

Unless it were proved to have been Expressly given for Judging him to Lend the Money, or for bear payments, or at least more Appear, that a previous treaty about giving more than the legal Interest upon such Accounty had passed betwixt the parties; or that the Receiver is a Manifest or ordinary Usurer for McLeewis Bann. part 1, fol. 24 25. & do pp. 4 pag. 293. Acts of Mary and Wm. 1542. by the King's Religious Decree, that if any can be proved to us here or elsewhere upon the same information given at the last Parliament in 1608. should take or receive anything 27 James 1. the middle center Remedy.

Of Private Imprisonment.

Private Imprisonment is the Confining any person in a private house or place, without Colow of Law: Which is an Affirmation of Jurisdiction.

By our Imperial Constitution in the Bill Laws, he who Imprisons any person in a private house or place without Colow of Authority or Colow of Law, is guilty of Treason and punishable with Death, i. e. in private Carceribus. And by another Constitution such an offender is liable only to so long Imprisonment, as he privately Confineth another, and to lose the blame for which he binds him. Of his Liberty B. Edmon. And by the Modern Law of Other Countries the punishment of private Imprisonment is Arbitrary. i. e. of the Tyrannical Canonibus qui 27 n. 35. Fol. Bar. fontent. lib. 2. cap. 68 n. 32. Casprou. Bann. part 1, qu. 41 n. 129. fol. 139. Casprou. ad L. 1. de private Carceribus. fo. Vol. Com. ad fol. 2. de offi. 2. de lib. Reor.

By the Law of Scotland the perpetuity of this Crime was before the Year 1701 Liable to an Arbitrary Prison. In the month of 1676 James Patrick & Mary Grey Black. On 1 April 1720 for Alexander Sutherland & James Black. But now all Confinements not either Conferred to by the Statute or inflicted after trial by sentence, are punishable as Irregular Imprisonment del. C. fol. 5. & 69. Parl. K. W.

By the Civil Law no person can be taken subject to private Imprisonment: Not only because such a Detention is Contra bonos Mores, but also for that private Imprisonment is an Usurpation of Jurisdiction which cannot be Conferred by the Agreement or Acquiescence of private persons. l. 3. de Jurisdictione Annua. 2. de Juris.

Privilegium. de Excommunication qui 27 n. 20. But this seems not to be agreeable to our Law, which punishes the Confinement as wrong and Imprisonment, only if not Conferred to or Justified by some Law. l. 1. ut b.

A Father may lawfully at his own hand confine his Unlawful and disobedient Child, and a Master his Servant and Unlawful Servant, and a jealous husband may lock up his Wanton wife in a Room, without Confining the said wife to private Imprisonment l. 352. fol. 2. Com. Ex lib. Dam. l. 2. de Act. Bann. cap. 64. Paroz. ad Gite. C. de private Carcer. n. 2. 3. Rolphs. Parin. lib. 2. n. 25. 26. 27. Casprou. Bann. part 2. qu. 111. n. 82. l. 83. Because such Confinement is Intended only for a Cowardly private Correction and Obliviousness. Not that one shall undo the guilt of private Imprisonment who having Appropriated his Debtor by a Captivity, shall at the Debtors own Desire keep him confined in a private Room till he take home Conveyance for payment of the Debt, lest if he were immediately thrown in to the Common Jail, he might be Arrested thereby. Other Cited: Because Potenti non fit Juris, and that was rather a favour than an Injury done to the person that he restrained. Casprou. lib. 2. n. 30. He who seizeth a Criminal in order to perswade him to a Judge, may lawfully by his own private Authority without further Warrant detain him in Custody for the space of 20 hours, but no longer l. 25. pr. B. ad. l. 1. de Tractoribus 3. de Van. Rolph. ap. 9. de Captiv. Reor. n. 3. Fol. Bar. fontent. off. a. Mad. 5. fin. qu. 68 n. 32. Rolphs. Parin. lib. 2. The friend of a Mad man ought to put him Under Restraint, and if necessary to Chains, fustell and shackles on him to prevent his doing mischief. C. 14. de officio profer. Casprou. Bann. part 3. qu. 145 n. 112. It is required de penis tempore carceris 2. n. 10. del. Mattheo. Bann. cap. 100 legum. cap. 2. n. 10. stat. 2. Rob. i. cap. 23. The Justices of Peace are Authorized to cause a Dangerous Madman to put in prison, and if they find necessary to cause chain him till he be cured. his son. 12. Anne Sept. 2. ap. 2. 3. 22.

Of Apprehension Committed by private persons in Contempt of Law.

Such are the Executing great priests for Grasse and Monk, than it is usual and Allowed Act 23. Parl. 5. c. Mastefung and Obstructing Common Highways to or from Burialls.