

Another, that the pardon of the one will by a necessary consequence Enure or be Effectual to the Benefit of the other. Its when a principal offender pleads and is admitted his pardon before his Conviction, the Accessory may by a necessary Consequence take benefit of it, because it cannot be Arraigned till after the principal is convicted *Hardin's lib. 322.*

The Acceptance or simple taking of a pardon which is termed in our Law only *bigging his life* lib. 42 Part. 9 § 4 is an Argument of guilty, but doth not amount to a Confession of the Crime, since that pardon may be done for the Mores Security to the Crown his guilt without any Bond of guilt, therefore the Lords of Session would not Declare a person guilty of a mortal Felony by *Stultory*, upon his having taken a Remission for that offence without other Evidence 9th January 1662. *Barro contra Baird*. But he that pleads a Remission for a Crime confesseth the fact, and by use it is understood to take guilt upon him, *Bocher's Rep. 43. 4 Just. 235. 239. Hol. Rep. 29. Nixon's Crim. par. 2. Jut. 28. 51. 27. Novemb. 1676. Alexander Strachan of Glenkindie's* And without such an Acknowledgement of the Crime, the Remission is of no force to stop a prosecution for it *Alloxid's lib. Quertin* if this be not a Deposition & actual ones pleading a General Act of Oblivion or Indemnity, and is Pleading an Excuse upon a Particular pardon? Because a party labours not if to a Remission upon an Acknowledgement of the Crime: Where as the Act of Oblivion prohibits prosecutions and Discharges the Judges to proceed upon the Crimes Included therein whether the Defendant be guilty or Innocent. Which point was Debated, but not Determined 16 March 1692. *John Gordon of Glasgow*

Chap. 6.

The several kinds of Crimes and offences into which the Roman Law Divides Crimes into publick and private Crimes. The Publick Crimes were those Declared to be such by some Law or other, and which all Manner of persons were allowed to prosecute in judgement, altho they had no Particular Interest therein. lib. 1. § 1. *Pro public. Judic.* Because the punishment of them was of Importance to the publick. The Private offences were those of which the prosecution was not allowed to any but the person who had an Interest therein. lib. 1. § 2. *Pro priv. De Lit. lull. § 2. Part.* Because the punishment of these was not thought to be of the same Importance to the publick. But by the Usage of Scotland all Crimes and offences whichsoever are punished as publick Crimes, in which the publick is concerned, that they should not pass unpunished. But we have several other Distinctions of Crimes and offences of Criminal and offences. Viz. those of Capital and not Capital Crimes. A Capital Crime is that which subjects the offender to the loss of his Life or Life, called in the Law of England *Holony*, a Gallie, Gall as being supposed to be done Maliciously. In England all high offences stand the Degree of Capital, and nearly bordering thereupon go under the Notion of Misprision; but generally a Misprision of Holony is taken for a Concealment of Holony or a procuring of the Concealment thereof: so that the former are termed Active, and the latter passive Misprisions. We have ordinary and extraordinary Crimes: the former are those whose punishment is Expressly Determined by Law; and the latter such as are left to the Discretion of the Judge to be punished more or less severely according to circumstances; for the Expend of a Crime consists in all being forbidden by Law, and not in the punishments being specified. Extraordinary Crimes are also termed Arbitrary, because the persons guilty thereof are liable to an arbitrary punishment. Nor of him to these Extraordinary or Arbitrary Crimes, is the Contravention of Orders