

All are liable to the Tor-ture except those Specially exempted for want of Judgment, as persons furious or Mad for ten Years of Age; or because of weakness of Body, as Doting and Deceitful persons, such as are Galatians 4. Women with Child, or within 40 days after Childs birth; or because of personal Dignity, as Peers, Military officers, Doctors of Divinity and its vicars abbas who are privileged from Tor-ture without Advice from the Sovereign.

The Effects of Tor-ture are, if the person Tor-tured persists in his Denial, the Presumptions against him are thought to be purged, and he is to be set free. But it is a mighty doubt among the Doctors, if upon new presumptions or Emergent Evidences, such a one can be again for the same Crime put to the Tor-ture or Condemned. I think he cannot: because Tor-ture is of the Nature of Evidence & Calculated for Discovering the Truth, called pro- utro utima; and Actore non probante Reus absolve- tur. l. 4. C. de Exco. Again a man would chuse rather to die with ake in his Mouth, than Endure the Tor-ture. Others hold that upon new presumptions the Tor-ture may be repeated, and that he who stands out against the first Trial, may be again obliged to Confess by the second Argument of Torment, ne Dolida Mandant Imperit. In Scotland persons after Enduring the Tor-ture have been put to the Knowledge of an Inquest upon new presumptions, 21 June 1634. M. of Huntley & others in the case of John Goshoch or farther Evidence 10 June 1681. John Spensel & Robert Gorington M. of Kinross Crimes 2. C. 27. 52. Infer. 29. When a person Emits a Confession of his guilt under Tor-ture, it is not Credited in law, unless it be feasible and freely & desired to in judgement after the Confessor is at ease, and if so, is sufficient to found a Conviction for the Crime; but if a man Revoke what he professes under Tor-ture, the Inquisitors order him to be set free; and if he persists in his Denial after being Tor-tured twice or thrice at fardest, he is to be appointed to a Judge will fully justify any person to undergo Tor-ture, is liable to make up his Damages and punishable according to the quality of the Crime for which it

it was inflicted: and if the Tor-tured person die is to be treated as a Murderer, Crimes part 3. Quest. 127 n. 3. l. 3. l. 4. Prosp. Garin de Indiciis & Torturas Quest 37 n. iii. d. seg. g.

This is the substance of what is handed more at large by the Criminalists, who also are taught to teach the Methods how some Elders and Baffle the Tor-ture by Magical Arts, and what is to be done for obviating such practices.

A learned Dutch Lawyer (Jo. Voel. Comm. ad Tit. de Quest. n. i.) is at much pains, to vindicate the Moderate use of Tor-ture as just and Equitable. But because the late Criminals are found to persist in the Denial of a truth in spite of Tor-ture, while others more faint hearts are apt the Confess what is not true for fear of it: not only do many Eminent Divines and Lawyers Condemn this Uncertain and fallacious Method of Dis-covering Truth; but also there is no warrant for it in the Judicial Law of Moses. The Common Law of England Abhors the Duke of Exeter's Draught, that is the Rack or Break; and in Scotland Tor-ture was but seldom practised, where the Plein of Right Declares, that the using Tor-ture for ordinary Crimes, or without Evidence for others, is contrary to Law: and now no person accused of any Crime in Scotland can be subjected to Tor-ture 7. Stat. Cap. 21. 55.

By the Law of England, where any offender brought to his Trial for Petit Treason or Felony, shall stand mute. Refusing to answer if he be guilty or not, and there by hindors the Trial to proceed, for preventing the forfeiture of his Land, and Corruption of his Blood, he doth not indeed forfeit his Land nor is his Blood stained Rab. Little. 391. a. But for his Contumacy he forfeits his goods, or Chattels Rab. p. 1. 226. 227. and is subjected to that horrible punishment called Rain Tort at Ture, or the Spanner. But before the Judgment passes, the fourth odd of his Thumbs to be tied together with 40 hyscord, and to be drawn to gather by the whole strength of his Men to give him a taste of the pain to be Endured if he dont Comply. If the Criminal not with standing continue Stubborn Judgment is given, that he be Remanded to prison, and laid there in some low dark Room upon the bare ground on his back with the