

most of such as are formed and part of Friends, according to the Depth of their guilt, were listed in the Commissioners, of the Library as persons supposed to understand that best.

It is much disputed, if an ineffectual Endeavour to commit a Crime be Criminal? According to the Civil Law, *Non tentat non Excusat Spectator in Maleficiis*, l. 1, p. 852, *ad l. Cornel. de Sear.* But by the Custom of Nations, *Sed omni L. Cornel. de Sear.* But by the Custom of Nations, it is punished if ever, an abortive Attempt to commit a Crime, is punished as if it had been committed, *Greenw. ad 53 Jus. 1. 78 public. Indiv. So. West. Comm. de Epit. ff. de Virrejur. n. 32 Prod. in Parim. de Romundio Quast. 124 n. 37-78. Jul. Clar. Sentent. lib. 5.*

de Romundio Quast. 124 n. 37-78. Jul. Clar. Sentent. lib. 5. § fin. Quast. 92. n. 2. *Capzov. Crims part 1. Dist. 17 n. 92. & 99.* Unless it be provided by express Law or Statute, that the ineffectual Attempt should be punished as if the Crime had been perfected. *See George Mackenzie (Crims part 1. § 10)*

§ 1) Holborn's opinion in the following terms: 1) Simple Design or Endeavour is punishable in respect and some other Crimes of the first Magnitude, where the Remedy would come too late after the Crime is committed. 2) In less atrocious Crimes, the Design is punished *ubi Delictum est ad Actum Maleficii prodimimus*: as where a Thief hath Clapped Ladders to a House he is held to Rob, or a person hath made up a dose of poison in order to kill another. Yet this is not a simple Endeavour, but rather an inferior Degree of the Crime aimed at. And this is a commonly received opinion, that in such cases as affect the Life Effectual ought not to be punished in the same Manner, or to that Degree as if the Crime had actually been committed: he would distinguish between a Crime Design pointed by some false witness, Accident, and that which never took effect by Reason of the parties Repentance; alleging that the bearing of a Criminal Weapon to commit a Murder, is not a sufficient Reason to punish or Mitigate the ordinary Punishment, *Capit. de Castris. Crim. l. 1* Especially where it can be proved that the Crime was long and seriously premeditated. For since offenders are not only punished for what they do, but also for preventing their Commission of it, the like in time coming: he who was hindered only by some Accident from accomplishing his Mischief, is

purpose, should be liable to the same punishment as if the Crime had been committed, otherwise the Common Wealth could not be secure. But then where a person Embarked in such a Criminal Design Repents and forbears to perform it, without finding any other obstacle in the prosecution, save the stinging Reflection of his own Conscience, the Punishment of a simple Design is little or no punishment: for that which *Utile tam Naturali, quam Numquid, eodem modo Dicitur, quo Colligatum est.* The same Author (*ibid.*) is also of opinion, that the like should hold for an abortive Criminal Design that was laid and formed in the heat of passion without premeditation: because future harm from the Contrivance thereof is not so much to be feared. But this Subject will afterwards be more fully cleared up in the treating of particular Crimes. See also *Abolimus* being more severely punishable in some than in others.

The offence of an Accessory can never be of a higher Nature than that of the Principal. It would seem that Accessories cannot be punished till once the principal Criminal is Discussed, and it appears who is principal. Because, 1) it is the Nature of Accessories to follow and not to precede: and where there is no principal, there can be no Accessory, more than there can be a Shadow without a Body. 2) The Principal may have a Defence, which the Accessory knows not or cannot prove. *W. G. A servant pursued as Accessory to the Privity of other mens Cattle, may have no thing to say for himself; where as his Master first indicted against him, may perhaps be able to prove that the beasts were his own. And one pursued as Art and part of Convocting the Clergy, or Offising in Arms, may be nonpluss'd for want of a Defence: when the principal author, might bring Evidence of the Convocation, if accused, might possibly have an Order from the Government to prosecute as a warrant for what he did. Which Defences would work absolutely in favour of the Accessories, who stand and fall with the principal parties. 3) The Discussing principal Criminals, might supplant against such as were but Accessory if*

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