of the offenders Moveables to the King is after the punishment of Crimes not Capital. And sometimes the liferent & escheat falls to the King acts 194 & 197 Parl. 14 J. 6. The Commonly liferent Escheats belong to the Respective Superiors.

The ordinary Legal punishments are Aggravated in some cases, and Mitigated in others.

Albeit a Judge ought to pronounce sentence according to Law, without being Legislator, and where there is no Law there is no transgression, Rom. 4. 15. Yet in some cases the ordinary punishment uses to be Aggravated with circumstances of pain or Disgrace; as drawing to the Gallows on a hurdle, cutting off the Criminall's hand while alive, hanging him up in chains for a lasting Spectacle of terror, quartering his body and Impaling the head and other parts upon conspicuous places; nor can any such condemned body be taken down from the Gibbet without permission of the Magistrate that ordered it to be hung up, Sit. & de Cadav. Punit. Carpzov. Crim. part 3 Quest. 139 n. 71. The ordinary punishment is Aggravated 1° where the Crime is very Haynous, as High treason, Parricide, Sacrilegious Robbery &c. 2° Punishment is Aggravated and Heightned in Respect of the place where the Crime was Committed. Thus Troublers of the Church, or who Raise any Fray Act 27 Parl. 11 J. 6. or Commit Slaughter Act 118 Parl. 15 J. 6, Sthirdly, or in the Church Yeard the time of Divine service; Strikers or Hurters of any person within the Court of Session or Justiciary while the Lords are sitting, or before any other Judge Act 173 Parl. 13 J. 6 are more severly punished than those who Commit such offences elsewhere. One who slays a Lord of Session or Justiciary 7 A. cap. 2 & 8 or Strikes or Hurts any Inferior Judge Act 173 sitting in Judgement or Unlawfully Attempts to kill or unlawfull Strikes or wounds one of the privy Council in the Execution of his office of a privy Counsellor in Council or in any Committee of Council 9 A. cap. 16 is more severly punished than offenders in the like kind in another place. 3° Punishment is Aggravated by the Character and quality of the person Injured. For the

the Killing a Lord of Session or Justiciary 7 Anne. Cap. 2 & 8 Attempting to Kill Striking or wounding a Privy Councellor in the Execution of his office 9 A. cap. 16. Assaulting or Beating any Judge Magistrate or Minister of the Gospel Act 4 Parl. 2 Jes. 2 Ch. 2 Beating or Hurting of Father or Mother Act 20 Parl. 1 Jes. 1 Ch. 2 are more Rigorously punished, than such offences Committed against other private persons: and Scandalum Magnatum more than Verbal Injuries done to Commoners. 4° Punishment is heightned where the offender is found to have been after guilty l. 3 Infin. C. de Episc. Audient. l. 28 § 3 & 10 de panis. Which is agreable to the Canon Law c. 25 Canon. 25 Quest. 2 c. 15 canon 27. Quest. 1 And the opinion of the Doctors, Prosp. Farinac. de Delictis Quest. 23 n. 128 legg. Because he who frequently Commits the same Crime, is Reckoned Incorrigible. Thus a third Theft even of Inconsiderable things, is Capital, M. Lenzie Crim. part 1 Tit. 19 § 13. A Vagabond Strong idle beggar, who hath been once burnt in the Ear, and scourged for his Vagrant way of Living, if he fall into it again, is liable to the pain of Death Act 74 Parl. 6 J. 6 Maintaining or Defending advised by a second time, the Authority of the Bishop of Rome within the Kings dominions, is treason 5 Eliz. cap. 1 & 10 tho that offence is not treason of its own Nature. So that in Crimes the Gentler Method is often tried for the first offence, which perhaps may prove Effectuall. But where a statute makes a second offence Felony, or subjects to a heavier punishment than for the first; it is implied, that such second offence ought to be Committed after a Conviction for the first. From whence it follows, that if it be not so laid in the Indictment, it shall be punished only as a first offence Hawkins pl. Cr. lib. 1 Cap. 40 § 3. 5° Punishment is Aggravated by Reason of the time of Committing the fact. Thus Night Thieves are more severly punished that those who Pilfer in the day time. Because such facts are more terrible and Dangerous, and Cannot be 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 either before Sun Rising while it Dawns, or after Sun Setting while it Grows Evening, it is held in law to have been Committed