

- \* N. 1. a man ~~may~~ <sup>by the common law</sup> be attainted whether upon Indictment or Appeal, may plead such Attainder to any subsequent Indictment or Appeal for the same or any other Felony. *Hawkins pler. lib. 2. ch. 36. § 1.*
- \* which plea is termed Attainder. The Reasons for sustaining such a plea are 1. Because the life of the defendant was in danger by the first prosecution, and Law will allow a man to be brought into such danger twice for one and the same offence. 2. Because generally such a second prosecution cannot be to any private purpose, being the party <sup>dead</sup> in Law by the first Attainder, and having already forfeited all his goods, it is equally absurd to attainder him a second time, as to attempt to kill one who is already dead, so that this is the most warranted of all pleas.
- \* But in some cases this plea of Attainder is of no effect, as 1. when the first Attainder is reversed for error, after which it can neither be pleaded to a prosecution for the same or any other Felony. *Hawkins ibid. § 2.*
- \* Because by such reversal, the Attainder is of no more force than if it had never been: And if an appeal on an erroneous Indictment or Appeal will not bar a subsequent prosecution firstly a felony; 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, *Hawkins ibid. § 2.*
- \* 2. when a person attainted at the suit of the King is pardoned, and thereafter prosecuted upon an appeal, such pardon can not be pleaded in Bar of the Appeal. *Stunf. pler. 107 b. Coke 3 Inst. 213. Hawkins ibid. § 3.*
- \* Because the King cannot bar an Appeal on the suit of the subject by pardoning the offender before it appears whether he be guilty or Innocent, and there cannot be any Reason that he should bar it after the guilt appears by a Judgment of Record.
- \* 3. The a person attainted cannot be indicted again for the same or for the like, or for a lesser offence; he may be arraigned a second time for a greater offence, that is liable to a heavier punishment & forfeiture; or for the same or for the like offence where the proportion 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 Inst. 213 Hals pler. 213. & 248 Hawkins ibid. § 4.* For the Judgment of Death in high Treason is not only different from that in Felony but the forfeiture is also more general.
- \* one attainted of Felony may be again indicted for Robbery, *Coke 3 Inst. 213 Hals pler. 248 Hawkins ibid. § 5.* That the person he hath robbed may have restitution of his money or goods 21 H. 8. ch. 11. For otherwise his Attainder would give him a privilege or protection, which Law never intended by allowing the plea of Attainder to a second prosecution for a new crime.
- \* 4. When 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 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, *Hawkins ibid. § 6.*
- \* 5. The Judgment of pain fort. et dure in one Felony is no Bar to a prosecution for another. *Coke 3 Inst. 213. Dyce 308. pl. 73.* Because the painance 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 fort. et dure may not bar a second prosecution for the same Felony, because the Life of the party was brought into danger by the first. *Hawkins ibid. § 7.*
- \* 6. An Attainder on an Indictment of Death is no Bar to an Appeal of the same Death within year and day of the Felony. *3 H. 7. ch. 1.*
- \* A retro foils convict, that is a conviction on an appeal or Indictment of Felony, may be pleaded to an Indictment or appeal of the same Felony; and a conviction of Manlaughter ~~in~~ in an Appeal of Death may be pleaded in Bar of a subsequent Indictment or Appeal of the same Death. *Hawkins ibid. § 10.*
- \* Because the party ought not to be brought twice in danger of his life.

Hals pler. 248. § 5. § 6.

- \* The a conviction of manlaughter on an Indictment of Death cannot be pleaded to an Appeal as well as to an Indictment, unless the person so convicted be admitted to his clergy, or at least have prayed it: Because the statute of 3 H. 7. ch. 1. expressly giving an appeal against a person attainted on an Indictment of Death, who hath not had his clergy, cannot but be thought to give it as well against a person convicted, since every Attainder includes a conviction & more; and it is really owing to the default of the Court, which shall not prejudice any one, that a person convicted is not attainted. *Hals Hawkins ibid. § 10.*
- \* But there seems to be no Authority that a conviction of one Felony may be pleaded in Bar of another. *Hawkins ibid.*
- \* It is a person cannot upon the occasion of his being admitted to his clergy, bar a subsequent prosecution for another felony, not within clergy the benefit of clergy & this ch. 1. & 18. ch. 7. § 15.