

Recreancy, or upon the Outlawry, or Abjuration, then is he said to be attaind. And thus is the Law taken at this Day, notwithstanding [a] some Diversity of Opinions in our Books.

If a Felon be convicted by Verdict, Confession, or Recreancy, he doth forfeit his Goods and Chattels, &c. presently, [b] For where a Reason hath been yielded in our Books, that the Praying of his Clergy, was a Refusal of the Judgment of the Law, and a Flight in Law, and for that Cause he forfeited his Goods and Chattels, that doth not hold; for if a Man be convicted of Petit Treason, or Murder, or any other Crime, for which he cannot have his Clergy, yet by the very Conviction he forfeiteth his Goods and Chattels before Attainder. And [c] Staundford (speaking of a Felon convicted by Verdict) saith, that he shall forfeit his Goods which he had at the Time of the Verdict given, which is the Conviction in that Case; and by the Statute of 1 R. 3. cap. 3. no Sheriff, Bailiff, &c. shall seize the Goods of a Felon, before he be convicted of Felony, whereby it appeareth that the Goods may be seized as forfeit after Conviction. And the [d] old Statute is worthy of noting. Provisum est in curia nostra coram iusticiariis nostris, quod de cetero nullus homo captus pro morte hominis vel alia feloniam pro qua debet imprisonari, disseiserur de terris & tenementis vel catallis suis quousque convictus fuerit. So as by a Conviction of a Felon, his Goods and Chattels are forfeited, but by Attainder, that is, by Judgment given, his Lands and Tenements are forfeited, and his Blood corrupted, and not before.

[e] If the Party upon his Arraignment refuse to answer according to Law, or say nothing, he shall not be adjudged to be hanged, but for his Contempt, to peine fort & dure, which work no Attainder for the Felony, nor forfeiture of his Lands, or Corruption of Blood. But in Case of High Treason, if the Party refuse to answer according to Law, or say nothing, he shall have such Judgment by Attainder, as if he had been convicted by Verdict or Confession.

Felony (*) Ex vi termini significat quodlibet capitale crimen felleo animo perpetratum, in which Sense Murder is said to be done per feloniam, and is so appropriated by Law, as felonice cannot be expressed by any other Word. [f] And in ancient Times this Word (Felonice) was of so large an Extent as it included High Treason; and therefore in our ancient Books, by the Pardon of all Felonies, High Treason, or Counterfeiting of the Great Seal, and of the King's Coin, &c. was pardoned. [g] But afterwards it was resolved, That in the King's Pardon or Charter, this Word (Felonies) should only extend to common Felonies, and that High Treason should not be comprehended under the same, and therefore ought to be specially named, and yet that a Pardon of all Felonies should extend to Petit Treason; wherefore by the Law at this Day under the Word (Felonies) in Commissions, &c. is included Petit Treason, Murder, Homicide, Burning of Houses, Burglary, Robbery, Rape, &c. Chancemedly, se defendendo, and Petit Larceny. [h] For such of these Crimes for the which any shall have this Judgment, To be hanged by the Neck till he be dead, he shall forfeit all his Lands in Fee-simple, and his Goods and Chattels: For Felony by Chancemedly, or se defendendo, or Petit Larceny, he shall forfeit his Goods and Chattels, and no Lands of any Estate of Freehold or Inheritance. And all Felonies punishable according to the Course of the Common Law, are either by the Common Law, or by Statute. There is also a Felony punishable by the Civil Law, because it is done upon the High Sea, as Piracy, Robbery or Murder, whereof the Common Law did take no Notice, because it could not be tried by twelve Men. If this Piracy be tried before the Lord Admiral in the Court of the Admiralty, according to the Civil Law, and the Delinquents there attainted, yet shall it work no Corruption of Blood, nor forfeiture of his Lands; otherwise it is if he be attainted before Commissioners by Force of the Statute of [i] 28 H. 8. By the express Purview of that Statute about the End of the Reign of Queen Elizabeth, certain English Pirates, that had robbed on the Sea Merchants of Venice, in Amity with the Queen, being not known, obtained a Coronation Pardon, whereby amongst other Things, the King pardoned them all Felonies. It was [k] resolved by all the Judges of England upon Conference and Advise, That this did not pardon the Piracy, for seeing it was no Felony whereof the Common Law took Conscience, and the Statute of 28 H. 8. did not alter the Offence, but ordain a Trial, and inflict Punishment, therefore it ought to be pardoned especially, or by Words which tantamount, and not by the general Name of Felony; and according to this Resolution the Delinquents were attainted and executed.

Pirate cometh from the Word *pirata*, which signifies a Robber at Sea. Attainder of Heresy, or Præmunire, worketh no Corruption of Blood; nor Heresy, forfeiture of Lands, but in Case of Præmunire, forfeiture of Lands in Fee-simple, but not of Lands in Tail, as formerly hath been said. [l] By some Statutes it is said, Surforfeiture de corps & de avoir, or Sub forisfactura omnium quæ in potestate sua obtinet, or to be at the King's Will, Body, Lands and Goods, and the like, these are not extended to the Loss of Life or Member, but to Imprisonment, Lands and Goods. [m] But if an Act of Parliament saith, Eit judgment de vie & member, or subeat iudicium vite vel membrorum, in that Case Judgment of Death

[a] 40 E. 3. 12. 3 E. 3. Coron. 365. 8 E. 2. 15. 293. 21 H. 7.
[b] Dame Hale's Case, Ubi supra 8 H. 4. 2. 12 Co. 121. 9 Co. 129.

[c] Staun. Pl. Cor. f. 197. Lib. 5. fol. 110. Foxley's Case. Vide 7 H. 4. 41. 1 R. 3. cap. 3. 3 Inst. 228.

[d] Statute de catallis felonum, ver. Magna Charta, fo. 66. 2 part.

[e] Staundf. Pl. Cor. 139, 185.

(*) Glanv. lib. 14. c. 25. Maribr ca. 25. W. 1. c. 15.
[f] 3 E. 4. 14. 18 E. 4. 10. 23 Aff. 49. 1 E. 3. 13. Staundf. Pl. Cor. 102. E. 8 H. 4. 2. 4 Co. 44. 3 Inst. 47. 4 Co. 40, 41, 42. [g] 22 Aff. 49.

[h] Staun. Præf. 45. b. 16 E. 3. Coron. 116. & 3 E. 3. Coron. 302. 5 Co. 120. 9 Co. 65.

† Vide ante 744

[i] 28 H. 8. cap. 15. 3 Inst. 112. [k] Hill. 2 Jac. Regis. Vide Mich. 7 & 8 Eliz. Dyer 241. 14 Eliz. Dyer 308. 4 Co. 43.

[l] Statute de Magna moneta tempore E. 1. 35 E. 1. de Carlisle. 20 E. 3. cap. 4. Dr. & Stud. 114.

[m] W. 2. c. 34. Rot. Parl. 2 E. 1. 1 E. 2. de frang. prisonam. 14 E. 3. ca. 10. Staun. Pl. Cor. 30, 31. 3 E. 3. Cor. 153. Brook, tit. Coron. 203. 9 E. 4. 26. 11 Co. 2. 23 H. 8. 25 H. 8. 48 H. 6. by 18 Eliz. 25 Edw. 3.