

A
General CHARGE

TO ALL

Grand Juries,

And other JURIES:

With ADVICE to those of

Life and Death, *Nisi Prius*, &c.

Collected and Publish'd

For the Ease of Justices of the Peace;
quicker Dispatch of Business; better
Information of Jurors; and common
Benefit of all Freeholders, who shall
be called to so Honourable and Neces-
sary a Service.

To which is prefix'd,

A Discourse of the Antiquity, Power,
and Duty of JURIES; With an Exhortation
to their due Performance thereof.

By Sir JAMES ASTRY.

The Second EDITION: Corrected, and much En-
larg'd, with the Laws of the Crown, Indictments,
Presentments, &c.

L O N D O N:

Printed for W. MEARS, at the *Lamb*, without *Temple Bar*.
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T H E

P R E F A C E.

TH E following Charge to grand Juries was written and delivered some Years ago by Sir James Astry, Kt. a very learned and ingenious Gentleman in the Commission of the Peace for the County of Bedford; and is so very excellent, that 'tis highly evident, if it be not the Foundation of all other Charges of this Nature, it at least hath stirr'd up other Justices to follow the Example of this Great Man, and to emulate in the discharge of their Duties at the Quarter Sessions of the Peace.

But though its Composition be so truly meriting; yet, thro' the Negligence of some, and by the Deaths

The P R E F A C E.

of others, who were the Proprietors of what is now handed to the Publick, and reviv'd from Obscurity, this General Charge hath had a Suspension from Day Light for almost twenty Years past ; such is oftentimes the Fate of the best Performances, whilst others inferior, by a contrary Management, get the upper Hand of them.

I have now corrected this Piece for further Editions, and considerably enlarged it, from our Crown-Laws, particularly in Cases of Treason, Murder, Felony, Riots, &c. And supply'd some Omissions, which at first accidentally slipp'd the Ingenious Author : Several new Heads are inserted, relating to Gaming Houses, Barwy Houses, Drunkenness, and Profaneness, to render the same equally useful to the Justices of Peace, and Juries of the great City of London, and other large Towns, as well as in the Country.

The P R E F A C E.

To make it yet further acceptable, I have added the particular Proceedings of Justices in the Quarter Sessions; Bills of Indictment for Crimes, which are to be found by the Grand Jury; and a general Presentment of many Kinds of Offences, which is not only new, but of universal Use. And I do assure my Readers, that for the Additions I have ventured to make, I am no ways indebted to the modern Charges of Mr. Bulstrode, or any others, however good in their Kind, but to our many Law Books on the Subject, and my own Industry and Application.

TO THE
FREEHOLDERS

Of the County of

B E D F O R D,

And all others in

G R E A T - B R I T A I N.

HA V I N G had the Honour to
serve my Country under three
Kings, and the Happiness to sur-
vive to that more glorious Reign of our
present Gracious Sovereign; I have of-
ten had the Opportunity to observe the
great Delays and Inconveniences that
have been occasion'd by too long and
tedious Charges, given at the General
Assizes, or Quarterly Sessions of the
Peace; and I need not remind some,
even in this County, who have severely
felt the fatal Influence thereof on their
Cause and Purfes. Mr. Babington, who
fat

*Asply con-
tra Waden-
don, Bed-
ford Ass.
Mr. J.
R-ly.*

sat at the Feet of our *English Gamaliels* forty five Years in one Circuit, is of Opinion, That even those of the learned Judges were better omitted, and that their Charges to the Grand Juries are more to inform the whole Country, and to shew their own Learning, and the Law therein, than that the Grand Jury should take them into Consideration, or make it the Duty of their Inquiry. But I must beg Leave to dissent from his Opinion in this, as well as some other Things, having been often extreamly well pleas'd, and edified with the learned and eloquent Discourses of some modern Oracles of the Law, who take Care to proportion their Rhetorick according to the Contingency of their Business. I will not presume either to find Fault with my Superiors, or inform my Equals, but write chiefly for the Use and Instruction of such honest, plain Freeholders, who will not spare Money to buy larger Books, or want Leisure to read them.

Britton 9.
Bracton l. 3.
c. 1.

That the Charge was anciently given in Writing to the Jurors, appears both by *Bracton* and *Britton*, who lived in the Time of *Hen. 3.* That the Jury might easier remember it, their Minds be refresh'd, and themselves, perhaps, better edified. The Justices in *Eyre*, that formerly were *Itinerant* over the Kingdom,
(in

(in whose Rooms our learned Judges succeed) ever gave their Charge, and whatever was inquirable by the *Grand Jurors*, in Writing. It was a Complaint, as ancient as the Reign of *Hen. 7.* That the Office of Justice of Peace was a great Burthen, in Regard they were charg'd with the Execution of so many Statute-Laws; whereas the Statutes touching Riots, Forceable Entries, Labourers and Liveries, were, as one observes, the greatest Part of their Business. But how prodigiously they have increas'd since, and yearly continue to do so, needs no other Evidence than the Statutes themselves at large. If therefore it were thought an Ease in that Infancy of Statute Laws, to reduce the Substance of them into Writing, for the Benefit of Juries; how much more necessary must it needs be, now they are grown so voluminous, for the Ease of Justices, as well as better Information of other Freeholders, who serve their Country on the *Grand* and *Petit-Jury*. But I use not these Arguments to the Gentlemen of this County, who have, for some Years past, judiciously made Use of this ancient and laudable Method. My only Design in Printing them, is to encourage Strangers to follow so good an Example; and that so publick a Good might be, at a small Charge, as publickly communi-
cated

cated to those who may hereafter be call'd to serve their Country, in that honourable and necessary Imployment.

