in England, is not a General Consequence of the Doom, but only a Speciality in the tenor of it for some Attrocious Crimes where the successors of the forfeited persons are Declared Incapable of lands estate honour or office (called in our Law Dishabilitatio) as was done in the Earl of Bothwel's case: or where their fame and Memory is Condemned and their sirname abolished, as was done in the Earl of Gowrie's case. For the offspring of forfeited persons here have ordinarly acquired estates and been succeeded therein by their Children without obtaining Restitution of Blood, Stair Inst. lib. 3 Tit. 3 § 37. And whatever Reason there may be for Excluding a traitor's Children from his own estate, it seems hard to make them incapable to gain or succeed to another estate. Therefore John Stewart of Codingham son to the Earl of Bothwel having been Dishabilitate by the sentence of forfeiture pronounced against his father, was Rehabilitate by the Parliament 1621 upon Consideration that he was noways accessory to his fathers Crime 24 feb. 1665 Douglass & Sinclair contra [?] Wedderburn. And the Parliament 1661 having adjected to the Marquiss of Argile's forfeiture, the Dishabilitation of his Children; the Children were in the last session of that same Parliament Restored by the Kings Express Command, to the Capacity of Enjoying estates and honours as other subjects.

No sentence of forfeiture for treason can be Reduced or Quarrelled upon Nullity of process, till the person forfeited be tried and acquitted, or the Crime pardoned by the King Act 135 Parl. 8. J. 6. A person may be Restored against forfeiture either per Modum Justitiæ, or per Modum Gratiæ. Restitution according to Justice, is a Reducing the Judgement given against the forfeited person as Unjust: which was obtained in Parliament if the person was forfeited there; or upon a Review in the Justice Court, if he was Condemned there McKenzie Crim. part 2 Tit. 28 § 5. By such Restitution according to Justice the forfeited person Recovers both his fame and estate tho gifted to a third party, as the Parliament 1661 Decided Betwixt the Marquisses of Montrose and Argile. In which case an Act of Parliament Ratifying the forfeiture, with the Kings Gifts is not sustained as Titulus Coloratus to afford the Benefit of bona fide

§ 7 A. cap. 21 § 1. Direction was given to the English Judges to publish an abstract of the Laws of high Treason for Information to the people of Scotland in that matter, which accordingly came forth in 8vo anno 1709 attested by the subscriptions of all the twelve Judges of England.

possession to the Donatary of the forfeiture, so as he Might not be Accountable for his Intromission with the Rents of the estate spent by him 15 feb. 1706 Ladies Caldwell & Fairlie contra Dalziell of Binns. Nor can forfeited persons, tho Restored by way of Justice & tanquam ab Initio, quarrel presentations during the forfeiture to Benefices whereof they were Patrons, upon pretence that they are to be Restored Intirely Act 12 Parl. 20 J. 6. Because Patrons are not allowed to Make any advantage by their priviledge of Presentation, and it is presumed that the Church would not Admit Insufficient persons. Restitution by way of grace is when the person forfeited obtains from the King a Gracious pardon or Remission: for his Majesty can Restore only by way of grace Act 135 Parl. 8. J. 6. In which case the party pardoned and so Restored cannot Recover what was [?] bestowed by the King upon third parties Act 4 Parl. 1 Ja. 6 McKenzie observ. on d. Act 4.

But the Laws of Scotland concerning High Treason being conceived in such general words, that the Judges might put such constructions on them as should serve the ends of a bad Court. It was provided by an Act of the British parliament 7 A. cap. 21 § 1 That all crimes which were high treason by the Law of England (and those only) should be high Treason in Scotland. And Ireland hath the same Laws for Treason that England hath, tho with some more Hale Hist. placit. Cor. Vol. 1. pag. 155.

Tit. 2.

Of High treason and Misprision thereof by the Law of Great Britain.

Sect. 1

What is high treason & the several kinds of it.

When all crimes which were high Treason by the Law of England (and those only) were made high Treason in Scotland &

1st It is high treason to Compass or Imagine the death of the King, or his Royal Consort the Queen, or the Prince their Eldest son and heir apparent to the Crown for the time 25 Edw. 3 St. 5 cap. 2. The words Compassing and Imagining Imply a design and Consequently Exclude deeds happening by Mischance without fore thought, and the deeds of Mentis Inopes, or Infants under the Age of Discretion, whose Execution cannot be an effectual lesson of Example to other Mad folks or Infants. Nor ought a traitor turning Mad before or after Conviction be arraigned or put to death while he suffers Exilium Mentis. For Actus non facit Reum nisi Mens sit Rea. Coke 3 Inst. 6. Hale pl. Cr. 10. But John Sheffeild Duke of Buckinghame (works Vol. 2 observe on the statute of treasons) Quarrels this opinion as Extraordinary, because of the great facility there