

unfontoned. But all they can do in such a case is to  
 go for a Remission to the party. Which is Agreeable  
 to the Roman law l. 27 pr. ff de penit. l. ult. infim. ff de quest.  
 And also to the Customs of other Nations. Jo. Voet ad gul.  
 ff de sentent. part. 2. Resol. n. i. However the Lord of Jus-  
 ticiary having ordained a person for Guiltious Expressions  
 uttered by him against the Lord Justices General, to stand  
 on the pillory with a paper on his breast importing  
 his fault, and to have his tongue bored; they did there-  
 after pardon the offender, and permit the punishment. In  
 respect the Justices General Interposed, signifying his  
 Resolution to pardon the offender in so far as he related to  
 him, and Desiring their Lordships also to forgive the  
 same in so far as Concerned them and to permit the  
 punishment 24 Feb. 1673 Donald Campbell.

Execution is the Epilogue or Ultimate Act of a Crimi-  
 nal trial. The Condemned Criminal is ordinarily Attended  
 to the place of Execution by a party of soldiers for  
 preventing tumults, who in the old Roman law were  
 called *Spiculatores* l. 6 ff de bonis damnatis because ap-  
 pointed to oversee the Execution. *Vis fides*, that Witoldius  
 Prince of Lithuania, introduced into that Nation, that a  
 Criminal Condemned to death should with his own hand  
 execute the sentence, thinking it strange, that a third  
 person Innocent of the fault should be guilty of homicide  
*Montaigne Esai's* liv. 3 Chap. 1. But Capital sentences and  
 those that inflict Corporal punishments are executed by  
 a hangman or Common Executioner, who (as Ignomin-  
 ous as his province is in the words of a Roman) is no less in-  
 nocent of the parties Death, than the pursuer, or Judge  
 or witnesses. The Doctors are of opinion, that where the  
 Executioner is wanting, the Judge may Compell Aliqua  
*personam Vilem* to supply the office. *Jul. Clar. sentent.*  
*lib. 5 § fin. qu. 99 n. 4. Carpov. Crim. Crim. part 3 qu. 187*  
*n. 53.* Which agrees with the Custom in Scotland. But  
*ser George Mackenzie* (Crim. part 2 tit. 31 § 7) thinks  
 that

that the Justices cannot force any Magistrate of a Burgh  
 to let the part of Executioners, when there is none to officiate  
 in the Burgh: because *officium Nominis debet esse Damnum*,  
 and no person except the officer of Magistrate, of such a Burgh  
 would be Consequenced. Tho' at the same time he is of opinion,  
 that Magistrates omitting to provide an Executioner may  
 be fined for Negligence. The Ordinary punishment is often  
 mitigated in the Execution, from a principle of humanity.  
 Thus traitors are not put down alive. Persons now a days  
 adjudged to be burnt, do usually get the favour to be strangled  
 before the fire takes hold of them at the stake. And those  
 who die under the pain of the *hard* are manifestly suffered  
 to be so overcharged with weight laid upon them, that  
 they suddenly Expire. It was once the Custom in some  
 places, particularly in Saxony, that if the Executioner (where  
 a person was to be beheaded) failed to sever the head from the  
 body at one stroke or other ways bungled and performed not his  
 office neatly and gloriously, the populace were sure to pursue him  
 with darts and great stones; till Charles 5 the Emperor  
 made an Ordinance (Ordin. Crim. Art. 97) for preventing that  
 abuse. *Carpov. Crim. part 3 qu. 137 n. 66.* But no doubt a  
 hangman so Misbehaving in the discharge of his Office, is  
 liable to an arbitrary punishment. *Carpov. Crim. n. 67.* By  
 the Custom of Scotland, the friends of Condemned traitors  
 could not assist on the scaffold or wear Murrings for  
 them, without an Allowance from the privy Council, *the*  
*howise Crim. part 2 tit. 31 § 7.* The Particulars, i.e. the  
 wearing Clothes pocket Money and Rings not worth  
 above 5 Crowns are forfeited to the Executioner l. 6 ff de  
*bonis damnatis*. Executed Criminals are not Denyed the  
 Benefit of burial, Unless where the sentence appoints  
 their carcases to be Exposed, for deterring others to  
 Commit the like. *Amo Coming, l. 11. C. de Religios.*  
*de sumpt. fun. l. 1. ult. ff de Cadav. punitor. final. l. 28*  
*§ post. ff de penit.* But the Bodies of the baser sort of  
 Criminals are sometimes Allowed by the Judges to go  
 to Anatomical Uses. *Gomes 3 Var. Resol. cap. 14 n. 9. Carpov. Crim.*