

statute 20 Hen. VI. c. 11. so far as relates to the making this offence high treason, yet still it remains a very great offence against the law of nations, and punishable by our laws, either capitally or otherwise, according to the circumstances of the case.

I. THE king therefore, considered as the representative of his people, has the sole power of sending ambassadors to foreign states, and receiving ambassadors at home. This may lead us into a short enquiry, how far the municipal laws of England intermeddle with or protect the rights of these messengers from one potentate to another, whom we call ambassadors.

THE rights, the powers, the duties, and the privileges of ambassadors are determined by the law of nature and nations, and not by any municipal constitutions. For, as they represent the persons of their respective masters, who owe no subjection to any laws but those of their own country, their actions are not subject to the control of the private law of that state, wherein they are appointed to reside. He that is subject to the coercion of laws is necessarily dependent on that power by whom those laws were made: but an ambassador ought to be independent of every power, except that by which he is sent; and of consequence ought not to be subject to the mere municipal laws of that nation, wherein he is to exercise his functions. If he grossly offends, or makes an ill use of his character, he may be sent home and accused before his master^b; who is bound either to do justice upon him, or avow himself the accomplice of his crimesⁱ. But there is great dispute among the writers on the laws of nations, whether this exemption of ambassadors extends to all crimes, as well natural as positive; or whether it only extends to such as are *mala prohibita*, as coining, and not to those that are *mala in se*, as murder^k. Our law seems to have formerly taken in the restriction, as well as the

^b As was done with count Gyllenberg the Swedish minister to Great Britain, A. D. 1716.

ⁱ Sp. L. 26. 21.

^k Van Leeuwen in *Ff.* 50. 7. 17. Barbeyrac's *Puff.* l. 8. c. 9. §. 9. & 17. Van Bynkerhoek *de fero legator.* c. 17, 18, 19.