acquitted or attainted: And the Statute doth not ſay when the Appeal ſhall be brought, either precedent, or concurrent with the Indictment; but generally that he may bring an Appeal, ſo that it be brought within a Year and a Day, *&c.* and ſo that Clergy is not had.

Now as to having the Clergy, it hath been adjudged: That praying to have it is having it within the intention and meaning of this Statute, for by praying it, the Priſoner has done all he can; but he cannot pray it, if the Court will not proceed to Judgment, and ask him what he hath to ſay, why Judgment ſhould not be given; therefore their Default or Delay ſhall not prejudice him.

Upon the whole matter; a Man is indicted for a Murder, and convicted of Manſlaughter, ſuch Conviction with Clergy had, is a good Plea in Bar to an Appeal, either precedent, concurrent or ſubſequent to the Indictment; and ſo it is, if the Clergy was not had by the Default of the Court in not asking the Priſoner what he had to ſay, why Judgment ſhould not be given againſt him?

Note, The ancient Law was, when a Man had Judgment to be hanged in an Appeal; that the Wife and all the Kindred of the Party ſlain, ſhould draw him to Execution, and this Judge *Gaſcoigne* ſaid was done in his days.

Thus much for Appeals, the Practice whereof has been almoſt loſt or forgot, till not long ſince it was revived by a Woman in *Southwark*, who brought an Appeal for the Death of her murdered Husband, againſt one who had got a Pardon; but ſhe got Judgment againſt him, the Appeal being tried before Baron *Weſton*, and the Perſon was executed, notwithſtanding the Pardon; ſince which time Appeals have been frequently brought, and almoſt as often compounded; for they are ſeldom effectually proſecuted.