

Title

Conductor generalis:

or The office, duty and authority of justices of the peace, high-sheriffs, under-sheriffs, coroners, constables, gaolers, jury-men, and overseers of the poor. As also, the office of clerks of assize and of the peace, &c. : To which are added, several choice maxims in law, &c. / Compiled chiefly from Burn's Justice, and the several other books on those subjects.

By James Parker, Esquire, late justice of the peace in Middlesex County, in New-Jersey; ; Adapted to these United States. ; The whole alphabetically digested under the several titles; with a table directing to the ready finding out the proper matter under those titles.

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OR, THE

OFFICE, DUTY AND AUTHORITY OF JUSTICES OF THE PEACE,



HIGH-SHERIFFS, UNDER-SHERIFFS, CORONERS, CONSTABLES,
GAOLERS, JURY-MEN, AND OVERSEERS OF THE POOR.

A S A L S O

THE OFFICE OF CLERKS OF ASSIZE, AND OF THE PEACE, &c.

Compiled chiefly from BURN'S Justice, and the several other Books
on those Subjects, as far as they extend and can be adapted to
these *American Colonies*.

By JAMES PARKER, One of his Majesty's Justices of the Peace for
Middlesex County, in New-JERSEY.

*The whole Alphabetically digested under the several Titles; with a TABLE
directing to the ready finding out the proper Matter under those Titles.*

To which is added,

A Treatise on the Law of Descents in Fee-Simple: By WILLIAM
BLACKSTONE, Esq; Barrister at Law, Vinerian Professor of the
LAWS OF ENGLAND: With several choice Maxims in Law, &c.

WOODBIDGE, in NEW-JERSEY:

Printed and Sold by James Parker: Sold also by John Holt, near
the Exchange, in NEW-YORK.

M.DCC.LXIV.

A T A B L E

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ensuing Treatise.*

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[Sometimes bonds are given to the overseers of the poor, to save the township or precinct harmless in the case of a bastard child, but whether a bond ought to be made to the overseers and their successors, or to their executors or administrators, hath been questioned. Those who take upon them to direct such sureties, would do well to consider whether the overseers of the poor are such a corporation, as can purchase, sue and be sued; and whether it may not be difficult for their successors in office to maintain an action, on a bond made to their predecessors.---In these *American* colonies, the overseers of the poor are generally chosen or appointed pursuant to the laws of the several legislatures; by which laws they are positively to be ruled and guided, yet where they are silent in the matter, it would seem to me, that the justices order is more convenient for the township, than a bond to the overseers, because the carrying the order into execution, is short and easy, compared to the course of suing a bond.]

By the 21 J. c. 27. *If any woman be delivered of any issue of her body, male or female, which being born alive, should by the laws of this realm be a bastard, and she endeavour privately, either by drowning, or secret burying thereof, or any other ways, either by herself, or the procuring of others, so to conceal the death thereof, as that it may not come to light, whether it were born alive or not, but be concealed, she shall suffer death as in case of murder, except she can prove by one witness at the least, that the child was born dead.*

And it hath been adjudged, that in order to convict a woman by force of this statute, there is no need that the indictment be drawn specially, or conclude against the form of the statute: for the statute doth not make a new offence, but only make such concealment an undeniable evidence of murder. 2 *Harw.* 438.

Also, it hath been agreed, that where a woman appears to have endeavoured to conceal the death of such child within the statute, there is no need of any proof that the child was born alive, or that there were any signs of hurt upon the body, but it shall be undeniably taken that the child was born alive, and murdered by the mother. 2 *Harw.* 438.

But it hath been adjudged, that where a woman lay in a chamber by herself, and went to bed without pain, and waked in the night, and knocked for help but could get none, and was delivered of a child, and put it in a trunk, and did not discover it till the following night, yet she was not within the statute, because she knocked for help. 2 *Harw.* 438.

Also it hath been agreed, that if a woman confess herself with child beforehand, and afterwards be surprized and delivered, no body being with her, she is not within the statute, because there was no intent of concealment, and therefore in such cases it must appear by signs of hurt upon the body, or some other way, that the child was born alive. 2 *Harw.* 438.

If a woman be with child, and any gives her a potion to destroy the child within her, and she take it, and it works so strongly that it kills her, this is murder; for it was not given to cure her of a disease,

disease, but unlawfully to destroy her child within her; and therefore he that gives her a potion to this end, must take the hazard, and if he kills the mother, it is murder. 1 H. H. 429. 30.

If a woman be quick or great with child, if she take, or another give her any potion to make an **abortion**, or if a man strike her, whereby the child within her is killed, tho' it be a great crime, yet it is not murder nor manslaughter by the laws of England, because it is not yet *in rerum natura*, nor can it legally be known, whether it were killed or not: So it is, if after such child were born alive, and after died of the stroke given to the mother, this is not homicide. 1 H. H. 433.