The Way of Trial by *Juries*, was contemporary with the Foundations of the Government, and has continued ever since under all the Revolutions of Times. *Ad Quæstionem Juris respondent Judices, ad Quæstionem Facti respondent Juratores*, has always been a fundamental Maxim in our Government. That it is of *English Saxon* Descent, appears by the Laws of King *Ethelred. c. 4.* *In all Hundreds let Assemblies be held, and 12 Freemen, the most ancient, together shall swear not to condemn the Innocent, or absolve the Guilty.* But Sir H. Spelman says, *Certè ipsius Ethelredi Leges quæ prostant, Ordalium in Hundredo solummodo Indicant.* But it was rarely made Use of, till those Superstitious Trials by Ordeal, &c. were abrogated by *Hen. 3.*

Lamb. in
verb Cen-
sur.

Spel. Tit.
Jur. &
Jud. Dei.

It is the great Happiness, Freedom and Liberty of the *English* Nation, that in all Offences Criminal, each Freeman shall receive his Trial *per Pares*, by his Equals. No Person can be convicted or attainted, or have Judgment of Life, or Member upon any Criminal Accusation, but there must be two Juries pass upon him, at least 24 Persons, the one a Grand Jury, (*ex parte Regis*) to present the Offence fit for a Trial; the other a petit
or

or lesser Jury, *inter Regem & personam accusatam*, to try the Truth of that Presentment. The Grand Jury coming from all Parts of the Country, the other Jury *de ipso Vicinetto*, of the very Neighbourhood where the Offence was committed.

The first is called a *Grand Jury*, either in respect of their Number being above Twelve, (the general Certainty of all other Juries) and may be as many as the Court please, but usually exceed not Twenty-three, and unless Twelve thereof agree, they cannot give a legal Verdict; for I have read of a Judge that was hang'd for giving Judgment on the Verdict of Eleven Jury-men. But in the petit Jury, every Man of the Twelve Mir. 296. must agree before they can give a Verdict. Or else they are called *Grand* in respect of the Quality of their Persons, or Greatness of their Estates; for in ancient Time, the Jury as well in Common-Pleas, as Pleas of the Crown, were Twelve Knights. Or lastly, That *per Glanvil* *Excellentiam* they are styled *Juratores* L. 2. c. 14. Bracton p. 116. *pro Domino Rege pro corpore com'*. And as the Commons in Parliament are to the whole Kingdom, they have an unlimited Power, to present all Offences committed in their Country, that are *contra Pacem, Coronam, & Dignitatem Regis*; against either Statute or Common Law.

Law. They are the great or grand Spring, or *Primum Mobile* of the Court, that gives Motion to all the other Wheels; their Presentments being the Key that opens and shuts the Proceedings of the Court in every Offence. Therefore the Law of *England* takes Care, that Juries must consist of such Persons, that are *Probi & Legales homines*, lawfully impanel'd and return'd by the Sheriff, and neither attainted nor outlawed in any personal Action. They must likewise be sufficient *Respectu Censur*, which is, that every one must have 40 s. *per Annum*, in Freehold. It is the general Course of the World to esteem Men according to their Estates, for *Quantum quisque sua nummorum habet in Arca, Tantum habet & fidei*. And Jurors that have Estates to lose, will be afraid to commit Perjury. The Defect in Sheriffs not returning Men of better Estates and Abilities, gave Occasion to a Gentleman of great Experience to affirm, that the Jurors of *England*, especially in the Circuits, are, for the most Part, the very Scandal of the Laws practical, who seldom serve but to serve a Turn, to obey a Superiour, pleasure a Friend, or to help away (in a Hurry) a quick Dispatch of Practice; and that it is hard to get an unbiassed Jury; some serving, had more need to be reliev'd by the

Eight

Eight Pence than Discretion to sift out the Truth of the Fact. *Pudet hæc Opprobria nobis, Et dici potuisse & non potuisse refelli.* The Fault is not in the Laws of *England*, but the male Execution of them. In former Times, when Estates of Inheritance were in few Mens Hands, such as had 40 s. *per Ann.* were found sufficient to serve on Juries; and in *Hen.* the Third's Time One Shilling was as much as Forty Shillings now. After Estates of Inheritance coming in greater measure to the Vulgar, it was by the Statute of 27 *Eliz. cap. 6.* made 4 l. *per Ann.* by the 16th and 17th *Car. 2. cap. 3.* 20 l. a Year; and now by the 4th and 5th of *William and Mary*, every Juror between Party and Party, must have 10 l. *per Annum*; and I hope the Wisdom of the Parliament will extend the same to the Juries in Criminal Causes also, that such Scandalous, though just Reflections, may in great measure be obviated, and the Life of a Subject may be valued at above 40 Marks. Every Jury Man must likewise be sufficient, *Respectu Rationis*, no Ideot, Lunatick, &c.

