

for the Appeal being commenced at the Assizes was determined as soon as the Assizes were ended; for it cannot be continued from one Gaol-Delivery to another.

It was admitted on all sides, that it was not wholly discontinued, because Mr. *Lisle* being in Custody of the Marshal, might move the Court to be arraigned, or if he was not in Custody, the Appellant might take out Process against him to bring him in, but he cannot proceed upon this Appeal thus commenced, unless it is revived, which was not done, and therefore the Court may proceed upon the Conviction of Manslaughter.

It was likewise agreed, that if an Offender was indicted, and at the same time, and before the same Judge, an Appeal was *freshly prosecuted* (i. e.) before the Party was convicted upon the Indictment, in such Case the Appeal ought to be preferred; because if it was for a Robbery, the Appellant might have Restitution of his Goods, which he could not have upon an Indictment before the Statute of 21 H. 8. and if it was for a Murder, then no Pardon could prevent the Punishment.

It was very incertain what is the legal Sense of a *fresh Prosecution*, for it was generally left to the Discretion of the Court, and it is probable that this might be the occasion of making the Statute of Gloucester cap. 9. by which it is enacted, That *no Default shall be in the Appellant so he bring his Appeal within a Year.*

Thus it appears, that there ought to be no delay in prosecuting an Appeal; and because it often happened otherwise, and sometimes Appeals were brought on purpose to obstruct the Prosecution on an Indictment; and sometimes an Agreement was made with the Appellant, so that the Year's End and all was forgotten, therefore the said Statute