deſcription of the offences enacted: and the word *wilfully* is expreſsly inſerted in the enacting part of the correſponding ſtatute of the 6 Geo. 3. c. 48.; and alſo in that part of the ſtat. 6 Geo. 3. c. 36. which reſpects aiders and abettors. Alſo the Black Act has the word *trees* in the plural, whereas the latter ſtatutes have the words "*tree* or *trees*." But it may be doubtful whether the former expreſſion may not be conſtrued *ſingulariter*, as other ſtatutes in the plural have been ſometimes interpreted where the ſenſe pointed to it. Beſides which the Black Act extends to "*any* trees," in the places there pointed out; whereas the ſtatutes of the 6th of Geo. 3. are confined to *timber* trees or *trees ſtanding for and likely to become timber*. Theſe latter however comprehend all ſuch trees growing not only in open grounds but in "woods, "*plantations*, and *incloſed grounds*," as ſtated in the preamble, which general deſcription ſeems to cover the more particular deſcription of places mentioned in the Black Act. But the moſt important diſtinction of all is, I apprehend, the view and intent of the Black Act contraſted with the other ſtatutes. Suppoſing that the words "*wilfully and maliciouſly*" which occur in the preamble of the ſtat. 6 Geo. 3. c. 36. of which the firſt only is uſed in the enacting part of the ſtat. 6 Geo. 3. c. 48. are a deſcriptive part of the offence under thoſe ſtatutes, yet the whole ſcope of thoſe ſtatutes, which were intended for the protection of the property itſelf from depredation, ſhews that the word *maliciouſly* is only to be taken in its moſt general ſignification, as denoting an unlawful and bad act, an act done malo animo from an unjuſt deſire of gain, or a careleſs indifference of miſchief. Whereas, in order to bring an offender within the penalty of death under the Black Act, the *malice* muſt be perſonal againſt the *owner* of the property. This has been expreſsly holden with reſpect to the offence of killing, maiming, or wounding cattle; and the two offences are deſcribed in the ſame paragraph of the clauſe, and muſt therefore have the ſame conſtruction. The words run thus: "If any perſon or perſons "ſhall unlawfully and maliciouſly kill, maim, or wound "any cattle, or cut down or otherwiſe deſtroy any trees "planted in any avenue," &c. And perhaps the ſame diſtinction was in the contemplation of the Legiſlature, when they made the 4th clauſe of the ſtat. 1 Geo. 1. ſt. 2 c. 48.

c. 48. and when they afterwards paſſed the ſubſequent act of the 6 Geo. 1. c. 16. followed up by the two ſtatutes in the 6 Geo. 3.; more particularly when that 4th clauſe, conſidered by Mr. Juſtice Blackſtone to be ſtill in force, is viewed as contraſted with the 1ſt and 2d clauſes of the ſame ſtatute, which are ejuſdem generis with thoſe ſubſequent ſtatutes: and this conſtruction can alone reconcile all the ſeveral proviſions.

Ch. XXII. § 8. *Timber, wood, &c.*

4 Blac. Com. 245.

§ 9.

By ſtat. 37 Hen. 8. c. 6. "If any perſon or perſons "maliciouſly, willingly, or unlawfully do burn or cauſe to "be burned any heap or heaps of wood of any other per- "ſon or perſons, prepared, cut, and felled, or to be prepared, "cut, or felled, for making of coals, billets, or talwood; "then every ſuch offender and offenders ſhall not only "loſe and forfeit unto the party grieved treble damages for "ſuch offence or offences, (the ſame to be recovered by ac- "tion of treſpaſs,) but alſo ſhall forfeit to the King for every "ſuch offence 10l. in the name of a fine."

37 H. 8. c. 6. *Burning heaps of wood prepared for making coal, &c.*

The offence herein deſcribed ſeems by the preamble to be pointed at ſuch as commit it from a motive of malice to the owner of the property; for it recites that "malicious and "*envious* perſons being men of evil and perverſe diſpoſi- "tions, &c. *and minding the hurt, undoing, and impoveriſh- "ment of true and faithful ſubjects*, have of late invented a "new damnable kind of vice, &c. and damnifying of the "King's true ſubjects, &c. in committing ſuch and ſuch "offences."

5. *Burning Wains or Carts laden with Goods.* § 10

The laſtmentioned ſtatute ſubjects to the ſame puniſh- "ment "any perſon or perſons who ſhall maliciouſly, wil- "fully and unlawfully burn or cauſe to be burned any wain "or cart laden or to be laden with coals or any other goods "or merchandizes of any other perſon or perſons."

37 H. 8. c. 6. *Burning carts laden with goods.*

6. *Deſtroying Fences and Incloſures.* § 11.

Some proviſions againſt the deſtruction of the fences of wood grounds have been already adverted to in the ſtat.

Fences and incloſures. Ante, f. 5.

Ch. XXII. § 11. *Fences and incloſures.*

6 Geo. 1. c. 16. which refers to the remedy provided by the ſtat. 13 Ed. 1. ſt. 1. c. 46. This latter ordains, that "where "one having right to approve doth then levy a dike or an "hedge, and ſome by night, or at another ſeaſon when they "ſuppoſe not to be eſpied, do overthrow the hedge or dike, "and it cannot be known by verdict of the aſſize or jury "who did overthrow the hedge or dike; and men of the "towns near will not indict ſuch as be guilty of the fact, "the towns near adjoining ſhall be diſtrained to levy the "hedge or dike at their own coſt, and to yield damages."

13 Ed. 1. ſt. 1. c. 46. *Damages to be recovered againſt the adjoining towns for hedges, &c. overthrown.*

2 Inſt. 476.

This preſumes the offence to be indictable; and Lord Coke ſays, that the indictment is to be either of a riot, force, or treſpaſs; and that no particular time being appointed for the next towns round about adjoining to indict the miſdoers, the law appoints a year and a day for that purpoſe; and by the indictment the lord ſhall know againſt whom to bring his action. But the latter opinions ſeem to be, that the towns muſt indict the miſdoers within a convenient time; otherwiſe upon the return of a writ of noctanter a diſtringas ſhall iſſue againſt the inhabitants, though within a year and a day.

Vide Creſwick's caſe, Skin. 94. Dean Foreſt caſe, Cro. Car. 2 So. R. v. Epworth, &c. ib. 439. and ib. 580.

9 Geo. 3 c. 29. ſ. 3. *Deſtroying incloſures made under act of parliament.*

By ſtat. 9 Geo. 3. c. 29. ſ. 3. "If any perſon or perſons "ſhall after the 1ſt of July 1769 wilfully or maliciouſly ſet "fire to, burn, demoliſh, pull down, or otherwiſe deſtroy "or damage, any fence or fences that are or ſhall be erect-"ed, ſet up, provided, or made, for dividing or incloſing any "common, waſte, or other lands or grounds, in purſuance "of any act or acts of parliament; every ſuch perſon be-"ing lawfully convicted of any or either of the ſaid ſeveral "offences, or of cauſing or procuring the ſame to be done, "ſhall be adjudged guilty of felony, and ſhall be ſubject to "the like pains and penalties as in caſes of felony; and "the Court before whom ſuch perſon ſhall be tried ſhall "have authority to tranſport ſuch felon for 7 years, in like "manner as other felons," &c. The proſecution to be commenced within eighteen months after the offence committed, by ſ. 4.

16 Geo. 3. c. 30. ſ. 8. *Deſtroying pales, &c. where deer are kept.*

By ſtat. 16 Geo. 3. c. 30. ſ. 8. "If any perſon or per-"ſons ſhall at any time wilfully pull down or deſtroy, or "cauſe to be wilfully pulled down or deſtroyed, the pale or "pales, or any part of the walls of any foreſt, chaſe, pur-"lieu,

"lieu, antient walk, park, paddock, wood, or other ground "where any red or fallow deer ſhall be then kept, without "the conſent of the owner or perſon chiefly intruſted with "the cuſtody thereof, or being otherwiſe duly authoriſed; "every perſon ſo offending ſhall be ſubject to the forfei-"ture and penalty hereby inflicted for the firſt offence of "killing any deer;" that is, he ſhall forfeit 30l. on conviction before one juſtice of the peace, who in caſe of non-payment of ſuch penalty has (by ſ. 12.) power to commit. By ſ. 25. the proſecution muſt be commenced within 12 calendar months after the offence committed.

Ch. XXII. § 11 *Fences and incloſures.*

5 Eliz. c. 21.

Offenders of this deſcription were alſo ſubjected to treble damages to the party grieved, and to impriſonment for three months and finding ſureties for ſeven years, by the ſtat. 5 Eliz. c. 21.

7. *Breaking down Mounds of Fiſh Ponds.* § 12.

Fiſh ponds.

The property of fiſh in ponds and other incloſed waters is protected both at common law and by ſeveral ſtatutes in the manner already ſhewn. The following proviſion of the Black Act was made with a view to protect the owner of this ſpecies of property from the malicious reſentment of others, who were diſpoſed not ſo much to benefit themſelves by ſtealing the property, as to injure him by the deſtruction of it. Wherefore it is enacted, that "if any perſon or "perſons" (whether armed or diſguiſed or not) "after the "1ſt of June 1723 ſhall unlawfully and maliciouſly break "down the head or mound of any fiſh pond, whereby the "fiſh ſhall be loſt or deſtroyed; or ſhall forcibly reſcue any "perſon being lawfully in cuſtody of any officer or other "perſon for any ſuch offence; or if any perſon or perſons "ſhall by gift or promiſe of money or other reward procure "any of the King's ſubjects to join him or them in any "ſuch unlawful act; every perſon ſo offending, being "thereof lawfully convicted, ſhall be adjudged guilty of "felony without benefit of clergy."

Ante, ſ. 10. tit. *Larceny, &c.*

9 Geo. 1. c. 22. made perpetual by ſt. 31 Geo. 2. c. 42. *Breaking down the head or mound of any fiſh pond a capital felony.*

Clergy is alſo ouſted from offenders not ſurrendering themſelves upon proclamation; and from ſuch as conceal, aid, abet, or ſuccour them after the time expired for their ſurrender.

Vide tit. *Proceſs to bring in the party.*

By

Ch. XXII. § 12. *Fiſh ponds.*

Trial, wide ante. 1057.

37 H. 8. c. 6. *Cutting heads or dams of ponds, &c. or other ſeveral waters; or heads or pipes of conduits.*

By ſ. 14. the offender may be tried in any county in England at the option of the proſecutor.

This ſtatute has in part ſuperſeded the uſe of the ſtat. 37 H. 8. c. 6. ſ. 4. by which it was enacted, "That if any "perſon or perſons maliciouſly, wilfully, and unlawfully "cut or cauſe to be cut out of the head or heads, dam or "dams of any ponds, pools, motes, ſtews, or other ſeveral "waters, or the head or heads, pipe or pipes, of any con-"duit or conduits of any other perſon or perſons; every "ſuch offender ſhall not only forfeit unto the party grieved "treble damages, to be recovered by action of treſpaſs, but "ſhall alſo forfeit to the King for every ſuch offence 10l. "in name of a fine." The act muſt be done from malice to the owner as it ſeems from the preamble before ſtated.

Ante, 1063.

5 Eliz. c. 21. *Breaking, &c. heads or dams of ponds, &c. to ſteal fiſh, impriſonment for three months and treble damages.*

Alſo the ſtat. 5 Eliz. c. 21. reciting that perſons had made ponds, &c. and ſtored the ſame with fiſh, &c. and that the ſaid ſeveral waters, grounds, &c. had not only by night been broken and entered into, "but alſo the heads "or dams of the ſaid ponds, &c. or ſeveral waters have "been maliciouſly, wilfully, and unlawfully cut out, and "the fiſh taken, deſtroyed, carried away, and *ſtolen*, to the "great loſs and damage of the owners, and the encourage-"ment of the offenders, &c.;" for remedy thereof enacts, "That if any perſon or perſons ſhall by day or night un-"lawfully, without authority, break, cut down, cut out, or "deſtroy, any head or heads, dam or dams, of any ponds, "pools, motes, ſtagnes, ſtews, or ſeveral pits, wherein fiſh "are or ſhall happen to be put in or ſtored withal, by the "owners or poſſeſſioners thereof, or do or ſhall wrongfully "fiſh in any of the ſaid ſeveral ponds, &c. to the intent to "deſtroy, kill, take, or ſteal away any of the ſame fiſh, "againſt the will of the owners or poſſeſſioners of the ſame, "not having any lawful title or authority ſo to do; and "thereof be lawfully convicted at the ſuit of the Queen, "&c. or the party grieved; he or they ſhall ſuffer impriſon-"ment for three months, and pay the party grieved treble "damages; and after the ſaid three months expired ſhall "find ſureties for good behaviour for ſeven years after, or "elſe remain in priſon till ſuch ſureties be found for the "ſaid ſeven years." By ſ. 6. the juſtices of oyer and ter-miner and of aſſize in their circuits, and juſtices of the peace and

Ch. XXII. § 12. *Fiſh ponds.*

and gaol delivery in their ſeſſions, have authority to hear and determine the ſame. And by ſ. 8. the ſaid juſtices may on the confeſſion of the offence by the party, and his ſatisfying the party grieved, releaſe the party and his ſureties from their recognizance, &c.

Roſs's caſe, Leicester Sp. Aſſ. 1800, cor. Chambre B. MS. Jud. *The breaking down the head or mound of a fiſh pond with a view of letting the water out, in order more effectually to ſteal the fiſh, is not an offence within the ſtat.* 9 Geo. 1. c. 22. *which makes the unlawfully and maliciouſly breaking down ſuch head, &c. whereby the fiſh ſhall be loſt or deſtroyed, a capital felony.*

Thomas Roſs was indicted on the ſtat. 9 Geo. 1. c. 22. for unlawfully, maliciouſly, and feloniouſly breaking down the head and mound of two fiſh ponds, in a place called Boſworth Park, belonging to Sir Wolſton Dixie, Bart. *whereby the fiſh therein were loſt and deſtroyed.* It was proved that a part of the head or mound of one of the ponds had been cut down to a conſiderable depth by two perſons, of whom the priſoner was one, ſo as to leave but little water in the pond, and that the fiſh were gone. But it appeared to have been the object of the offenders to *ſteal* the fiſh, and not to let them eſcape through the breach in the mound. For the weeds were much trodden down in the pond, manifeſtly in ſearching for the fiſh; and the two perſons had been ſeen with ſacks, which there was evidence ſufficient to prove were filled with fiſh; and there was no evidence to ſhew that any of the fiſh had eſcaped through the cut, or that it was the occaſion of their loſs or deſtruction any otherwiſe than by rendering it more eaſy to take them when the greateſt part of the water was let off. Chambre B. at the firſt was inclined to think, that though the priſoner might have been indicted for a miſdemeanor under the ſtat. 5 Geo. 3. c. 14., the caſe proved did not ſupport the indictment for the felony, conceiving that the ſtat. 9 Geo. 1. was meant to apply only to caſes of malicious miſchief, and when the breaking of the mound was the immediate cauſe of the loſs and deſtruction of the fiſh, and not merely auxiliary to the deſtruction of them by other means: but not recollecting any caſe upon the conſtruction of this clauſe, he left the evidence of the facts to the jury, who found the priſoner guilty; and he reſpited judgment in order to take the opinion of the Judges upon the queſtion of law. In Trin. term 1800 the Judges on conference held the conviction wrong, as the clauſe againſt breaking the heads, &c. of ponds does not extend to caſes where the object of the party was to ſteal the fiſh; which is guarded againſt by another clauſe. And that even if the offence proved had been originally within

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Vide ante, 611.

within the Black Act, it was virtually taken out of it by the ſubſequent ſtatute of the 5 Geo. 3. c. 14.

Perhaps the abovementioned ſtatute of the 5 Eliz. which was not adverted to upon that occaſion, may alſo be thought to meet the caſe ſo far as concerns the act of cutting the dam with intent to ſteal the fiſh.

§ 13.

8. *Cutting Hop-binds.*

Maliciouſly cutting hop binds in plantations.

6 Geo. 2. c. 37. ſ. 6.

This, as well as the Black Act, 9 Geo. 1. c. 22. *is made perpetual by* ſt. 31 Geo. 2. c. 42. ſ. 2 & 4.

10 Geo. 2. c. 32. *extending other proviſions of the Black Act to this.*

By ſtat. 6 Geo. 2. c. 37. ſ. 6. "If any perſon or perſons "after the 24th of June 1733 ſhall (during the continu- "ance of the ſtat. 9 Geo. 1. c. 22.) unlawfully and mali- "ciouſly cut any hop-binds growing on poles in any planta- "tion of hops; every perſon or perſons ſo offending, being "thereof lawfully convicted, ſhall be adjudged guilty of "felony, without benefit of clergy." And by ſtat. 10 Geo. 2. c. 32. ſ. 4. "all the proviſions made in the ſtat. 9 Geo. "1. c. 22. for the more ſpeedy and eaſy bringing the of- "fenders againſt the ſaid act to juſtice, and the perſons "who ſhall conceal, aid, abet, or ſuccour ſuch offenders, "and for making ſatisfaction and amends to all and every "the perſon and perſons, their executors and adminiſtra- "tors, for the damages they ſhall have ſuſtained or ſuffered "by any offender or offenders againſt the ſaid act, and for "the encouragement of perſons to apprehend and ſecure "ſuch offender and offenders, and for the better and more "impartial trial of any indictment or information which "ſhall be found, commenced, or proſecuted for any of the "offences committed againſt the ſaid act; together with "all reſtrictions, limitations, and mitigations by the ſaid act "directed; ſhall during the continuance of the ſaid act "extend to, and be of force and effect in all caſes of "offences committed by unlawfully and maliciouſly cutting "any hop-binds growing on poles in any plantation of "hops."

§ 14.

9. *Obſtructing the Paſſage of Grain.*

36 Geo. 3. c. 9. ſ. 1.

Vide ante, 425.

Uſing violence to any perſon to deter him from buying grain;

By ſtat. 36 Geo. 3. c. 9. intitled, "An act to prevent "obſtructions to the free paſſage of grain within the king- "dom," it is enacted, "that if any perſon or perſons "(after

"(after the 18th of December 1795) ſhall wilfully and "maliciouſly beat, wound, or uſe any other violence to or "upon any perſon or perſons, with intent to deter or hin- "der him or them from buying of corn or grain in any "market or other place within this kingdom; or ſhall un- "lawfully ſtop or ſeize any wheat (*a*), flour, meal, malt, or "other grain, in or on the way to or from any city, market "town, or place in this kingdom; or ſhall wilfully and "maliciouſly break, cut, or deſtroy any waggon, cart, or "other carriage wherein any ſuch wheat, &c. or other grain "ſhall be loaded, or the harneſs of any horſe or horſes "drawing or carrying the ſame; or ſhall unlawfully take "off from any ſuch carriage, or drive away, kill, or wound "any ſuch horſe or horſes; or unlawfully beat or wound "the driver or drivers of any ſuch waggon, cart, or other "carriage, or horſe, ſo loaded; with intent to ſtop ſuch "wheat, &c. or other grain; or ſhall by cutting of the "ſacks, or otherwiſe, ſcatter or throw abroad any ſuch "wheat, &c.; or ſhall take or carry away, deſtroy, ſpoil, "or damage the ſame, or any part thereof; every and all "ſuch perſon or perſons, being thereof lawfully convicted "before any two or more juſtices of the peace of the "county, &c. wherein ſuch offence or offences ſhall be "committed, or before the juſtices of the peace in open "Seſſions (who are authoriſed ſummarily and finally to "hear and determine the ſame), ſhall be ſent to the com- "mon gaol or houſe of correction, there to continue and "be kept to hard labour for any time not exceeding three "months nor leſs than one."

