

or coercion of her husband, she is responsible for her offense as much as any feme sole.

19. *If a man be violently assaulted, and hath no other possible means of escaping death but by killing an innocent person, may he kill that person?*—30.

No; the fear and force shall not acquit him of murder; for he ought rather to die himself, than escape by the murder of an innocent man.

20. *When a man, by the commandment of the law, is bound to arrest another for any capital offense, or to disperse a riot, and resistance is made to his authority, may he kill the offenders?*—31.

It is here justifiable, and even necessary, to beat, to wound, or perhaps to kill the offenders, rather than permit the murderer to escape, or the riot to continue.

21. *May a man, in extreme want of food or clothing, justify stealing either, to relieve his present necessities?*—31, 32.

The law admits no such excuse.

22. *In whom does the law suppose an incapacity of doing wrong, from the excellence and perfection of the person?*—32, 33.

In the king.

### CHAPTER III.

#### OF PRINCIPALS AND ACCESSARIES.

1. *What are the degrees of guilt among persons that are capable of offending?*—34.

They may offend as principals, or as accessaries.

2. *In what degrees may a man be principal in an offense?*—34.

In two degrees: a principal in the first degree is he that is the actor, or absolute perpetrator of the crime; and a principal

in the second degree is he who is present, aiding and abetting the act to be done.

3. *Must this presence of the principal in the second degree be an actual immediate standing by, within sight or hearing of the fact?*—34.

It need not; there may be a constructive presence.

4. *In cases of murder, committed in the absence of the murderer, by means which he had prepared beforehand, in what degree as principal is he guilty?*—34, 35.

He is guilty as principal in the first degree.

5. *What reason does the law assign for this?*—35.

That, in the case of preparing poison or laying a trap or pitfall for another, whereby he is killed; letting out a wild beast with an intent to do mischief, or exciting a madman to commit murder, so that death thereupon ensues, the party offending cannot be called an accessory, that necessarily presupposing a principal; and the poison, the pitfall, the beast, or the madman, cannot be held principals, being only the instruments of death. As, therefore, he must be certainly guilty, either as principal or accessory, and cannot be so as accessory, it follows that he must be guilty as principal, and if principal, then in the first degree; for there is no other criminal, much less a superior in the guilt, whom he could aid, abet, or assist.

6. *Who is an accessory?*—35.

An accessory is he who is not the chief actor in the offense, nor present at its performance, but is some way concerned therein, either before or after the fact committed.

7. *Why are all principals in high treason?*—35.

Upon account of the heinousness of the crime.

8. *In what crimes may there be accessaries?*—36.

In *petit* treason, murder, and felonies, with or without the benefit of clergy; except only in those offenses which, by judgment of law, are sudden and unpremeditated, as manslaughter, and the like, which therefore cannot have any accessaries before the fact.



9. *In petit larceny, and in all crimes under the degree of felony, why are all principals?*—36.

Because the law does not descend to distinguish the different shades of guilt in petit misdemeanors.

10. *If a servant instigates a stranger to kill his master, of what is he guilty?*—36.

He is accessory only to the crime of murder.

11. *Who may be an accessory before the fact?*—36.

Sir Matthew Hale defines him to be "one who, being absent at the time of the crime committed, doth yet procure, counsel, or command another to commit a crime."

12. *If A. command B. to beat C., and B. beats him so that he dies, in what degree is A. guilty?*—36, 37.

He is guilty as accessory.

13. *If A. command B. to burn C.'s house, and he in so doing commits a robbery, in what degree is A. guilty?*—37.

A. though accessory to the burning, is not accessory to the robbery.

14. *Who is an accessory after the fact?*—37, 38.

The one who assists a felon, knowing him to be such. To make an accessory *ex post facto*, it is in the first place requisite that he knows of the felony committed. In the next place, he must receive, relieve, comfort, or assist the felon.

15. *Is the relief of a felon, in jail, with clothes or other necessities an offense?*—38.

It is not.

16. *What if one wounds another mortally, and, after the wound given but before death ensues, a person assists or receives the delinquent?*—38.

The latter does not become accessory to the homicide; for, till death ensues, there is no felony committed.

17. *Where a felony is actually complete, are the nearest relatives suffered to aid or receive one another?*—38, 39.

They are not. If the parent assists his child, or the child his parent; if the brother receives brother; the master his servant, or the servant his master; or even if the husband receives his wife, who have any of them committed a felony, the receivers become accessories *ex post facto*. But a feme covert cannot become an accessory by the receipt and concealment of her husband.

18. *How were accessories treated, considered distinct from principals?*—39.

The general rule of the ancient law (borrowed from the Gothic constitution) is this, that accessories shall suffer the same punishment as their principals.

19. *For what reasons, then, are elaborate distinctions made between accessories and principals?*—39, 40.

