by the peers, court martial, and trial by a judge of the High Court of Justice and a jury. The offence cannot be tried at quarter sessions. Trial by battle in cases of treason ceased in the 14th century, as far as regards appeals in the common law courts or in parliament, by the effect of several statutes passed between 1332 and 1399. Appeals of treason were finally abolished in 1819 (see Appeal). In the court of the lord high constable an award of battle occurred as lately as 1631 in the case of Lord Rea.@@1 Traitors in the reign of Edward 1V., and perhaps later, were at times tried by martial law. The issue of commissions of martial law in time of peace was declared illegal by the Petition of Right in 1628. The prerogative of the crown to try traitors by martial law in time of open rebellion still exists, and is recognized by statute. In two Acts, for instance, dealing with Ireland, 43 Geo. III. c. 117 and 3 and 4 Will. IV. c. 4, it was provided that nothing in the Acts was to take away the undoubted prerogative of the crown for the public safety to resort to the exercise of martial law against open enemies and traitors. A peer is tried before the House of Lords, or the court of the lord high steward if the trial be during the recess of parliament. Procedure in such trials is regulated by 7 and 8 Will. III. c. 3, and other Acts. The last trial of a peer for treason was that of Lord Lovat in 1746-47. Persons subject to naval or military law are triable by court martial in certain cases under the powers given by the Naval Discipline Act, 1866, and the Army Act, 1881. The trial of treason committed out of the realm is regulated by 35 Hen. VIII. c. 2, 5 and 6 Edw. VI. c. 11, and 7 Anne c. 21. Lord Macguire was tried by jury in England under 35 Hen. VIII. c. 2 for treason committed in Ireland.@@2 Procedure before and at the trial depends upon a large number of Acts, of which the most important is one passed in 1695 (7 and 8 Will. III. c. 3). It enacted that persons indicted for treason are to have a copy of the indictment delivered to them five days before trial. The court is empowered to assign counsel for the prisoner (a power extended to impeachments by 20 Geo. II. c. 30). The oath of two witnesses, or confession in open court, or refusal to plead, or per­emptory challenge of more than thirty-five jurors is necessary for conviction. The witnesses must be both to the same overt act or one to one and the other to another overt act of the same treason. If two or more treasons of divers kinds are alleged in one indict­ment, one witness to prove one treason and another to prove another are not sufficient. No person is to be indicted unless within three years after the offence, except on a charge of attempted assassination of the king. The accused is to have copies of the panel of the jury@@3 two days before trial. He is entitled to the same process to compel his witnesses to appear as is usually granted to compel the witnesses for the prosecution. No evidence is to be given of any overt act not expressly laid in the indictment. The Act expressly denied the prisoner the names of the witnesses against him. The law on this point was altered by 7 Anne c. 21, which enacted that a list of such witnesses was to be delivered to him ten days before trial. Such witnesses had previously been made examinable upon oath by 1 Anne st. 2, c. 9. By 5 and 6 Vict. c. 51 (extending the provisions of an Act of 1800) the advantages given by the Act of William III. are not to extend to a prisoner charged with treason in compassing or imagining any bodily harm tending to the death or destruction, maiming or wounding of the queen, where the overt act is an attempt to injure the person of the queen. In such a case the trial is to proceed in every respect and on the like evidence as if it were for murder. By

11 Vict. c. 12 no prosecution for a felony under the Act, in so far as it is expressed by open and advised speaking only, is to be instituted unless information be given to a justice or sheriff within six days and a warrant issued within ten days of the information, and no person is to be convicted of such an offence except on con­fession in open court or proof by two witnesses. The prisoner is not to be acquitted if the facts amount to treason. There may be accessories to felonies under this Act, which, as has been already stated, there cannot be to treason. The prosecutor and witnesses are not entitled to costs. By a later Act of the same year (11 and

12 Vict. c. 42, § 23) a person charged with treason is not to be admitted to bail except by order of a secretary of state or by the Queen’s Bench Division or a judge thereof in vacation.

The punishment of treason at common law was barbarous in the extreme.@@4 The sentence was that the offender, if a man, be drawn on a hurdle to the place of execution, that there he be hanged by the neck till he be dead, that his head be severed from his body, and that his body be divided into four quarters, the head and quarters to be at the disposal of the crown. A woman was drawn to the place of execution, and there burned alive. The Acts of 30 Geo. III. c. 48 and 54 Geo. III. c. 146 changed the sentence to

hanging in the case of women, and in the case of men enabled the crown, by warrant under the sign manual countersigned by a secretary of state, to change the sentence to beheading or remit it altogether. By the Felony Act, 1870, the punishment is hanging only, but 54 Geo. III. c. 146 appears to be still so far in force that beheading may be substituted by warrant of the crown where the criminal is a man. Attainder and forfeiture are abolished by the Felony Act, 1870, except where the offender has been outlawed.@@5 The maximum penalty for a felony under the Act of 1848 is penal servitude for life. In every pardon of treason the offence is to be particularly specified therein (see Pardon)·