Ch. XXII. § 14. *Grain, flour, &c.*

or ſtopping grain, &c. in its paſſage;

or breaking or cutting, &c. carriage or harneſs of horſes conveying it;

or taking off from carriage or injuring, &c. horſes;

or beating driver;

with intent to ſtop ſuch grain;

or cutting ſacks, or otherwiſe ſcattering ſuch grain;

imprisonment on ſummary conviction before juſtices of peace.

By ſ. 2. "If any ſuch perſon or perſons ſo convicted "ſhall commit any of the offences aforeſaid a ſecond time; "or if (after the 18th December 1795) any perſon or per- "ſons, with intent to prevent or hinder any corn, meal, "flour, malt, or grain from being lawfully carried or re- "moved from any place whatſoever, ſhall wilfully and

2d offence felony.

(*a*) The words of the prior ſtatute of the 11 Geo. 2. c. 22. ſ. 1. are, "or "ſhall ſtop or ſeize upon any waggon, cart, or other carriage, or horſe, loaded "with wheat, &c. in or on the way to or from any city, market town, or ſea- "port of this kingdom, and wilfully and maliciouſly break, cut, ſeparate, or de- "ſtroy the ſame, or any part thereof, or the harneſs of the horſes drawing the "ſame; or ſhall unlawfully take off, drive away, kill, or wound any of ſuch "horſes," &c.

"maliciouſly

Ch. XXII. § 14. *Grain, flour, &c.*

Deſtroying granary, &c. or taking grain, &c. therefrom; or ſpoiling the ſame, felony.

" maliciouſly pull, throw down, or otherwiſe deſtroy, any " ſtorehouſe, or granary, or other place in which corn (*a*), " meal, flour, malt, or grain ſhall be then kept, or ſhall unlawfully enter any ſuch ſtorehouſe, granary, or other " place, and take and carry away, any corn, flour, meal, " malt, or grain therefrom; or ſhall throw abroad or ſpoil " the ſame, or any part thereof; or ſhall unlawfully enter " on board any ſhip, barge, boat, or veſſel, and wilfully and " maliciouſly take and carry away, caſt or throw out there- " from, or otherwiſe ſpoil or damage any corn, flour, meal, " malt, or grain therein (*b*); every perſon ſo offending and " being thereof lawfully convicted ſhall be adjudged guilty " of felony, and tranſported for 7 years, in like manner as " other felons are directed to be, &c. And if any ſuch " offender ſo tranſported ſhall return into this kingdom be- " fore the expiration of the ſaid 7 years, he or ſhe ſhall " ſuffer death as a felon without benefit of clergy." Saving corruption of blood and loſs of dower.

Vide ante, 426

The ſtat. 11 Geo. 2. c. 22. ſtill in force, which was levelled againſt offences of this deſcription committed, as the title of the act ſtates, " with intent to hinder the exporta- " tion of corn," has the ſame proviſions, with the variations noticed below in the margin; and with this further addition, that for the offences created by the firſt clauſe of that ſtatute the juſtices are alſo directed to adjudge the offender to be publicly whipped at the time and place before ſpecified.

By both acts a conditional remedy is given againſt the hundred.

§ 15.

X. *Againſt Cattle.*

Cattle. 37 Hen. 8. c. 6. ſ. 4.

So far back as the reign of Henry VIII. a ſtatute paſſed, whereby it was enacted, " that if any perſon or perſons " maliciouſly, unlawfully, and willingly cut out, or cauſe to " be cut out, the tongue of any tame beaſt of any other per- " ſon or perſons, the ſaid beaſt then being in life; every ſuch " offender ſhould not only forfeit to the party grieved treble

(*a*) The words of the ſtat. 11 Geo. 2. here are, " where corn ſhall be then " kept *in order to be exported*, or ſhall unlawfully enter," &c.

(*b*) The ſame here adds, " intended for exportation."

" damages

" damages for ſuch offence, to be recovered by action of " treſpaſs, but ſhould alſo forfeit to the King for every ſuch " offence 10l. in name of fine." The preamble ſeems to point, as I have remarked in another place, at ſuch acts done out of malice to the owner.

Ch. XXII. § 15 *Cattle.*

Ante, 1063.

Then the ſtat. 22 & 23 Car. 2. c. 7. reciting that " whereas divers evil-diſpoſed perſons, *intending the ruin* " *and impoveriſhment of their fellow ſubjects*, have deviſed " and of late ſecretly in the night-time, and at other times " when they think their deeds are not known, frequently " practiſed in ſeveral parts of this kingdom unlawful and " wicked courſes in burning of ricks, &c. and cutting, " maiming, wounding, and killing of horſes, ſheep, beaſts, " and *other cattle*, &c.; *for prevention thereof* enacts, (ſ. 2.) " that if any perſon or perſons ſhall *in the night-time* mali- " ciouſly, unlawfully, and willingly, kill or deſtroy any " horſes, ſheep, or *other cattle*, of any perſon or perſons " whatſoever; every ſuch offence ſhall be adjudged felo- " ny, and the offenders and every of them ſhall ſuffer as " in caſe of felony. And (by ſ. 4.) it is further enacted " and declared, that in caſe any perſon or perſons who " ſhall be convict or attainted of any the offences, &c. " aforeſaid, (to avoid judgment of death or execution " thereupon for ſuch his offence,) ſhall make his election " to be tranſported beyond ſeas to any of his Majeſty's " plantations, that then the juſtices of aſſize, oyer and " terminer, gaol delivery, or juſtices of the peace, before " whom ſuch offender ſhall be convict or attaint by virtue " of this act, and every of them reſpectively, ſhall cauſe " judgment to be entered againſt every ſuch offender, that " he be tranſported beyond the ſeas to ſome of his Ma- " jeſty's plantations, in the ſaid judgment to be particularly " mentioned and expreſſed, there to remain for 7 years." " And if any ſuch offender ſhall return into this kingdom " before the expiration of the ſaid 7 years, he ſhall ſuffer " death as a felon, and as if no ſuch election to be tranſ- " ported had been made by him."

22 & 23 Car. 2. c. 7.

Killing horſes, ſheep, or other cattle in the night, felony and death, tranſmutable for tranſportation.

But by ſ. 5. " If any perſon or perſons ſhall in the night- " time maliciouſly, unlawfully, and willingly maim, wound, " or otherwiſe hurt any horſes, ſheep, or other cattle, " *whereby the ſame ſhall not be killed or utterly deſtroyed*; then

" every

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" every ſuch offender ſhall forfeit to the party grieved " treble the damage which he ſhall thereby ſuſtain, to be " recovered by action of treſpaſs or upon the caſe.

Offences within this act muſt by ſ. 7. " be proceeded " againſt within 6 months after the offence committed."

9 Geo. 1. c. 22. ſ. 1.; made perpetual by 31 Geo. 2. c. 42. ſ. 2. *Maliciouſly killing, wounding, or maiming any cattle, a capital felony.*

Laſtly, by the Black Act " If any perſon or perſons (whe- " ther armed or diſguiſed or not) after the 1ſt of *June* " 1723, ſhall unlawfully and maliciouſly kill, maim, *or* " wound *any cattle*; or ſhall forcibly reſcue any perſon, " being lawfully in cuſtody of any officer or other perſon " for any the offences before mentioned; or if any perſon " or perſons ſhall by gift or promiſe of money or other " reward procure any of his Majeſty's ſubjects to join him " or them in any ſuch unlawful act; every perſon ſo of- " fending, being lawfully convicted thereof, ſhall be ad- " judged guilty of felony without benefit of clergy."

Vide tit. *Proceſs againſt the party.*

Offenders not ſurrendering themſelves purſuant to an order of the King in council are alſo ouſted of clergy by ſ. 4. as well as thoſe who, " after the time appointed as " aforeſaid for the ſurrender of any perſon ſo charged upon " oath with any the offences aforeſaid be expired, conceal, " aid, abet, or ſuccour ſuch perſon, knowing him to have " been ſo charged as aforeſaid, and to have been required " to ſurrender himſelf by ſuch order or orders as aforeſaid, " being lawfully convicted thereof," &c.

Trial. Ante, 1057.

The trial may, by ſ. 14., be in any county in *England.*

Aiders and abettors. Midwinter and Sym's caſe, Glouceſter Sp. Aſſizes 1779, Foſt. 415. and poſt, ſ. 19

Aiders and abettors at the fact, who are principals at common law, are holden to be ouſted of clergy under the ſtat. 9 Geo. 1.

§ 16. *Malice againſt the owner.*

It is clearly ſettled, that in order to bring an offender within this law the malice muſt be directed againſt the owner of the cattle, and not merely againſt the animal itſelf.

Pearce's caſe, Glouceſter Sum. Aſſ. 1789, cor. Heath J. 2 Leach, 591. *Malice againſt the animal not within the Black Act.*

Charles Pearce was indicted on the ſtat. 9 Geo. 1. for " felonioufly, unlawfully, wilfully, and malicious maiming " and wounding a cow" of the proſecutor's. It appeared that his intent was to commit beſtiality with the animal, and that he had in a paſſion run a ſharp pointed ſtick quite through her body becauſe ſhe would not ſtand quiet. Heath J. directed the priſoner to be acquitted on this charge; it being

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being neceſſary to ſhew that the fact was committed from ſome *malicious motive towards the owner*, and not merely from an angry and paſſionate diſpoſition towards the beaſt itſelf, *without any intention of thereby injuring the owner.*

Kean's caſe, O. B. 1789, 2 Leach, 595. 609.

The ſame point was ruled in the caſe of one John Kean, by the ſame learned Judge, where the fact of killing appeared to have been done in a moment of paſſion againſt the animal.

Shepherd's caſe, O. B. Oct. 1790, 2 Leach, 609. *Proof of diſlike by a ſervant to a particular horſe, and the fact committed after the maſter's refuſal to let him have another, not ſufficient to bring the caſe within the Black Act; though the priſoner had before threatened the injury if his maſter would not let him have the other horſe.*

And again in John Shepherd's caſe, upon a ſimilar indictment tried at the O. B. before Hotham B. and Heath J. the evidence was, that the priſoner, who was ſervant to the proſecutor, had ſolicited him earneſtly to let him have another of the horſes called Boxer, inſtead of the one which was afterwards maimed, and which at the time the miſchief was done was employed under the direction of the priſoner, in carrying dung in the team. His requeſt was not complied with; and he was afterwards ſeen holding the horſe by the tongue with one hand while he beat him violently over the head with the butt end of a whip which he held in the other: and afterwards the animal was found lying in a meadow with its tongue hanging quite out of its mouth, and one part of it, which was quite dead, was nearly ſevered from the other. But there was no other evidence that the priſoner had any malice againſt his maſter, except only, that on being remonſtrated with on the barbarity of his conduct, he had declared in the heat of his paſſion, that he would do the other horſe an injury if his maſter did not let him have Boxer to go in the team; neither did the immediate cauſe of his reſentment againſt the animal appear. It was left to the jury to conſider whether the priſoner's conduct had been actuated by any motives of perſonal revenge againſt his maſter, or had proceeded from ſome ſudden paſſion againſt the animal itſelf; for unleſs they were of opinion that it was done from a malicious motive againſt the owner, however brutal his conduct was, he did not come within the meaning of the act. The priſoner was thereupon acquitted.

Maiming ſheep becauſe they overleapt their bounds, not within the act. Ex relatione.

There was another caſe ſome years ago, the name of which I have not been able to learn, ſaid to have been decided by Mr. Juſtice Heath, where it appeared that the priſoner had cut the tendons of the hinder legs of ſeveral

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ſheep that had from time to time broke over into his incloſure; which was holden not to be a caſe within the ſtatute.

In all theſe caſes there was reaſonable evidence appearing upon the face of the tranſaction itſelf to impute the motive of the fact to reſentment againſt the particular animals, and not to any perſonal malice againſt the owner. But it does not appear to have been decided that it is neceſſary to give expreſs evidence of previous malice againſt the owner, in order to bring a caſe within the act: but the fact being proved to be done wilfully, which can only proceed from a brutal or malignant mind, it ſeems a queſtion ſolely for the conſideration of the jury to attribute the real motive to it: to which the tranſaction itſelf will moſt probably furniſh a clue. And in Daniel Ranger's caſe, although that point was not directly in judgment, the Judges agreed in the debate that it was not neceſſary in theſe caſes for the proſecutor to prove a previous exiſting malice againſt the owner.

Ranger's caſe, Surry Sum. Aſſ. 1798, cor. Buller J. MS. Buller J. and Ms. Jud.

§ 17. *No indictment lies at common law for unlawfully with force and arms maiming a horſe.*

The laſt-mentioned caſe was an indictment at common law, which charged that the priſoner "on 23d of May, 33 Geo. 3. with force and arms, at, &c. one black gelding of the value of 30l. of the goods and chattels of William Collyer, then and there being, then and there unlawfully did maim, to the great damage of Collyer, and againſt the peace," &c. But upon reference to the Judges after conviction, they all held that the indictment contained no indictable offence; for if the caſe were not within the Black Act, the fact in itſelf was only a treſpaſs: for that the words *vi et armis* did not imply force ſufficient to ſupport an indictment.

§ 18. *Cattle.*

As to what ſhall be deemed *cattle* within the Black Act:

Paty's caſe, Abingdon Sum. Aſſ. 1770, cor. Blackſtone J. 2 Blac. Rep. 721. *The 9 Geo. 1. c. 22. was deſigned to extend and not abridge the offences deſcribed in 22 & 23 Car. 2. c. 7.*

John Paty was tried and convicted on an indictment framed on the ſtat. 9 Geo. 1. c. 22. for feloniouſly, unlawfully, knowingly, wilfully, and maliciouſly ſhooting and killing one mare, of a mixed red and white colour, and one brown ſtone colt, the goods and chattels of Matthew Batten. The words of the ſtatute are, "That if any perſon ſhall "unlawfully and maliciouſly kill, &c. any *cattle*, he ſhall "ſuffer death without benefit of clergy." It was moved in arreſt

arreſt of judgment, 1ſt, That the mare and colt were not averred in the indictment to be *cattle* within the meaning of the act. 2dly, That the word *cattle* does not neceſſarily include *horſes, mares, and colts.* To ſupport theſe objections it was argued, that the Legiſlature in the ſtatutes of 3 & 4 Ed. 6. c. 19. 5 & 6 Ed. 6. c. 14. and 31 Geo. 2. c. 40. for regulating the ſale of *cattle*, has thought it neceſſary to mention by name the ſeveral ſpecies of beaſts to which the proviſions of thoſe acts were deſigned to extend. That the book of rates (12 Car. 2. c. 4.) diſtinguiſhes between the ſubſidy to be paid on *great cattle* imported, viz. 50 ſhillings, and that on *horſes and mares*, viz. 10l. That the ſtat. 22 Car. 2. c. 13. diſtinguiſhes between the encouragements given for breeding *cattle of all ſorts*, and for breeding *horſes;* and that when the ſtat. 14 Geo. 2. c. 6. made it felony without clergy to ſteal ſheep or other cattle, it was found neceſſary to ſpecify by ſtat. 15 Geo. 2. c. 34. what cattle were intended by the act, among which neither *horſes, mares, or colts* are included (*a*). On the firſt day of Michaelmas term 1770 this caſe was ſubmitted to the Judges at Serjeants'-Inn; and they unanimouſly agreed, That as the ſtat. of 22 & 23 Car. 2. c. 7. had made the offence of killing horſes by night a ſingle felony, this ſtat. of 9 Geo. 1. c. 22. was only to be conſidered as an extenſion of that act; and ſome precedents of capital convictions were cited upon this branch of the ſtatute, though none of executions. It was therefore agreed that judgment of death ſhould be given againſt the priſoner at the next aſſizes; but he was then reprieved for tranſportation; and afterwards, (upon ſtrong application from the country,) received a free pardon.

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and therefore horſes, mares, and colts are included in the word cattle.

Vide ante, 616.

In Robert Mott's caſe, who was convicted for wounding a gelding, a ſimilar objection in arreſt of judgment was over-ruled by Mr. Baron Hotham upon the authority of the above caſe.

Mott's caſe, O. B. Sep. 1783, 1 Leach, 85. n.

(*a*) The argument derived in the above caſe from the ſtats. 14 & 15 Geo. 2. on behalf of the priſoner will be found to loſe much of its force by adverting to the preamble of the firſt of thoſe ſtatutes: from whence it appears that one principal object of the law was to guard againſt an artful practice of ſheep ſtealers, and ſtealers of other cattle for food, whoſe principal object being the carcale, they ſtripped the animals which they killed on the ſpot, and left their ſkins there for fear of detection. This of courſe is quite foreign to the intention and purpoſe of horſe-ſtealers.

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The ſame point was ruled in Moyle's caſe, who was convicted of killing a mare.

Moyle's caſe, Bodmin Sum. Aſſ. 1791, cor. Buller J.

It is plain that the Legiſlature muſt have intended to include *horſes* in the word "*cattle*," when in the ſtat. of Car. 2. they ſpeak of "horſes, ſheep, or *other cattle*:" and by the ſtatute of George the firſt they exclude from clergy ſuch as kill, &c. *any cattle*: which latter ſtatute was evidently intended to enlarge and not to reſtrain the deſcription of the felony; for it extends to ſuch as "maim or wound" any cattle, though not deſtroyed, which by the prior act was left a miſdemeanor at moſt, puniſhable only by action to recover treble damages.

§ 19. *Aiders and abettors.*

Midwinter and Sims' caſe, Gloucester Sp. Aſſ. 1779, Foſt. 425. Appx. laſt edition. *Aiders and abettors at the fact of killing a mare of another from malice to the owner are ouſted of clergy by the ſt. 9 G. 1. c. 22 as well as the principal, who gave the mortal blow.*

In the caſe of Midwinter and Sims, who were indicted and convicted on the Black Act for killing a mare of Mr. Dutton's, the verdict was approved by all the Judges as to the principal offender; though Mr. Juſtice Foſter diſſented from the reſt as to the propriety of ouſting Sims of his clergy, who was no more than an aider and abettor at the fact. The circumſtances there were, that the priſoners, having conceived a prejudice againſt the proſecutor on account of a proſecution which he was then carrying on againſt them for ſtealing rabbits, agreed to take their revenge on him, and to kill one of his breeding mares that night; which they executed accordingly: Midwinter with the aſſiſtance of the other having caught the mare, buckled his own girdle about her neck, and faſtened a girdle of Sims' to his own: and Sims, having taken hold of the girdle fixed in this manner to the mare's neck, held it faſt in order to prevent the mare getting away, while Midwinter with a large ſharp hook gave the mare a deep wound in the belly, of which ſhe died the ſame night.

§ 20.

Haywood's caſe, Coventry Sum. Aſſ 1801, cor. Rooke J. MS. Jud. *Wounding a horſe out of malice to the owner by driving a nail into the frog of his hoof, is within the Black Act*, 9 Geo. 1. c. 22. *though the injury were only temporary.*

As to the extent of the injury received by the animal; if the maim or wound were not mortal, the caſe did not amount to felony within the ſtat. of Car. 2.; but that is otherwiſe within the act of Geo. 1.

John Haywood was tried on an indictment on the Black Act, containing two counts, one for maliciouſly maiming, the other for maliciouſly wounding a gelding, againſt the ſtatute. It was proved, that on the 10th of June the priſoner had maliciouſly and with an intent to injure the proſecutor driven a nail into the frog of the horſe's foot; and the horſe was thereby rendered uſeleſs to the owner, and continued ſo at the time of the trial (1ſt Auguſt): but the proſecutor ſaid he was likely to do well, and to be perfectly ſound again in a ſhort time. After conviction, judgment was reſpited upon a doubt, whether as the horſe was likely to recover, and as the wound was not a permanent injury, the offence were within the ſtatute? In Michaelmas term 1801 all the Judges held the conviction right. The words of the ſtat. 9 Geo. 1. c. 22. are, "ſhall unlawfully and "maliciouſly kill, maim, OR *wound* any cattle," &c.; which word *wound* appears to be uſed as contradiſtinguiſhed from a permanent injury, ſuch as maiming.

