

*&c.* and that at the time of the Conviction he was, and yet is a Clerk, and that he then prayed his Clergy, and offered to read as a Clerk if the Court would have admitted him: And that afterwards, *viz.* on Monday next after *Craftinum Purificationis, &c.* being demanded by the Court, why Judgment should not be given against him, he prayed the Benefit of the Clergy, which being allowed, he read as a Clerk, and was burnt in the Hand, as it appears by the Record, *&c.* and as to the Felony and Murder he pleaded not guilty.

The Appellant replied, that he demanded the Appellee to plead at the Assizes, which he refused, to which Replication the Appellee demurred.

It was objected, that a Conviction for Manslaughter on an Indictment for Murder, and Clergy allowed, could be no Bar to an Appeal, which was either *precedent or concurrent to the Indictment*: Now here the Appeal was concurrent to the Indictment and precedent to the Conviction; for both being returned of one Sessions, both were of the same Day, because the Assizes or Sessions is but one Day in Law.

So that this is a Case at Common Law, and not within the Statute 3 *H. 7.* which doth not extend to an Appeal which is precedent, but to that which is subsequent to the Indictment.

But adjudged, that at Common Law, if a Man was indicted for Murder and acquitted, or convicted only for Manslaughter, such Acquittal or Conviction had been a good Plea to bar any Appeal, and so would the Law still have been, if it was not for the Statute 3 *H. 7.* by which the Acquittal or Conviction is made no good Plea, unless Clergy be had thereon.

By which 'tis plain, that if the Clergy be not had, the Party may bring an Appeal against the Person acquitted