1. To distinguish the nature and denomination of crimes, that the accused may know how to defend himself when indicted; the commission of an actual robbery being quite a different accusation from that of harboring the robber.

2. Because, though by the ancient common law the rule is that both shall be punished alike, yet now, by the statute relating to the benefit of clergy, a distinction is made between them.

3. Because, formerly, no man could be tried as accessory till after the principal was convicted, or, at least, he must have been tried at the same time with him; though that law is now much altered.

4. Because, though a man be indicted as accessory and acquitted, he may afterward be indicted as principal.

20. *Is an acquittal of receiving or counseling a felon, an acquittal of the felony itself?*—40.

It is not.



## CHAPTER IV.

## OF OFFENSES AGAINST GOD AND RELIGION.

1. *How are crimes to be estimated, in their relation to the municipal law?*—41.

They ought to be estimated merely according to the mischiefs which they produce in civil society.

2. *What is the difference between public and private vices?*—42.

Both public and private vices are subject to the vengeance of eternal justice; and public vices are besides liable to the temporal punishments of human tribunals.

3. *Under what heads are the several offenses, which are either directly, or by consequence, injurious to civil society, and therefore punishable by the laws of England, distributed?*—42, 43.

Under the following general heads: 1. Those which are more immediately injurious to God and his holy religion.

2. Such as violate and transgress the law of nations.

3. Such as more especially affect the sovereign executive power of the state, or the king and his government.

4. Such as more directly infringe the rights of the public or commonwealth.

5. Such as derogate from those rights and duties which are owing to particular individuals, and in the preservation and vindication of which the community is deeply interested.

4. *How do such crimes and misdemeanors as more immediately offend Almighty God, by transgressing the precepts of religion, either natural or revealed, transgress the law of society also?*—43.

Mediately, by their bad example and consequence.

5. *Of what species are they?*—43-64.

They are: 1. Apostacy. 2. Heresy. 3. Offenses against the established church. 4. Blasphemy. 5. The offense of profane and common swearing and cursing. 6. Witchcraft, con-

juration, enchantment, or sorcery. 7. The offense of religious impostors. 8. Simony. 9. Profanation of the Lord's day. 10. Drunkenness. 11. Open and notorious lewdness.

6. *What is apostacy?*—43.

It is a total renunciation of christianity, by embracing either a false religion, or no religion at all. This offense can only take place in such as have once professed the true religion.

7. *What is heresy?*—44, 45.

It consists, not in the total denial of Christianity, but of some of its essential doctrines, publicly and obstinately avowed.

8. *Of what kinds are the offenses against religion which affect the established church?*—50.

They are either positive or negative: positive, by reviling its ordinances; or negative, by nonconformity to its worship.

9. *How are non-conformists divided?*—52.

They are of two sorts: 1. Such as absent themselves from divine worship in the established church, through total irreligion, and attend the service of no other persuasion. 2. Those who offend through a mistaken or perverse zeal; as papists and protestant dissenters.

10. *Into what classes may papists be divided?*—55.

Into three: 1. Persons professing popery.

2. Popish recusants convict.

3. Popish priests.

11. *What were the penalties and disabilities of the first class?*—55.

Besides penalties for not frequenting their parish church, they were disabled from taking their lands, either by descent or purchase, after eighteen years of age, until they renounced their errors; they were incapable of presenting to any advowson, or granting to any other person any avoidance of the same; they might not keep or teach any school, under pain of perpetual imprisonment; and if they willingly said or heard mass, they for-



feited, for the one two hundred, for the other one hundred marks, and each suffered a year's imprisonment.

12. *What if these errors were aggravated by apostacy or perversion?*—55.

Where they were so aggravated, as where a person was reconciled to the see of Rome, or procured others to be reconciled, the offense amounted to high treason.

13. *To what additional disabilities, penalties, and forfeitures, were the second class of papists subject?*—56.

They were considered as persons excommunicated; they could hold no office or employment; they could not keep arms in their houses, but the same could be seized by the justices of the peace; they might not come within ten miles of London, on pain of £100; they could bring no action at law, or suit in equity; they were not permitted to travel above five miles from home, unless by license, upon pain of forfeiting all their goods; and they could not come to court under pain of £100. No marriage or burial of such recusant, or baptism of his child, could be had otherwise than by the ministers of the church of England, under other severe penalties. A married woman, when recusant, forfeited two-thirds of her dower or jointure, might not be executrix or administratrix to her husband, nor have any part of his goods; and, during the coverture, might be kept in prison, unless her husband redeem her at the rate of £10 a month, or the third part of all his lands. And, lastly, as a feme covert recusant might be imprisoned, so all others were obliged, within three months after conviction, either to submit and renounce their errors, or, if required to do so by four justices, abjure and renounce the realm; and if they did not depart, or if they returned without the king's license, they were deemed guilty of felony, and suffered death as felons without benefit of clergy.