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II. *Manufactures.* § 21.

The proviſions made by ſtatute for the protection of manufactures from depredation, as well as the perſons of maſter manufacturers from unlawful violence, having been before mentioned, I now proceed to conſider another ſort of protection by which this ſpecies of property is guarded.

Ante, tit. *Larceny*, p. 618 &c. and tit. *Aſſaults*, &c. 426.

Woollens.

22 Geo. 3. c. 40. ſ. 2. this repeals a ſimilar proviſion in ſtat. 12 Geo. 1. c. 34. ſ. 7. *Breaking into houſe, &c with intent to cut or deſtroy woollens in the loom, or rack, or tools, or cutting, &c. ſuch, a capital felony.*

By the ſtat. 22 Geo. 3. c. 40. ſ. 2. "If any perſon or "perſons ſhall by day or by night break into any houſe or "ſhop, or enter by force into any houſe or ſhop, with in- "tent to cut or deſtroy any ſerge, or other woollen goods "in the loom, or any tools employed in the making there- "of; or ſhall wilfully and maliciouſly cut or deſtroy any ſuch "ſerges or woollen goods in the loom, or on the rack, or ſhall "burn, cut, or deſtroy any rack on which any ſuch ſerges or "other woollen goods are hanged in order to dry; or ſhall "wilfully and maliciouſly break or deſtroy any tools uſed in "the making any ſuch ſerge or other woollen goods, not hav- "ing the conſent of the owner ſo to do; every ſuch offender "being thereof lawfully convicted ſhall be guilty of felony "without benefit of clergy."

§ 22. *Silk.*

The ſame ſtatute, ſ. 2. enacts, "that if any perſon or "perſons ſhall by day or by night break into any houſe or "ſhop, or enter by force into any houſe or ſhop, with intent "to cut or deſtroy any velvet, wrought ſilk, or ſilk mixed "with

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" with any other materials, or other ſilk manufacture in the " loom, or any warp or ſhute, tools, tackle, or utenſils; or " ſhall wilfully and maliciouſly cut or deſtroy any velvet, " wrought ſilk, or ſilk mixed with any other materials, or " other ſilk manufacture in the loom, or any warp or ſhute, " tools, &c. prepared or employed in or for the making " thereof; or ſhall wilfully and maliciouſly break or deſtroy " any tools, tackle, or utenſils uſed in or for the weaving or " making of any ſuch velvet, &c. or other ſilk goods or ſilk " manufacture; not having the conſent of the owner ſo to " do; every ſuch offender, being thereof lawfully convicted, " ſhall be guilty of felony, without benefit of clergy."

§ 23. *Linen or cotton.*

Alſo by ſ. 3. it is enacted, " that if any perſon or perſons " ſhall by day or by night break into any houſe or ſhop, or " enter by force into any houſe or ſhop with intent to cut " and (*a*) deſtroy any linen or cotton, or linen and cotton " mixed with any other materials, or other linen or cotton " manufactures in the loom, or any warp, or ſhute, tools, " tackle, and utenſils; or ſhall wilfully and maliciouſly cut or " deſtroy any linen or cotton, or linen or cotton mixed with " any other materials, or other linen and cotton manufacture " in the loom, or any warp, or ſhute, tools, tackle, and " utenſils prepared for or employed in the making thereof; " or ſhall wilfully and maliciouſly break and deſtroy any " tools, tackle, or utenſils uſed in or for the carding, ſpin- " ning, weaving, preparing, or making, in any way what- " ever, any ſuch linen or cotton, or linen or cotton mixed " with any other materials, or other linen and cotton goods, " or linen and cotton manufactures whatſoever; not having " the conſent of the owner ſo to do; every ſuch offender, " being thereof lawfully convicted, ſhall be guilty of felony " without benefit of clergy."

(*a*) The word *or* is uſed in the prior ſection, and poſt.

Vide the title of the act.

This act repeals ſo much of the ſtat. 12 Geo. 1. c. 34. and of the ſtat. 6 Geo. 3. c. 28. " as relates to the puniſh- " ment of perſons deſtroying any woollen or ſilk manufac- " tures, or any implements prepared for or uſed therein;" and the clauſes of the former act ſo repealed which are re- cited in this ſtatute are verbatim the ſame. But it does not profeſs to repeal the following ſtatute, which contains pro- viſions varying in ſeveral reſpects from the clauſe laſt ſet forth. And Lord Hale informs us, that a ſecond ſtatute enact-

1 Hale, 705.

enacting the ſame offence to be felony that was ſo enacted before, with ſome alterations, is but cumulative, and no re- peal of the former act: which muſt doubtleſs be underſtood with this reſerve, that the two proviſions may well ſtand together without claſhing or inconſiſtency. Ch. XXII. § 23. *Manufactures.*

By ſtat. 4 Geo. 3. c. 37. ſ. 16. " If any perſon or perſons " ſhall by day or night break into any houſe, ſhop, cellar, " vault, or other place or building, or by force enter into " any houſe, &c. or other place or building, with intent " to ſteal, cut, or deſtroy, any linen yarn, or any linen " cloth, or any manufacture of linen yarn, belonging to " any manufactory, or the looms, tools, or implements " uſed therein; or ſhall wilfully or maliciouſly cut in pieces, " or deſtroy, any ſuch goods, either when expoſed to bleach " or dry; every ſuch offender, being thereof lawfully con- " victed, ſhall be judged guilty of felony, without benefit " of clergy." This by ſ. 33. is made a public act. 4 Geo. 3. c. 37. as to ſtealing ſuch, *vide* ante, 620.

§ 24. *Plate glaſs.*

By ſtat. 38 Geo. 3. c. 17. ſ. 24. for 21 years from the 7th of May 1798, and to the end of the then next ſeſſion, " If any perſon or perſons ſhall by day or night break into " any houſe, ſhop, cellar, vault, or other place or build- " ing, or by force enter into any houſe, &c. or other place " or building, belonging to the ſaid manufactory (i. e. of " the governor and company of the Britiſh caſt-plate-glaſs " manufactory), or wherein the ſame ſhall be then carry- " ing on, with intent to ſteal, cut (*a*), break, or otherwiſe " deſtroy any glaſs, wrought or unwrought, or any mate- " rials, tools, or implements, uſed in, for, or about the ma- " king thereof, or any goods or wares belonging to the ſaid " manufactory, or ſhall ſteal, or wilfully or maliciouſly cut, " break, or otherwiſe deſtroy any ſuch glaſs, materials, " tools, or implements; every ſuch offender, being lawfully " convicted, ſhall be judged guilty of felony, and tran- " ſported for ſeven years (*b*), or ſhall be adjuged to ſuffer " ſuch leſs puniſhment as the Court before whom ſuch of- " fender or offenders ſhall be tried ſhall think fit to " award." 38 Geo. 3. c. 17. (This, though a public act, is to be found among the private and local acts.)

(*b*) The following words were not in the firſt ſtatute.

(*a*) The printed ſtat. has here the word *out*, inſtead of *cut*, probably a miſprint, as the word *cut* afterwards is uſed; and the ſtat. 13 Geo. 3. c. 38. ſ. 29. for incorpo- rating the original company, from whence this was probably taken, has the word *cut*.

Ch. XXII. § 25. *Highways.*

12. *Highways.*

§ 25. *Vide* general title *Highways and Bridges.*

All nuſances to ſuch are indictable at common law: and by the general highway act, 13 Geo. 3. c. 78. ſ. 42., the damaging of poſts, blocks, and great ſtones ſet up to ſecure cauſeways, and of the banks which ſecure and defend the ſame, and the ſtones, bricks, or wood, fixed on the parapets or battlements of bridges, as alſo the pulling down, deſtroying or defacing of mile ſtones or direction poſts, is made liable on conviction before a juſtice of the peace to a penalty not exceeding 5*l.*, nor leſs than 10*s.*; and in default of payment the offender is to be committed to the houſe of correction, there to be whipped and kept to hard labour not exceeding one calendar month, nor leſs than ſeven days.

13. *Turnpikes.*

§ 26. *Vide* poſt. ſ. 32.

The ſtat. 7 Geo. 3. c. 40. repealed all former general proviſions relative to turnpikes: this again was repealed (except as to ſo much as repealed the former acts) by the ſtat. 13 Geo. 3. c. 84. ſ. 86. which latter conſolidates all the former proviſions intended to be retained. And

13 Geo. 3 c. 84. *Deſtroying turnpike gates, poſts, rails, &c. or engines for weighing, &c.*

By ſ. 42. of that act, "To prevent the malicious deſtroying of any turnpike gate or houſe which hath been or ſhall hereafter be erected," it is enacted, "that if any perſon or perſons whatſoever ſhall either by day or night wilfully or maliciouſly pull down, pluck up, throw down, level, or otherwiſe deſtroy any turnpike gate, or turnpike gates, or any poſt or poſts, rail or rails, wall or walls, or any chain, bar, or other fence or fences belonging to any turnpike gate, or any other chain, bar, or fence of any kind whatſoever, ſet up or erected, or hereafter to be ſet up or erected, to prevent paſſengers from paſſing by without paying any toll, laid or directed to be paid by any act or acts of parliament made for that purpoſe; or any houſe or houſes erected or to be erected for the uſe of any ſuch turnpike gate or turnpike gates; or any crane, machine, or engine, made or erected, or to be made or erected on any turnpike road by authority of parliament, for weighing waggons, carts, or carriages; or ſhall forcibly reſcue any perſon or perſons, being lawfully in cuſ-

Ch. XXII. § 26. *Turnpikes.*

"tody of any officer or other perſon for any of the offences before-mentioned; every perſon ſo offending in any of the ſaid caſes, being thereof lawfully convicted, ſhall be adjudged guilty of felony, and ſhall be tranſported to one of his Majeſty's plantations abroad for ſeven years, or ſhall be committed to priſon for any time not exceeding three years, at the diſcretion of the Judge or Court before whom ſuch offender ſhall be tried. And any indictment for ſuch offences may be inquired of, tried and determined in any adjacent county within that part of *Great Britain* called *England*, in ſuch manner and form as if the facts had been there committed."

Felony and tranſportation or impriſonment for three years. The ſt. 8 G. 2. c. 20. had made the offence a capital felony.

Trial.

By ſ. 43. the hundred ſhall make ſatisfaction, &c.

14. *Bridges.*

§ 27. *Bridges.*

The malicious deſtruction or damaging of public bridges is no doubt puniſhable as a miſdemeanor at common law, being a nuſance to all the King's ſubjects; and the general highway act of the 13 Geo. 3. c. 78. ſubjects to a penalty of 5 l. on ſummary conviction before a juſtice of peace, and in default of payment to whipping, impriſonment, and hard labour, every perſon who ſhall "break, damage, or throw down the ſtones, bricks, or wood fixed upon the parapets or battlements of bridges."

In many inſtances the Legiſlature have made the offence of deſtroying or damaging particular bridges felony; and in ſome have ouſted ſuch offenders from the benefit of clergy. It would be endleſs to ſet out theſe acts: ſuch as have fallen under my notice are ſubjoined in a note (*a*).

15. *Mines and Engines.*

§ 28. *Setting fire to coal mines.* 10 Geo. c. 32. ſ. 6.

By ſtat. 10 Geo. 2. c. 32. ſ. 6. "After the 23d of June 1737 and during the continuance of the ſtat. 9 Geo. 1.

(*a*) London B. 31 Geo. 2. c. 20. ſ. 6. Weſtminſter B. 9 G. 2. c. 29. Blackfriars B. 29 Geo. 2. c. 86. Fulham B. 12 Geo. 1. c. 36 ſ. 3. Old Brentford B. 30 Geo. 2. c. 63. ſ. 19. and 31 Geo. 2. c. 48. Hampton Court B. 23 Geo. 2. c. 37. ſ. 12. Walton B. 20 Geo. 2. c. 22. ſ 3. Ribble B. 24 Geo. 2. c. 36. Sandwich B. 28 Geo. 2. c. 55. Wye B. 29 Geo. 2. c. 73. ſ. 5. Urſe B. 29 Geo. 2. c. 73. J. Ferry's B. 30 Geo. 2. c. 59. and 18 Geo. 3. c. 10. Trent B. 31 Geo. 2. c. 59.

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" c. 22." (this is the Black Act, which after ſeveral continuances was together with this act made perpetual by the ſtat. 31 Geo. 2. c. 42.) " if any perſon or perſons ſhall wilfully and maliciouſly ſet on fire or cauſe to be ſet on fire " any mine, pit, or delph of coal or cannel coal; every perſon ſo offending, being thereof lawfully convicted, ſhall be " adjudged guilty of felony, without benefit of clergy."

And by ſ. 4. of the ſame act, " all the proviſions made in " the ſtat. 9 Geo. 1. c. 22. for the more ſpeedy and eaſy " bringing the offenders againſt the ſaid act to juſtice, and " the perſons who ſhall conceal, aid, abet, or ſuccour ſuch " offenders, and for making ſatisfaction and amends to all " and every the perſon and perſons, their executors and adminiſtrators, for the damages they ſhall have ſuſtained or " ſuffered by any offender or offenders againſt the ſaid act, " and for the encouragement of perſons to apprehend and " ſecure ſuch offender and offenders, and for the better and " more impartial trial of any indictment or information " which ſhall be found, commenced or proſecuted for any of " the offences committed againſt the ſaid act, together with " all reſtrictions, limitations, and mitigations by the ſaid act " directed, ſhall during the continuance of the ſaid act extend to and be of force and effect in all caſes of offences " committed by wilfully and maliciouſly ſetting on fire, or " cauſing to be ſet on fire, any mine, pit, or delph of coal or " cannel coal."

13 Geo. 2. c. 21. *Drowning collieries ſubjects party to treble damages in action.*

Then the ſtat. 13 Geo. 2. c. 21. entitled an act " for " *further* and more effectually preventing the wilful and " malicious deſtruction of collieries and coal-works;" reciting that " divers evil-diſpoſed perſons poſſeſſed of or in" tereſted in collieries, have by ſecret and ſubtil devices " wilfully and maliciouſly attempted to drown adjacent " collieries, and have by means of water conveyed or ob" ſtructed for that purpoſe deſtroyed or damaged the ſame, " *intending* thereby to enhance the price of coals and gain " the monopoly thereof." And then reciting the act of the 10 Geo. 2. c. 32. whereby the wilfully and maliciouſly ſetting on *fire* any ſuch mine, &c. is made a capital felony; " and " whereas it is reaſonable that an adequate puniſhment " ſhould likewiſe be inflicted on perſons who ſhall wilfully " and maliciouſly deſtroy or damage collieries by means of " *water*

" *water*, as is aforeſaid;" it therefore enacts, " that if any " perſon after the 12th of *June* 1740 ſhall unlawfully, wil" fully, and *maliciouſly* divert or cauſe to be diverted water " from any river, brook, water courſe, channel, or land " flood, or convey or cauſe to be conveyed water into any " coal-work, mine, pit, or delph of coal, or into any ſub" terraneous cavities or paſſages, or make or cauſe to be " made any ſubterraneous cavities or paſſages, with deſign " thereby to deſtroy or damage any coal work, &c. belong" ing to any other perſon or perſons, or ſhall for that pur" poſe unlawfully and maliciouſly deſtroy or obſtruct any " ſough or ſewer (which has been a ſough or ſewer in com" mon for 50 years), made for draining any coal work, &c.; " or ſhall attempt or continue any ſuch miſchievous prac" tice; or ſhall aid or aſſiſt therein in manner aforeſaid; " every ſuch perſon ſhall for every ſuch offence forfeit and " pay to the party aggrieved treble damages and full coſts " of ſuit, to be recovered by action of debt, bill, plaint, or " information, in any of the King's Courts of Record at " *Weſtminſter*:" provided (by ſ. 2.) that the owner of any ſough, &c. may deſtroy, &c. or uſe it as he might before lawfully do.

There ſeems to be an incongruous and unprecedented diſparity in the puniſhments inflicted by the two laſt-mentioned acts, aſſuming the fact of deſtroying the mine in the one caſe *by fire*, and in the other *by water*, to be done *wilfully and maliciouſly*; unleſs it can be ſuppoſed that the legiſlature meant to diſtinguiſh between an act done from mere malice to the owner, and one done lucri cauſâ, as the latter ſtatute plainly imports in the preamble. Yet the diſtinction (ſuppoſing ſome to exiſt,) has ſeldom if ever been carried ſo far in legiſlation as in this inſtance. In ſmall offences it is frequent enough, and not unreaſonable, that thoſe who cannot pay in their purſes ſhould pay in their perſons the penalty of their miſdeeds; but this is confined to temporary and moderate ſuffering, and does not touch life itſelf. This affords a preſumption that the true ground of the diſtinction made by the two acts was in the mean uſed being in its nature more deſtructive, and the damage more extenſive and irreparable in the one caſe of firing than in the other of drowning a mine. For otherwiſe it might be argued

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gued that if the act of firing were proved to have been done by the owner of an adjoining mine merely for the ſake of increaſing his own profit, and not from malice to the perſon of the owner, the caſe would not fall within the ſpirit of the firſt law; though certainly there is nothing in the words to warrant any ſuch diſtinction: and as the ſtatute in queſtion refers to the Black Act, with which it was meant to be incorporated, it ſeems as if the caſe of burning a coal mine was in point of intent to be governed by the ſame conſideration as the caſe of arſon and other burning provided for by that law.

9 Geo. 1. c. 22.

§ 29.

For the further protection of this and other mining property, the ſtat. 9 Geo. 3. c. 29. ſ. 3. enacts, "that if any "perſon or perſons ſhall at any time after the firſt of *July* "1769 wilfully or maliciouſly ſet fire to, burn, demoliſh, "pull down, or otherwiſe deſtroy, or damage any fire engine or other engine, erected or to be erected for draining "water from collieries or coal mines, or for drawing coals "out of the ſame; or for draining water from any mine of "lead, tin, copper, or other mineral; or any bridge, waggon-way, or trunk, erected or to be erected for conveying "coals from any colliery or coal mine, or ſtaith for depoſiting the ſame; or any bridge or waggon-way erected or "to be erected for conveying lead, tin, copper, or other "mineral, from any ſuch mine; every ſuch perſon being "lawfully convicted of any of the ſaid offences, or of cauſing or procuring the ſame to be done, ſhall be adjudged "guilty of felony, and ſhall be liable to the ſame pains and "penalties as in caſes of felony; and the court before whom "ſuch perſon ſhall be tried ſhall have authority to tranſport "ſuch felon for the term of ſeven years, in like manner as "other felons are directed to be," &c.

9 Geo. 3. c. 29. *Deſtroying engines for draining mines, felony and tranſportation:*

or bridge-ways or waggon-ways, &c.

Proſecution within 18 months.

S. 4. provides that no perſon ſhall be proſecuted for any offence by virtue of this act, "unleſs ſuch proſecution be "commenced within 18 months after the offence committed."

§ 30.