But if a man procure a woman with child to destroy her infant when born, and the child is born, and the woman in pursuance of that procurement kill the infant; this is murder in the mother, and the procurer is accessary. 1 H. H. 433.

A bastard can have no name of reputation as soon as he is born; but after he is born, and hath gained by time a name by reputation, he may purchase by his reputed name, to him and to his heirs; tho' he can have no heirs but of his body. 1 Inst. 3. 6 Co. 65.

A bastard is *terminus a quo*; he is the first of his family, for he hath no relation of which the law takes any notice; but this must be understood as to civil purposes, for there is a relation as to moral purposes, therefore he cannot marry his own mother, or sister, or the like. 3 Salk. 66.

A woman shall not be sent to the house of correction; until after the child be born, and that it be living; for it must be such a child as may be chargeable to the township. Dalt. c. 11.

Also it seemeth, that such bastard child is not to be sent with the mother to the house of correction, but rather that the child should remain in the town where it was born (or settled with the mother) and there to be relieved by the work of the mother, or by relief from the reputed father; and yet the common opinion and practice is otherwise, *viz.* to send the child with the mother to the house of correction; and this may also seem reasonable, where the child sucketh on the mother. Dalt. c. 11.

But it seemeth much the best, to commit the mother only, and not the child, but leave it to her choice whether she will take it with her; and if she will not, then to send it to its lawful place of settlement.

Voluntary examination of a woman with child of a bastard.

New-York, **T**HE voluntary examination of A. M. of-----
King's County. **I**n the said county single woman, taken on oath,
before me----- one of his majesty's justices of the peace in and for the
said county, this----- day of-----

THE
HISTORY
OF THE
Pleas of the Crown.

By SIR MATTHEW HALE,
LORD CHIEF JUSTICE OF THE COURT OF KING'S BENCH.

PUBLISHED FROM THE ORIGINAL MANUSCRIPTS

By *SOLLOM EMLYN, of Lincoln's-Inn, Esq.*

WITH

ADDITIONAL NOTES AND REFERENCES TO MODERN CASES CONCERNING THE PLEAS OF THE CROWN.

By GEORGE WILSON, SERJEANT AT LAW.

A NEW EDITION.

AND

AN ABRIDGMENT OF THE STATUTES RELATING TO FELONIES
CONTINUED TO THE PRESENT TIME, WITH NOTES
AND REFERENCES,

By THOMAS DOGHERTY, *Esq.*
OF CLIFFORD'S-INN.

In Two Volumes.

VOL. I.



Printed by E. Rider, Little-Britain,

FOR T. PAYNE, H. L. GARDNER, W. OTRIDGE, E. AND R. BROOKE AND
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J. CUTHELL, J. WALKER, J. BAGSTER, AND R. BICKERSTAFF.

1800.

fectured and dies? whether this be not murder by the common law might be a question, but if no such intention evidently appears, tho *de facto* by his conversation another be infected, it is no felony by the common law, tho it be a great misdemeanor, and the reasons are,

1. Because it is hard to discern, whether the infection arise from the party, or from the contagion of the air, it is God's arrow, and

2. Nature prompts every man, in what condition soever, to preserve himself, which cannot be well without mutual conversation.

3. Contagious diseases, as plague, pestilential fevers, small pox, &c. are common among mankind by the visitation, and the extension of capital punishments in cases of this nature would multiply severe punishments too far, and give too great latitude and loose to severe punishments,

II. the second consideration, that is common both to murder and manslaughter, is, who shall be said a person, the killing of whom shall be said murder or manslaughter.

[433] If a woman be quick or great with child, if she takes, or another gives her any potion to make an abortion, or if a man strike her, whereby the child within her is killed, it is not murder nor manslaughter by the law of *England*, because it is not yet in *rerum natura*, tho it be a great crime, and by the judicial law of *Moses* (*g*) was punishable with death, nor can it legally be made known, whether it were killed or not, 22 *E. 3. Coron.* 263. so it is, if after such child were born alive, and baptized, and after die of the stroke given to the mother, this is not homicide.

1. *E. 3. 23. b. Coron.* 146.

But if a man procure a woman with child to destroy her infant, when born, and the child is born, and the woman in pursuance of that procurement kill the infant, this is murder in the mother, and the procurer is accessory to murder, if absent, and this, whether the child were baptized or not. 7 *Co. Rep.* 9. *Dyer* 186.

The killing of a man attaint of felony, otherwise than in execution of the sentence by a lawful officer lawfully appointed, is murder or manslaughter, as the case happens, and tho there was some doubt, whether the killing of a person outlawed of felony were homicide or no, 2 *E. 3. 6.* yet it is homicide in both cases, 27 *Affiz.*

41. *Coron.* 203.