

not try the cause the same Sessions the Indictment is, as was resolved in *Bampsteds Case*, *Hill. 11. Car. 1. Cro.* where a person was indicted of Extortion, and proceeded against to conviction the same Sessions, and adjudged not good: and so was also resolved *Trin. 23 Car. 1.* upon an Indictment for words spoken of the Queen Mother: so likewise of Justices of Oyer and Terminer. But otherwise it is of Justices of Gaol-delivery; and by the case of *22 E. 4. Fitz. Coron. 44.* it appeareth, that the Justices of Peace in their Sessions cannot proceed in a cause criminal the same Sessions, especially where the party requires time to be advised.

§. 4.
Forraign
Plea.

By the Statute *22 H. 8. 14.* made perpetual by *32 H. 8.* the Trial against the party indicted shall be in the County where he is indicted for Murder or Felony, notwithstanding any Forraign Plea.

Judgment. C H A P. CLXXXVIII.

§. 1.
Woman.

A Woman convicted of taking Goods above the value of *12 d.* and under the value of *10 s.* or as Accessary to any such Offence, for which a Man might have his Clergy, shall for the first Offence be branded and marked in the Hand, upon the brawn of the left Thumb, with an hot burning Iron, with a T upon the Iron, openly in Court; and be farther punished by Whipping, Imprisoning, Stocking, or sending to the House of Correction, in such manner and for such time (not exceeding one year) as the Judge shall think fit, and then be delivered out of prison.

But if she afterwards offend, she is to have Judgment of Death, as she was to have had at Common Law.

For the Judgment in Treason and petty Treason, the Justices not meddling therewith, I refer you to the Books, and especially to Mr. Justice *Stamford*, who hath written learnedly and largely of the Pleas of the Crown, *l. 3. c. 19.* and also *Coke tit. Pleas of the Crown.*

§. 2.
Felon.

In case of Felony the Judgment is usually pronounced thus; You shall be carried back to the prison from whence you came, and from thence be had to the place of Execution, and there be hanged by the Neck until you be Dead, and the Lord have mercy upon your Soul.

§. 3.
Petit Lar-
ceny.

In cases of petit Larceny the Justices of Peace may award the party either to be whipped at the Carts tail, or at the Whipping post, as they shall judge convenient. But Whipping is grown the usual and ordinary punishment, although formerly it was uncertain, and punished by Pillory or cutting off the Ears, *Co. 4. Inst. 218.*

§. 4.
Altering
the Judg-
ment.

By many Statutes peculiar punishments are appointed for several Offences, as Pillory, Stocks, Imprisonment, binding to the Good Behaviour, Stigmatizing, &c. But in all those cases no room is left for the Justices discretion, for they ought to give Judgment, and to inflict the punishment in all the circumstances thereof as such Statutes do direct. For if the King cannot alter the intire manner of Execution, as to direct a person to be beheaded that hath Judgment to be hanged; much less can an inferiour Court alter a Judgment and Sentence directed by Act of Parliament. And therefore the course taken up in some Counties, to admit the party indicted for breach of Penal Laws, to submit with a Protestation Not Guilty; and therefore forbear to inflict the penalty imposed, and so mitigate the penalty, and is an Offence for which they are punishable: for thereby, 1. The Sentence im-