

ancient judgment ran, till they answered": Chitty's Crim. Law 1, p. 426.

"This practice of the '*peine forte et dure*' is one of the most singular circumstances in the whole of the criminal law": Stephen's Hist. Cr. Law 1, 299. It was in force in England until the year 1772 when it was abolished by statute which made standing mute in cases of felony equivalent to a conviction; in 1827 it was enacted that in such cases a plea of not guilty should be entered for the person accused: *Ib.* p. 298. And this practice is to be followed under the code: s. 657.

III. PROCEDURE.

Criminal procedure had been much simplified by legislation before the code; this improvement has been continued under the code, technicalities can now seldom avail owing to the large powers of amendment given, while pleadings are short, simple and intelligible.

This removes a scandal which existed in Sir Matthew Hale's time. He writes: "That in favour of life great strictnesses have been in all times required in points of indictments, and the truth is, that it is grown to be a blemish and inconvenience in the law, and the administration thereof; more offenders escape by the over-easy ear given to exceptions in indictments, than by their own innocence, and many times gross murders, burglaries, robberies, and other heinous and crying offences, escape by these unseemly niceties to the reproach of the law, to the shame of the Government and to the encouragement of villany, and to the dishonour of God. And it were very fit, that by some law this overgrown curiosity and nicety were reformed, which is now become the disease of the law, and will, I fear, in time grow mortal without some timely remedy": Hale's P.C. II, p. 193.

And the editor of the edition published in A.D. 1800 concurs in this view, as is seen by the following significant foot note:—"This advice of our author, would, if complied with, be of excellent use, for it would not only prevent the guilty from escaping, but would likewise be a guard to innocence, for thereby would be removed the only pretence upon which counsel is denied the prisoner in cases of felony; for if no exceptions were to be allowed, but what went to the merits, there would then be no reason to deny that assistance in cases, where life is concerned, which yet is allowed in every petit trespass."