

in the foremost rank of the patriots of that day and covered the names of some of their number with imperishable fame.*

That curious ancient privilege, viz. : benefit of clergy, of which the two soldiers (*Killroy* and *Montgomery*) convicted of manslaughter, had the advantage (p. 508) originated in a pious regard for the church by which the clergy of Catholic countries were either partially or wholly exempted from the jurisdiction of the ordinary legal tribunals. It extended in England only to the case of felony; and though it was intended to apply simply to clerical persons or clerks, yet as being able to read was, by the laws of England, considered as sufficient evidence of the clerical character, when the rudiments of learning came to be diffused, almost every man in the community became entitled to this privilege; a person entitled to the benefit of clergy was formerly handed over to the ecclesiastical tribunals for trial. But this giving rise to great abuses the secular judges ordered those who were entitled to the benefit of clergy to be detained in prison until they should be pardoned by the king. By a statute passed in the reign of Queen Elizabeth, persons convicted of felony and entitled to the benefit of clergy were to be discharged from prison, being first branded in the thumb; if laymen it was discretionary with the judge to detain them in prison, not exceeding one year. At the time of the trial of the British soldiers, manslaughter was within the benefit of clergy and the punishment was for the offender to be burnt in the hand and forfeit all his goods and chattels. It was abolished in England in the reign of George IV.

*Chandler's American Criminal Trials.