1 cap. 11 §. 18 6 G. 1 cap. 23. Formerly the Benefit of Clergy was denied only in treason against the King and Lasenicae [illegible] pl. Cr. 2 30. p. 25 [illegible] 3 cap. 4. But now it is taken away in several other offences by particular Statutes. Hale 3 Hist. pag. 334 [illegible]

This Relaxation of the Severity of the Judgment of the Law

Albeit commonly in Civil Alternative obligations the Debtor hath the Election which to perform: Yet where any Crime is liable to alternative arbitrary punishments the Judge and not the Debtor by offence determines the punishment according to the quality of the Crime and Criminal, Carpzov. Prim. part 3. Tiber. 133 n. 51. Paris Prud. Forens. part 4 Consil. 48 Dec. 8 Salycetus l. 4 C. de servis fugitivis n. 7.

According to the Civil law, a Criminal Clergyable with several Crimes should be loaded with several punishments l. 2 de Priv. Delict. l. 6 de obslig. & act. In which case some of the Doctors are for beginning with the last punishment and then Inflicting the former. The other will have the Greater punishment to absorb the lesser Especially where both Crimes have the same Quality. Interpretors go about to Decide this perplexed Question with more perplexed Distinctions be that the Arbitrable or Compatible and Incompatible Crimes Arbitrable punishments; and betwixt successive Crimes Committed with Intervalls of the same and Different kinds, and the like; which serve more to Confound than to Illustrate the point. As that some Praesp. Criminal Delicts Quaest. 22 n. 31 circa fin. Carpzov. Crim. part 3 Quaest. 132 n. 18) are forced to leave it in arbitrio Judicis when and how several punishments were to be Inflicted for Concurring Crimes, and to allow him to proceed therein according to the law of the place. This is Certain that where Different Capital Crimes the Offender is only to Undergo the punishment of that which is most Attrocious, Carpzov. ibid. n. 19 & because Impossible to make one die twice. Where a person guilty of a Capital Crime and one that inflicts a Corporal punishment, he is to undergo for both by suffering the punishment of death; without [illegible]

Considering what is Disposed on the Account of the lesser Crimes Carpzov. ibid. n. 628 & legg. By the Custom of Saxony where several Crimes Inferring Different Corporal punishments Concurr, one punishment only is Inflicted: Because pœnæ corporis afflictivæ pro Incompatibilibus habentur Carpzov. ibid. n. 67 & legg. And Banishment is the Constant Concomitant of Corporal punishment; but Fining or other Civil punishments are either added to the former Carpzov. ibid. n. 73 & legg. A person guilty of several Capital offences liable to particular punishments is to undergo one Certain Arbitrary punishment in Lieu of all, According to the offences and the Degree of guilt Carpzov. ibid. n. 78 & legg.

By the Civil Law, where one Crime is punished with several punishments appointed by Different Laws [illegible] Derogate from one another, it is in the Arbitrium of the Judge to Inflict either of such punishments l. 11 § 1 de obslig. & act. But will hold l. 14 § de Accusat. (adds Rebuffus Com. Cont. 1 Cap. 2 Gloss. for Gloss. Tom. 2 Cor. Corpus Jur. 2 92 bost from which it is to be observed) where the Judge in Civil Causes is to observe the Custom of that Law where, & mostly use for Leaving Custom and positive Laws, [illegible] Inflicting a Judge to inflict punishment in those Crimes is not [illegible] determine, [illegible] several penal Statutes no Crime offenders.

It would seem that by the Laws of Scotland, where two punishments of the same Crime are appointed by Different Statutes, both cannot be Inflicted, Unless that be Expressly provided in the later Statute; but the last penal Law Derogates the first: and that if the last penal Law do not so Derogate the first punishment, the offender should Undergo either of those two punishments successively appointed for one Fault, might be thought prejudicial to one Another; it was Expressly Cautioned in a particular act, that the one pain should not stop or stay the other Act 248 Parl. 16 J. 6. We have Notes Collected of the Aggravation of punishment upon the Account of a Concourse of Crimes; as Hamilton of Pathhead Cj 1645 Alexander Milne 30 July 1680 David Hackstoun of Rathillet 8 Feb. 1688 Philips Stamfield

By the Law of England one guilty of Felony or Treason may be proceeded against for a Misprision only if the King pleases, a Misprision being Contained in every treason or Felony what soever, Stamf. Pl. Cor. 37. b. Hawkins Pl. Cr. lib. 2 c. 20 sect. 1. Those who purchased any Bull &c. from Rome by the 13 Eliz. cap. 2 guilty of high treason, and by the Ancient Statutes still in force guilty of a Praemunire