

Mortification, is that Manner of Holding, whereby Colleges Hospitals or others are bound to pay the Duty of proventus & lachrymæ for Lands or others mortified to them for a pious Use, called fundum ad manum mortuam seu puram elemosinam, and termed in England Mortmain from the French mot dead & main hand. Because held as fast by the Enjoyer, as what is put in the Grips of a dead Man; or seeing the Service due from those Lands are given in Mortmain, are withdrawn, the Lands may be said to come into a dead Hand, for that a dead Hand yeeldeth no Service. Mortifications are not subject to any Casualty of Superiority emerging from the Death of a Vassal; seeing the Community or pious Use to which the Mortification is made is not considered to die. Upon which Account some think, that such pious Encowments should rather go under the Name of Vivifications: Seeing by this is acquired vivification, et nulli amplius mutationi submittitur.

Minister's Gables and Manes (tho they requiring no Investment or Oath or Acknowledgment, approach near to the Nature of Allodials) are properly held of the King in Mortification. Seeing the Inherent Escheat of the Incumbent, by his being Year and Day at the Horns, falls to the King only Stat. Lib. 2. Tit. 3. §. 4. & 40.

Gifts and Legacies in Favour of Churches, Colleges, Schools or other pious Uses, cannot be converted to any other Use than that appointed by the Mortifier, in his Letters of Mortification may be issued forth by the Lords of Session for Observation thereof Act 5. Part. 1. Ch. 11.

If being the publick Interest, that none make bad Use of their Property, it is held, de his quibus vel alienis. Mortifications to an unlawful Use, as for maintaining a false Religion, falls under Confiscation l. 4. §. 1. et seqq. C. de heretico. Because que sunt nullius sunt domini regis. And such Gifts may be converted to some honest and necessary Use of the Republick; As the Princes and Cities of Germany, and the Kings of Scotland and England, at the Reformation from Popery, did with the Endowments of the popish Clergy, in their respective Dominions. Deeds in Favour of Coysters or other popish Societies are void in Law, and accrue to the Grantors next protestant Relations l. 3. §. 9. Part. 2. W. Where a Mortification is made or Legacy left to one incapable at the Time, by a Person who knows the Donee was incapable to receive or enjoy it, the Mortification should belong to the King as a due Punishment

of his Fault: But if the Mortifier did not know so much viz. that the Donee was incapable, it should not fall to the King as Caducary, and remain with the Donor or Testator's Heirs l. 3. pt. §. 1. ff. de his que non script. Rab. l. un. §. 2. & 3. De caduc. l. 6. Since the Property was never transferred. When Observ. on Act 6. Part. 1. Ch. 1. Not only Mortifications to a full End, but also useful Mortifications may be allowed by the Parliament to be employed to an Use suitable to the Design of the Mortifier and better for the Community. Thus Thomas-Mudie having left a Sum for building a Church in the parish of St. Andrew of Dindriepe. 3. Magistrates were upon their Application allowed to build a Steeple and buy a Pair of Bells with the Money: Because a Church without a Steeple is useless. And George Kerrie having appointed by one of the Statutes of his Hospital in Dindriepe, that none of the Rooms should be altered, tho for the better: It was thought that some of the Rooms that were left unfurnished by the Trustees for want of Money, might be let out in Lease for some years to Undertakers to furnish them: Albeit another of the Statutes provides that none other than Students should lodge within the Hospital, because that, if broken by the Mortifier, would certainly have been allowed as reasonable. M. Lenzie v. M.

Princes and Superiors found themselves similarly touched in the Matter of Interest, by the making of Mortifications by their Subjects in Favour of a Community, to the Laws of France and Spain, no Mortification is effectual without Consent of the Prince.

With us no Mortification by a Vassal is valid without Consent of the Superior. Spotswood. Deat. Tit. Mortification. And Superiors are thry to accept Resignations from their Vassals upon Grants of Mortification in Favour of a Community, or for the Use of the Poor as being in Effect a giving up of their casualties. That the Revenue of the Crown may not be diminished the Partons of the Exchequer have since the Union of the two Kingdoms, refused to pass any Signatures of Lands holden of the Crown, in Favour of Societys Incorporations or Bodys politic.

In England none can alien or purchase or take in Mortmain, without a License or Dispensation from the King. But he may alien in Mortmain, and may license any Person or Bodys politic to do so, to purchase, or take in Mortmain, Lands Tenements or Hereditaments whatsoever of whomsoever the same are holden 7 & 8. W. 3. cap. 37. And any Person may vest Lands & Curia the Corporation for the County of L. And by Deed enrolled according to the Statute 27. Hen. 8. cap. 16. or by Will for Augmentation of Churches 2. Anne cap. 11.