Committed in the daytime Jo. Voet. Comm. ad Pit. ff. de pœn. n. 8.

It hath been doubted, if a Judge can Mitigate or abate the ordinary or Legal Punishment of a Crime. Because punishment is not be intended for Correcting what cannot be Mended but to prevent the Like in time Coming; it should be severely Inflicted without Pity. Again if a Judge know not for Certain that a person is guilty he ought to absolve him Simply, and if he know him to be guilty he ought to subject him to the ordinary punishment; Consequently there is no Room for a Mitigation, and the Judge should not be Clemente Leg. Novel. 82 Cap. 10. But albeit a Judge cannot arbitrarly abate any thing of the Legal Punishment without a good Reason, he may do it upon sufficient Grounds and Motives l. 11 pr. ff. de pœnis l. 3 C. ex quib. cause Infam. Irrog. Again those are only liable to the ordinary Punishment, who offended with an Evil Intention; and Men some times fall into Crimes by Negligence without any Evil Design, who albeit they ought not to Escape all Manner of Punishment, should yet be dealt with more Gently than a wilfull offender, l. 7 ff. ad L. Cornel. de Sicar. l. 1 C. Eod. Carpzov. Crim. part 3 Quæst. 142 n. 30. 32. 33. In which case Severity is to be temperd with Mercy: And as Aristotle (5 Ethic. cap. 5) says, a Judge may be Clemente Leg. Serpta, quando Ejusdem Legis et Justitiæ ratio fort & patitur. Upon these grounds it is that Lawyers allow some what of the Rigour of the ordinary punishment to be Mitigated and Dispenced with in some Special cases. As 1. If the they Excuse none upon the Account of Ignorance of the Law of Nature or who offended Dolentfully or Clandestinely. Yet they are favourable to Women and Boors or Infants when found to Grip in some cases thro ignorance of more positive Law, or when Charged with presumptive Fraud the they sustain the plea of Ignorance of Matters of Fact even in favour of the Judicious, if they erred following the faith of persons of Credit Prosp. Farin. de pœnis Impor. Quæst. 90 n. 101 Quæst. 98 n. 12. 26 & Legg. n. 49 M Kenzie Crim. part 2 Tit. 30 § pr. 2. Succeed both some times plead favour to an Unwarrantable Action l. 2 § 7 ff. de Orig. Jur. As when a Souldier Attacks and beats

beats the Enemy contrary to the Superior Officers order Prosp. Farin. ibid. Quæst. 98 n. 179 M Kenzie ibid. § 7. Sho it is not to be done that good may Come of it. 3. If Spontaneous Confession of a Crime before the offender is Committed to prison or at least before he is Convicted, is held to be a ground for Mitigating the ordinary punishment 18 March 1605 Alex. Andr. Troy 21 December 1638 William Scot 5 March 1639 William Bar 31 March 1647 John M Lean 21 March 1649 John Dick & his Wife Carpzov. part 3 Quæst. 149 n. 23. 4. If Some Indulgence at all be had if Youth or great age M Kenzie Crim. part 2 Tit. 30 § 3 Carpzov. Crim. part 3 Quæst. 143 n. 65 & 81 Quæst. 144 n. 18. 29. 34. 35. Or great Merit and Skill in Fencing Prosp. Farin. ibid. Quæst. 98 n. 134 & Legg. Carpzov. ibid. Quæst. 149 n. 62 M Kenzie ibid. § 7. Or Noble Mony, who albeit they are not legal an Abatement of the ordinary punishment, which ought to be Inflicted without Respect of persons Prosp. Farin. ibid. n. 108 Carpzov. ibid. Quæst. 148 n. 38. 39. Yet During the Dependance of their trial Meet with Indulgent treatment. They are Never Sent to Correction Houses, Pillories, or other Ignominious places. Since if they commit a small Crime in the Necessary Defence of their Honour they are Excused from the ordinary punishment: Also for Crimes whereby their Honour is Forfeited, they deserve more Severity than others Prosp. Farin. ibid. n. 114 & Legg. M Kenzie ibid. § 8 C. de Episc. & Clerc. l. 13 § 8 C. de Judic. In which case taints Gravis est vindicandum, quanto Majore præsumunt Dignitate, et Eorum Exemplo facilius alij polorint ad Similia provocari. 12. ff. de Jurejur. But the the Judgement against Boors for high treason be the same with that of Common persons: Yet by the Kings favour it is ordinarly Altered to the Heading. 5. For Bonds pursued at the Sovereigns Instance for Crimes Committed in Another Country, are to be More Gently punished M Kenzie Crim. part 2 Tit. 30 § 7 Because the offence is less in a place where the Scandal was not given. 6. Where prosecution for a Crime is long delayed and the offender all the time Under Confinement, the punishment shall be lessned l. 25 pr. ff. de pœnis l. 23 C. Eod. Carpzov. ibid. Quæst. 149. n. 43 & Legg. Antonius Matth. de Crim. lib. 48 Tit. 18 Cap. 4 n. 26 Cap. 5 n. 14 Jo. Voet. Comm. ad Pit. ff. de pœnis n. 7. Because a Scandal Grows Weaker as it grows older: and a Criminal who suffered long Imprisonment may find a Mitigation of the ordinary punishment in Aegro Equator Carceris, which Deprives a Man of the Use of light and Air is of it self a punishment of