14. *What is blasphemy, and how punishable at common law?*—59.

It is an offense against God and religion, by denying his being and providence; or by contumelious reproaches of our Saviour Christ. Whither also may be referred all profane scoff-

ing at the Holy Scriptures, or exposing them to contempt and ridicule. These are offenses punishable at common law by fine and imprisonment, or other infamous corporeal punishment; for Christianity is part of the laws of England.

15. *How was the pretence of using witchcraft, telling fortunes, or discovering stolen goods by skill in the occult sciences, punished?*—62.

By a year's imprisonment, and standing four times in the pillory.

16. *Who are religious impostors?*—62.

Such as falsely pretend an extraordinary commission from heaven, or terrify and abuse the people with false denunciations of judgment.

17. *How are they punishable?*—62.

With fine, imprisonment, and infamous corporeal punishment, by the temporal courts.

18. *What is Simony?*—62.

The corrupt presentation of any one to an ecclesiastical benefice for gifts or reward. It is, also, to be considered an offense against religion.

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## CHAPTER V.

### OF OFFENSES AGAINST THE LAW OF NATIONS.

1. *What is the law of nations?*—66.

The law of nations is a system of rules, deducible by natural reason, and established by universal consent among the civilized inhabitants of the world, in order to decide all disputes, to regulate all ceremonies and civilities, and to ensure the observance of justice and good faith, in that intercourse which must frequently occur between two or more independent states, and the individuals belonging to each. This general law is founded upon this



principle, that different nations ought, in time of peace, to do one another all the good they can, and in time of war, as little harm as possible, without prejudice to their own real interests.

2. *Is this law of nations adopted by the common law?*—67.

Yes; to its full extent, and is held to be a part of the law of the land.

3. *What is the remedy for offenses against this law by whole states or nations?*—68.

Recourse can only be had to war.

4. *What if the individuals of any state violate this general law?*—68.

It is then the interest as well as duty of the government, under which they live, to animadvert upon them with a becoming severity, that the peace of the world may be maintained.

5. *What are the principal offenses against the law of nations, animadverted on as such by the municipal laws of England?*—68.

They are three in number: 1. Violation of safe-conducts. 2. Infringement of the rights of ambassadors. 3. Piracy.

6. *What is piracy?*—71–73.

The offense of piracy, by common law, consists in committing those acts of robbery and depredation upon the high seas, which, if committed upon land, would have amounted to felony.

## CHAPTER VI.

### OF HIGH TREASON.

1. *Into what kinds may those offenses, which more immediately affect the royal person, his crown, or dignity, and which are in some degree a breach of the duty of allegiance, whether natural and innate, or local and acquired by residence, be distinguished?*—74.

They may be distinguished into four kinds: 1. Treason. 2. Felonies injurious to the king's prerogative. 3. Præmunire.

4. Other misprisions and contempts. Of which crimes the first and principal is that of treason.

2. *What is treason?*—75.

Treason, *proditio*, in its very name, imports a betraying, treachery, or breach of faith. It, therefore, happens only between allies; for treason is indeed a general appellation, made use of by the law, to denote, not only offenses against the king and government, but also that accumulation of guilt which arises whenever a superior reposes a confidence in a subject or inferior, between whom and himself there subsists a natural, a civil, or even a spiritual relation; and the inferior so abuses that confidence, so forgets the obligations of duty, subjection, and allegiance, as to destroy the life of any such superior or lord.

3. *What is high treason?*—75.

When disloyalty attacks even majesty itself, it is called, by way of eminent distinction, high treason, *alta proditio*; being equivalent to the *crimen læsæ majestatis* of the Romans.

4. *What statute defines treasonable offenses?*—76.

The statute 25 Edward III, c. 2, which defines what offenses for the future shall be held to be treason.\*

5. *What is meant by compassing or imagining the death of the king?*—78.

To purpose or design his death.

6. *How must this act of the mind be demonstrated before it can possibly fall under any judicial cognizance?*—79.

By some open or overt act.

7. *What are held to be such overt acts?*—79.

To provide weapons or ammunition for the purpose of killing the king. To conspire to imprison him by force, and move toward it by assembling company. And, also, taking any measures to render such treasonable purposes effectual, as assembling and consulting on the means to kill the king.

\* The provisions of this act are confirmed by the 36 George III, c. 7, which is made perpetual by the 57 George III, c. 6.



8. *Are words spoken treason?*—80.

Both by common law and statute, they are not.

9. *Are words written treason?*—80.

The bare words are not treason, but the deliberate act of writing them has been held to be treason.

10. *What if two subjects quarrel, and levy war against each other?*—82.

It is no treason, but a great riot and contempt.

11. *When does a bare conspiracy to levy war amount to high treason?*—82.