Again by ſtat. 39 & 40 Geo. 3. c. 77. ſ. 1. entitled "an "act for the ſecurity of collieries and mines, and for the "better regulation of colliers and miners;" reciting that "from

39 & 40 Geo. 3. c. 77. *Pulling down, filling up, &c.*

"from the ſituation of the veins and mines of coal and iron "ſtone, they are greatly expoſed to the depredations of evil "diſpoſed perſons, and the laws in being are inadequate to "the protection thereof, enacts, that if any perſon or perſons ſhall, after the 1ſt of *September* 1800, wilfully and "maliciouſly pull down, fill up, or begin or attempt to pull "down or fill up, any air-way, water-way, drain, pit, "level, or ſhaft, or damage or deſtroy any rail-way, tram-"road, or other road leading to or from, or intended to lead "to or from any coal or other mine work; or if any perſon or perſons (not having or bonâ fide claiming a right "to poſſeſs or work the ſame reſpectively), ſhall, after the "ſaid time wilfully and unlawfully cut, dig, raiſe, take, or "carry away any coal, culm, or other mineral, from any "bed, band, vein, or mine, lying and being in any waſte, "open or uninciоſed lands; or ſhall wilfully and unlawfully enter into any level, pit, or ſhaft, with an intent to "dig, cut, raiſe, take, or carry away therefrom any coal, "culm, or other mineral; or ſhall aid, abet, aſſiſt, hire, or "command any perſon or perſons to commit any ſuch offence or offences as aforeſaid, then and in every ſuch caſe "all and every ſuch perſon or perſons ſhall be deemed and "adjudged guilty of a miſdemeanor, and the court before "whom any ſuch perſon or perſons ſhall be tried and convicted ſhall have authority to cauſe ſuch perſon or perſons to be impriſoned for any term not exceeding ſix "months."

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air-way or water-way, &c. of any mine, ſubject to imprisonment:

ſo damaging rail-way, &c.

Vide ante, 595.

Acceſſaries before and aiders, &c.

"Provided by ſ. 2. this ſhall not extend to any treſpaſs or "damage done or committed under ground by any owner "or owners of any adjoining coal, or other mine, in working the ſame, or by any perſon or perſons duly authorized "and employed in ſuch working as aforeſaid."

Exception in favour of owners, &c. of adjoining mines.

By ſ. 9. "No perſon ſhall be proſecuted for any offence "againſt this act, unleſs ſuch proſecution be begun within "nine calendar months after the offence committed."

Limitation of proſecutions.

The offence of breaking into the black lead mines conſtituted by the ſtat. 25 Geo. 2. c. 10. muſt be with intent to ſteal, and was therefore ſtated in another place.

Black lead mines. Ante, 594.

16. *Sea*

Ch. XXII. § 31. *Sea and river banks.*

16. *Sea Banks and Banks of Rivers.*

§ 31.
6 Geo. 2. c. 37.

By the ſtat. 6 Geo. 2. c. 37. ſ. 5. "If any perſon or perſons, after the 24th of *June* 1733, and during the continuance of the ſtat. 9 Geo. 1. c. 22. ſhall unlawfully and maliciouſly break down, or cut down, the bank or banks of any river, or any ſea bank, whereby any lands ſhall be overflowed or damaged; every perſon ſo offending, being thereof lawfully convicted, ſhall be adjudged guilty of felony without benefit of clergy."

This act and that of the 9 Geo. 1. c. 22. were made perpetual by ſtat. 31 Geo. 2. c. 42.

10 Geo. 2. c. 32. *Extending provisions of the Black Act to theſe offences.*

The ſtat. 10 Geo. 2. c. 32. ſ. 4. further enacts, "That all the proviſions made in the act of the 9 Geo. 1. c. 22. for the more ſpeedy and eaſy bringing the offenders againſt the ſaid act to juſtice, and the perſons who ſhall conceal, aid, abet, or ſuccour ſuch offenders, and for making ſatisfaction and amends to all and every the perſon and perſons, their executors and adminiſtrators, for the damages they ſhall have ſuſtained or ſuffered by any offender or offenders againſt the ſaid act, and for the encouragement of perſons to apprehend and ſecure ſuch offender and offenders, and for the better and more impartial trial of any indictment or information which ſhall be found, commenced, or proſecuted for any of the offences committed againſt the ſaid act, together with all reſtrictions, limitations, and mitigations by the ſaid act directed, ſhall, during the continuance of the ſaid act, extend to and be of force and effect in all caſes of offences committed by unlawfully and maliciouſly breaking down or cutting down the bank or banks of any river, or any ſea bank, whereby any lands ſhall be overflowed or damaged."

This clauſe was alſo made perpetual by the ſtat. 31 Geo. 2. c. 42. ſ. 5.

ſ. 5. *Unlawfully deſtroying or taking away piles, chalk, or other materials from ſea banks or walls* 20 l. *penalty on ſummary conviction.*

By ſ. 5. of the ſtat. 10 Geo. 2. c. 32. reciting "That it frequently happens that idle and diſorderly people employed in fiſhing boats, and others reſiding near the ſea coaſts, do unlawfully and maliciouſly cut off, &c. and deſtroy the piles which are drove into the marſh or ſea walls and banks, whereby the chalk and other materials uſed for ſecuring the ſaid walls and banks fall away, and often times take the ſaid chalk and other materials uſed for that purpoſe, and thereby frequent inundations happen to the lands lying within the ſaid walls and banks, to the great damage of the owners and occupiers of the ſaid lands; for remedy thereof," enacts, "that if any perſon or perſons ſhall at any time or times hereafter unlawfully cut off, draw up, or remove and carry away any piles, chalk, or other materials, which are, or at any time hereafter ſhall be driven into the ground, and uſed for the ſecuring any marſh or ſea walls or banks, in order to prevent the lands lying within the ſame from being overflowed and damaged," it ſhall be lawful for one or more juſtice of the peace reſiding near the place to hear the complaint in the manner there ſtated; and the offender upon conviction ſhall forfeit 20 l. &c. or in default of payment be committed to the houſe of correction, there to be kept at hard labour for ſix months.

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The duration of this proviſion was not limited to any particular time.

19 Geo. 2. c. 22. *Diſcharging rubbiſh in harbours, or ſuffering ſtranded veſſels to remain, &c.*

By the ſtat. 19 Geo. 2. c. 22. a ſummary juriſdiction is given to one or more juſtices of peace to inquire of and determine certain offences againſt the due preſervation of havens, roads, channels, and navigable rivers in England, by unloading rubbiſh, &c. out of veſſels within the ſame, or ſuffering old hulks to ſink there, or not removing ſuch as are ſtranded.

17. *Locks and other Works on navigable Rivers.*

§ 32. *Locks, &c. on navigable rivers.* 1 Geo. 2. ſt. 2. c. 19.

The firſt ſtatute paſſed on this ſubject was the 1 Geo. 2. ſt. 2. c. 19. intitled an act for puniſhing ſuch perſons as wilfully and maliciouſly deſtroy turnpikes, &c. "or locks or other works erected by authority of parliament for making rivers navigable," which reciting that evil diſpoſed perſons had deſtroyed turnpike gates, &c. and had "threatened the pulling down and deſtroying of locks, ſluices, and flood-gates, erected to preſerve and ſecure the navigation of rivers made navigable purſuant to acts of parliament for that purpoſe; for preventing ſuch practices,

Ch. XXII. § 32. *Locks, ſluices, &c.*

" and for rendering the ſaid acts more effectual," enacts, that if any perſon ſhall by day or night wilfully and maliciouſly break down, &c. or otherwiſe deſtroy any turnpike gate, &c. he ſhall be ſubject to certain corporal puniſhment upon conviction before two juſtices of peace, &c. Then by ſ. 2. " If any ſuch perſon or perſons ſo convicted ſhall, after " the ſaid 24th of *June* 1728, commit any of the offences " aforeſaid a ſecond time; or if any perſon or perſons ſhall, " either by day or night, wilfully and maliciouſly pull down or " demoliſh any houſe or houſes erected or to be erected for the " ſervice of any turnpike gate, &c. or ſhall wilfully and ma- " liciouſly break down or demoliſh any lock, ſluice, or flood- " gate, erected or to be erected by authority of parliament, " *upon any navigable river, for preſerving or ſecuring the naviga-* " *tion thereof*, and ſhall be lawfully convicted of the ſame re- " ſpectively upon indictment before any juſtices of aſſize, oyer " and terminer or gaol delivery for the county, &c. borough " or corporation where ſuch offence or offences reſpectively " ſhall be committed; every ſuch perſon and perſons ſo of- " fending, and being thereof lawfully convicted, ſhall be " adjudged guilty of felony, and ſubject to the like pains " and penalties as in caſes of felony; and the court before " whom ſuch perſon or perſons ſhall be tried ſhall have au- " thority to tranſport ſuch felons for ſeven years, in like " manner as other felons," &c.

Maliciouſly demoliſhing locks, ſluices, &c. on navigable rivers, felony and tranſportation.

5 Geo. 2. c. 33.

Then the ſtat. 5 Geo. 2. c. 33. reciting that the act of the 1 Geo. 2., " for puniſhing ſuch perſons as wilfully and ma- " liciouſly pull down or deſtroy turnpikes or locks or " other works erected by authority of parliament, for ma- " king rivers navigable, and that the proviſions by the ſaid " act made for puniſhing *ſuch* offenders have been found in- " ſufficient; for remedy thereof and for rendering the ſaid " act more effectual," by ſ. 1. makes the malicious deſtroy- ing of turnpikes felony, and gives authority to tranſport every ſuch felon for ſeven years.

Returning from tranſportation, death.

Then by ſ. 2. it is further enacted, that " if *ſuch* offender " or offenders ſhall return into *Great Britain* or *Ireland* be- " fore the expiration of the ſaid term of ſeven years, con- " trary to the true intent or meaning hereof, *or of the ſaid* " *act paſſed in the 1ſt Geo.* 2. (ſtat. 2. c. 19.) he or they ſo " returning ſhall ſuffer death as felons, and have execution " awarded

" awarded againſt them as perſons attainted of felony, with- " out benefit of clergy."

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The words in Italics muſt refer to ſuch as being convicted of deſtroying ſluices, &c. were ſentenced to tranſportation under the ſtat. 1 Geo. 2., becauſe none other were tranſport- able under that ſtatute, and therefore none other could re- turn, *contrary to the true intent and meaning of the ſaid act*; although there be ſome obſcurity in the clauſe by the uſe of the relative word *ſuch* (ſuch offenders, &c.) in the beginning of it, which muſt mean *ſuch offenders* as are ſpoken of in the preamble of the act, and not merely ſuch as are laſt ſpoken of in the preceding enacting clauſe.

Expences of proſecution.

The third clauſe enables the truſtees, proprietors, &c. or other perſons authorized to put in execution any act or acts of parliament for repairing of highways *or* making rivers na- vigable out of the tolls, &c. to diſcharge the expences of any action, &c. indictment or other proſecution which ſhall be commenced on account of the deſtroying, &c. any turnpike gate, &c. " or any lock, ſluice, flood-gate, or other works on " any navigable river, erected or to be erected by authority " of parliament."

8 Geo. 2. c. 20. *Clergy.*

Then the ſtat. 8 Geo. 2. reciting the act of the firſt and fifth of Geo. 2. and " that the proviſions for puniſhing *ſuch* " offenders had been found inſufficient, for rendering the *ſaid* " acts more effectual," enacts, " that if any perſon or per- " ſons whatſoever, after the 15th of May 1735, ſhall either " by day or night wilfully *or* maliciouſly pull down, pluck " up, throw down, level, or otherwiſe deſtroy any turnpike " gate (*a*), &c. or any lock, ſluice, flood-gate, or other works, " on any navigable river erected or to be erected by autho- " rity of parliament; or forcibly reſcue any perſon or per- " ſons, being lawfully in cuſtody of any officer or other per- " ſon for any of the offences before mentioned; that then " and in any of the ſaid caſes every perſon ſo offending, " being thereof lawfully convicted, ſhall ſuffer death, as in " caſes of felony, without benefit of clergy."

(*a*) So much of the act as reſpects turnpikes was afterwards repealed, *vide* ante, 1080.

Reſcuing offenders.

By ſ. 2. perſons wilfully and maliciouſly drawing up any flood-gate, fixed or made in any wear or lock made or to be made, &c. upon any navigable river, for preſerving the na- vigation thereof, are ſubject to impriſonment and hard la-

Ch. XXII. § 32. *Locks, ſluices, &c.*

bour for a month, upon a ſummary conviction before two juſtices of the peace.

Trial.

By ſ. 3. "Every offence aforeſaid done contrary to this "act ſhall and may be inquired of, examined, tried, and "determined in any adjacent county within that part of "*Great Britain* called *England*, in ſuch manner and form "as if the fact had been therein committed."

Pardon.

By ſ. 5. Offenders out of priſon diſcovering and convicting others guilty of the ſaid felonies ſhall be pardoned.

By ſ. 6. &c. a conditional remedy is given to recover damages againſt the hundred.

Theſe ſeveral acts having been ſuffered to expire, were all revived from the 1ſt of June 1742, for a certain period, by the ſtat. 15 Geo. 2. c. 33. ſ. 1. and continued by the ſtat. 20 Geo. 2. c. 47., and finally made perpetual by the ſtat. 27 Geo. 2. c. 16. A few years afterwards we find the following law.

4 Geo. 3. c. 12. ſ. 5. *Tranſportation.*

The ſtat. 4 Geo. 3. c. 12. ſ. 5. reciting that "the laws "then in being were not ſufficient for the preſervation of "the banks, flood-gates, ſluices, and other works belonging "to rivers and ſtreams made navigable by act of parliament, "and for maintaining the navigation on *ſuch* rivers and "ſtreams," enacts, "that from and after the paſſing of "this act, if any perſon or perſons ſhall wilfully *or* malicioufly break, throw down, damage, or deſtroy, any "banks, flood-gates, ſluices, or other works; or open or "draw up any flood-gate or flood-gates, or do any other "wilful hurt or miſchief to any *ſuch* navigation, ſo as to "obſtruct, hinder, or prevent the carrying on, completing, "ſupporting, or maintaining ſuch navigation; every ſuch "perſon or perſons ſhall be adjudged guilty of felony, and "the Court before whom ſuch ſhall be tried and convicted "ſhall have authority to order ſuch perſon or perſons to "be tranſported for 7 years."

§ 33.

18. *Drainage Works, &c. in particular Places.*

In many inſtances particular proviſion has been made by the legiſlature againſt miſchief of the ſort now deſcribing in particular places. Amongſt others the following are to be found.

Powdike

Ch. XXII. § 33. *Powdike in marſh land.*

Powdike in Marſh Land.

22 H. 8. c. 11.

By ſtat. 22 Hen. 8. c. 11. reciting that ill-diſpoſed perſons had at divers times "maliciouſly cut, caſt down, and "broken up parts of the dike called the *New Powdike*, in "marſh land in the county of Norfolk, and the broken "dike, otherwiſe called *Oldfield Dike*, by marſh land, in "the Iſle of Ely, in the county of Cambridge, by reaſon "whereof, &c. the ground and paſtures within the country "of marſh land, in the counties aforeſaid, have been "drowned, &c. and the inhabitants within the ſaid marſh "land and the level of the ſame put to great charges," &c. enacts, "that every ſuch perverſe and malicious cutting "down and breaking up of any part or parts of the ſaid "dikes, or of any other bank, being parcel of the rind "and uppermoſt part of the ſaid county of marſh land "aforeſaid, made for the defence and ſalvation of the ſame, "at any time from henceforth, by any perſon or perſons "committed and done, otherwiſe than in working upon "the ſaid banks or dikes, for the repairing, fortifying, and "mending of the ſame, be adjudged felony," &c.

This ſtatute, which ſtood repealed after the ſtat. 1 Ed. 6. c. 12. ſ. 4. and 1 Mar. ſt. 1. c. 1. ſ. 5. was revived by ſtat. 2 & 3 Ph. & M. c. 19.

§ 34. *Bedford level.*

27 G. 2 c. 19. *Vide* 11 Geo. 2. c. 34. 14 Geo. 2. c. 24. 13 Geo. 3. c. 45 & 60. 21 Geo. 2. c. 18. and 23 Geo. 3. c. 25.

By the ſtat. 27 Geo. 2. c. 19. for (amongſt other things) the more effectually draining and preſerving the North Bedford level, and divers lands adjoining thereto in the manor of Crowland (ſ. 49.) "For the preventing the damming "up, ſtopping, throwing down, burning, &c. or damaging "any of the rivers, drains, &c. or other works already made "or erected for or towards draining the lands and grounds "contained within the ſaid ſeveral diſtricts and diviſions, or "any of them, or hereafter to be made, &c. for the purpoſes aforeſaid, by virtue of or under the powers and authorities of this act, it is enacted, that if any perſon or "perſons ſhall, at any time hereafter, maliciouſly cut, "break down, burn, demoliſh, or deſtroy, any bank, mill, "engine, flood-gate, or ſluice already made or erected, or "which ſhall, at any time hereafter, be making or erecting, "or made or erected, ſupported or maintained, for anſwer-

Ch. XXII. § 34. *Bedford level.*

" ing the purpoſes aforeſaid; every perſon or perſons ſo of-
" fending, being thereof convicted, ſhall be guilty of felony,
" without benefit of clergy. And if any perſon or perſons
" ſhall, at any time hereafter, maliciouſly ſtop, dam, or de-
" moliſh, damage, or deſtroy any river, drain, water-courſe,
" door, dam, bridge, or other work or works already made
" or erected, or which ſhall at any time hereafter be ma-
" king or erecting, or made or erected, ſupported or main-
" tained, for anſwering the purpoſes aforeſaid; every per-
" ſon or perſons ſo offending, being thereof convicted be-
" fore any two or more juſtices of the peace for the coun-
" ties and iſle aforeſaid, or either of them, &c. ſhall forfeit
" 100*l.* to the commiſſioners, &c. and in default of payment
" be ſent to the houſe of correction of the county or iſle
" where ſuch offence ſhall be committed, there to be kept
" to hard labour for ſuch time as ſuch juſtices ſhall direct,
" not exceeding ſix months."

§ 35. *Norfolk.* 42 Geo. 3. c. 22.

By an act of the 42 Geo. 3. c. 22. (of local acts) for in-cloſing and draining, &c. marſh lands and fens, &c. in the pariſh of Runham in the county of Norfolk, it is enacted, (ſ. 49.) " That if any perſon or perſons ſhall wilfully and
" maliciouſly cut, damage, break down, demoliſh, or deſtroy
" any bank, mill, engine, dam, floodgate, bridge, ſluice, or
" tunnel, already made, or which ſhall at any time hereafter
" be made or erected, ſupported, maintained, or uſed for
" anſwering any of the purpoſes of this act; every perſon
" ſo offending, and being convicted thereof, ſhall be deemed
" guilty of felony; and the Court before whom ſuch perſon
" ſhall be tried and convicted ſhall have authority to cauſe
" ſuch perſon or perſons to be tranſported for 7 years, or in
" mitigation of ſuch puniſhment may award ſuch ſentence
" as the law directs in caſes of petit larceny."

§ 36. *Devon.* 42 Geo. 3. c. 32.

By ſtat. 42 Geo. 3. c. 32. for embanking and preſerving from the ſea certain lands ſituate between Great Prince Rock and the village of Crabtree, called Tothill Bay and Lipſon Bay, near Plymouth in the county of Devon, it is enacted, (ſ. 46.) " That if any perſon or perſons ſhall wilfully and maliciouſly
" break, throw down, damage, or deſtroy any of the banks,
" mounds, dams, or other works to be erected or made by
" virtue

" virtue of this act, every ſuch perſon ſhall be deemed guilty
" of felony, and ſhall on being lawfully convicted thereof
" be ſubject to the like pains and penalties as in caſes of
" felony; and the Court before whom ſuch perſon ſhall be
" tried and convicted ſhall have authority to cauſe ſuch
" perſon to be puniſhed in like manner as felons, &c. or in
" mitigation of ſuch puniſhment ſuch Court may award
" ſuch ſentence as the law directs in caſes of petit
" larceny."

Ch. XXII. § 36. *Devon.*

19. *Weſt-India Docks.*

§ 37. *Weſt India docks.* 39 Geo. 3. c. 69. (local.)

