(called in the Law of England Manbote)

Absithment is an Obligation to repair Damage done by Killing, maim or Lurking one. It is called Croy Act 94. Dec. 6. J. 5. or Galnes Reg. Majest. Lib. 4. cap. 24. & 36. Absithment is a Term in our Law which signifies the Obligation to repair, and the actual Reparation of Damage sustained by Slaughter, Mutilation, or other Injuries done to one in the Members or Heal of his Body.

Absithment for Slaughter produceth Action to the Wife or Children, and 2do Kind of the Person slain, tho not of the nearest Degree nor of all four Branches of his Kindred Stair Lib. 1. Tit. 9. §. 7. and for Mutilation to the Party maimed for a pecuniary Compensation of the Injury. The taking a Remission for a Crime is sufficient to find and prove a Libel for Absithment. Stair Ibid. Action for Absithment is privileged as a recent Spuilzie Act 7. Dec. 3. J. 5. And so favourable, that it was sustained upon a Libel not specifying the Quantity of the Pursuers Damage, because it was to be modified by the Lords pro tanto. Dratt. Tit. Summons and Libel. Absithment is modified with Respect to the Ability and Estate of the Offender Principal or Accessary all Circumstances being considered Stair Ibid. tho he was not freed from an Absithment by a written Acknowledgement from the Person slain, that he occasioned the Wound of which he died and therefore discharged the Injury, Clad. Dratt. 25 Jan. 1681. Drew contra Hume. But an Absithment is only due where the Offender gets a Remission Mc Kenzie Observ. on Act 7. Par. 3. J. 5. And not where he suffers the due Punishment of his Crime Carpzov. Crim. Part. 1. Quæst. 84. n. 42. Farin. Part 4. Const. 12. Dec. 7. Gomez Var. Resol. Tom. 3. Cap. 3. Ant. Matth. de Crim. Lib. 48. Tit. Cap. 7. n. 12. in fin. Vol. Carpzov. Tit. 6. n. 2. & Coarr. de Succan. n. 6. The Discharge given to the Party by those who receive Payment of an Absithment is called by the Doctors Litera pacis and termed in Scotland Letters of Slains, Because thereby they freely consent to his getting a Remission, renounce and pass from all Revenge and Rancour against him upon Account of the crime, and promise their Peace with him.

Tit. 2.

Breach of Arrestment and Deforcement.

Breach of Arrestment, is a Delivery of movable goods to the owner, after they had been arrested in the Deliverers Hand.

Deforcement, is a resisting and opposing Heralds, Pursevants, and other Officers of Court or Justice, in the Execution of their Office, and upon Account thereof. Because Violence used to an Officer not in the Execution of his Office or upon some extrinsick Account, as in a Scuffle occasioned by his own indiscretion, would not infer a Deforcement Mc Kenzie Crim. Tit. Deforcement §. 2. Deforcement is inferred against a Party directly in the Execution stopped, not only by his own Acts, but by Deeds of any whom he could Hinder, as his Wife Children in Familia and Servants, and by the Deeds of others in his Presence whom he did not require to forbear according to the Rule qui tacet consentire videtur But he is not liable for the Officials Actings of Strangers not under his Influence, who without his Warrant or Knowledge stop any Diligence against him Stair Lib. 4. Tit. 49. §. 8. A Master whose Servant was

was apprehended by a Messenger upon Letters of second Diligence, for his not appearing to Depone as Witness in a Cause, was not found guilty of Deforcement pursued ad Civilem effectum for saying in a threatning Manner he would not let his Servant go along with the Messenger, except the Prisoner and other Servants when out of the Master's Sight, fell upon the Messenger and beat him, whereby the Prisoner escaped out of his Hands in Respect the Execution of Deforcement cannot but a Bone of Contention was offered and the Masters Words might consist of an favourable Construction that he would not let his Servant go to lye with Prisoner a convenient Time, for that he had offered Bond to present him when Equivalent Diligence effectually secure the Interests of the Partial concerned, and he had been incarcerated Hall Feb. 15 June 1714 E. Winton contra Provestzier and Finlay. Where the Executer of any Summons Letters or Charges is deforced, maisted, mis-used or barred by the Officer of the Place the Execution is declared relevant and probative notwithstanding the Deforcement Act 15. Par. 12. J. 6. If a Sheriff or Bailie shall wilfully hath done all that in him lay to stop the Law, so that after Diligence by reason of Deforcement of the Execution. But that declaring the Execution of Deforcement relevant and sufficient to be proven or not proven is left entirely to the Discretion and Conscience of the Judge relating to Murthers, seeing it would occasion a great Uncertainty of Law, Rights should never be at an end, and render an Execution as intricated Execution as good as one compleat Stair Lib. 1. Tit. 9. §. 29. Lib. 4. Tit. 45. §. 4.

Breach of Arrestment and Deforcement are Offences of the same Nature and Dressed the same Way either civilly for Payment before the Session or criminally Act 84. Par. 11. 6. Mckenzie Observ. on Act 118. Par. 7. 1. 81. as mentioned publicum in Order to Punishment before the Court of Justiciary. And the one Action doth not exhaust the other having a different Conclusion. A Person may after he hath prevailed in the criminal Suit insist in a Civil Action for Damages 13 December 1672. Murray contra French. Against which Law Act 118. Par. 7. J. 6. says that Persons convicted of Deforcement or Breach of Arrestment are liable to a civil Action at the Instance of the Party injured for Payment of his Debt and Damages he was not hindered to pursue civilly for the same against the Offender before Conviction. Seeing the Statute prohibited not the Party injured to seek any other lawful Redress, and if a criminal Action be competent, much more this which is less penal. But in Regard the Civil Action was founded upon a Criminal Ground they appointed the Libel to be proved by most unsuspected Witnesses 25 July 1633 Mitchel contra Law and Stewarts. For Parties to be implicated in a Criminal Prosecution for Breach of Arrestment or Deforcement, which are an arbitrary Punishment and Confiscation of Moveables Half to the King and Half to the Party injured, being treated of in the second Volume (Lib. 5. Rap. 3. Tit. 1. & 2.) I shall here only take Notice, that the Party at whose Instance the Execution was hath it in his Option, according as he finds it to be for his Interest to insist either for the Half of the Defunct Goods, or for Payment of his Debt Expence and Damage out of the whole before the King draw any Share Act 118. Par. 7. Act 158. Par. 12. J. 6. Stair Lib. 4.

Tit.