

cap. profero Bonivet of Crim'd think, that what ever is <sup>an</sup> ~~an~~  
 escaping Execution of a Capital Sentence, and coming to be  
 Naturally acquired in the Interim; should fall to his heir  
 and Executors; But that if he in that Interim commit Treason  
 (albeit a person Attainted being either Mortuall or Nullius  
 in law seem'd to have No thing to loose) his being formerly  
 sentenced, would not hinder his estate to fall under forfeiture.

By the Civil law, Prisons were appointed only for  
 Confinement of offenders, and not for punishment, and therefore  
 no Criminal convicted could be punished with perpetual  
 Imprisonment l. 8 s. 9. Do penes l. 6 c. Eod. But the Emor  
 l. 3. s. 3. Do penes in c. and the Modern Custom (Brod p. Farin.  
 de Delictis l. 2. s. 1. 19 n. 31) Green wagen ad d. l. 6 c. Do penes ad  
 lous perpetual Imprisonment to be inflicted at a quarter  
 month. And We reckon among Corporal Punishments not  
 Capital, Squalor, Carcons or Imprisonment, Cropping  
 the Ears, or branding some Member of the Body, Making the  
 offenders ear to the Ground, Whipping thro' the Town, putting  
 the feet in Stocks, or the Head in Logs; such also is the  
 Discipline of the Correction House, which answers to *Carcer*  
 to a *Motatum* in the Civil law, and to *carcer* in the Statutes  
 in France & Turkey. The simple bearing and wearing of  
 without distance from the King and his Council, except by  
 Soldiers in his Majesties service or at or in going to or  
 coming from Weapon showings or Hosts, or in the pursuit  
 of the war, is punishable by Cutting off the Right Hand, if  
 pursued before the Justice Courts, and by Imprisonment  
 and Eschat of Movable goods or by Fining, if tried before  
 the Privy Council, Act 13 Parl. i Act 24 c. Parl. 15 June 16.  
 Act. 5 Parl. 16 J. 6. But all such pursuits having been  
 brought before the Privy Council when in being, and  
 not before the Common Pleas of the Exchequer; it seems  
 that Amputation of the hand in case of a pursuit before  
 them, has been inserted in the law Co. Act 6 Parl. i. J. 6.  
 ad terrorem only, As this punishment of Cutting off the  
 hand is by the Civil law inflicted with much torment  
 and hard servitude to the Cutting off boththumbs in the  
 June c. de Jure Fugitivo. Nov. 138. Casp. ult. Unless the offe  
 der is to suffer death: because a Man deprived of both

hands could not serve himself with the Necessaries of life. So  
 for the same reason, where the offender hath a Member  
 lost, the Doctor will have the useful hand to be spared, Caballe  
 Rebel. Crim. Cont. 3 Cas. 136 n. 52. de Regg. And Agree, that where  
 he hath but one hand, he should not be deprived of that  
 to satisfy the law, but the ordinary punishment be committed  
 in such a case, Brod p. Farin. de Delictis l. 2. s. 19 n. 28.

Under Cur punishment I comprehend 1. Banishment  
 the same as *Deportatio* among the Romans, where by the offe  
 der lost the Birthright of a Citizen: Which Banishment to the  
 Ban in Germany, and is *patris privatio*, *Natalis s. l.*  
*Ammisio*, *Mentis elegendi*, *Natharum* in J. Edw. 10. s. 3. by King  
 Marjms Gods banishment to be unlawful, kept those who  
 are so Banished to Run their Country should go and set up  
 among Infidels and thereby turn more Wicked than formerly.  
 For the sending Malefactors abroad to Infect and Infect  
 forainers is a Method Equally unjust and unprovoked, if  
 it would provide them to transmit the profligate Vices  
 of their Country to us. By the Common Law of England, no  
 man can be Banished his Native Country but Either by  
 Authority of Parliament, or in case of Abjuration for Felo  
 ny where Felon Fled to the Sanctuary of some Church or  
 Church Ward having Confessed his guilt to a Parish be  
 fore the Governor or Parson of the Realm for ever. But such  
 Abjuration being forbidden on the jurisdiction of an Abjurer,  
 is now taken away 21 Jan. cap. 20 56. In Scotland Banish  
 ments are an ordinary punishment of Crim'd. For tho' the an  
 junct cannot Effectually oblige himself to any thing under  
 the pain of life or Limb: Yet it is usual for a Criminal to  
 take Banishment upon him, and to Enact himself in the  
 Books of his Journall never to Return to Scotland under the  
 pain of death. Which has been inflicted in the Case  
 of Contraband on 28 December 1649. Crim'd. Hamilton. Tho'  
 there the Sentence of death inflicted by the Lord of Jus  
 ticiary, was by the Privy Council commuted into Banish  
 ment never to Return under Certificate and pains  
 of the first Sentence. The Criminals following was  
 found Relevant to put the first Sentence in Execution  
 on 6 September 1715. William and John Baillie. Accused that