Jurors are return'd by the Sheriff, by Virtue of a Precept to that Purpose, against which at Common Law both King and Subject had two lawful Challenges; peremptory, and upon Cause shewed. But though the Peremptory
Challenge

Challenge remaineth for the Party, yet it is abridged by the Statute of 32 Hen. 8. *cap.* 30. for whereas at Common Law he might have challenged 35, without Cause shewed, it is now reduced to 20; and if he challenge beyond that Number, it is a waving his Trial; but he may challenge as many as he please for Cause shewn, which shall be tried by two of them that were before impannelled, to be appointed by the Court.

Foreigners are to have a peculiar Way of Trial, *de Medietate Linguae*, six English and six Foreigners, if there be so many in the Place, and these may be of any Nation, but the Party must pray such Jury.

It is a good Challenge to a Juror, that he was one of the Party's Indictors, for he shall be presumed not to change his Mind.

And Challenge to the Jury (which is an Exception against them) is of Two Kinds, *viz.* to the Array, and the Polls. A Challenge to the Array is at once to except against all the Persons impannell'd: And there may be a principal Cause of Challenge to the Array, and a Challenge to the Favour. A principal Cause, in respect of Partiality or Default of the Sheriff, &c. and not in respect of the Persons returned. Partiality in the Sheriff, may be by Reason of Kindred
or

1 Inst.
155, &c.
3 H. 7.

32 Hen. 8.
cap. 30.

or Affinity to the Plaintiff or Defendant; or if one of the Jury is return'd at the Nomination of the Plaintiff or Defendant. Exception to the Favour, is where the Plaintiff or Defendant is Tenant to the Sheriff; or if the Sheriff's Son hath married the Daughter of the Party, &c. A Challenge to the Polls, is an Exception against one or more particular Jurors returned; and this in Treason or Felony may be peremptory, without shewing any Cause, in Favour of Life. If either of the Parties is of Affinity to a Juror, the Juror hath given a Verdict before in the same Cause, if after he is returned, he eats and drinks at the Charge of either Party; if the Plaintiff, &c. be his Master, or the Juror hath any Interest in the Thing demanded; if the Juror is convicted and attainted of Treason, Felony, Perjury, adjudg'd to the Pillory, be outlaw'd, &c. These are all principal Challenges.

At *Michaelmas* Sessions yearly, Constables of Hundreds, &c. are to give in Lists (within their respective Limits) to the Justices of Peace, of the Names and Places of Habitation of all Persons qualified to serve on Juries, between the Age of 21 and 70, by late Statutes.

But Aliens, Apothecaries, Butchers, Clergymen, Infants, &c. may not serve on Juries.

Justices

13 Hen. 1.
cap. 1.
3 Hen. 7.

Justices of Peace may enquire of Concealments by former Juries, and punish them by Amercement ; touching which Matter, consider,

1. The Matters which they be punish'd for the Concealment of, must be such as may be presented before the Justices.

2. The Concealments of the Inquest taken before Justices out of Sessions, or before Coroners, or in Leets, or in the Sheriffs Turn, may be enquired of before them in the Sessions.

3. Every Juror which shall enquire of such Concealments, must have 40 s. Freehold, *per Annum*.

4. Such enquiring must be of Concealments by former Juries, of Matters or Bills presented before them.

5. Such Enquiry must be made within the Year after such Concealment.

6. The Amercement must be reasonable, altho' it be directed to be by Discretion.

7. The Inquest ought to consist of as many, or more than the first Inquest did.

8. Notwithstanding any Complaint, yet the Justices may take or refuse such Inquest as they see Cause.

9. Such Amercement must be set in full Sessions.

This Discourse, and the following Charge being designed chiefly for the Use

Use and Information of the Grand Jurors, at the Assizes, or Sessions of the Peace: I think it necessary to set down their Oath *in Terminis*, and afterwards to explain the Nature and Extent thereof, in the several Branches of their Duty.

YOU shall diligently enquire, and true Presentment make, of all such Things and Matters as shall be given you in Charge, or shall come to your Knowledge, concerning this present Service. The King's Counsel, your Fellows, and your own, you shall well and truly keep secret. You shall present nothing for Malice, or evil Will you bear to any Person; neither shall you leave any Thing unpresented, for Love, Favour, Affection, Reward, or any Hopes thereof; but in all Things that shall concern this present Service, you shall present the Truth, the whole Truth, and nothing else but the Truth, according to the best of your Skill and Knowledge: So God you help.