By the act of the 39 Geo. 3. c. 69. for improving the port of London, it is enacted, (ſ. 4.) that if any perſon or
" perſons whoſoever ſhall wilfully and maliciouſly ſet on fire
" any of the works to be made by virtue of this act, or any
" ſhip or other veſſel lying or being in the ſaid canal, or in any
" of the docks, baſons, cuts, or other works to be made by
" virtue of this act; every perſon ſo offending in any of the
" ſaid caſes ſhall be adjudged guilty of felony without benefit
" of clergy. And if any perſon or perſons ſhall knowingly,
" wilfully, or maliciouſly demoliſh, break down, cut or deſtroy
" any of the works to be made by virtue of this act, or any ſhip
" or veſſel lying in the ſaid canal, or in any of the ſaid docks,
" baſons, cuts, or other works; then every ſuch offender,
" being convicted thereof, ſhall ſuffer puniſhment by fine,
" impriſonment, or tranſportation, at the diſcretion of the
" Judge, &c. before whom ſuch offender ſhall be tried and
" convicted."

Deſtroying moorings ropes, &c. in certain places in the Thames.

By ſ. 105. " In caſe any perſon or perſons whoſoever
" ſhall wilfully or maliciouſly cut, break, or in any manner
" deſtroy any rope or other thing by which any ſhip or other
" veſſel lying in the ſaid canal, or in any of the ſaid docks,
" baſons, or cuts, *or in any place or places in the River Thames,*
" *between London Bridge and the mouth of the River Lea,* *Vi. poſt, ſ. 44.*
" ſhall be moored or faſtened, ſuch perſon or perſons ſhall,
" for every ſuch offence, forfeit and pay a ſum not exceed-
" ing 10*l.*" &c.

20. *The King's Ships, Dock Yards, &c.*

§ 38. *King's ſhips, docks, ſtores, &c.* 12 Geo. 3. c. 24. *Ante, 621.*

The offence of embezzling the King's ſtores has been before treated of; and further the ſtat. 12 Geo. 3. c. 24. entitled

Ch. XXII. § 38. *King's ſhips, docks, &c.*

titled "An act for the better ſecuring and preſerving his "Majeſty's dock-yards, magazines, ſhips, ammunition and "ſtores," reciting that "Whereas the ſafety and preſerva- "tion of his Majeſty's ſhips of war, arſenals, magazines, "dock yards, rope yards, victualling offices, military, naval, "and victualling ſtores, and the places where ſuch ſtores "are kept or depoſited, either within this realm, or in any "of the iſlands, countries, forts, or places thereunto belong- "ing, is of great importance to the welfare and ſecurity of "the kingdom;" enacts, "that if any perſon or perſons ſhall, "either within this realm, or in any of the iſlands, countries, "forts, or places thereunto belonging, wilfully and malici- "ouſly ſet on fire, or burn or otherwiſe deſtroy, or cauſe to "be ſet on fire, or burnt or otherwiſe deſtroyed, or aid, pro- "cure, abet or aſſiſt in the ſetting on fire, or burning, or "otherwiſe deſtroying of any of his Majeſty's ſhips or veſſels "of war, whether the ſaid ſhips or veſſels of war be on float "or building, or begun to be built in any of his Majeſty's "dock-yards, or building or repairing by contract in any pri- "vate yards, for the uſe of his Majeſty; or any of his Ma- "jeſty's arſenals, magazines, dock-yards, rope-yards, victual- "ling offices, or any of the buildings erected therein or be- "longing thereto; or any timber or materials there placed, "for building, repairing, or fitting out of ſhips or veſſels; or "any of his Majeſty's military, naval, or victualling ſtores, "or other ammunition of war; or any place or places where "any ſuch military, naval, or victualling ſtores, or other am- "munition of war is, are, or ſhall be kept, placed, or depo- "ſited; that then the perſon or perſons guilty of any ſuch "offence, being thereof convicted in due form of law, ſhall "be adjudged guilty of felony, without benefit of clergy."

Wilfully ſetting on fire, &c. ſhips of war, dock-yards, &c. felony without clergy.

Trial.

By ſ. 2. "any perſon who ſhall commit any of the offences "before mentioned, in any place out of this realm, may be "indicted and tried for the ſame, either in any ſhire or county "within this realm, in like manner and form as if ſuch of- "fence had been committed within the ſaid ſhire or county, "or in ſuch iſland, country, or place where ſuch offence ſhall "have been actually committed, as his Majeſty, his heirs, "&c. may deem moſt expedient for bringing ſuch offender to "juſtice; any law, uſage, or cuſtom notwithſtanding."

Vide 22 Geo. 2. c. 33.

Cognizance of ſimilar offences is given to Courts Martial by the naval articles of war, ſ. 24. and 25.

Ch. XXII. § 39. *Ships.*

21. *Private Ships, Wrecks, &c.*

§ 39. *Private ſhips.* 22 & 23 Car. 2. c. 11. *Wilful deſtruction of ſhips, felony. Vide* ante, 800.

The ſtat. 22 & 23 Car. 2. c. 11. ſ. 12. reciting that "it "often happens that maſters and mariners of ſhips having "inſured or taken upon bottomry greater ſums of money "than the value of their adventure, do wilfully caſt away, "burn, or otherwiſe deſtroy the ſhips under their charge, to "the merchants and owners great loſs; for the prevention "thereof for the future enacts, that if any captain, maſter, "mariner, or other officer belonging to any ſhip ſhall wilfully "caſt away, burn, or otherwiſe deſtroy the ſhip unto which "he belongeth, or procure the ſame to be done, he ſhall "ſuffer death as a felon."

1 Ann. ſt. 2. c. 9. ſ. 4.

By ſtat. 1 Ann. ſt. 2. c. 9. ſ. 4. "For the effectual pre- "venting the wilful caſting away, burning, or otherwiſe de- "ſtroying by maſters and mariners of ſhips under their "charge, it is enacted, that if any captain, maſter, mariner, "or other officer belonging to any ſhip, ſhall, after the 12th "of February 1702, wilfully caſt away, burn, or otherwiſe "deſtroy the ſhip unto which he belongeth, or procure the "ſame to be done, to the prejudice of the owner or owners "thereof, or of any merchant or merchants who ſhall load "goods thereon, he ſhall ſuffer death as a felon."

Trial. Vide poſt.

And by ſ. 5. "all and every the ſaid offence and offences "committed on the high ſeas, or where the Admiralty hath "juriſdiction, ſhall be inquired of, tried, &c. and judged in "ſuch ſhires and places in the realm as ſhall be limited by "the Queen's commiſſion under the great ſeal, in ſuch man- "ner and form as by ſtat. 28 Hen. 8. c. 15 is directed for the "trial of pirates, and all and every perſon and perſons who "ſhall be convicted of any of the ſaid offence or offences laſt "mentioned, or ſhall ſtand mute, or peremptorily challenge "above 20 of the jury, ſhall ſuffer death without benefit of "clergy."

Vide tit. *Piracy.*

Excluded clergy.

§ 40. *Ships in diſtreſs of ſtranding.* 12 Ann. ſt. 2. c. 18.

The ſtat. 12 Ann ſt. 2. c. 18. entitled "An act for pre- "ſerving all ſuch ſhips and goods thereof which ſhall happen "to be forced on ſhore or ſtranded upon the coaſts of this "kingdom or any other of her Majeſty's dominions," re- citing "that great complaints had been made by merchants,

Ch. XXII. §40. *Ships.*

" as well her Majeſty's ſubjects as foreigners trading to and " from this kingdom, that many ſhips of trade have un- " fortunately near home run on ſhore or been ſtranded on " the coaſt thereof, and that ſuch ſhips have been barba- " rouſly plundered by her Majeſty's ſubjects, and their car- " goes embezzled," &c. provides that the ſheriffs and other peace officers, &c. and officers of the cuſtoms, ſhall, on the application of any commander, or chief officer " of any ſhip " or veſſel of any of her Majeſty's ſubjects or others being " in danger of being ſtranded or run on ſhore, or being " ſtranded or run on ſhore," give their aſſiſtance, &c. and are empowered to command the conſtables of the neareſt ports to ſummon as many men as ſhall be neceſſary to aſſiſt, &c.; and if there be any man of war, or merchant ſhip or veſſel riding at anchor near, any of the ſaid officers of the cuſtoms or conſtables are required to demand aſſiſtance of the ſuperior officers of ſuch ſhip, to aid ſuch veſſel in diſtreſs, who in caſe of refuſal or neglect, ſhall forfeit 100 *l.* to be recovered in an action of debt, &c. by the ſuperior officer of the ſhip ſo in diſtreſs.

Perſons entering ſhip without leave,

By ſ. 3. " If any perſon or perſons whatſoever (beſides " thoſe empowered by the ſaid officer of the cuſtoms, or his " deputy, or the conſtables as aforeſaid) ſhall enter or en- " deavour to enter on board any ſuch ſhip or veſſel ſo in " diſtreſs as aforeſaid, without the leave or conſent of the " commander or other ſuperior officer of the ſaid ſhip, or " of the ſaid officer of the cuſtoms, &c. or ſome or one of " them employed for the ſervice and preſervation of the ſaid " ſhip or veſſel as aforeſaid; or in caſe any perſon ſhall mo- " leſt him, them, or any of them in the ſaving of the ſaid " ſhip, veſſel, or goods, or ſhall endeavour to impede or " hinder the ſaving of any ſuch ſhip, veſſel, or goods; or " when any ſuch goods are ſaved, ſhall take out or deface " the marks of any ſuch goods, before the ſame ſhall be ta- " ken down in a book or books for that purpoſe provided " by the commander or ruling officer and the firſt officer of " the cuſtoms as aforeſaid; ſuch perſon or perſons ſhall, " within 20 days, make double ſatisfaction to the party " grieved, at the diſcretion of the two next juſtices of peace, " or in default thereof ſhall, by ſuch juſtices of peace, be " ſent to the next houſe of correction, where he ſhall con- " tinue

or moleſting or hindering others in ſaving the ſhip. Vide poſt 1100. ſt. 26 Geo. 2.

ſhall make double ſatisfaction to party grieved at diſcretion of two magiſtrates, or be ſent to houſe of correction for 12 months.

" tinue and be employed in hard labour by the ſpace of 12 " months then next enſuing. And that it ſhall be lawful " for any commander or ſuperior officer of the ſaid ſhip or " veſſel ſo in diſtreſs as aforeſaid, or for the ſaid officer of " the cuſtoms or conſtables on board the ſame ſhip or veſ- " ſel, to repel by force any ſuch perſon or perſons as ſhall " without ſuch leave or conſent from the ſaid commander " or ſuperior officer, or the ſaid officer of the cuſtoms or " his deputy, or ſuch conſtables as aforeſaid, preſs on board " the ſaid ſhip or veſſel ſo in diſtreſs, as aforeſaid, and there- " by moleſt them in the preſervation of the ſaid ſhip or veſ- " ſel ſo in diſtreſs as aforeſaid."

Ch. XXII. §40. *Ships.*

§ 41.

Making holes in ſuch ſhip in diſtreſs, &c. felony without clergy. Vide ante, 648.

Then by ſ. 5. " If any perſon or perſons ſhall make or " be aſſiſting in the making any hole in the bottom, ſide, " or any other part of any ſhip or veſſel ſo in diſtreſs as " aforeſaid, or ſhall ſteal any pump belonging to any ſhip or " veſſel ſo in diſtreſs as aforeſaid, or ſhall be aiding or abet- " ting in the ſtealing ſuch pump as aforeſaid, or ſhall wilfully " do any thing tending to the immediate loſs or deſtruction " of ſuch ſhip or veſſel; ſuch perſon or perſons ſhall be guilty " of felony, without benefit of clergy."

Made perpetual by 4 Geo. 1. c. 12.

Saving Admiralty juriſdiction of Cinque Ports.

This act was made perpetual by the ſtat. 4 Geo. 1. c. 12. with a proviſo (ſ. 2.) ſaving the Admiralty juriſdiction of the Cinque Ports, and the officers thereto belonging, who are empowered to put the act in force within their juriſdiction.

4 Geo. 1. c. 12. *Owners, maſters, or mariners deſtroying ſhips to the prejudice of underwriters, &c. death.*

And by ſ. 3. " for the effectual preventing the wilful " caſting away, burning, or otherwiſe deſtroying of ſhips by " the owners, maſters, and mariners thereof and thereto be- " longing, it is enacted, that if any owner of, or captain, " maſter, mariner, or other officer belonging to any ſhip, " ſhall, after the 24th of June 1718, wilfully caſt away, " burn, or otherwiſe deſtroy the ſhip of which he is owner, " or unto which he belongeth, or in any manner of wiſe di- " rect or procure the ſame to be done to the prejudice of " any perſon or perſons that ſhall underwrite any policy or " policies of inſurance thereon, or of any merchant or mer- " chants that ſhall load goods thereon, he ſhall ſuffer death."

11 Geo. 1. c. 29. ſ. 5. & 6. *Wilfully deſtroying ſhips by owner, maſter, or*

This proviſion is explained and enforced by the ſtat. 11 Geo. 1. c. 29. ſ. 5. & 6., which reciting the laſt-mentioned act, and that " ſome doubts had ariſen touching the nature of

Ch. XXII. § 41. *Ships.*

of "the offence provided againſt by the ſaid recited act, "and the trial and puniſhment to be had and inflicted for "the ſame, therefore enacts and declares that if any owner "of, or captain, maſter, officer or mariner belonging to any "ſhip or veſſel, ſhall, after the 24th of June 1725, wilfully "caſt away, burn, or otherwiſe deſtroy the ſhip or veſſel "of which he is owner, or to which he belongeth, or in "anywiſe direct or procure the ſame to be done, with in-"tent or deſign to prejudice any perſon or perſons that hath "or ſhall underwrite any policy or policies of inſurance "thereon, or of any merchant or merchants that ſhall load "goods thereon, or of any owner or owners of ſuch ſhip "or veſſel; the perſon or perſons offending therein, being "thereof lawfully convicted, ſhall be deemed and adjudged "a felon or felons, and ſhall ſuffer as in caſes of felony, "without benefit of clergy."

mariner, to prejudice inſurers thereon, or merchants having laden goods on board, felony without clergy. Vide poſt.

Trial. Vide Rex v. Snape and Aires, ante, 807. and poſt, ſt. 26 G. 2. c. 19. ſ. 8.

Sect. 7. enacts, "that if any of the ſaid offences, in wil-"fully caſting away, burning, or otherwiſe deſtroying any "ſhip or veſſel as aforeſaid, ſhall be committed within the "body of any county of this realm, the ſame ſhall and may "be inquired of, tried, determined, and adjudged in the "ſame Courts, in ſuch manner and form as felonies done "within the body of any county by the laws of this realm "are to be inquired of, &c. And if any of the ſaid of-"fences ſhall be committed upon the high ſeas, the ſame "ſhall be inquired of, &c. before ſuch court, and in ſuch "manner and form as by ſtat. 28 Hen. 8. (c. 15.) entitled "*for pirates*, is directed and appointed for the inquiring, &c. "of felonies done upon the high ſeas."

§ 42. *What a caſting away or deſtroying.*

Upon the conſtruction of the acts of the 4 & 11 Geo. 1. it has been ruled, that if the ſhip be only run aground or ſtranded upon a rock, and be afterwards got off in a condition capable of being eaſily refitted, ſhe cannot be ſaid to be *caſt away or deſtroyed*; and therefore it is not within either of theſe ſtatutes. Upon this diſtinction Auguſtin de Londo, the maſter of a Spaniſh veſſel, called El Principi de Eſpana, was acquitted at an Admiralty ſeſſion holden before Sir T. Saluſbury, and Yates and Aſton, juſtices.

De Londo's caſe, Admiralty, 9th July 1765, 2 MS. Sum. 325.

To the prejudice of underwriters. 2 MS. Sum. 325.

If the inſurance be only on the cargo, and not on the ſhip, it is not within that branch of the ſtatutes relating to the prejudice

prejudice of underwriters: for the words are "to the pre-"judice of any perſon that ſhall underwrite any policy of "inſurance *thereon*," ſhips only being before-mentioned; and penal ſtatutes are to be conſtrued ſtrictly.

Ch. XXII. § 42. *Ships.*

At the Admiralty Seſſions holden at the Old Bailey on the 25th of February 1754, before Adams B., Sir Thomas Saluſbury Knt. Judge of the court of Admiralty, Sir T. Birch Knt. and others, John Lancey and John Lloyd were indicted on the ſtat. 11 Geo. 1. c. 29. for unlawfully burning and deſtroying the ſhip Nightingale, whereof T. Benſon was owner, with intention to defraud the underwriters therein named; and Thomas Pow was charged in the ſame indictment as an acceſſary before the fact, for counſelling and adviſing the ſaid Lancey and Lloyd to commit the felony aforeſaid. It appeared in evidence that Benſon, the owner of the ſhip, rented the iſland of Lundy, ſituated in the mouth of the Briſtol channel, near the middle, between Devonſhire and Pembrokeſhire, (long. 4. 40. W., lat. 60. 25. N.) but within the county of Devon. That Pow was a taylor and ſaleſman, living near the point of Appledore, a town in Kent. That the ſhip was freighted with ſalt, dry goods, maunds of pewter, and a caſk of combuſtibles, and inſured by Benſon for 400 l. from Appledore to Maryland. That Pow ſhipped the ſeamen on board at Appledore, and ſhe ſailed from thence to Lundy iſland, where the dry goods and pewter were unloaded and buried under ground among the rocks. That while the veſſel lay in Lundy road, in fourteen fathoms water, Pow went on board her, and gave ſeveral of the crew notes of hand, promiſing to pay them a certain ſum of money, as a compenſation for their clothes, &c. *in caſe the ſhip was loſt by any misfortune between that place and the cape of Virginia on her outward-bound paſſage.* That Pow returned on ſhore; the ſhip ſet ſail; and the morning after, Lancey the captain gave orders to ſet the ſhip on fire, which was accordingly done. The jury acquitted Lloyd, and found Lancey guilty (*a*). They alſo found ſpecially, "That Thomas Pow, before the ſaid felony "was committed by Lancey, did, near the iſland of Lundy "within the county of Devon, incite, &c. and counſel the

Pow's caſe, O. B. 1754, 1 Leach, 54. *A perſon who is acceſſary to a felonious ſhip-wreck is not within* 4 Geo. 1. c. 12. *unleſs he belong to the ſhip.*

(*a*) He was executed at Execution Dock on Friday June 7th, 1754.

"ſaid

Ch. XXII. § 42. *Ships.*

" ſaid John Lancey to commit the ſame; but that the ſaid " T. Pow was neither owner, maſter, captain, or mariner " of the ſaid ſhip."

Upon the verdict two queſtions were ſubmitted to the opinion of the Judges: firſt, Whether an acceſſary upon the land to the offence of burning a ſhip, which offence is afterwards committed upon the high ſeas, be within the juriſdiction of the court of Admiralty? or, Whether he ought not to be indicted and tried at the aſſizes for the county within which his offence was committed? ſecondly, Whether Thomas Pow, being a perſon in trade, living at Appledore point, and found by the verdict not to be either owner, maſter, captain, or mariner of the veſſel burnt, were within the meaning of the ſtat. 4 Geo. 1. c. 12. explained by 11 Geo. 1. c. 29. ſ. 6. upon which the indictment was founded; that ſtatute only ſaying, " That if any owner, captain, maſter, " mariner, or other officer belonging to any ſhip, ſhall wil- " fully burn," &c.? The Judges were of opinion, that Thomas Pow, upon the finding of the jury, was not an offender within the meaning of the ſtat. 4 Geo. 1. c. 12. but they gave no opinion upon the firſt point.

§ 43. *Offences againſt ſhips by ſtrangers.*

Many offences however of this nature may be committed by perſons not belonging to the particular ſhip.

Plunder or deſtruction of goods on board ſhips.

