N.1. Bulwhore a Glutton makes a Crowd offence Felony or subject to a heavier punishment than (a) punishment is aggravated by Custom of the Time of committing the Fact as night Theives are more severely punished than those who offer in the day Time. 4 Bl

because such Facts are more terrible and dangerous & can not so easily provided against.

But where a greater punishment is due for a crime committed in the night than in the day, if the fact was done in the twilight or before sun-rising while it dawns or after sun-setting while it grows clearing, it is held in Law to have been committed in the Day Time. Jo. Bost. comm. ad Tit. ff de pœnis n. 4

(a) Thus the Fact; it was done simply that first found. Hence ought to be committed after a conviction for the Misdemeanor; it ought to be punished but as the first offence, Hawkins pl cr. Lib. 1. Ch. 40 § 3.

N.2. An unborgly Collegiate Incorporation, which is not a natural intelligent person, but no more than an aggregate Body represented by its Magistrals Governours Rulers or Administrators can be guilty of crimes committed by such Magistrals &c, in their single capacity of private men. Bl. ff de dolo. Mala, as murder oppression or Riot. Gomes 3 Var. Resolut. Cap. de Delictis N. 52 per. Farin. de Delict. quæst. 24. n. 110. M'Kenzie crim. part 1 Tit. 1 §9. pulton de pace 25a.

But Law supposith such a corporate Body to offend in some cases in its Magistrals or Administrators. i.e. a corporation or College is understood guilty & until the Magistrals or Administrators thereof do Abuse in the proper business of the Corporation as in the making Statutes or Bye-Laws, imposing Taxes or contributions, raising and using unlawful Judicatures, &c. Clem. Statut. Fredrici 2 de Statut. & consuet. contra Libert. civitat. Bolo. Farinac. de Delict. quæst. 24 n. 110 & segg.

And the Body politick may be charged with the guilt of Crimes committed by private persons if done by order of the Rulers and managers called and met in a common Council of the society by Bl. ff. Quod met. causa. Farin. de Delict. quæst. 24. n. 129. or if the crime continued for some time as Theft or Insurrection, and the Magistrals or Administrators did not upon the first Notice speedily call a Council and put effectual orders for suppressing it when they might have easily done it: Because in such case the society is understood to have committed it or tacitly approved of the Crime. Farin. de Delict. quæst. 24. n. 131. 134 et segg.

Again, crimes of omission may be imputed to Incorporations when their Administrators neglect what Law commands. Leo. ff de Off. Consul. et Gomes crim. part 1. Tit. 1 §9.

So corporations have been suppressed, and their Liberties seized into the Kings (b)

This Grant to an Incorporation of the office of Magistracy to govern carries in it an unequal Trust, and a tacit condition to govern well, and the greater the Trust the Stricter is the condition. For the King trusts them with the Local civil Power and Government of that particular Place upon account of and subordinate to the publick Government of the Kingdom: And therefore a Breach of the publick Trust is a Forfeiture and good cause to separate the publick capacity from the natural: when sober the Law create a Trust, the same prohibits a Remedy if the Trust be broken, for putting that Trust into safer Hands, because there is a cessor, and a Determination of the Trust in the Hands of him that acts directly contrary to it.

An unborgly abstractly considered cannot be punished with corporal or capital punishment: and it were absurd to punish for the Fault of its Governours, the private persons or members of the society, who may be Infants, women and children altogether innocent thereof. Gomes 3 Var. Resolut. cap. de Delictis N. 53 per. Farin. De Delict. quæst. 24 n. 115.

(b) Hands for suffering a dangerous Riot to happen within their Jurisdiction without using their Endeavours to suppress it. Hawkins pl. cr. Lib. 1. Ch. 65 § 13.
N.B. The case of Shawfield agst the Town of Glasgow.

(c) And the persons of whom a corporation consists being guilty of any fact crime incapacitates them in their natural and politick capacity