

Design and perhaps friends to him.

By the civil law fire-raisers (called incendiarij) were lawfully punished according to the Circumstances of facts and of the offenders. Those who burn houses within a town were some times, if mean persons, adjudged to be torn in pieces with wild beasts, and if men of Rank and quality, were punishable Capitally, or by Deportation into an Island till they should die. Rich. Manfr. in those town house burners were often burnt quick & 28 Bull. ff. de penis. Such as burn houses and stacks of Corn, Flour, houses, &c. are Condemned to be scourged and to die with fire l. 9. ff. de pœnis. Run Manfr. But those who burn Cottages or houses standing by them selves are more gently punished d. l. 28 § 12. De pœnis. Which Distinction betwixt the Burning of town and Country houses, is not now observed. Groenogonde l. 9. Abing. ad d. l. 28 § 12. Borch. part 4. Corol. 24 n. 32. In Germany wilful fire-raisers are burnt alive Borch. ibid. n. 11 § 8. fagg. Cap. 200. Crim. part. 38 n. 88. fagg. Juris. Geron. part. 1. § 172. f. 1. By the law of England, One who Maliciously and Voluntarily burn the dwelling house of another or any part thereof, or his barn with the Corn therein, or is accessory to such a fact 23 H. 8. c. 1. § 3. 4 R. 2. Pl. 8. M. c. 4 or any Base lamen Master Murderer or other Officer belonging to a ship wilfully burning it or procuring the same to be done to the prejudice of the person having goods thereon. 1 R. 2. c. 2 § 4. 5. In force of death without Benefit of Clergy. It is also felony to burn in the Night time Maliciously any Field or Stack of Corn, Barns (the empty) or other houses or buildings, or kilns in any place whatsoever. But the offender may avoid the Judgment by shewing to be banished for seven years 22 & 23 Car. 2. c. 7.

By the law of Scotland, it was formerly treason to burn the houses, and barn houses and Corns, and to raise fire wilfully Act & Parl. 3. J. 6. Act 38 Parl. 1. J. 6. Which practice is not understood Caputative but Detentive; that is, it was treason to burn dwelling houses tho the people by accident were not within at the time, or being there happily so because the offender is supposed to have designed the burning of all that might be in the house, as well as the house itself Wilkieson's Crim. part. 1. § 755. 2. ff. was treason

to burn houses and Corns Wilkieson's ibid. § 7. ff. was treason to raise wilful fire, that is to set fire to a particular place or thing with a Design to burn more, as to burn a little standing by with intention to burn the whole field. But it was not treason to fire a particular thing without any Design to destroy more, as to burn goods in a shop or some field or little Cottage standing in a Moor Wilkieson's ibid. Nor was the setting fire to a prison door to force it open and let out the Prisoners without any Design to burn the house or any thing in it, found to be treason 29 July 1700 Black's Ward and Others. Again it was treason out of private Revenge and Despair to set Goal on fire Act 146 Parl. 2. § 6. Partly, because it was thought necessary to preserve safe a Commodity as Coal from Run by persons committing a Crime destructive thereof, which may be easily committed; partly, upon the account of the great hazard arising from such fire, which if once kindled can never be quenched. But it was not thought treason to drown a coal bough Wilkieson's ibid. § 7. fearing a Penal law so severe might not to be extended: And the Danger by Drowning a Coal-pit is not so great as by burning it, the former being more easily remedied and less Capable to spread, than the latter. But now wilful fire-raising is punished only Capitally with Death 1 R. 2. c. 2 § 4. And any person who Maliciously sets on fire houses or causes to be burnt any Woods, Under wood or Coppice or any part thereof suffers death as a wilful fire-raiser 1 R. 2. c. 2 § 4. This Crime is so heinous, that in the opinion of Lawyers (Dummond) if an accidental attempt to commit it is punishable. But by the law of England, Neither a bare Intention to burn a house, nor even an actual Attempt to do it by putting fire to a part of a house will amount to felony, if no part of it be burnt Hale pl. Cr. 308. Hawkins pl. Cr. lib. 1. chap. 39 § 4. Reiterated Threats to burn a house within a town, were sustained Relevant to infer an arbitrary punishment 3. April, 1686. General's Case. And a Gentleman who, after he had his powder and house and plaster laid to his son, threatened to burn the