

that punishment, which, in a state of nature, an individual might, for an invasion of his person or property; and indeed it was anciently held that any Person, who overcame a Pirate, might put him to death without the formality of a trial.

By the ancient Common Law, Piracy, if committed by a subject, was held to be a species of Treason, being contrary to his natural allegiance, and by an Alien, to be Felony only; but since the statute of Treasons, of the 25 E. 3. c. 2. it is held to be only Felony in a Subject. The Court of King's Bench had certainly a concurrent jurisdiction with the Admiralty, in cases of Felony done upon the Narrow Seas or Coasts, though it were high Sea, because within the King's Realm of England. But this jurisdiction of the Common Law Courts was interrupted by a Special order of the King and Council 35 E. 3. since which it does not appear that the Courts of Common Law took cognizance of Crimes committed upon the High Seas. Lord Coke says, "There is a Felony punishable by the Civil Law, because it is done upon the high Sea, as Piracy, Robbery, or Murder, whereof the Common Law did take no notice, because it could not be tried by twelve men."

PIRATES were tried by the Courts of Admiralty, which proceeded, without a jury, in a method much conformed to the Civil Law, but the exercise of a Criminal Jurisdiction of that nature was contrary to the genius of the Laws of England, and became very odious to the Nation, inasmuch as a man might be deprived of his life by the opinion of a single judge, without the judgment of his Peers: and besides, as innocent persons might thus fall a sacrifice to the caprice of a single man, so very gross offenders might, and frequently did, escape punishment; for the Rule of the Civil Law is, that no judgment of death can be given against offenders, without proof by two witnesses, or a confession, of the fact by themselves. This was always a great offence to the English Nation, and therefore in the time of Henry 6. it was endeavoured to apply a Remedy in Parliament, which then miscarried for want of the royal assent. Afterwards the statute 28 Hen. 8. was passed, which enacted that all Felonies and Robberies, committed on the Seas, or in any place, where the Admirals have jurisdiction, should be tried by Commissioners to be nominated by the Lord Chancellor, namely the Admiral or his Deputy, and three or four others, (among whom two common Law Judges are constantly appointed, and who in effect try all the Prisoners,) the Indictment being found by a Grand Jury, and afterwards tried by a Petit Jury, as at Common Law, and that the proceedings should be according to the Common Law. By this Court, Pirates have been ever since, and now are, tried in England, but, as it was established before the settlement of the Colonies, it was entirely confined to England, and therefore when persons charged with the crime of Piracy were brought into the Colonies, it became necessary to send them to England for trial, and I believe Kidd was the last person who was sent home for that purpose. To remedy so great an inconvenience and expence, the statute of William 3d, was passed, which after reciting the difficulty and expence of bringing persons, who had committed Piracies in remote parts, to trial in England, enacts that all Pirates, Felonies, and