

to fall witnesses. But the fixing the punishment to the offender is now in the Arbitrion of the Judge.

Chap. 5.

How Crimes and offenses are Extinguished & abolished. Crimes and offenses are Extinguished, 1^o By the Natural death of the offender before his trial, or by the repealing the Statute against which they were Committed before he is brought to trial 2^o By the offenders undergoing the punishment of law, and by his Acquittal or Absolution. 3^o By Prescription, or the course of time 4^o By a Pardon.

Tit. 1.

Extinction of Crimes by the Natural death of the offender.

According to the Civil law, when one prosecuted for an ordinary Crime dies before sentence the suit might have been Continued against his heirs for a fine or pecuniary punishment C. 20 f. de Accus. But in our law Crimes are Extinguished by the Natural death of the offender before his trial M. Lorie Crime part 2 Tit. 31 § 10. Example in the case of a self Murtherer whose death is the offence and in the case of oson and Manifest Rebels. in 29 H. 6 cap.

13 Eliz. cap. 10. 29 Eliz. cap. 1. 35 Eliz. cap. 5. 3 Jac. 1. cap. 2.

But as in factory (C. 20. f. de Accus. Def. 1. D.) it is in Holland (M. Lorie ibid) a Civil pursuit may be pursued against the heir of a Criminal dying before sentence for the Expences of the Crime & suit.

When a Criminal Statute is repealed before an offender against it is brought to his trial, the former is strictly, and he shall not be punished by force of such Statute; Pullin de praed. 127. b.

But a Crime Committed in one Kings Reign may be tried and punished in the Reign of another King Pullin ibid. For the same law and form of Government to which the offence is done Continued, the Sovereign die.

Tit. 2.

The Abolition of Crimes by the offenders undergoing the punishment of law; and by his Acquittal or Absolution.

It is no less Unreasonable that one should be punished twice for the same fact, than it is Unjust to Exact twice payment of the same debt: if the first punishment was inflicted by the sentence of a competent Judge, and fairly proportioned to the Crime, so as both in deita publica and the private Interest of the party injured be satisfied; in the case of a woman was punished for the same crime of Rape but no other way.

It is not just, but the Fifth hath by Virtue of the Convention therein contained, without the care to what is inflicted by the sentence. Thus John Waugh in Ireland being found guilty of Robbery by the Sheriff and ordered to pay 2000 shillings or go to Barbadoes; the Exchequer offered him 2000 shillings to Mr Andrew Hodder, who a writ he had fulfilled the sentence of the Sheriff. And in a Declarator purged at the instance of the said Donatory; the Lord of Session found that by Waugh being once found guilty of the Robbery, there was no Indultum Regis which the Sheriff or other Criminal Judge could not Derogate from by his Murther sentence; more than he could all together remit the punishment being a mitigation of the ordinary punishment, is a Remission thereof per se tantum. Albeit it was alleged for Waugh, that our Custom doth punish theft with death or by fine, according to the Degree of guilt: And that the Sheriff had done amiss, the party was free by the sentence and that the Sheriff only liable to punishment ex Syria rectore. Upon that the party been unjustly appointed he could not be punished again, and much more should the Sheriff be punished because against a greater punishment. Appointed by law according to the Rule, qui potest magis potest minus.