

In Hester West's place. (See vol. 2. pag. 1391. et seq. and vol. 1. one person may give upon a conviction before another, Huls. 3. bid. pag. 401. et seq.)

Substantial Exceptions or plead in point of law Against the Judgment or any wrong step in the proceeding, may be Moved in Arrest of Judgment. If the prisoner can plead, he Demand and will be allowed the benefit of Clergy for some ordinary Capital Crimes, but not for high treason. He may also plead the King's pardon if he hath it. But if that plea be Disallowed, he should not be allowed to plead any other plea, it being peremptory to him if overruled. Yet after such plea, he ought to have the benefit of his Clergy in cases where Clergy is allowed. Kel. Rep. 29. If the court signify their pleasure to give Judgment Not with standing what the prisoner hath alleged in his own behalf, the Clerk bids the Cryer Make proclamation once and repeat thrice, my Lords the Kings Justices and other Commissioners strictly Charge and Command all Manner of persons to keep silence while Judgment is being, upon pain of Imprisonment. Then the Clerk may, or some other Commissioner, having first spoke to the prisoner standing at the Bar concerning the Crime he stands convicted of, give Judgment or sentence against him, as supra page 229. Some Judges would give sentence and state and always the same for the same species of Crimes: of which the most remarkable are those for treason and felony primo and Misprison. In which stated Judgments the laws make no distinction between a peer and a Commoner, or between a Common or ordinary case, and one attended with Extraordinary Circumstances, Hawk. Ind. pl. Cr. lib. 2. chap. 45. 52. Other Judgments are discretionary and Variable according to Different Circumstances, and are in a great Measure left to the prudence of the Court, to inflict such Corporal punishments, and also such fine and Lien to the good Behaviour for a certain time &c. as shall seem most proper and requisite to the offence from the Consideration of Circumstances, which may any way Aggravate or Exacerbate the guilt, Hawk. Ind. 54. Ind. concerning Judgments in the several kinds of Capital offences.

After pronouncing of Judgment the prisoner is said to be Attainted, then the Clerk bids the keeper take the prisoner from the Bar, and enter and add over the prisoners Name in the Judgment, to what he had entered before, these words, Habet

Judicium prout patet Juroribus indictamenti, and writes the Judgment on the back of the Judgment. This is called Attainder by Conviction.

The Court may command Execution to be done Against a person Attainted Without any writ Finch of law 478. 3 Med. Rep. 42. Hawk. Ind. pl. Cr. lib. 2. chap. 51. 54. But sometimes Execution is Commanded by writ, as in Sir Walter Raleigh's case 10. Jac. 496. And in Lord Stafford's case State Trials Vol. 2. p. 704. 705. When a person against whom Judgment is given, is called to the Bar and asked what he can say, why Execution should not go Against him, stands Mute to the Demand; he shall not be awarded to his prayers, but to the same kind of Execution that would have been awarded, if he had not stood Mute. Hawk. Ind. chap. 30. 58. If a person Attainted who hath been at large after his Attainder by an escape, be retaken brought into Court and Demanded why Execution should not be awarded Against him, saying that he is the same person; it shall be immediately tried by a Jury Returned for that purpose, Hawk. Ind. chap. 51. 53.

When a Woman is indicted and convicted of high Treason, or felony, and hath had Judgment given Against her, the Clerk must call her to be set to the Bar again, and then ask her what she can say for her self in stay of Execution of her according to the Judgment given Against her. If she say, that she is great with child, and pray a Jury of Matrons or Mothers by Women to inspect and try whether she be so or Not; the Justice will be granted, and thereupon the Clerk adds to the former Entry over her Name in the Judgment, placitum pregnant. The Court useth to Command the Sheriff of the County, immediately to cause 12 good and Motherly Women, not of Kindred to the prisoner (by whom her plea of pregnancy may be tried) to come to handle and inspect her body, and several parts. When the Jury of Matrons aforesaid, and a panel out of their Names are brought by the Sheriff into the Court, their Clerk calls them by the names, and causeth the Cryer swear 12 of them thus: A. M. lay your Right hand upon