In the first Place you see by the Oath, they are sworn to be diligent in their Enquiry, not to be slothful, or negligent, being quickned by their Oath: This Diligence is to be exercised in an Enquiry, and this Enquiry is to be made amongst themselves, in what they know of their own Knowledge, or shall

B. be

be brought unto them by the Testimony of others. As to the Matter of their Enquiry, which next follows in the Oath, *it is of all such Things and Matters as shall be given them in Charge.* These Words are general (*Things and Matters*) and certainly in the clearest Understanding, are intended, the general Heads of all Offences by them enquirable; As, all Murthers, and that comprehends all manner of unlawful Killing: All Felonies, and that comprehends all manner of Stealing; and so of other general Heads of Offences, here enquirable, as Perjuries, Forgeries, Misdemeanors, &c. Now although the learned Judge doth often in his Charge, when he speaks of Murther, declare the several Species and Differences in that Offence by Law; and so of Felony, the several Manners of Felonies, simple and compound; and so of other Offences, the Words of the Oath do no Way oblige them by reason of such a Charge, to determine (by their Presentment) every Nicety in Law, that may arise upon every Fact before them, otherwise than in that Form and Manner; the Court and the King's Council have framed and presented it to their Enquiry, where the single Fact of unlawful killing another, &c. by the Hands of such a one, is proved unto them so far, as in their Judgments it is fit Matter of
 Accusation,

Accusation, to bring the whole Matter of Fact, and all that may depend upon it, to a farther and more full Examination. Then it follows in the Oath, [*The King's Council, their Fellows, and their own, they shall keep secret.*] By the *King's Council* is to be understood any Directions the Judge shall, in Court, give unto them, in any Matter before them; as also the Evidence of Witnesses, that shall be produced to them on the King's Behalf, in any Fact, (for no other Witnesses must be heard by them) and likewise such Counsellors learned in the Law, as shall manage the Matter on the King's Behalf, (for no other Council must be heard by them against the Bill) none of this must be revealed, or discovered by the *Grand Jurors*, but faithfully kept Secret, according to their Oath, from the Party concern'd, his Friends, and all others, except the Court demand any Question from them upon their Evidence; so likewise must they *keep their fellow Jurors Counsel, and their own*; that is, they are not to discover what any one of themselves have together counselled, advised, or debated, in the Business before them, against such a Person. They are the King's great Council upon this Account; and all such great Councils, where the King is so much concerned, take an Oath of Secrecy; for otherwise,

by revealing such Counsels, a Traytor, a Murtherer, and the greatest Felon, may escape, to the endangering of the King and Kingdom ; and this Offence, in ancient Time, was holden for Treason or Felony : But the Lord *Coke* says, in his third *Institutes*, fol. 107. *Certain it is, that such Discovery is accompanied with Perjury, and a great Misprision, to be punish'd by Fine and Imprisonment. And it is well provided by the Oath, that each Juror is sworn to keep his own Counsel also ; for he that will not keep his own Secrets, will hardly keep anothers.*

So much for the Matter of the Oath, what they are to do : It follows in the Oath, with what Integrity they ought to do their Duty, *They are to present no Person for any Offence, thro' Malice they have to the Person, nor omit any meerly for any Favour they have for the Person.* This is so plain, it needs nothing but Practice ; these two seem very easy, but, indeed, are very difficult to Flesh and Blood, not to take Revenge when one hath Power to do it ; and not to shew Favour, when there is Power and Opportunity to express it.

Malice and Favour (two great Enemies to Justice) are to be excluded all Courts of Justice, as too partial ; and therefore the Oath well concludes, *That they shall present*

present the Truth, the whole Truth, and nothing but the Truth. The Truth, that is, Truth sufficient to make an Accusation against a nocent Person; The whole Truth, not concealing any Part of it wilfully, but so presenting it, that the whole Matter of Fact may come in Question to another Jury. And as there must not be in the Grand Jury Suppressio Veri, a suppressing or lessening the Truth; so there must not be Expressio Falsi, a false Accusation; and therefore it follows in the Oaths, And nothing but the Truth; that is, no known Falsity, no false Accusation against any Person must be presented, whereby to bring an innocent Person to Tryal, where there is nothing of Fact to be prov'd against him, or any probable Accusation. If these three Truths, in this Oath mentioned, are not to be understood in this legal Sense, and according to the common Practice of the legal Proceedings in these Cases; I must confess, I am to be instructed how any Grand Juror (that hears but one Side) can satisfy his Conscience, that in a plain, literal, and grammatical Sense, he can swear, that every Presentment and Indictment, that comes from the Grand Jury, contains in it the Truth, the whole Truth, and nothing but the Truth. And this is declared by the last Words of the Oath [according to the best of their

Skill and Knowledge] for this must be understood, *Skill and Knowledge* in the Law and Fact, as to the Practice and Nature of the Proceedings of the Law in such Cases; for it is rather *Discretia Legis*, than *Hominis*.

