Incest and pain of Death, that a Man and his Niece were both for some time Naked in bed together 18 June 1705 George and Janet Johnstons. But yet a woman for being found lying Naked in Bed with two brothers was subjected only to an Arbitrary punishment Viz. to stand in Jaggs upon the Tron of Edinburgh, to be scourged thro the town and then transported to the plantations 2 Feb. 1692 Margaret Polson, the pursuer having Restricted his libel to an arbitrary punishment. And in the opinion of the Doctors of the Civil law, a just and probable Ignorance of the Relation exempts from the pain of Incest, if upon the Discovery the parties have no far then Dealing together Proff. Farin. de n. 162. 195. Sir George McKenzie (Crim. part 1 tit. 14 §. 5.) is of Opinion, that not only those who actually Commit Incest within the forbidden degrees, but even such as Endeavour to do it, are guilty of Incest and punishable with death.

Chap. 5.

Of Bigamy or Polygamy.

Sir Edward Cooke (3 Inst. 89) Distinguisheth Bigamy from Polygamy, making the former to be one having two wives or two husbands successively or one after another; and the latter to be the having two wives or two husbands living at one and the same time. But the Doctors of the Civil law and Cujacius of Scotland use Bigamy and Polygamy as Synonymous words to signify a Mans marrying two or more Wives, or a woman's marrying two or more husbands living at the same time Undivorced.

Plurality of wives was indeed tolerated among the Jews and Many other Nations; and is yet allowed by Indians and Mahumitans: albeit no where a wife was ever permitted to have more than one husband; because Men being the Law givers designed to Women what they thought fit for themselves, or Rather for that a Woman and having two husbands hindered the Propagation of Mankind which is furthered by the plurality of Wives. But the

having of several wives was Connived at for a time among good Peculiar people for the Speedier Multiplying of Abraham's Seed conform to the Divine promise to that patriarch; Plurality, whether of wives or husbands, is Contrary to the primitive Institution and law of Marriage, whereby two (one man and one woman and no More) become one flesh Gen. 2. 24. Junct. c. Matth. 19. 5. Every man is to have his own wife, and every woman her own husband 1 Cor. 7. 2 which Excludes More wives or husbands. And the Man who puts away his wife and Marries Another, Committs adultery Matth. 19. 9. Yea it is not only prohibited by the law of Moses, which Dispensed with the Liberty, one wife to another to Uncover her Nakedness besides the other in her life time Levit. 18. 18. The Civil law, which Brands Polygamists with Infamy l. 1. ff. de his qui Notantur Infamia c. 2 C. de Incest. Nupt. and by the Canon law c. 2 x. de Sponsi. Divor. c. 8 x. de Divort. But also it Runs Counter to the law of Nature. In so far as it hinders the equal giving of the Bonds of love, and cools that Love Required in the Conjugal State, and breeds Domestick peace and Unity, and gives Rise to Emulation Jars and quarrels between the Wives and their Children. Nor is it much for the Credit of Polygamy, that he who first took unto him two wives was Lamech Gen. 4. 19 who by also Committing Murder after the Example of Cain his ancestor, approved himself to be a Despiser of Law and good order.

Bigamists are punished in Germany (Carpzov Crim. part 2 qu. 66 n. 30 & Segg. Forombs part 4 Const. 20 Def. 1) and France (Stat. Matthi de Crimin. ad Gl. 8 ad L. Jul. de Adult. cap. 1 n. 13) with death. In Spain they are Stigmatized with the Letter L. Stat. Matth. ibid. In other Countries Bigamy is Restrained by Arbitrary Punishment Prosp. Farin. de Delictis Carnis qu. 140 n. 12 & Segg. By the law of England it is Felony if any husband or wife do Marry another while the former wife or husband is alive and Not Divorced 1 Jac. 1 cap. 11 §. 1. But the offender may have the Be-