Thus the entering by force on board any ſhip in diſtreſs, and deſtroying the marks on the goods, is puniſhable as a miſdemeanor on ſummary conviction before magiſtrates by

12 Ann. ante, 1095.

the ſtat. 12 Ann. ſt. 2. c. 18. ſ. 3. in the manner and under the circumſtances therein ſet forth. The principal object of that proviſion was certainly to guard againſt thievery and

8 Geo. 1. c. 24. ante, p. 801.

plunder. With the ſame view the ſtat. 8 Geo. 1. c. 24. before ſtated puniſhes as pirates ſuch as forcibly enter merchant ſhips, and throw overboard or deſtroy any part of the goods or merchandizes belonging to the ſame, though the ſhip itſelf be not carried off. And this was again followed

26 Geo. 2. c. 19. ſ. 1. *vide* ante, 648. & 421.

up by the ſtat. 26 Geo. 2. c. 19. ſ. 1. whereby " If any per- " ſon or perſons ſhall plunder, ſteal, take away, or *deſtroy* any goods or merchandizes or other effects, from or belonging to any ſhip or veſſel of his Majeſty's ſubjects or others, " which ſhall be in diſtreſs, or which ſhall be wrecked, " loſt, ſtranded, or caſt on ſhore in any part of his Majeſty's

" jeſty's dominions, (whether any living creature be on " board ſuch veſſel or not (*a*),) or any of the furniture, " tackle, apparel, proviſion, or part of ſuch ſhip or veſſel; " or ſhall beat or wound with intent to kill or deſtroy, or " ſhall otherwiſe wilfully obſtruct the eſcape of any perſon " endeavouring to ſave his or her life from ſuch ſhip or veſ- " ſel, or the wreck thereof: or if any perſon or perſons " ſhall put out any falſe light or lights, with intention to " bring any ſhip or veſſel into danger; then ſuch perſon or " perſons ſo offending ſhall be deemed guilty of felony, " and being lawfully convicted thereof, ſhall ſuffer death as " in caſes of felony, without benefit of clergy."

Ch. XXII. § 43. *Ships.*

Obſtructing the eſcape of any perſon from wreck. Ante, 422.

Putting out falſe lights to bring ſhips into danger.

The act then makes ſeveral proviſions againſt the plundering of veſſels loſt or ſtranded, and for the detection and puniſhment of offenders. And then by ſ. 8. regulates the trial in manner before ſtated.

Trial. Ante, 649.

S. 12. empowers any one juſtice of the peace, or more " in caſe of need and in the abſence of the ſheriff, to take " ſufficient power of the country to repreſs all unjuſt vio- " lence, and duly to enforce the execution of the act."

Juſtices of peace may take force to repreſs violence.

S. 16. enacts that the ſtat. 12 Ann. ſt. 2. c. 18. and 4 Geo. 1. c. 12. " ſhall in all things remain in full force " ſave only ſo far as the ſame are altered or changed by this " preſent act."

By ſ. 18. the act is not to extend to Scotland.

§ 44. *In Thames.*

Again by ſtat. 2 Geo. 3. c. 28. ſ. 13. for the preventing thefts and frauds by perſons navigating boats on the river Thames; " If any perſon or perſons ſhall cut, damage, or " ſpoil, any cordage, cable, buoys, buoy rope, head-faſt, " or other faſt, fixed to any anchor or moorings belonging " to any ſhip or veſſel at anchor or mooring in the river " Thames, or any rope uſed for the purpoſe of mooring " or rafting maſts or timber; or ſhall be aiding or aſſiſting " therein; with an intent to ſteal the ſame; ſuch perſon " or perſons ſhall, being convicted thereof on the oath of " two or more credible witneſſes, be tranſported to ſome of " his Majeſty's plantations in America for 7 years, accord- " ing to the laws now in force for the tranſportation of " felons."

2 Geo. 3. c. 28. *Cutting or damaging cordage, &c. with intent to ſteal, tranſportation.* Ante, ſ. 37.

(*a*) *Vide* ante, 648. *a*.

As

Ch. XXII. § 44. *Ships.*

As this clauſe does not expreſsly declare the offenders to be felons, it is ſubject to the like obſervations as were before noted in reſpect of the preceding clauſe of the ſame ſtatute againſt receivers of goods ſtolen from ſuch ſhips: and ſeems by the opinion of the legiſlature expreſſed in the ſtat. 39 & 40 Geo. 3. c. 87. ſ. 22. to reſt in miſdemeanor.

Ante, 753, 4.

Obſtructing execution of act.

Alſo by ſ. 19. "In caſe any perſon or perſons acting in "the execution of any of the powers granted by this act, "ſhall be obſtructed therein; every perſon ſo obſtructing, "and all ſuch as ſhall act in their aſſiſtance, ſhall, on being "thereof convicted before the juſtices of the peace at the "general or quarter ſeſſions of the county or city adjoining "to the ſaid river, upon the oath of two or more credible "witneſſes, be tranſported to any of his Majeſty's planta- "tions in America for ſeven years, according to the laws "now in force for the tranſportation of felons."

This by ſ. 23. ſhall be deemed a public act.

§ 45. *King's ſhips wilfully or negligently running down, &c. others.* 22 Geo. 2. c. 33

Alſo the naval articles of war provide, by article 26. that "Care ſhall be taken in the conducting and ſteering of any "of his Majeſty's ſhips, that through wilfulneſs, negligence, "or other defaults, no ſhip be ſtranded, or run upon any "rocks or ſands, or ſplit, or hazarded; upon pain that ſuch "as ſhall be found guilty therein be puniſhed with death, "or ſuch other puniſhment as the offence by a court mar- "tial ſhall be judged to deſerve."

§ 46. 33 Geo. 3. c. 67. *Seamen, &c. wilfully ſetting fire to any ſhip, to ſuffer death;*

By ſtat. 33 Geo. 3. c. 67. ſ. 3. (made perpetual by ſtat. 41 Geo. 3. c. 19.) "If any ſeaman, keelman, caſter, or ſhip "carpenter, or other perſon or perſons, ſhall, at any time "after the 24th of June 1793, wilfully and maliciouſly "burn or ſet fire to any ſhip, keel, or other veſſel; every "perſon ſo offending, and being thereof lawfully convicted, "in any court of oyer and terminer, to be holden in and "for the county, &c. or diſtrict wherein the offence was "committed, ſhall be adjudged guilty of felony without "benefit of clergy."

and deſtroying or damaging them by any other means, to be tranſported.

And by ſ. 6. "If any ſeaman, keelman, caſter, ſhip- "carpenter, or other perſon or perſons, ſhall after the 24th "of June 1793, wilfully and maliciouſly deſtroy or damage "any ſhip, keel, or other veſſel, (otherwiſe than by fire,) "every

"every ſeaman, keelman, caſter, ſhip-carpenter, and other "perſon ſo offending, and being thereof lawfully convicted "upon any indictment to be found againſt him, her, or "them, in any court of oyer and terminer, or general or "quarter ſeſſions of the peace, to be holden reſpectively in "and for the county, &c. or diſtrict wherein the offence "was committed, ſhall be adjudged guilty of felony, and "ſhall be tranſported to ſome of his Majeſty's dominions "beyond the ſeas, for any ſpace of time or term of years "not exceeding 14 years nor leſs than ſeven years."

Ch. XXII. § 46. *Ships.*

Trial.

By ſ. 7. in caſe any of the ſaid offences ſhall be committed "on the high ſeas, then and in every ſuch caſe the offence "or offences ſo committed ſhall be triable, and the perſon "or perſons ſo offending may be proſecuted and tried by "virtue of this act in any ſeſſion of oyer and terminer and "gaol delivery, for the trial of offences committed on the "high ſeas, within the juriſdiction of the Admiralty of "England, &c.

Limitation.

By ſ. 8. "No perſon ſhall be proſecuted by virtue of this "act for any of the offences aforeſaid, unleſs ſuch proſecu- "tion be commenced within 12 calendar months after the "offence committed."

CHAP. XXIII.

THREATENING LETTERS OR WRITINGS.

The Statutes. - - - - - § 1.
By Stat. 9 Geo. 1. c. 22. ſending Letter without Name, or with fictitious Name, demanding Money, Veniſon, or other valuable Thing, or reſcuing any Offender in Cuſtody for the ſame, &c. Felony without Clergy. *ib.*
Extended by Stat. 27 Geo. 2. c. 15. to ſending ſuch Letter, threatening to kill any Perſon, or burn their Houſes, &c. though no valuable Thing be demanded. *ib.*
By Stat. 32 Geo. 2. c. 24. ſending or delivering Letter, or Writing, with or without Name, or with fictitious Name, threatening to accuſe another of Offence puniſhable with Death, Tranſportation, or infamous Puniſhment, with Intent to extort Money, Goods, Wares, or Merchandizes, puniſhable as Miſdemeanor, or with Tranſportation. *ib.*
By Stats. 12 Geo. 1. c. 34. and 22 Geo. 2. c. 27. writing or ſending any Letter, or other Writing, or Meſſage to Maſters by Perſons employed in the Woollen, Felt, Hat, Silk, Mohair, Fur, Hemp, Flax, Linen, Cotton, Fuſtian, Iron, or Leathern Manufactures; Felony, and Tranſportation. *ib.*

Conſtruction of the Statutes.

What Letters within them. - - § 2.
A Letter ſigned with initials is a Letter *without a Name*, within the Stat. 9 Geo. 1. *ib.*
Demanding, within that Statute, means an aſking accompanied with expreſs or implied Threat in caſe of Non-compliance. *ib.* And though the Threat be of a Charge of Murder, it is Felony within that Statute if there be an actual Demand; for the Stat. 30 Geo. 2. c. 24. which makes it a Miſdemeanor, only reaches Caſes falling ſhort of an actual Demand. - § 2.
A Bank Note is a *valuable Thing* within the Stat. 9 Geo. 1. *ib.*
A Letter containing a Threat to ſet Fire to *Proſecutor's Mill* in which he had *then no Property*, held not within the Stat. 27 Geo. 2. c. 15. *ib.*
So a Threat by Priſoners to do *all the public Injury they were able* to Proſecutor's Farms, &c. held not neceſſarily to imply a *Burning* within the ſame Statute. *ib.*
But a Letter accuſing Proſecutor of having taken away the Life of a Friend of the Writer's, who was come to revenge him, is Evidence to go to the Jury of ſending a Letter threatening to kill and murder Proſecutor. *ib.* (& ſ. 4.)
A threatening Letter referring to ſuch Circumſtances as were plainly intended to denote the Writer, as by making Demand of a particular Sum in Controverſy between him and the Proſecutor is not within the Stat. 9 Geo. 1. or 27 Geo. 2. although no Name be ſubſcribed. *ib.*

Diſtinctions between the ſeveral Statutes. - § 3.
As to the Offence—Names, &c. to the Letters—Letters or Writings—Things demanded—Intent, &c. *ib.*
Indictment on Stat. 30 Geo. 2. c. 24. for ſending threatening Letter with Intent to extort *Money*, not proved by ſhewing a Letter containing a Threat of a falſe Accuſation, if he did not give up a *Bill of Exchange* drawn by the Writer. *ib.*

What a Sending of the Letter. - - § 4.
Diſtinguiſhed by the Stat. 30 Geo. 2. from a *Delivery*. *ib.*
Where the *Wife wrote* a threatening Letter, and the *Huſband delivered it* to Party threatened; held that the Huſband, though privy to the Writing, was not within

within Stat. 9 Geo. 1. or 27 Geo. 2.; nor could the Wife alone be convicted, unleſs ſhe wrote and ſent it without her Huſband's Privity. - §4.

Evidence that Priſoner delivered a threatening Letter ſealed up to another, by whom it was put in the Poſt, and ſo conveyed to Proſecutor, is ſufficient to go to the Jury of a Sending ſuch Letter knowing the Contents. *ib.*

So throwing the Letter into Proſecutor's Yard, where it was taken up by his Servant and carried to him, is a *Sending*. *ib.*

So dropping it in a Room frequented by Proſecutor, where it was picked up by one and given to him. *ib.*

Indictment and Evidence. - - §5.

The *Letter* itſelf muſt be ſet forth in the Indictment. *ib.*

The Precedents in general allege that the Letter was ſent *to* the Party: but ſaid to be ſufficient to allege that it was *ſent directed to* the Proſecutor. *ib.*

But Evidence of ſending the Letter by the Poſt, or dropping it where it is likely to be picked up and given to Proſecutor, by whom it is afterwards received, is Evidence of a *Sending to* him. *ib.*

Prior and ſubſequent Letters to the one ſtated in the Indictment may be given in Evidence to explain it. §6.

Trial. - - - §7.

May be in any County under Stat. 9 Geo. 1. And under the other Statutes may be in the County where the Letter was *received*, though ſent in the firſt Inſtance by the Priſoner in another County. *ib.*

Threatening Letters or Writings.

§1. *General view of the offences in the ſtatutes.* 9 Geo. 1. c. 22. made perpetual by 31 Geo. 2. c. 42.

THE occaſion and object of the laws in force againſt the offence of ſending threatening letters and writings to others are well explained in the preamble of the Black Act, which recites that ill-deſigning and diſorderly perſons had of late aſſociated themſelves, &c. " and had ſent letters in fictitious

" titious names to ſeveral perſons demanding veniſon and " money, and threatening ſome great violence if ſuch their " unlawful demands ſhould be refuſed, or if they ſhould be " interrupted in or proſecuted for ſuch their wicked prac- " tices; and had actually done great damage to ſeveral per- " ſons who have either refuſed to comply with ſuch demands, " or have endeavoured to bring them to juſtice:" and then enacts, that " if any perſon or perſons (whether armed or " diſguiſed or not) ſhall knowingly ſend any letter without " any name ſubſcribed thereto, or ſigned with a fictitious " name, demanding money, veniſon, or other valuable " thing; or ſhall forcibly reſcue any perſon being lawfully " in cuſtody of any officer or other perſon for any ſuch of- " fence; or if any perſon or perſons ſhall by gift or promiſe " of money or other reward procure any of his Majeſty's " ſubjects to join him or them in any ſuch unlawful act; " every perſon ſo offending, being thereof lawfully convict- " ed, ſhall be adjudged guilty of felony without benefit of " clergy." Ch. XXIII. § 1. *Statutes.*

Sending letter without name, with fictitious name, demanding any valuable thing, felony without clergy.

By ſ. 4. ſuch offenders not ſurrendering themſelves when demanded by the King's proclamation, and making full confeſſion of their accomplices, are made guilty of felony without benefit of clergy. And by ſ. 5. perſons who after the time for ſuch ſurrender expired ſhall " conceal, aid, abet, or ſuccour any ſuch offender, knowing him to have been ſo charged, and to have been required to ſurrender by ſuch order," ſhall on conviction be guilty of felony without benefit of clergy.

Surrender clauſe, wide Proceſs to bring in party.

By ſ. 14. ſuch offences may be tried in any county of England.

Trial. Poſt, 1125.

Then the ſtat. 27 Geo. 2. c. 15. reciting the ſaid law, and " that divers letters had been ſent to ſeveral of his Majeſty's " ſubjects threatening their lives, or the burning their houſes, " which letters not demanding money, veniſon, or any " valuable effects, were not ſubject to the penalties of the " ſaid act; to prevent the like miſchievous and iniquitous " proceedings for the future," enacts, that " if any perſon " or perſons, after the 1ſt of May 1754, ſhall knowingly " ſend any letter without any name ſubſcribed thereto, or " ſigned with a fictitious name or names, letter or letters, " threatening to kill or murder any of the King's ſubject or " ſubjects,

27 Geo. 2. c. 15. *Extends to ſending ſuch letters, threatening to kill, &c. or burn houſes, &c. though no valuable thing be demanded.*

Ch. XXIII. § 1. *Statutes.*

" ſubjects, or to burn their houſes, outhouſes, barns, ſtacks " of corn or grain, hay, or ſtraw; though no money or " veniſon, or other valuable thing ſhall be demanded in or " by ſuch letter or letters; or ſhall forcibly reſcue any per- " ſon being lawfully in cuſtody of any officer or other perſon " for the ſaid offence; every perſon ſo offending, being " thereof lawfully convicted, ſhall be adjudged guilty of " felony without benefit of clergy."

30 Geo. 2 c. 24. *Sending or delivering letter or writing with or without names, or with fictitious names, &c. threatening to accuſe another of offence puniſhable with death, tranſportation, or infamous puniſhment, with intent to extort; puniſhable as miſdemeanor or with tranſportation.*

Laſtly, by ſtat. 30 Geo. 2. c. 24. ſ. 1. " All perſons who " ſhall (after the 29th of September 1757) knowingly ſend or " deliver any letter or writing with or without a name or " names ſubſcribed thereto, or ſigned with a fictitious name " or names, letter or letters, threatening to accuſe any per- " ſon of any crime puniſhable by law with death, tranſporta- " tion, pillory, or any other infamous puniſhment, with a " view or intent to extort or gain money, goods, wares, or " merchandizes from the perſon or perſons ſo threatened to " be accuſed, ſhall be deemed offenders againſt law and the " public peace; and the Court before whom ſuch offender " or offenders ſhall be tried ſhall, in caſe he, ſhe, or they be " convicted of any of the ſaid offences, order ſuch offender " or offenders to be fined and impriſoned, or to be put in the " pillory, or publicly whipped, or to be tranſported as ſoon " as they conveniently may be (according to the laws made " for tranſportation of felons) to ſome of his Majeſty's colo- " nies or plantations in America for the term of 7 years, " as the Court ſhall think fit to order."

Sending threatening letters or meſſages to maſter manufacturers in certain trades. 12 Geo. 1. c. 34. *Vid.* ante, tit. *Aſſault*, 426.

By the ſtat. 12 Geo. 1. c. 34. ſ. 6. " If any perſon or " perſons ſhall write, or cauſe to be written, or knowingly " ſend, or cauſe to be ſent, any letter, or other writing, or " meſſage, threatening any hurt or harm to any maſter " wool-comber, or maſter weaver, or other perſon concern- " ed in the *woollen manufacture*, or threatening to burn, pull " down, or deſtroy any of their houſes or outhouſes, or to " cut down or deſtroy any of their trees, or to maim or kill " any of their cattle, for not complying with any demands, " claims, or pretences of any of his or their workmen, or " others employed by them in the ſaid manufacture, or for " not conforming, or not ſubmitting to any ſuch (*a*) illegal " by-laws, ordinances, rules, or orders as aforeſaid; every " perſon ſo knowingly or willingly offending in the premiſes, " being

(*a*) *Vide* ante, 426.

" being thereof lawfully convicted, upon any indictment " to be found within twelve calendar months next after any " ſuch offence committed, ſhall be adjudged guilty of felony, " and ſhall be tranſported for 7 years to ſome or one of his " Majeſty's colonies or plantations in America, by ſuch ways " and means, and in ſuch manner, and under ſuch pains " and penalties as felons in other caſes are by law to be " tranſported."

Ch. XXIII. § 2. *Statutes.*

Felony and tranſportation.