Mr. *Babington* before mentioned, who was a very ancient Man, and long experienced in Tryals of Criminal Causes, has wrote a large Treatise intituled, *Advice to Grand Juries in Cases of Blood*. Wherein he asserts and proves by Law and Reason, That it is the Duty of Grand Jurors in all Cases of Blood, touching the Death of any reasonable Creature, by Violence, or by the Hand or Act of any other reasonable Creature, where the Bill of Indictment is brought unto them for Murther, in case they find upon the Evidence any Probability, that the Person said to be kill'd in the Indictment, was slain by the Person charged to do it in the Indictment, to put *Billa vera* to that Indictment, without foreclosing the Court, by judging amongst themselves the Points of Law that may arise in that Case, as whether it be Murther, Manslaughter, at Common Law, or upon the Statute, *Se def. per Infortunium*, justifiable or otherwise; none of these Special Matters being to be found by them, who are but Inquisitors for the King, not *Triers* of the Offence,

fence ; hearing but Witnesses on one Side, and whose Presentment or Verdict is not final, but must be put to Issue betwixt the King and the Party, to be try'd by another Jury, whether there be Truth in it, or no. This Book was licensed by the Lord Keeper *North*, has been since approv'd of by all the learned Judges, and the Substance thereof, as to this Point, often given in Charge by them in their Circuits ; I shall not therefore scruple to borrow your Information from it, esteeming that Man a happy Plagiary, who can steal *Wisdom* from *Solomon*.

The Reason why a Petit Jury, or Jury of Life and Death may extenuate an Offence, and make it less than the Grand Jury is, because (hearing of both Sides) they may enquire of Circumstances which a Grand Jury cannot. Besides, as the Lord *Coke* informs us : *An Indictment is no Part of the Tryal, but an Information, or Declaration for the King ; and the Evidence of Witnesses to a Grand Jury is no Part of the Tryal : For by Law the Tryal in that is not by Witnesses, but by Verdict of 12 Men, and there is a manifest Diversity between the Evidence to a Jury, and a Tryal by a Jury. If the Indictment were Part of the Tryal, then ought he that is a Nobleman, and Lord of Parliament, to be indicted by his Peers ; but the Indictment*

against a Peer of the Realm is always found by Freeholders, and not by Peers.

It is not material in all Cases of Murther, that exprefs Malice be proved to the Jury of Life and Death, tho' they are to convict the Prifoner ; much lefs (or not at all) is it material to prove it to the Grand Jury, who are but to preſent it, not to the Jury of Life and Death in any Caſe, where the Law only implies it, for ſuch Proof is in the Judgment of the Court, and not in the Jury, which the Jury muſt ſubmit unto, and be overrul'd in ; and much lefs is this implied Malice to be proved to the Grand Jurors ; for it lies not in the Proof of Witneſſes, but in the Conſtruction of the Law ; and yet the Grand Jury muſt find thoſe Words, *ex Malitiâ præcogitata, &c.* as if they were prov'd expreſly unto them by Witneſſes, or otherwiſe the Jurors of Life and Death cannot enquire of the Offence, as Murther ; for the Definition thereof is *a wilful killing of a Man upon Malice forethought* (but this muſt be either expreſſed in Proof, or implied by Law :) And the Jury of Life and Death (in ſuch a Caſe) muſt find thoſe Words expreſly, altho' they cannot be prov'd unto them, but are only imply'd and ſupply'd by Law ; or elſe the Party accuſed can never be convicted of Murther, as might be inſtanced in ve-

ry many Cafes, of which take thefe following, not mention'd in the Charge.

One in Prifon kills his Keeper, and makes an Escape, where no Malice or falling out can be prov'd: A Stranger, or other Perfon, kills a Watchman, Conftable, or other Officer, that hath a good Warrant to ftay him, tho' perhaps there be no Caufe for his Stay, being an innocent Perfon, or another Perfon, and not the fame intended; here is no Malice, and yet this is Murther *ex Malitiâ præcogitata*, &c. One goes into the Street or Highway, and kills the firft Man he meets, altho' he never faw him before. Two Perfons are fighting a Duel together upon cool Blood, upon premeditate Malice, and a third Perfon comes to part them, and is kill'd by one of them; this is Murther *ex Malitiâ præcogitata* in him that kill'd him, (if not in both) altho' neither of them ever faw him before, and yet no Malice to this Man. One wilfully kicks or wounds a Woman great with Child, whereby the Child is wounded in her; ſhe is afterwards fafely delivered of the Child, (the Child alive) the Wound or Bruife by the Kick or Blow, appearing upon the Child mortally, whereof afterwards it dies; this is Murther *ex Malitiâ præcogitata*: And yet what Malice had this Man to the Child he never faw? Divers Perfons are
unlawfully

unlawfully hunting in a Park, one of them kills the Keeper, (after the Keeper had duly, according to his Office, admonished him to stand) all the rest of the Company tho' a Mile off in the said Park, and out of Sight, are guilty of wilful Murther of the said Keeper, and yet nothing of Malice can be expressly proved. One is shooting at a Cock or Hen, and kills another Person, this is Murther, his Act was unlawful. One finding a Gun or Pistol charged, lying upon a Table or other Place, takes it up into his Hand, draws up the Cock, (not thinking it to be charged) and in a jesting Way gives Fire at one in the Room, the Gun goes off, and kills him; this is Murther, he had nothing to do to meddle with the Gun, it was out of his Calling, and none of his, he must jest at his Peril. A drunken Man gets upon a Horse, (which a sober Man might ride quietly) and in a Fair or Market, occasions the Horse to run over another Person, and kills him, this is Murther. *A.* gives *B.* the Lie, with many other provoking Words, as Coward, Thief, &c. whereupon *B.* strikes *A.* and kills him, this is Murther, *ex Malitiâ*, &c. Words are not a sufficient Provocation for one to kill another. If one killeth another, without any Provocation (actual) of the Part
of

of him that was slain ; this is Murther, the Law implieth Malice.

