part 1 Tit. 6 § 22. Where one against whom high treason
against the Kings person and the estates had been suffici
ently verifyed, procured his own death in attempting to escape
out of Prison, the dead man was presented our pannal and
doom given against him as a traitor by express warrant
from his Majesty 31 January 1603 Umquhile Francis Moubray

9°/ The King's Advocate is to be the last Speaker to the
assize in the case of high treason and Rebellion against
the King: tho in other cases the Pannals Advocates have the
Priviledge of Speaking last Act of Regul. of the Justice court
1672 Act. 10 and answering all that is advanced by the
pursuer. Witnesses cited in cases of Treason who refusing
to Depone were Declared liable as guilty of that Crime: But their
Depositions so omitted were not to Militate against the Deponents
themselves any Manner of way Act 4 sess. 1 Parl. J. 7.

10°/ The Roman Law Punisheth treason by death and Confisca
tion of the traitors whole estate l. 5 C. ad L. Jul. Maj. Heritable
or Moveable lying within the territories of the offended Prince
but not what lies else where c. 2 de Constitutionibus in 6. doth
not allow the Mourning Ceremonie or publick Rites of Burial to
be performed to a traitor l. 1 ff de Cadav. Punit. l. 11 § 3 ff de his
qui Not. Infam. l. 35 ff de Relig. & sump. fun. And Declares their
Children incapable to Enjoy any estate Dignity or office, ut Mors sit
illis Solatium, Vita Supplicium d. l. 5 C. ad L. Jul. Maj. The Canon
law is no less severe to traitors than the civil law. Yea, ordains
their houses to be thrown down and to lie perpetually in Rub
=bish c. 5 de poenis in 6. The Parliament of Paris had first in
a Detestation of Ravilacs Atrocious crime, that they Con
demned his very Parents to Banishment, and all the family
to Change their Name. But no Nation doth now deal thus rigo
rously with Children for their fathers Transgressions, Ant. Mattheus
de Criminibus ad lib. 48 Tit. 2 ff cap. 3 n. 11. Nor doth the law of
God allow one to suffer for the sin of Another Deut. 24. 16.
2 Kings 14. 6. The Instance of Achan's children who were
stoned to death and burnt for their fathers Crime, Josh.
7: 15. 24. 25. Concludes nothing against this mild opinion:
since these were punished by the Revealed Will of
God who can alter and Dispense with the laws of Nature
Besides that probably the whole family was Involv
ed in the guilt by Concealing the theft, and being privy

privy to it, seeing the Stollen goods were found in the tent where they
were. It was ordinary in Scotland for the friends of persons Condem
ned for high treason to get a warrand for attending them in Mour
ning upon the scaffold, and to bury them: tho some sentences of treason
limit the friends of traitors in that Matter 30 July 1680 Hack
ston of Rathillet. Yet I do not find where ever the wearing Mour
ning for or burying a traitor without warrand was Reckoned a
Crime here. Forfeiture of life lands goods and gear whatsoever,
whether heritable or Moveable Feudal or Allodial is the punish
ment of treason Act 3 Parl. 1 J. 1. And tho Men cannot Dispone
their titles of honour, nor their Creditors adjudge them for debt;
Yet traitors forfeit and lose those. Forfeiture (in Latin foris fac
tura quasi foris aut extra Legem factio) is Derived from the
French word forfait and offence or transgression. Forfeiture
of an Apparent heir carries Right to heritage Devolved upon
him thro the death of his predecessor Act 2 Parl. 9. J. 6. Tho he
be not Infeft: But if he die before his predecessor, the Fisk
cannot Exclude his Descendants from succeeding to that prede
cessor Stair Inst. lib. 3 Tit. 3 § 38. Seeing the forfeiture did not
incapacitate the predecessor to Dispose of his own estate, and
Parents may freely Determine Concerning their fortunes in
Scotland without Impediment by Complaints of Exheredation.
And it were hard to bind up a parent more strictly in favour
of the Fisk, than of his own Child: Unless a fraudulent Design
to Disappoint the effect of forfeiture without a Reasonable
cause, were Made Appear. Tho a person Infeft in liferent being
forfeited for treason, becomes Nullus Civiliter by the sentence;
the liferent doth not Expire, but belongs to the soveraign,
while the traitor lives, Stuart Answers to Dirlet. doubts
Tit. Forfeiture. Forfeiture of the Kings Immediate ward Vas
=sal, proceeding upon Crimes which infer Recognition, Makes
the ward Lands Return to his Majesty, as they came from
him, free of all Burden not Consented to by him Stair lib. 3
Tit. 3 § 31 & 39 in fin. Forfeitures, by laws before the Year
1690 did not only carry away Rights and Interests Vested
in the traitor, but also those of his or her wife or husband,
Vassals, Creditors, and heirs of Entail. Without any obliga
tion upon the soveraign to acknowledge the traitors deeds
not Confirmed or Consented to by his Majesty before the
treason Committed Stair ibid. § 30 McKenzie observ. on
Act 37 Parl. 2 J. 6. Which gave Rise to this ill Maxim
that the fisk pays no debt. Infeftments of ward Lands