Then the ſtat. 22 Geo. 2. c. 27. ſ. 12. reciting the above- mentioned law, and " that it was neceſſary that the ſaid ſe- " veral proviſions and regulations in the ſaid laſt in part " recited act ſhould be extended to journeymen dyers, " journeymen hot-preſſers, and all other perſons employed " in the woollen manufactures of this kingdom, and alſo to " journeymen, ſervants, workmen, and labourers employed " in the making of felts or hats, and in the manufactures of " ſilk, mohair, fur, hemp, flax, linen, cotton, fuſtian, iron " and leather, or any manufactures made up of wool, fur, " hemp, flax, cotton, mohair or ſilk, or of any of the ſaid " materials mixed one with another;" therefore enacts, " That the ſaid ſeveral before-recited clauſes in the ſaid act, " made in the 12th year of his ſaid late Majeſty's reign, and " all the proviſions, regulations, pains, penalties and for- " feitures therein contained, ſhall from and after the 24th " of June 1749 extend and be conſtrued, deemed, and ad- " judged to extend to journeymen dyers, journeymen hot- " preſſers, and all other perſons whatſoever employed in or " about any of the *woollen manufactures* of this kingdom; " and alſo to journeymen, ſervants, workmen, and labour- " ers, and all other perſons whatſoever employed in the " making of *felts*, or *hats*, or in or about any of *the manu-* " *factures of ſilk, mohair, fur, hemp, flax, linen, cotton, fuſtian,* " *iron, or leather*, or in or about any manufactures made up of " *wool, fur, hemp, flax, cotton, mohair, or ſilk*, or of any of *the* " *ſaid materials mixed one with another*, in as full and ample " manner as the ſaid proviſions, regulations, pains, penal- " ties, and forfeitures are by the ſaid laſt-mentioned act de- " clared to extend to the ſeveral and reſpective perſons " therein named; and the pains, penalties, and forfeitures " which ſhall be incurred by reaſon of any offence com- " mitted againſt the ſaid laſt-mentioned act, by any perſon

22 Geo. 2. c. 27. ſ. 12.

The proviſions in the recited act, to extend to perſons employed in the manufactures enumerated.

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" or perſons employed or concerned in or about any of the " ſaid manufactures hereinbefore enumerated, ſhall be in- " flicted, levied, and recovered in the ſame manner as the " pains, penalties, and forfeitures contained in the ſaid laſt " in part recited act are directed to be inflicted, levied, and " recovered upon and againſt the ſeveral and reſpective per- " ſons therein mentioned."

§ 2. *Conſtruction of the ſtatutes.*

The following caſes have occurred on the conſtruction of theſe ſtatutes:

Robinſon's caſe, O.B. Feb. 1796, cor. Lawrence J. MS. Buller J. and MS. Jud. (2 Leach. 869. S. C.) *Vide* Seſſ. Papers, p. 394. for the detail of the evidence.

Michael Robinſon was tried on an indictment charging him with having unlawfully and feloniouſly, &c. ſent a certain letter dated the 12th of January 1796, *without any name ſubſcribed thereto*, to James Oldham Oldham, *demanding* of him *a certain valuable thing*, viz. *a bank note*, againſt the form of the ſtatute, &c.

Sending a threatening letter ſigned R. R. *demanding a Bank-note, and threatening in caſe of refuſal to publiſh a libel charging the proſecutor with murder, is a capital felony within the ſtat.* 9 Geo. 1. c. 22. *which act is not repealed in that reſpect by the ſtat.* 30 Geo. 2 c. 24. *which only reaches caſes falling ſhort of an actual demand, where at the ſame time the letter is ſent with a view or intent to extort money, &c. and which by the latter act is made a miſdemeanor only.*

A BANK NOTE IS A VALUABLE THING, *within the meaning of the ſtat.* 9 Geo. 1. *though not the ſubject of larceny at the time of paſſing the act. It is ſufficient if it be a valuable thing at the time of the demand made.*

It appeared in evidence that the proſecutor had ſerved an apprenticeſhip with one Daniel Dolly, by whom he was afterwards taken into partnerſhip. That upon Dolly's death, which happened a few years afterwards, a report was ſpread that the proſecutor had been the author of his death, upon which he brought an action againſt two perſons, and had judgment againſt them. That before the letter in queſtion was ſent, ſeveral other letters had been written by the priſoner to the proſecutor, to which he returned anſwers for the purpoſe of obtaining information of the priſoner's place of abode to bring him to juſtice. All theſe letters were read in evidence, as they ſerved to explain the letter upon which he was indicted. They contained an intimation that another perſon who was a friend of the writer, who was in diſtreſs, had put certain MS. into his hands, containing a charge of the proſecutor's having murdered his former maſter, Dolly, and afterwards married the widow his accomplice: that the priſoner was unwilling to publiſh the MS. containing ſo ſerious a charge without giving a previous intimation to him, and hearing what he had to propoſe upon the ſubject. The letter for ſending which the priſoner was indicted, addreſſed to the proſecutor, contained a threat to publiſh the ſaid libel on him, imputing to him the murder of Dolly, and was as follows:

" Tueſday,

" Tueſday, 12th January 1796.

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" Sir,

I am well pleaſed to find that I am not likely to be miſtaken in the idea I have entertained of you amongſt men of a proper and liberal way of thinking. An underſtanding on ſuch a matter as this is the eaſieſt thing imaginable, and in repeating that you will find me a gentleman, I wiſh you to be ſatisfied that I am as incapable of taking any unmanly advantage as of wantonly ſporting with the feelings of any one, &c. The ſubject on which I have addreſſed you has long lain dormant; and it was becauſe I thought the attack of a moſt ſerious complexion that I heſitated for ſuch a length of time in giving my countenance to it: not that I ever ſought for any circumſtances to influence my judgment or qualify my opinion; and for aught that has ever come to my knowledge it may be all the moonſhine of the moment. I am therefore ſo far candid, and I truſt not indelicate, and it will at leaſt be a ſatisfaction to you to be told, (&c.) that not a ſoul but myſelf is in poſſeſſion of a line of the MS.; nor has it ever been out of my hands, or peruſed or heard by any perſon living ſince firſt I had it: ſo that *when* it is committed to the flames all will neceſſarily die with it. Of this you ſhall have a teſtimony ſo clear and unequivocal, that it will not be poſſible for you afterwards to doubt. Thus much I have ſuggeſted for *your* ſatisfaction. You will now give me leave to ſay ſomething of the cauſe I have engaged in. I have no objection to an interview, and I readily cloſe with your propoſition; but there are a few preliminaries which I muſt beg leave to adjuſt; perhaps I may be more anxious to urge them in order to have ſome proof of your ſincerity, after which I am at your ſervice. In order to relieve a deſtitute and unhappy perſon ſtruggling with ſickneſs and with ſorrow, will you permit me to be your almoner? Will you enable me to diſpoſe of a little of your money as I ſhall ſee occaſion? It is a duty I owe the cauſe of humanity to urge it. Remember, Sir, I am now only making an appeal to your *benevolence*. I am holding out no deluſions to exact the involuntary tribute: I am aſking you as a gentleman, as a man, to give me ſome earneſt of your intentions to prove what I am ſo ſtrongly inclined to give you credit for. *Incloſe a bank note in a letter addreſſed to R. R.*, and let it be left at the

A mere aſking of charity is not a demand within the act, but it muſt be accompanied with ſome expreſs or implied threat: a requiſition which may operate as a force on the mind of the perſon to whom it is addreſſed. But whether a letter contain ſuch a demand is a matter of conſtruction on which the Court will inſtruct the jury. The ſending ſuch a letter ſigned with INITIALS ONLY *is a ſending of a letter* WITHOUT A NAME. *Both previous and ſubſequent letters may be received in evidence as explanatory of the letter ſet forth in the indictment.*

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Cambridge coffee-houſe, &c. on Thurſday next; and on the ſame day a line ſhall be ſent by a porter to acknowledge the receipt; after which, if you will name any evening to take a bottle of wine at the King's-Head tavern or elſewhere, I will with pleaſure attend you: our meeting is however to be private and tete a tetê. Thus poſſibly over the aſhes of the MS. a phœnix may ariſe that may prove the forerunner to friendſhip," &c.

(Signed) "R.R."

Subſequent letters explanatory of the one ſtated in the indictment given in evidence.

A ſubſequent correſpondence between the proſecutor and priſoner was alſo given in evidence; in the courſe of which the priſoner communicated a few pages of the ſuppoſed MS. in verſe, from which the charge alluded to was to be plainly inferred.

Several objections were urged on the part of the priſoner, which were reſerved for the opinion of the Judges; and Mr. Juſtice Lawrence left it to the jury to ſay whether the priſoner ſent the letter of the 12th of January, and whether it contained a threat to publiſh a libel on the proſecutor, imputing to him the death of Daniel Dolly, unleſs he would ſend him a bank note; and if they were of that opinion, they were directed to find him guilty. The jury found him guilty; and alſo found ſpecially, that the priſoner ſent the letter in the indictment, and that it contained a threat to publiſh a libel imputing to the proſecutor the murder of his maſter, in order to extort money from him.

The objections were argued before all the Judges on the 8th of June 1796, when they were of opinion with the proſecutor on all the points made in argument, and which were afterwards noticed by Mr. Juſtice Buller, who delivered their opinion at the next ſeſſions at the Old Bailey as follows:

MS. Buller J

Four objections have been made againſt this conviction; 1. That this is not a letter *without a name*. 2. That it does not contain a *threat* or *demand*, ſo as to bring the caſe within the ſtat. 9 Geo. 1. c. 22. 3. That a bank note is not a valuable thing within the meaning of that act. 4. That ſuppoſing this caſe to fall within the words and meaning of that ſtatute, yet it is the preciſe offence deſcribed by the ſubſequent ſtatute of the 30 Geo. 2. which, making it a miſdemeanor only, is a virtual repeal of the prior act of the 9 Geo. 1. on which this proſecution is founded. As to the

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firſt, whether the letter be with or without a name, is a ſimple fact appearing on the face of the letter itſelf. It is ſigned with two letters R. R., which are ſo far from being a name, that no man on looking at the letter only can tell whether it meant to refer to any name, or what that name was. The ſecond and third objections depend on the words of the ſtat 9 Geo. 1. and the true conſtruction of that act. The words of the enacting clauſe ſpeak of *a demand* generally, without requiring any particular circumſtances other than its being by letter without a name, or in a fictitious name, to accompany that demand. But the preamble of the act recites, that ſeveral perſons had of late aſſociated themſelves under the name of Blacks, and entered into confederacies to aſſiſt one another in ſtealing deer, robbing warrens, and other illegal practices, and had in great numbers, armed with offenſive weapons, ſeveral of them with their faces blacked, or in diſguiſed habits, unlawfully hunted, &c. "and have ſent letters *in fictitious names* to ſeveral perſons *demanding* veniſon and money, and threatening ſome great violence if ſuch their unlawful demands ſhould be refuſed," &c.: and it was contended for the priſoner, that the enacting clauſe ought to be reſtrained by the preamble, or at leaſt ſo far that *the demand* muſt be direct and peremptory, and accompanied with a threat of bodily harm. Where the enacting clauſe of a ſtatute refers to ſuch offences only as are mentioned in the preamble, it may thereby be controlled or reſtrained; but in this caſe it would be doing violence to very plain words, and repealing ſome of the obvious proviſions if it were ſo reſtrained. It is no uncommon thing for a ſtatute to recite a particular miſchief as the cauſe of making the ſtatute, and yet for the enacting part of it to embrace more general objects, and to extend to other caſes, which the Legiſlature thought within equal miſchief. If the enacting clauſe in this act were to be reſtrained by the preamble, it would apply only to caſes where ſeveral perſons had joined together; where the letter was written in a fictitious name only; and where the thing demanded was either veniſon or money. But the enacting clauſe in expreſs words applies to a ſingle offender; to a letter ſent *without a name* as well as to one ſigned *with a fictitious name;* and to a demand of *any valuable thing* as well as of money or veniſon; and to all

Vide preamble, ante, 1107.

demands

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demands by such letters, *whether accompanied with a threat of bodily harm, or not.* I agree that a mere request, such as asking charity, without imposing any conditions, would not come within the sense or meaning of the word *demand* (*a*): but here the demand is, as the jury truly said when they found a general verdict of guilty, under a threat to publish a libel attributing to the prosecutor the murder of his master. Whether the letter do amount to such a demand or not is a question which the Judges are bound to pronounce upon reading it as it is set out on the record; and they are all clearly of opinion that it is a demand within the true intent and meaning of the statute. It is a demand of money or money's worth, (which a bank note is), by means of holding out a threat to impute murder to the prosecutor, and to blast his fame and character, and not a request of voluntary charity. That a bank note was a valuable thing at the time when the demand was made was rightly admitted by the prisoner's counsel; but it was contended, that it was not so when the statute 9 Geo. 1. was made, because it was not then the subject of larceny. The Judges however are all of opinion, that if the thing demanded be valuable at the time that the demand is made, that is sufficient (*b*), though the thing demanded did not exist, or the value of it was not known when the statute was made. But in truth it was a valuable thing at the time that the statute was made, though it might not come under the denomination of goods and chattels, or be the subject of larceny; for it was the evidence of a debt; it might at any time be turned into cash, and was to the owner of the value of the money for which it was given. 4. The only remaining question is, whether the statute 9 Geo. 1. on which this prosecution is founded were repealed by the stat. 30 Geo. 2. c. 24. It was truly contended, that if one act of parliament make a particular case a capital offence, and a subsequent act make the *same case* only a misdemeanor, the last act is a repeal of the former: and so it was decided in Davis's case, in November 1783, on

Ante, 609.

(*a*) Upon the debate of this case Eyre C. J. said, "*a demand* (within the act) "must be something more than asking: it is a requisition in the shape of forcing." And another of the Judges observed, that it meant "asking money, &c. and "holding out a threat at the same time to enforce it."

(*b*) Lord Kenyon C. J. and Eyre C. J. expressly declared themselves of this opinion on the debate.

the

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the very act of the 9 Geo. 1. which makes it a capital offence to kill, wound, or destroy, any deer in any forest or park, the statute 16 Geo. 3. c. 30. having made that offence *in the same words* a misdemeanor only. But if the two statutes are consistent and can both stand together, the rule does not apply, and the last act will not be a repeal of the first. Here the stat. 9 Geo. 1. extends to such cases only in which there is an *actual demand*; and the stat. 30 Geo. 2. reaches cases which fall short of a demand, and includes letters sent *with a view or intent* to extort money, though no demand be made. The consequence is, that neither of the objections is well founded, and the conviction is right.

Upon the conference on the above case it was agreed by all the Judges, that if the indictment were framed upon the stat. 30 Geo. 2. and a demand proved, there must be an acquittal.

Jepson and Springett's case, Essex Sum. Ass. 1798, cor. Lord Kenyon C. J. MS. Jud. *Conviction on the 27 Geo. 2. c. 15. for sending a letter to the prosecutor threatening "to set fire to his "mill, and like-"wise to do all "the public in-"jury they were "able to him in "all his farms "and feteres;" held wrong; he not then having any* MILL *to which the threat of burning would apply (having parted with it three years before), and the threat as to the* FARM, *&c. not necessarily implying a* BURNING.

John Jepson and George Springett were indicted upon the stat. 27 Geo. 2. c. 15. for sending to the prosecutor Mr. Woodgate the following Letter.

March 3d 1798.

Mr. Woodgate—Sir, I am very sorry to acquaint you that we are determined to set your mill on fire, and likewise to do all the public injury that we are able to do you, in all your *farms and feteres* (*a*) which you are in possession of, without you on next —— (*b*) day release that Ann Wood which you put in confinement. Sir, we mention in a few lines, and we hope if you have any regard for your wife and family, you will take our meaning without any thing further; and if you do not we will persist as far as we possibly can, so you may lay your hand at your heart and strive your uttermost ruin. I shall not mention nothing more to you, until such time as you find the few lines a fact, with our respect. So no more at this time from me,

R. R.

It was proved that the letter was of the hand-writing of Jepson, and that it was thrown by the other prisoner into Mr. Woodgate's yard, from whence it was taken by a servant of Mr. Woodgate and delivered to him. Mr. Wood-

(*a*) By this was understood *settings* or lettings. The whole letter was evidently the production of an illiterate person, being falsely spelt nearly throughout.

(*b*) The word here was unintelligible in my copy.

gate

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gate ſwore that he had had a ſhare in a mill three years before this letter was written, but had no mill at that time. That he held a farm when the letter was written and came to his hands, and ſtill holds it, with ſeveral buildings upon it. It was objected that this was not ſuch a letter as comprehended the offence in the act of parliament. (27 Geo. 2. c. 15.)

At a conference of the Judges, after conviction, in Michaelmas term 1798 (abſent Eyre C. J.) it was agreed that the proſecutor having no ſuch property at the time as the mill which was threatened to be burnt, that part of the letter muſt be laid out of the queſtion. But as to the reſt of it, Lord Kenyon C. J. and Buller Juſtice were of opinion that the letter muſt be underſtood as alſo importing a threat to burn the proſecutor's farm-houſe and buildings: but the other Judges not thinking that a neceſſary conſtruction, the conviction was holden wrong, and a pardon recommended.

Girdwood's caſe, poſt, ſ. 4.

But in Girdwood's caſe after mentioned, a letter accuſing the proſecutor of having taken away the life of a friend of the writer's, who was *come to revenge him*, was ruled to be evidence to go to the jury upon a charge of ſending a letter threatening *to kill and murder* the proſecutor.

Heming's caſe, Warwick Sum. Aſſ. 1799, cor. Chambre B. MS. Jud. *A threatening letter, referring in the terms of it to ſuch circumſtances as were plainly intended to denote who the writer was, and making a demand of a ſum of money in controverſy between him and the proſecutor, which the latter had received, and which the former had before inſiſted ſhould be accounted for to him, is not a threatening letter within the ſtat.* 9 Geo. 1. c. 22. *or* 27 G. 2. c. 15. *although the writer did not ſubſcribe his name.*

John Heming was indicted for ſending a threatening letter to William James, an attorney at Henley, without any name ſubſcribed to it. The indictment conſiſted of four counts, two upon the ſtat. 9 Geo. 1. c. 22. deſcribing the letter as a letter demanding money, and the other two on the ſtat. 27 Geo. 2. c. 15. deſcribing it as a letter threatening to kill and murder. The letter produced in evidence was directed to William James the proſecutor, and was in the following words, correſponding with the deſcription in the indictment: "Mr. James, before I put my intentions in force I thought "it proper to acquaint you with the ſame. I am determin-"ed you ſhall die with a leaden fever if you don't pay the "money you have taken out of the court of King's Bench; "as I can't reſt to think of the uſage I received from you: "it is worſe than murder." This letter was proved to be in the hand-writing of the priſoner, who ſent it to the poſt-office, from whence it was ſent in the uſual manner to the proſecutor. But it alſo appeared in evidence that the proſecutor had formerly been employed in his profeſſion as an attorney

torney by the priſoner's deceaſed mother in her lifetime: that in the courſe of that employment he had, as her attorney, received a ſum of 20 l. and upwards out of the court of K. B.: and that the priſoner, who had been reduced to great poverty, had conceived an opinion that the proſecutor had wronged him by not accounting for that ſum. That for five or ſix years laſt paſt the priſoner had very frequently demanded the money, and abuſed the proſecutor very much for refuſing to pay it, threatening to ſet fire to his houſe, and uſing other menaces. That this was done moſt frequently when he was in liquor, and on many occaſions when he was ſober. That the proſecutor had frequently correſponded with the priſoner, and was well acquainted with his hand-writing: and that the letter in queſtion was written in his uſual manner without any diſguiſe of the character. The jury found the priſoner guilty; but Chambre B., before whom he was tried, reſpited the ſentence in order to take the opinion of the Judges, whether as the tranſactions previous to the ſending of the letter, the hand-writing, and the contents of the letter itſelf, ſhewed clearly who was the writer, and that he could have no intention to conceal himſelf; the caſe came within the meaning of either of the acts of parliament, although no name was ſubſcribed to the letter. On the firſt day of Michaelmas term 1799 all the Judges aſſembled held that the conviction was wrong: for the priſoner making himſelf known in the letter, was the ſame thing as if he had ſigned his name to it; and therefore ſuch a letter was not within the true ſpirit of the act. He was accordingly recommended for a pardon.

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(Abſent Buller J.)