If one meaning to steal a Deer in a Park, Shoots at the Deer, and by Glance of the Arrow kills a Boy that is hid in a Bush ; this is Murther, the Act being unlawful, though here was no Intent to hurt the Boy, knowing nothing of his being there.

If a Woman being quick with Child, do wilfully with a Potion, or otherwise, intend the Destruction of the Child in her Womb, the Child being born alive, dieth of the Potion, Battery, or other Cause ; this is Murther.

If one keep a Mastiff-Dog, that is used to bite People, near the Common Highway ; or Bull or Beast, that hath hurt any one (after Notice) they kill any one, that will be Murther in the Owner, although not present when the Fact was done ; and yet in this, and the other precedent Cases, here is no exprefs Malice to be proved, but what the Law construes to be so : Which can in no Sense be left to the Grand Jury to be Judges of ; but in all these Cases, and many more, must be ruled and over-ruled by the Judgment of the Court, in Point of Law.

Altho' no Malice in these Cases can be proved to the Grand or Petit Jury ; yet the Indictment must be expressly drawn,

drawn, and so found by the Grand Jury, with these Words to make it Murder, *ex Malitiâ suâ præcogitatâ, &c.*

And that this may be yet more evident, I will now, *in Terminis*, set down the Oath of the Jurors of Life and Death, by which it appears, that they only stand charg'd with the Prisoner, (as it is expressed in the Oath) and the Grand Jury only with the Accusation against him. [*You shall well and truly try, and true Deliverance make, between our Sovereign Lord the King, and the Prisoner at the Bar, (whom you shall have in Charge.) and a true Verdict give according to your Evidence: So help you God.*] Which is to be formally and legally drawn up, in the Nature of a Declaration at Law, at the King's Suit, the King being Plaintiff, and the Prisoner Defendant; which Prisoner upon his Arraignment either confesseth, and then he is convicted without hearing of any Evidence, or otherwise pleads *Not Guilty* to it, to which the King (by the Clerk of the Crown) joins Issue by *Culprit*, viz. *that he is ready to prove him Guilty*. And so the Issue being thus join'd, Evidence for the King is given against him upon Oath, to which he makes his Defence in Person, or by his Council (if any Point of Law arise to which he desires Council; and the Court approve of it,

t, the Judge being as well Council for
 the Prisoner as the King) calls his Wit-
 nesses (if he have any) who speak up-
 on their Credits, and not upon their
 Oaths, which is much for the Advan-
 tage of the Prisoner, the Law presuming
 (in Favour of Life) the Affirmative
 Proof to be so clear against the Prisoner,
 that nothing in the Negative can be
 prov'd (upon Oath) against it. And
 that is one Reason why regularly he
 cannot have Council: The other Reason
 is, the Court ought to see the Indict-
 ment, Trial, and other Proceedings good
 in Law, lest by an erroneous Judgment,
 they attain the Prisoner. But my Lord
 Coke, in another Place says, *Furato credi-*^{3 Inst. 137.}
tur in Judio; and to say the Truth, we^{fol. 29.}
never read in any Act of Parliament, anci-^{Coke 3.}
ent Author, Book, Case or Record, that in^{Inst. fol. 79.}
criminal Cases the Party accused, should not
have Witnesses sworn for him, and there-
fore there is not so much as Scintilla Juris
against it. Of which Opinion also is my
 Lord Chief Justice *Hale* in his Pleas of
 the Crown, notwithstanding the Practice
 to the contrary. After a full Trial of
 what can be said and prov'd on both
 Sides, and a convenient Time taken by
 the Jury to consider of it, they bring in
 their Verdict; either convict or acquit
 him; either find him Guilty according
 to the Indictment found by the Grand
 Jury,

Jury, by hearing of one Side, or specially, as they find the Fact, by hearing of both Sides; for they are not bound strictly to the Matter and Form of the Indictment, as the *Grand Jury* have found it; for they may by Law extenuate it to the least Degree of Offence, that can be in that kind; but they cannot aggravate it, or exceed above what the *Grand Jury* have found; for if they might do so, they would become Accusers, as well as Tryers, which would be against the Law and Liberty of the Subject: And therefore the *Grand Jurors* have the greater Reason to enlarge their Declaration or Accusation for the King, as far as the Law will heighten all Offences in Blood, since the other Jury have so much Liberty to extenuate the Crime, whatever the Accusation is.

