

by it consist to be any longer a part of the body from which it is separated.

Both these Crimes go by the Common Name of Maim or Macton in Latin May Comium or Mahimium (from Mohaigne or from Manius) Amputing to the 2<sup>d</sup> fealty word Manis which is the taking from one some Natural part or Member of his body or the use thereof, whereby he is Disabled to serve the Common Wealth, or to provide for his own Lively hood. For Understanding the Nature of this Crime of Mutilation and Dis-membration, it is necessary to Explain what is Meant by a Member of the body. A Member (in Latine Membrum from Membrum to Divide Caball. Resol. Prim. Cont. 3. cad. 236. n. 6.) in a proper and strict sense, is a part of the body having its proper and distinct operation and office, which can be performed by no other part, Zach. quest. Mod. Log. q. 1. n. 5. 6. 7. As the foot whose work is to walk the Eye to see, the hand to apprehend food and grasp the Knife to pull the hand to apprehend food and grasp the Knife. And the accidental Distemper may hinder the proper use of such Members, as when the Nose wants the sense of smelling thro' Influxion of Humours, or the foot or hand is Disabled by a palsy, the Nature of these Members is not thereby changed. Some are called Principal Members, which work by themselves; others are termed Servient Members, which are Useful to the other in their operations. All Lawyers and Physicians agree that the Eye is a principal Member of the body: because when it performs the Action of seeing, which consisteth with out it; and by the want of it the body is Deprived of Light and Deprived of the Common pleasures of sight. The Tongue is a principal Member because it performs the distinct office of speaking, and contributes to the Chewing and Swallowing of Meats, Caball. Resol. Prim. Cont. 3. cad. 236. n. 9. The Nose is a principal Member, Zach. 2<sup>d</sup> quest. 14. n. 385. Because it only

426.  
Exercise the function of Smelling besides the other distinct uses of Respiration, and the Nerve descending from the brain by its Eye ear is generally owned as a principal Member, because it is the sole Instrument of hearing. But whether the Loop of the ear or External part be the ear called the Loop to a proper Member is Controversied. Some as Fortunat. Fidal. & Covarruvias Resolved being a Principal Member: because it is continued rather for Moment and safe-guard to the ear than for up to the Body. Others as Gabon and Suarez will have it to be a principal Member: partly, because it contributes much to the organ of hearing, and a sound without it resembles the Confused Noise of running Water; partly, for that the Lung may be Dis-membr'd, tho' the inward part of the ear cannot be Cut off. That the inward part of the ear cannot be Cut off. That the Arm, Leg, hand and foot are principal Members is Controversed by all: the distinct uses whereof can be best Judged by such as want them. But it must be owned, that the hand is a more Noble Member than the foot: so that when a Member is simply Spoken of the hand is understood, Zach. quest. Mod. Log. lib. 1. pt. 3. q. 6. n. 5. The Doctors are mightily Divided in their opinions about the fingers of the hand and toes of the foot whether they are Members of the body proper, or only subject to the hand and foot. Most of them as Barletius, Batus, Julius Clarus, Parracius, Covarruvias, and others will have fingers to be the Members, but only parts of Members. Others, as Cypriani So. & C. affirm the finger to be a Member. Because albeit a finger cannot operate by itself without Concourse of the hand, yet it hath often something proper to it in the Action of the hand, as in playing on a Musical Instrument Writing and the like, and if the fingers be separated from the hand, it is of little or no use. Which last Opinion is gone into by the Inviolable daily practice of the Justice Court. The toes of the foot