

A Man attainted whether upon Judgment or Appeal may by the Common law plead such Attainder to any subsequent Judgment or Appeal for the same or any other felony Hawkings pl. Cr. l. b. 2 chap. 36 § 1. Which plea is termed *Ante facta Attainder*. The Reasons for sustaining such a plea are 1st because the life of the Defendant was in danger by the first prosecution, and law doth not allow a Man to be brought into such Danger twice for one and the same offence. 2^d Because Generally such a second prosecution cannot be to any purpose, seeing the party being dead in law by the first attainder and having already forfeit all he can forfeit, it is equally absurd to Attaint him a second time, as to Attempt to kill one who is already dead. So that this is the most wretched of all pleas. But in some cases this plea of *Ante facta Attainder* is of no effect Vix. 1st where the first Attainder is Reversed for Error, after which it can neither be pleaded to a prosecution for the same or any other felony Hawkings *ibid.* 52. Because by such reversal the Attainder is of no more force than if it had never been. And if an Acquittal on an Erroneous Judgment or Appeal will not bar a subsequent prosecution, Surely a fortiori an Attainder Reversed will not do it. But it is agreed to be a good Bar while it stands Unreversed, Because it is not void but voidable only Hawkings *ibid.* 2^d Where a person Attainted at the suit of the King is Pardoned, and thereafter prosecuted upon an Appeal, such ^{Attainder} ~~prosecution~~ cannot be pleaded in Bar of the Appeal. *Stamf. Pl. Cor.* 197. b. *Coke* 3 Just. 213. Hawkings *ibid.* 53. Because the King cannot bar an Appeal or the suit of the subject by Pardoning the offender before it appear whether he be guilty or Innocent, either cannot but be much less Reason that he should bar it after the guilt appears by a Judgment of Record. Again where a person all the suit of the King is Pardoned, he may be thereafter arraigned for another felony. 3^d Where a person Attainted cannot be indicted again for the same, or for the like, or for a lesser offence; yet he may be arraigned a second time for a greater offence, that is liable

to a heavier punishment and forfeiture, or for the same or for the like offences, where Reparation is to be made to a different person. Thus a person Attainted of felony, may be afterwards attainted of high treason, whether committed before or after the felony *Coke* 3 Just. 213. *Raleph* pl. Cr. 213 & 248. Hawkings *ibid.* 54. For the Judgment of death in high treason, is not only Different from that in felony, but the forfeiture is also more General. And one Attainted of felony, may be again indicted for Robbery *Coke* *ibid.* *Raleph* *ibid.* 248. Hawkings *ibid.* 55. That the person who hath Robbed may have Restitution of his Money or goods 21 H. 8 cap. 11. For otherwise his Attainder would give him a privilege or protection which law never intended, by allowing the plea of *Ante facta Attainder* to a second prosecution for a new Crime. 4th Where a person Attainted of one felony, is afterwards prosecuted as a Principal in another, and Others prosecuted together with him as his Accessories; it is said, that for the Benefit of Public Justice, he is Compellable to plead *Ec.* to the second prosecution, in the same Manner as if he had not been Attainted. Because otherwise the Accessories to such second felonies could not be brought to their trials, for want of a Conviction of their Principal Hawkings *ibid.* 56. 5th The Judgment of pain forfeit to Sure in one felony is no bar to a prosecution for another, *Coke* *ibid.* *Dyer* 308. pl. 73. Because the penance is not given for the felony, but for Contumacy, and is not an Attainder, nor doth it as an Attainder Corrupt the Blood or forfeit lands. But it seems questionable whether such Judgment of pain forfeit to Sure may not bar a second prosecution for the same felony, because the life of the Party was brought into Danger by the first Hawkings *ibid.* 57.

6th An Attainder on a Judgment of Death, is no bar to an Appeal of the same Death within Year and Day of the Felony 3 H. 7 cap. 1. *vid.* *supra* pag. 73. *Ante*