Having spoken of *Grand* and *Petit Juries*, I shall now, according to my Title, give some Advice to others also. There is a Maxim, and an old Custom in the Law, that the Jury shall not eat nor drink after they be sworn, till they have given their Verdict, without the Assent and Licence of the Justices; and that is ordain'd by the Law, for avoiding divers Inconveniencies that might follow thereupon; and that especially if they should eat and drink at the Cost of the Partics, and therefore if they do
so,

so, it may be laid in Arrest of Judgment; but with the Assent of the Justices they may both eat and drink, as if any of the Jurors fall sick before they be agreed of their Verdict, so soon that he may not commune of the Verdict, then, by the Assent of the Justices, he may have Meat or Drink, and such other Things as be necessary for him. And if the Case so happen, that the Jury can in no wise agree in their Verdict, as if one of the Jurors knoweth, in his own Conscience, the Thing to be false, which the other Jurors affirm to be true, and so he will not agree with them in giving a false Verdict, and this appeareth to the Justices upon Examination, the Justices may, in such Case, suffer the Jury to have both Meat and Drink, for a Time, to see whether they will agree; and if they will in no wise agree, the Justices may award a new Inquest, and by setting a Fine upon them, that they shall find in Default, or otherwise as they shall think fit, like as they may do if one of the Jury die before the Verdict. If the Jury after the Evidence given unto them at the Bar, do at their own Charges eat and drink, it is fineable, but it shall not avoid the Verdict; but if before they are agreed on their Verdict, they eat or drink at the Charge of the Plaintiff, if the Verdict be given for him,

Doct. & Stud. 158.
Inst.

it

it shall avoid the Verdict; but if it be given for the Defendant, it shall not avoid it, & sic è converso. But if after they are agreed on their Verdict, they eat and drink at the Charge of him for whom they do pass, it shall not avoid the Verdict. To give the Jury Money makes their Verdict void.

Leem. 1. part 18. By the Law of *England*, a Jury after their Evidence given upon the Issue, ought to be kept together, in some convenient Place, without Meat or Drink, Fire or Candle, and without Speech with any, unless it be the Bailiff, and with him only, if they be agreed. After they are agreed, they may in Causes between Party and Party give a Verdict, and if the Court be risen, give a privy Verdict before any of the Judges of the Court, and then they may eat and drink, and the next Morning in open Court, they may either affirm, or alter their privy Verdict, and that which is given in Court shall stand. But in criminal Cases of Life or Member, the Jury can give no privy Verdict, but they must give it openly in Court.

Br. Enquest 6^o, 47, 39, &c. Neither can a Jury sworn and charg'd in the Case of Life or Member, be discharged by the Court, or any other, but they ought to give a Verdict. And the King cannot be Non-suit, for He is in Judgment of Law ever present in Court; but

But a common Person may be Non-suit.
And in civil Actions, the Justices, upon
Cause, may discharge the Jury.

After a Jury of Life and Death have
been sworn, and charg'd with the Pri-
soners arraign'd, the Judges having been
inform'd, that it was a Jury pack'd to
favour some Prisoner, have sometimes
discharg'd the Jury, and made the She-
riff return another presently.

In *Hillary Term, sexto Hen. 8. Rot.*
358, It was alledged in Arrest of the
Verdict at the *Nisi prius*, that the Jurors
had eat and drank. And upon Exami-
nation it was found, that they had first
agreed; and that returning to give their
Verdict, they saw *Rend*, Chief Justice,
in the Way, going to see a Fray, and
they follow'd him, & *in veniendo vide-
runt Ciphum, & inde biberunt*. And for
this, every one was fin'd Forty Pence,
and the Plaintiff had Judgment upon
the Verdict.

And *Dyer 218*. At the *Nisi prius*, the *Dyer 372*
Jury, after their Charge given, return'd,
and said they all agreed except one,
who had eat a Pear, and drunk a
Draught of Ale, for which he would
not agree; and at the Request of the
Plaintiff the Jury was sent back again,
and found the Issue for the Plaintiff.
And the Matter aforesaid being exa-
mined by the Oath of the Jurors *separa-*
tim,

Leon. 1.
Pt. 133.

Et, and the Bailiff who kept them, and found true, the Offender was committed, and afterwards found Surety for his Fine. In Trespass by *Mounson* against *West*, the Jury was charged, and Evidence given, and the Jurors being retir'd into a House, to consider of their Evidence, they remained there a long Time without concluding any thing, and the Officers of the Court who attended them, seeing their Delay, searched the Jurors, and found that some of them had Figs, and others Pippins, for which the next Day the Matter was mov'd to the Court, and the Jurors were examin'd upon Oath, and two of them did confess they had eaten Figs, before they had agreed on their Verdict, and three of them did confess they had Pippins, but did not eat of them, and that they did it without the Knowledge or Will of any of the Parties. And afterwards, the Court set a Fine of 5 *l.* upon each of them that had eaten, and upon the others which had not eaten, 40 *s.* But upon great Advice and Consideration had, and Conference with the rest of the Judges, the Verdict was held to be good, notwithstanding the said Misdemeanour.

