and giving them to a stranger, is not guilty of theft. because of her being reckoned one person with her husband, and a husband in England at the solemnizing of the Marriage endows his wife with all his worldly goods, whereby she hath a kind of Interest in them. But in Scotland, tho a husband cannot pursue his wife for theft because such a suit would Argue the Crime punished. Yet the King's advocat can pursue either a Design in him to get rid of her, than to have the wife or husband for stealing from the other Mackenz. Crim. part 1 Git. 19 §14. One is not guilty of theft by taking away Another mans goods with his Consent to satisfie his Creditor, or taxt presumed from the tacit Consent and Freindship to him Bynes Prosp. and the owners Relation and Freindship to him Ibid.

= mindo furtis qu. 174 n. 1 & 2. Mackenzie Ibid.

It is questioned, if one in danger of Starving is guilty of theft by taking Victuals from his Neighbours. Some of the Doctors of the Civil law (Ant. Matthæus de Furt. lib. 47. Git. 1 cap. 1 n. 7. Jo. Voet. Comment. Git. de furt. n. 8) think that he is guilty: and others (Bynes Prosp. Farinac. n. 68. 69. Carpzov. Crim. part 2 qu. 82. n. 38) hold that he is not, for that Necessity has no Law. Which last opinion is agreeable to our law where by no means can he be accused of theft for as much Meat as he can carry on his back Reg. Maj. lib. 4 cap. 16 if it was taken to supply his Craving Necessity we Call to mind the old way to supply by Hunting Reg. Maj. lib. 3 cap. 13 Mackenzie Crim. part 1 Git. 19 §3.

= Barbinsack or Yburpananoca, from Pana in the Gascoign Language signifying a thief or to steal and oca a sack Skene de Verb. signif. Verb. Yburpananoca. And by the Law of England one is not guilty of Larceny, who is Ready to starve to get Victuals from Another to satisfie his present hunger, Dalton Chap. 99. Hawkins pl. Cr. lib. 1. chap. 33 §26. And according to the Law of God Mosaical Deut. 23. a thief, if he steal to satisfie his soul when he is Hungry Prob. 6. 30. But this last Clause is to be owing to his Unchristianess it is far from being an

any Excuse to him. Hawkins pl. Cr. lib. 1. chap. 33. §. 26. Matthew Hale's Hist. Pleas Coron. part 1. p. 53. Says that it is a question worth considering, whether a man out of mere necessity for preservation of his life, may not take victuals without the consent of the owner, and without any intention to pay for them, and seems to incline to the affirmative, upon that account.

The Civil law Punishes Larceny more Mildly, as to a borrower or lender of a thing guilty of theft, by appointing it to Another or for the use than that to which it was lent 8 Fr. pl. de oblig. quæ Delict. l. 4 l. 5 § 1 l. 82 Pr. Ibid. furt. But this is not Reckoned to be theft by our Law Reg. Maj. lib. 3 cap. 9 § 5. Sir George Mackenzie Crim. part 1 Git. 19 §2 thinks, that if a man borrow a thing for a certain use, with a Design to Apply it at the time to some other use, and do it actually Apply it to that other use; as when one borrowing Money upon to Land has a Palpable pretence Designs to invade it, and turn his Country, he is guilty of theft. because in such a case the Lender is as much wronged by Deceit as if the Money had been stollen from him: and the first Intention of the borrower of the Money was not to have the simple use of it, but only under Colour thereof to have the better opportunity of Stealing away with it. By the Law of England to Make one guilty of theft, the goods must be taken away fraudulently, that is without the owners knowledge or Consent with an Intention of Stealing them at the time they are taken; for if he hath the possession of goods once lawfully, tho he carry them away with an ill Intention after ward. Q. If one Deliver goods to his servant to sell and he Receive the price and pack off with it, or if one Intrusted to uplift his masters money or Rents Receive and run away with them; this is not Larceny Cooke 3 Inst. 108. Hale pl. Cr. 63. Hawkins pl. Cr. lib. 1 chap. 33 §13. Because the first taking was Lawfull. A Carrier who Receives the goods in order to carry them to a certain place, or a taylor who has them in order to Make me a suit of Clothes, or a friend who is intrusted with them to keep for my use cannot be said to steal them by Embezzling them afterward Stamf. pl. Cor. 25. a. Cooke Ibid. 107 Hale Ibid. 61. Hawkins Ibid. 33. Because such persons had the actuall possession of the Goods by the owners Delivery, and it may be presumed that both the servant and his offence are