§ 3. *Diſtinctions between the ſeveral ſtatutes as to names.*

It is evident from the whole ſcope of the acts of the 9 Geo. 1. and 27 Geo. 2. making the offences therein deſcribed felony, that they were levelled againſt ſuch whoſe intention it was (by writing ſuch letters either without names or in fictitious names) to conceal themſelves from the knowledge of the party threatened, that they might obtain their object by creating terror in his mind without incurring danger and reſponſibility themſelves. In this reſpect the ſubſequent act of the 30 Geo. 2. c. 24. which only makes the offence a miſdemeanor, though puniſhable with tranſportation, is very differently worded from the other two, for it extends to any letter "*with* or without *a name*," &c. *or* ſigned

Ch. XXIII. § 3. *Diſtinction between ſtatutes.*

signed with a *fictitious* name, &c.; and therefore it may well include letters (in other reſpects within the ſcope of it), though ſigned in the writer's real name.

Letters, writing, and meſſages.

It is alſo obſervable that the latter ſtatute has the word "*writing*" as well as "*letter*," which is not included in the enacting part of the prior ſtatutes, though it occurs in the preamble to the firſt of them, and the ſtats. 12 Geo. 1. and 22 Geo. 2. extend even to *meſſages*.

Thing demanded.

Another difference between the ſeveral acts is with reſpect to the thing demanded: this under the ſtat. 9 Geo. 1. muſt be "money, veniſon, or other valuable thing:" which latter deſcription includes a bank note, as was before ſhewn in Robinſon's caſe. But under the ſtat. 27 Geo. 2. the guilt is incurred, though there be no demand made of any thing in the letter: and the ſtat. 30 Geo. 2. only reaches caſes where the letter falls ſhort of an actual demand, but is ſent "with intent to extort or gain *money, goods, wares, or mer-* "*chandiſe.*"

Ante, f. 2.

Intent.

Major's caſe, O. B. June 1796, and before all the Judges in Mich. T. 1796, MS. Buller J. and MS. Jud. *Indictment on the ſtat.* 30 Geo. 2. c. 24. *for ſending a threatening letter* intending to extort and gain money, *cannot be ſupported by ſhewing a letter threatening to accuſe the proſecutor of an unnatural crime if he did not give up a certain bill drawn by the priſoner, of which the proſecutor was the holder.*

In Edward Major's caſe the indictment charged that the priſoner *intending to extort and gain money* from one Auguſtine Rayner, unlawfully, knowingly, and deſignedly ſent to the ſaid A. R. a certain letter in writing, &c. thereby threatening, &c., and then ſet forth the letter as follows: "Sir, I "received a letter reſpecting the bill which I gave you "when we parted: and as you know I have it not in my "power to pay it; and if I had, it is an unjuſt demand; I "have only to obſerve, that if you do not immediately return "it to me as an acknowledgment for the obſcene offence of "ſodomy attempted upon me, &c. I am determined to pro-"ſecute you to the utmoſt rigor of the law, &c. (Signed) "E. Major, (and dated) June 1ſt, 1796;" *with a view and intent to extort and gain money* from the ſaid A. R. againſt the form of the ſtatute, &c. The Judges, on reference to them after conviction, in Michaelmas term 1796 held the conviction wrong; for the letter was not ſent to extort *money*, but to procure the delivery up of the *bill*.

§ 4. *What a ſending of the letter.*

Further, the ſtats. 9 Geo. 1. and 27 Geo. 2. prohibit any perſon from "*knowingly ſending*" any letter ſuch as is therein reſpectively deſcribed. The ſtat. 30 Geo. 2. extends to ſuch

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as "knowingly ſend *or deliver* the letters;" and the ſtats. 12 Geo. 1. and 22 Geo. 2. to ſuch as "write, or cauſe to "be written, or knowingly ſend or cauſe to be ſent any "letter," &c.

Hammond's caſe, O. B. May 1787, cor. Aſhurſt J. and Perryn B. 2 Leach, 499. *Where the wife wrote a threatening letter, and the huſband* CARRIED *it to the party threatened; held that the huſband, though privy to the writing, was not within the ſtatutes* 9 Geo. 1. *and* 27 Geo. 2.; *nor could the wife alone be convicted, unleſs ſhe wrote and ſent it without the huſband, who delivered it, being privy to the contents.*

John Hammond and Mary Hammond were indicted on the ſtatutes 9 Geo. 1. c. 22. and 27 Geo. 2. c. 15. for feloniouſly ſending a threatening letter to Daniel Dancer, demanding the ſum of 10l. The indictment conſiſted of twelve counts, one ſet charging that the priſoners ſent and delivered the ſaid letter; and another, that they cauſed it to be ſent and delivered. It appeared in evidence that the priſoners were huſband and wife, and lived as ſervants with the proſecutor. That Mary Hammond had written the letter in queſtion, and that it was delivered to the proſecutor by John Hammond, who ſaid he found it in the proſecutor's garden; but there was no evidence that he had any knowledge of its contents. On behalf of the priſoner it was ſubmitted to the Court, that the offence deſcribed by the ſtatutes on which the indictment was founded, was the "knowingly *ſending*" a threatening letter, &c.; but that the evidence only proved that the wife had written the letter, and that the huſband had delivered it; and that there was no proof of its having been *ſent* to the proſecutor. The Court agreeing as to the deſcription of the offence in the ſtatutes, obſerved, that in caſes ſo highly penal as the preſent it was neceſſary not only to conſider the intention of the Legiſlature, but to bring the offender within the words of the ſtatute. That the mere act of *writing* a threatening letter would not conſtitute the offence; for unleſs the writer or contriver of ſuch a letter afterward ſent it to the party whoſe fears it was calculated to alarm, it could not produce the miſchief which the Legiſlature intended alone to ſuppreſs; and they had accordingly adapted the words of both the ſtatutes to that exigency, viz. if any perſon ſhall *ſend* "any ſuch letter, &c. he ſhall be guilty of felony," &c. That it was impoſſible to conceive, that *carrying* a letter could by any conſtruction be comprehended under the words "*ſend* any letter," which were the preciſe terms in which the ſtatutes were penned. That the Court was not to conſider what the Legiſlature would have done if they had contemplated ſuch a caſe as the preſent, but to look at the words they had uſed, and to conſtrue them

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according to the meaning which it was moſt likely they entertained at the time the ſubject was under their conſideration. Then at the time thoſe ſtatutes paſſed, it ſeemed that the Legiſlature never had it in contemplation that any perſon would be the carrier of a threatening letter which he himſelf had written or contrived. They undoubtedly conceived that ſuch a letter would be ſent by the poſt, or by ſome ſecret conveyance, ſo as to prevent the diſcovery of the perſon by whom it was ſent. It was clear therefore that the act of delivering a threatening letter was not the offence deſcribed in the ſtatutes of 9 *Geo.* 1. *c.* 22. and 27 *Geo.* 2. *c.* 13. But if any doubt could be entertained upon that point, the Legiſlature itſelf had removed it; for by the ſubſequent act of the 30 *Geo.* 2. *c.* 24. the offence of *delivering* as well as *ſending* a threatening letter was made a miſdemeanor, puniſhable in the diſcretion of the Court, according to the circumſtances of the caſe. That ſtatute made it evident, that where the Legiſlature intended to extend the deſcription of the offence, they knew how to make uſe of proper words to expreſs that intention; and it ſhewed that they had it not in contemplation to make the *delivery* of a threatening letter felony, when the ſtatutes on which the preſent indictment was founded were paſſed. But, as the Court further obſerved, there was ſtill a queſtion in this caſe for the conſideration of the jury; for though Mary Hammond were the wife of the other priſoner, yet if the jury were of opinion that ſhe wrote the letter herſelf, without any interference of her huſband, and ſent it by him, without his knowing any thing of the contents, to the proſecutor, ſhe alone might be found guilty; but otherwiſe, both the priſoners muſt be acquitted. The jury upon this direction acquitted both the priſoners.

Girdwood's caſe, O. B. Feb 1776, MS. Crown Caſ. Reſ. and MS. Gould and Buller Js. (1 Leach, 169. S. C.) *Evidence that the priſoner delivered a threatening letter ſealed up to another by whom it was put in the poſt, and ſo conveyed to the proſecutor, is ſufficient to go to the jury that he ſent ſuch letter knowing the contents. A letter accuſing the proſecutor of having taken away the life of a friend of the writer's, who was come to revenge him, is evidence to go to the jury of ſending a letter threatening to kill and murder the proſecutor. The trial may be where the proſecutor received the letter by the poſt, tho' delivered by the priſoner, and put into the poſt in another county.*

Archibald Girdwood was charged on the ſtat. 27 Geo. 2. c. 15. in the firſt count of the indictment generally for feloniouſly ſending a certain letter in writing with the fictitious letters of J. W. ſubſcribed thereto, to one John Edridge, &c. threatening to kill and murder him. The ſecond count was for ſending a letter to the ſame purport, ſetting out the letter in words and figures as follows:

"Sir, "Feb. 9, 1796."

"I am ſorry to find a gentleman like you would be "guilty of taking M'Alleſter's life away for the ſake of two "or three guineas; but it will not be forgot by one who is "but juſt come home to revenge his cauſe. This you may "depend upon, whenever I meet you I will lay my life for "him in this cauſe. I follow the road, tho' I have been "out of London; but on receiving a letter from M'Alleſ-"ter before he died, for to ſeek revenge I am come to town. "I remain a true friend to M'Alleſter.

"J. W."

Edridge proved the receipt of the letter by the penny poſt at his houſe in Davis ſtreet, Berkeley-ſquare, which is in the county of Middleſex; and his tracing it up to one Elizabeth Robinſon, who ſwore that ſhe was employed in going errands for the priſoners in Newgate; and that having on the 9th of February received this letter from the priſoner's hands at the grate at Newgate, ſhe immediately carried it to the poſt-office in Newgate-ſtreet. The ſervant of the office-keeper confirmed her account: and both ſwore to the identity of the letter, the direction being in a remarkable hand.

Mr. Baron Hotham directed the jury, which was of Middleſex, to conſider, 1ſt, Whether from the priſoner's delivering the letter he knew the contents of it? 2dly, Whether they thought the letter itſelf contained in the terms of it an actual threatening to kill and murder? If they were of opinion that it did, and that the priſoner knew the contents of it, they ought to find him guilty; but if they thought he did not know the contents, or that the words might import any thing leſs than to kill or murder, they ſhould acquit him. The jury found him guilty; but judgment was reſpited to take the opinion of the Judges on the following points: 1. Whether there were ſufficient evidence to be left to the jury of the priſoner's ſending the letter *knowing the contents?* 2. Whether the letter purported to be a letter threatening to kill or murder? 3. Whether the priſoner were properly tried by a Middleſex jury; the letter, though received by Edridge in Middleſex, having been delivered by

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the priſoner to E. Robinſon in London, and by her put into the office, which is alſo in London?

(Abſent De Grey C. J. and one place vacant.) *Vide* Lloyd v. Maund, 2 Term Rep. 760. S P.

In Eaſter term 1776, ten Judges preſent were all clearly of opinion that the conviction was right. They thought that the conſtruction of the letter was properly left to the jury; as alſo whether the priſoner knew the contents of it; and that there was no objection to the trial being had before a Middleſex jury. The priſoner was afterwards executed.

Ante, 1116.

In Heming's caſe, the letter was alſo ſent by the medium of the poſt.

Lloyd's caſe, poſt, ſ. 5.

In Lloyd's caſe, the letter was dropped in a veſtry-room frequented by the proſecutor every Sunday morning, where it was picked up by the ſexton and given to the proſecutor: and Mr. Juſtice Yates had no doubt but that this was a ſending within the act.

Ante, 1115.

So in Jepſon and Springet's caſe, the letter was thrown into the proſecutor's yard, from whence it was taken up by the proſecutor's ſervant and delivered to him.

Indictment and Evidence.

§ 5. *Indictment and evidence.*

The indictment for ſending an incendiary or threatening letter muſt ſet forth the letter itſelf, that the Court may judge whether it be one of that kind which falls within the purview of the reſpective ſtatutes.

2 MS. Sum. 329. *Vide* Cr. Cir. Comp.

Lloyd's caſe, Hereford Sp. Aſſ. 1767, cor. Yates J. MS ut ſupra and MS Buller J. *Indictment for ſending a threatening letter muſt ſet out the letter. Stating that the priſoner ſent ſuch a letter, directed to the proſecutor, &c. ſeems ſufficient, without expreſsly alleging that the priſoner ſent it to the proſecutor.*

In Lloyd's caſe, who was tried by Mr. Juſtice Yates, the indictment only followed the words of the Black Act (9 Geo. 1. c. 22.), and charged that the priſoner "knowingly, "unlawfully, wickedly and felonioufly, did ſend a certain "letter in writing, without any name ſubſcribed and ſigned "thereto, directed to one Edward Salway, by the name of "Edward Salway Eſq. demanding money, to wit, 100 gui-"neas, &c. to the great damage of the ſaid E. S. and againſt "the form of the ſtatute, &c." After conviction, it was moved in arreſt of judgment, that the indictment was bad in two reſpects; firſt, Becauſe it did not charge that the defendant *ſent* the letter *to Mr. Salway* the proſecutor, but only that he *ſent* (without ſaying to whom) a certain letter *directed to Mr. Salway*. Secondly, Becauſe neither the letter nor even the ſubſtance of it was ſet forth in the indictment.

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ment. The learned Judge, in reporting the caſe afterwards to the reſt of the Judges, obſerved, as to the firſt objection, that it had no degree of weight with him: for it ſeemed to be very immaterial whether the letter were ſent directly to the proſecutor, or were put into a more oblique courſe of conveyance, by which it might finally come to his hands. The fact being that the priſoner dropped the letter into a veſtry-room which Mr. Salway frequented (*a*) every Sunday morning before ſervice began, from whence the ſexton had picked it up, and delivered it to him. But the ſecond objection ſeemed to him a very ſtrong one; and therefore he reſpited judgment for the opinion of the Judges upon it. It was argued for the proſecutor that this indictment purſued the very words of the ſtatute 9 Geo. 1. c. 22., which in general caſes was holden to be ſufficient. That the defendant was charged with ſending this letter "felonioufly, and contrary to the form of the ſtatute;" and that thoſe words import that the letter was of ſuch a nature as the ſtatute had in view. That the jury had found the defendant guilty to the whole extent of that charge; and therefore it muſt be taken that the letter which was proved to the jury, and upon which their verdict was founded, was a menacing letter, and within the true meaning of the ſtatute. That if it were not ſuch a letter it was to be preſumed that the priſoner would have been acquitted, as all theſe trials were ſuperintended by a Judge who muſt be ſuppoſed to give proper directions to the jury. In anſwer, it was admitted that in general caſes, if an indictment on a ſtatute purſued the words of the ſtatute itſelf, it was ſufficient; but thoſe were caſes where the words of the ſtatute contained a complete deſcription of the offence. But when

(*a*) *Qu.* Whether if one intentionally put a letter in a place where it is likely to be ſeen and read by the party for whom it is intended, or to be found by ſome other perſon who it is expected will forward it to ſuch party, and the letter do accordingly reach its intended deſtination, this may not be ſaid to be a ſending *to ſuch party*, ſuppoſing ſuch an allegation to be neceſſary upon the true conſtruction of the acts? The ſame ſort of evidence was given in Springett's caſe, before mentioned, in ſupport of the allegation of ſending a threatening letter to the proſecutor, and no objection was made on that ground. And the general current of precedents is in the ſame form. Upon the whole, it became unneceſſary for the Judges to give any opinion on this point of the caſe in queſtion. Ante, p. 1115.

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the ſtatute related to a particular kind of letter, the indictment ſhould ſtate the letter itſelf, that the Court might ſee whether it were one of that kind. That in every indictment a complete offence muſt be ſhewn, ſo as to enable the Court to give judgment upon it in caſe a demurrer were joined or a writ of error brought. But if the words "feloniouſly" and "contrary to the ſtatute" ſhould be deemed ſufficient, it would leave the conſtruction of the law to the jury. That in all indictments of forgery the inſtrument forged muſt be ſet forth, that the Court might ſee that it was one of that kind which fell within the purview of the ſtatute. Mr. Juſtice Yates further ſtated, that he had ſince cauſed inquiries to be made into the practice of the Old Bailey, and upon the Weſtern and Home Circuits, and found that in all indictments upon this act of parliament the letter itſelf was generally ſet forth. And that the clerks did not remember an inſtance where the indictment did not ſtate at leaſt the ſubſtance of the letter. In Trinity term following the Judges were conſulted on this caſe; and they were of opinion that the indictment was bad in not ſetting forth the letter itſelf. For if the words "feloniouſly and contrary to the form of the ſtatute" were allowed to ſupply the place of the letter, it would be leaving it to the proſecutor to put his own interpretation upon it, and to the jury the conſtruction of the matter of law.

Not only the letter itſelf muſt be truly ſet out in the indictment, but the alleged intent of the writer in ſending it muſt be ſuch as is conſiſtent with and deducible from the letter. Therefore, where, in Major's caſe, the allegation was, that the letter was ſent to extort *money*, and it appeared upon the face of it to have been ſent with a view of procuring the delivery up of a bill of exchange, the allegation was holden not to be ſuſtained.

Major's caſe, ante, 1118.

§ 6. *Evidence.*

It appears from Robinſon's caſe, before mentioned, that prior and ſubſequent letters from the priſoner to the party threatened may be given in evidence as explanatory of the meaning and intent of the particular letter on which the indictment is framed.

Robinſon's caſe, ante, 1120.

Trial.

Ch. XXIII. § 7. *Trial.*

Trial.

§ 7. *Trial.*

Under the 14th clauſe of the act of the 9 Geo. 1. c. 22. the trial may be had in any county in England at the option of the proſecutor. But no expreſs proviſion is made to extend the ſame privilege to caſes falling under either of the ſtatutes of Geo. 2., which muſt therefore be governed by the general rule. If it be a neceſſary ingredient in this offence that the threatening letter ſhould come to the hands of the party threatened, then it ſeems that the county wherein it is ſo received is that in which the trial ſhould properly be had; becauſe till then the offence is not complete. But if the mere act of *ſending* ſuch a letter with intent that the threat therein contained ſhould reach the proſecutor, conſtitute the offence, a conſtruction which the words of the enacting clauſes will ſatisfy, and which may be thought to be confirmed by the opinion of Mr. Juſtice Yates in Lloyd's caſe; then it follows that the trial may be had in any county into which the letter goes in the progreſs of ſuch ſending. It has indeed been ſometimes contended on behalf of a priſoner indicted where the letter was received, that the trial could only be had in the county where the original ſending by the act of the priſoner himſelf was proved: but this has been over-ruled; and the venue has been holden to be well laid in the county in which the letter was received by the party to whom the threat was addreſſed. But I can find no caſe where the venue has been laid in any other than that county where this point has come in judgment. In Girdwood's caſe the trial was had in the county where the threatening letter was received. And ſo it was in the following caſe.

Vide Mortis's caſe, ante, 1032.

Vi. ante, 1129.

Ante, 1122.

Ante, f. 4.

An indictment on the ſtat. 30 Geo. 2. againſt two defendants for ſending a letter to the proſecutor, threatening to accuſe him of an unnatural crime, with intent to extort money from him, laid the offence in Middleſex, but the letter was dated from Maidſtone in Kent. The ſending it was proved by the defendant's confeſſion. It was objected that as the letter was dated and ſent by the poſt from Maidſtone, the fact of the ſending, which conſtituted the offence,

Eſſex's caſe, Weſtminſter Sittings after Trin. 7 Geo. 3. MS. Buller J. *The offence of ſending a threatening letter may be laid in the county where it is delivered by the poſt.*

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offence, was committed in Kent, and the indictment would not lie in Middlesex. But Lord Mansfield C. J. held, that as it was directed to the prosecutor in Middlesex, where it was delivered, that was a sending in Middlesex; for the whole was to be considered as the act of the defendant to the time of the delivery in that county.

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