

foundling hospitals, though comprized in the Theodosian code^y, were rejected in Justinian's collection.

THESE rights, of life and member, can only be determined by the death of the person; which is either a civil or natural death. The civil death commences if any man be banished the realm^z by the process of the common law, or enters into religion; that is, goes into a monastery, and becomes there a monk professed: in which cases he is absolutely dead in law, and his next heir shall have his estate. For, such banished man is entirely cut off from society; and such a monk, upon his profession, renounces solemnly all secular concerns: and besides, as the popish clergy claimed an exemption from the duties of civil life and the commands of the temporal magistrate, the genius of the English law would not suffer those persons to enjoy the benefits of society, who secluded themselves from it, and refused to submit to its regulations^a. A monk was therefore accounted *civiliter mortuus*, and when he entered into religion might, like other dying men, make his testament and executors; or, if he made none, the ordinary might grant administration to his next of kin, as if he were actually dead intestate. And such executors and administrators had the same power, and might bring the same actions for debts due to the religious, and were liable to the same actions for those due from him, as if he were naturally deceased^b. Nay, so far has this principle been carried, that when one was bound in a bond to an abbot and his successors, and afterwards made his executors and professed himself a monk of the same abbey, and in process of time was himself made abbot thereof; here the law gave him, in the capacity of abbot, an action of debt against his own executors to recover the money due^c. In short, a monk or religious was so effectually dead in law, that a lease made even to a third person, during the life (generally) of one who afterwards became a monk, determined by such his entry into religion: for

^y l. 11. t. 27.

^z Co. Litt. 133.

^a This was also a rule in the feudal law,
l. 2. t. 21. *desuit esse miles seculi, qui factus est*

miles Christi; nec beneficium pertinet ad eum qui non debet gerere officium.

^b Litt. §. 200.

^c Co. Litt. 133.

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