If particularly pointed at the king and his government.

12. *When shall a man's joining with rebels or enemies in the kingdom be excused?*—83.

If he be under circumstances of actual force and constraint, provided he leaves them when he has a safe opportunity.

13. *Of what does the punishment of high treason consist?*—92, 93.

The punishment is: 1. That the offender be drawn to the gallows. 2. That he be hanged by the neck, and then cut down alive. 3. That his entrails be taken out and burned while he is yet alive. 4. That his head be cut off. 5. That his body be divided into four parts. 6. That his head and quarters be at the king's disposal. But the king may discharge all the punishment except beheading.

14. *Is the punishment milder for offenders in the case of coining?*—93.

In the case of coining, which is a treason of a different complexion from the rest, the punishment is milder for male offenders, being only to be drawn, and hanged by the neck till dead.

15. *What is the punishment of women for treason of every kind?*—93.

It is to be drawn to the gallows, and there to be burned alive.

## CHAPTER VII.

## OF FELONIES INJURIOUS TO THE KING'S PREROGATIVE.

1. *What is felony, in the general acceptation of the English law?*—94, 95.

It comprises every species of crimes which occasioned, at common law, the forfeiture of lands or goods.

2. *Is treason felony?*—94.

All treasons, strictly speaking, are felonies.

3. *What other offenses are felonies?*—95.

All offenses now capital are, in some degree or other, felony, but this is likewise the case with some other offenses which are not punished with death; as suicide; homicide by chance-medley, or in self-defense; and in petit larceny or pilfering, all which are (strictly speaking) felonies, as they subject the committers of them to forfeitures.

4. *What is probably the origin of the term "felony"?*—95.

Felony, according to Sir Henry Spelman, is derived from the northern words, *fee*, which signifies the fief, feud, or beneficiary estate; and *lon*, which signifies price or value. Felony is, therefore, the same as *pretium feudi*, the consideration for which a man gives up his fief; as we say in common speech, such an act is as much as your life, or estate, is worth. Felony, and the act of forfeiture to the law, were thus synonymous terms in the feudal law.

5. *Does capital punishment enter into the true idea and definition of felony?*—97.

It does not; the idea of felony, however, is so generally connected with that of capital punishment, that we find it hard to separate them; and to this usage the interpretations of the law now conform.



6. *What follows from this usage?*—98.

If a statute makes any new offense felony, the law implies that it shall be punished with death, viz., by hanging, as well as with forfeiture; unless the offender prays the benefit of clergy; which all felons are entitled once to have, provided the same is not expressly taken away by statute.

7. *What felonies are more immediately injurious to the king's prerogative?*—98.

They are: 1. Offenses relating to the coin, not amounting to treason. 2. Offenses against the king's council. 3. The offense of serving a foreign prince. 4. The offense of embezzling or destroying the king's armor or stores of war. 5. Desertion from the king's armies in time of war.

## CHAPTER VIII.

## OF PRÆMUNIRE.

1. *Why is the offense of præmunire so called, and what was its origin?*—103.

It is so called from the words of the writ preparatory to the prosecution thereof. It took its original from the exorbitant power claimed and exercised in England by the Pope.

2. *In what year was made the first statute against papal provisions?*—110.

In the thirty-fifth year of Edward I. was made the first statute against papal provisions, being, according to Sir Edmund Coke, the foundation of all the other statutes of *præmunire*.

3. *Is præmunire an offense against the king?*—111.

It is ranked as such, because every encouragement of the papal power was deemed a diminution of the authority of the crown.

4. *What statute is generally referred to as the "statute of præmunire"?*—112.

The statute 16 Ric. II. c. 5. It is generally referred to in all subsequent statutes by that designation.

5. *What is the original meaning of this offense?*—115.

Introducing a foreign power into the land, and creating *imperium in imperio*, by paying that obedience to papal process which constitutionally belonged to the king alone.

6. *Were the penalties of præmunire extended beyond the object of their original institution, to other offenses?*—116.

Up to the statute 1 and 2 Ph. and Mar., c. 8, the penalties of præmunire were kept within the bounds of their original institution, that of depressing the power of the pope. By that statute, and afterwards, it was thought fit to apply the same to other offenses of a heinous character, some of which bear more, and some less, relation to this original offense, and some no relation at all.

7. *What was the punishment of præmunire?*—118, 119.

From conviction, the defendant was out of the king's protection, his lands and tenements, goods and chattels, were forfeited to the king, and his body remained in prison at the king's pleasure, or during life.

8. *Was one convicted of this offense, out of the law's protection?*—118.

He was: though protected from public wrongs, he could bring no action for any private injury, how atrocious soever, being so far out of the protection of the law that it would not guard his civil rights, nor remedy any grievance which he, as an individual, might suffer.