Trials for treason in Great Britain and Ireland have been very numerous, and occupy a large part of the numerous volumes of the *State Trials.* Some of the more interesting may be mentioned. Before the Statute of Treasons were those of Gaveston and the Despensers in the reign of Edward II. on charges of accroaching the royal power. After the Statute were those (some before the peers by trial or impeachment, most before the ordinary criminal courts) of Empson and Dudley, Fisher, More, the earl of Surrey, the duke of Somerset, Anne Boleyn, Lady Jane Grey, Sir Thomas Wyatt, Cranmer, the queen of Scots, Sir Walter Raleigh, Strafford, Laud, Sir Henry Vane and other regicides, William, Lord Russell, Algernon Sidney, the duke of Monmouth, and those implicated in the Pilgrimage of Grace, the Gunpowder, Popish, Rye House, and other plots. Cases where the proceeding was by bill of attainder have been already mentioned. Occasionally the result of a trial was confirmed by statute. In some of these trials, as is well known, the law was considerably strained in order to insure a con­viction. Since the Revolution there have been the cases of those who took part in the risings of 1715 and 1745, Lord George Gordon in 1780, Hardy and Horne Tooke in 1794, the Cato Street con­spirators in 1820, Frost in 1840, and the Fenians in 1867. It should be noticed that many cases of proceedings for treason against foreigners occur. Treason committed by them within the realm is a breach of what has been called local allegiance, due to the sovereign of the country in which they reside. Such are the cases of Leslie, bishop of Ross, ambassador to Elizabeth from the queen of Scots, the Marquis de Guiscard in Queen Anne’s reign, and Gyllenborg, the ambassador from Sweden to George II. Pro­ceedings against ambassadors for treason have never gone beyond imprisonment, more for safe custody than as a punishment. No amount of residence abroad will suffice to exempt a native-born subject from the penalty of treason if he bear arms against the country of his birth.@@6

*Misprision* (from the old French *mespris)* of treason, in the words of Blackstone, “ consists in the bare knowledge and concealment of treason, without any degree of assent thereto, for any assent makes the party a principal traitor.” At common law even the conceal­ment was treason, but 5 and 6 Edw. VI. c. 11 and 1 and 2 Ph. and Μ. c. 10 made concealment a misprision only. The offence was dealt with by many Acts, under some of which rather remark­able crimes were made misprision; *e.g.,* 14 Eliz. c. 3 constituted the counterfeiting of foreign coinage a misprision. The procedure in trials for misprision is in general the same as that followed in trials for treason, most of the Acts regulating procedure including both crimes. The punishment is loss of the profit of the lands of the offender during life, and imprisonment for life.

*Cognate Offences.—*Under this head may be conveniently grouped certain offences against public order which, though not technically treason or treasonable offences (to use the language of the draft criminal code), are so nearly allied to them as to make it convenient to treat them under the head of treason. The most interesting of these for historical reasons is *præmunire.* The word is derived from *præmunire* or *præmoneri facias,* the introductory words of the writ of summons to the defendant to answer the charge. From this the word came to be used to denote the offences prosecuted by means of such a writ, usually of an ecclesiastical kind. The Statute of Præmunire, specially so called, is 16 Ric. II. c. 5, enact­ing that the procuring at Rome or elsewhere of any translations, bulls, &c., against the king puts the persons offending out of the king’s protection, subjects their goods to forfeiture and themselves to attachment or process of *præmunire facias.* The Act introduced no new principle, but simply continued the anti-papal policy visible in the Statutes of Provisors, the earliest of which dated from 1307. At different times many other Acts were passed, extending the penalties of præmunire to other crimes, usually those connected with the supremacy of the pope (2 Hen. IV. c. 4, mentioned under Tithes, is an example), but sometimes of a more distinctly political as distinguished from religious nature. Thus it is præmunire by 13 Car. I. c. 1 to affirm the power of parliament to legislate with­out the crown, by the Habeas Corpus Act to send a prisoner beyond seas, and to verbally assert the right of a person to the crown con-

@@@1 Shakespeare twice makes effective use of the trial by battle in treason, in *King Lear* and *Richard II.*

@@@2 4 *State Trials,* 653.

@@@3 By the Bill of Rights the jurors in trials for treason must have been free­holders. This provision of the Act was repealed by 9 Geo. IV. c. 50.

@@@4 The exceptional character of the punishment, like that of the procedure, may be paralleled from Germany. The punishment of traitors by Frederick II. by wrapping them in lead and throwing them into a furnace is alluded to by Dante, *Inferno,* xxiii. 66.

@@@5 Proceedings after the death of an alleged traitor might at one time have been taken, but only to a very limited extent as compared with what was allowed in Roman and Scots law. Sir E. Coke (4 *Rep.,* 57) states that there might have been forfeiture of the land or goods of one slain in rebellion on view of the body by the lord chief justice of England as supreme coroner.

@@@6 See Æneas Macdonald's case, 18 *State Trials,* 857.