

Cloth belonging to Merchants, was sustained to infer the
 pain of Death 15 September 1649 Patrick Bald. Another was
 hanged for breaking a house Under Night, when the family
 was at Rest, and stealing some silver plate out of it 23 March
 1701 William Traxer. A third Under woud the same punishment
 for opening barns Under Night with false keys and stealing
 Victual forth thereof, and for stealing four sheep out of
 Common theft and Robb of Theft 15 March 1616 James Gory
 By the law of England, breaking and entering into the Man-
 sion house of another, or the out buildings thereof as barns
 or stables, or into a Church in the Night time, that is when
 there is not so much daylight as a Mans face can be seen
 and thereby, with a Design to steal or Commit some other
 felony, whether the Felonious intent be Executed or
 not is felony Code 3 Just. 63. 64. 65. Hals pl. Cr. 79. 82.
 Hawkins pl. Cr. 66. 1 chap. 38 §. 2. 10. 11. 12. 18. Without the
 benefit of Clergy 18 Eliz. cap. 7. And the same is termed
 burglary (in Latin burglary) from the French Bourg
 a borough and Laron a thief. The stealing of goods within
 a house is on fire, or in the case of shipboard, or in time of
 an Uproar or sedition should be punished with Death
 Michonius Prim. part 1. §. 19. 218. Which is agreeable to the
 law Jo. Wood Comm. ad §. 8 de homic. An. Henr. 11. 2. And
 there is good Reason for it: because the theft is more easily
 committed in houses and such calamitous cases, and the
 offenders who thereby add affliction to the afflicted
 ever great Villany and Malice.

502 Theft because of the way and Manner of Accomplish-
 ing it, as stealing by the means of false keys, or
 breaking in, is punished capitally Michonius ibid. This
 opening a Collar with false keys and breaking in, and
 stealing forth thereof a pack of lint, was sustained
 to infer the pain of death 15 September 1649
 Patrick Bald. A third was Doomed to be hanged
 for opening a house on the Lords day in time of
 1701

homon with a false key, and taking some butter out of a
 Chest there, which he had a mind to eat when he got
 bread, which here with a brooked iron was found upon him
 19 December 1698 Alexander, Jail.

In fore poli. and by the Canon law the intention to steal
 is theft. But it is not theft either by the civil law, the
 law of the Design to be Accomplished by taking away
 l. 57 §. 2. furtis. Nor yet is an attempt to steal if no
 thing be actually stolen or carried away punished as
 theft either by the law of England
 or by the law of holland Michonius Prim. part 1. §. 19. 216.
 For the attempt might cause the wanted. Here
 the Entering into a Combination and society for stealing
 and pulling of purses was punished his servant
 to infer only an Arbitrary punishment 12 December
 1668 Hamilton alias Heasel & Young.

A person who is art and part of the theft is punished
 as the principal thief. Thus one was hanged for being
 art and part of the theft of 40 sheep and ten cows 19 July
 1603 Thomas Lotman. Another suffered the like punish-
 ment for being art and part of the theft of 11 sheep 11
 July 1623 James Aldon. A third for being art and part
 of the theft of 69 catt and a Mare 2 July 1617 Thom Robb.
 One may be art and part if he be at the place by giving advice
 and assistance in the theft l. 52 De Verb. Signif. l. 30 53 54
 §. 1. upon De furtis l. showing the way to a thief and instructing
 him how to steal Michonius Prim. part 1. §. 19. 216. Or
 being him a ladder to scale the windows of a house in order
 to steal thereof. Gorrin de Consultoribus q. 130 n. 22. That
 one who furnishes another with a knife to cut buttons
 off Gentlemens Clothes in presence of the
 Lords sitting in Parliament was ordered to be whipped
 and transported to the plantations 21 June 1680
 Matthew 21. The person who knows the house, and
 1701