In *Ejectione firme*, it was found for the Defendant, three of the Jurors had Sweet-meats in their Pockets, and those
three

three were for the Plaintiff, until they were searched, and the Sweet-meats found, and then did agree with the other Nine, and gave Verdict for the Defendant. It was the Opinion of the Justices, that whether they eat or not, they were fineable for having of the Sweet-meats with them, for that is a very great Misdemeanour.

40 *Affize, Placito 11.* The Justices *Godbolt* said, that if the Jury will not agree in³⁵³ their Verdict, the Justices may carry them in a Cart, along with them, till they are agreed.

The Plaintiff (before the Trial) deliver'd a Breviat of his Evidence to the Jury, which contain'd no more than was prov'd in Court, yet by this the Verdict was avoided.

So *Mich. 13. Eliz. C. B. Metcalf and Dean.* After the Jury were gone from the Bar, they sent for one of the Witnesses and re-examined him; who gave the very same he had before given in Court, yet the Verdict was avoided; and the Reason of both is, a Fear and Jealousy that other Matters might be given, &c.

If a Juror depart after he is sworn, he shall be fined and imprisoned; and by Assent of Parties, another Juror may be sworn. *Br. Jurors 46. Lib. 5. 40.*

Jurors, in civil Matters, are to take Care not to be corrupted, for if they be, they may be severely punish'd, by a Writ, called a *Decies tantum*, which is a Writ lying against a Juror in any Inquest, when he taketh Money, or other Reward of either Party, to give his Verdict of his Side. And this, any Man that will, may sue in the King's Name and his own; and if it be found, he is to lose Ten Times as much as he took, to be divided between the King and the Informer. And so it lieth against an Embracerer, one that doth procure another to be so perjurd: And if a Jury give a false Verdict, the Party grieved, may have a Writ of Attaint against them; of which, see more in the following Charge.

As to the Difference betwixt the Judge and the Jury, and that Question which has made such a Noise, viz. *Whether a Jury is Fineable for going against their Evidence in Court, or the Directions of the Judge.* I look upon it as absolutely determin'd since *Bushel's Case* in my Lord *Vaughan's Reports*. It doth appear there to have been resolved by all the Judges, upon a full Conference at *Serjeants Inn*, *That a Jury is not Fineable for going against their Evidence, where an Attaint lies.* And that it is evident by several Resolutions of all the Judges: *That where an Attaint*
lies,

lies, the Judge cannot fine the Jury, for going against their Evidence, or Direction of the Court, without other Misdemeanour.

And where an Attaint doth not lie, as in criminal Causes, upon Indictments, &c. my Lord *Vaughan* says these Words, *That the Court could not fine a Jury at the Common Law, where Attaint did not lie; I think to be the clearest Position that ever I consider'd, either for Authority or Reason of Law.* And one Reason for this (which can never be answer'd) is, That the Judge cannot fully know upon what Evidence the Jury give their Verdict; for they may have other Evidence than what is shown in Court. They are of the *Vicinage*, the Judge is a Stranger; they may have Evidence from their own personal Knowledge, that the Witnesses speak false, which the Judge knows not of; they may know the Witnesses to be stigmatized and infamous, which may be unknown to the Parties, or Court. And if the Jury know no more than what they heard in Court, and so the Judge know as much as they; yet they might make different Conclusions, as oftentimes two Judges do, and therefore as it would be a strange and absurd Thing to punish one Judge for differing with another in Opinion or Judgment; so it would be worse for the Jury, who are Judges of the Fact. But he that would

be better satisfied in this Point, may read that Case, and the Authorities and Reasons given by my Lord *Vaughan*, whom all Men honour as a Man of great Reason. It is shew'd in that Case, that much of the Office of Jurors, in order to their Verdict is *Ministerial*, as not withdrawing from their Fellows after they are sworn, not receiving from either Side Evidence after their Oath, not given in Court, not eating or drinking before their Verdict; or refusing to give a Verdict, and the like, wherein if they transgress they are fineable. But the Verdict it self, when given, is not an Act *Ministerial* but *Judicial*, and according to the best of their Judgment, for which they are not fineable, nor to be punish'd but by Attaint. Nor can any Man shew that a Jury was ever punish'd upon an Information, either in Law or the *Star-Chamber*, where the Charge was only, *for finding against their Evidence, or giving an untrue Verdict*, unless *Imbracery, Subornation*, or the like, were join'd.

But the *Fining and Imprisoning of Jurors for giving their Verdicts*, hath several Times been declar'd in Parliament, an illegal and arbitrary Innovation, and of dangerous Consequence to the Government; the Lives and Liberties of the People. This celebrated Tryal by Jurors,

ries, having been confirm'd by many Parliaments.

Littleton, Sect. 368. tells us, That as the Jury may find the Matter at large; that is, a *Special Verdict* (which the Court cannot refuse, if it be pertinent to the Matter put in Issue) and leave the Law to the Court; so if the Jury will, they may take upon them the Knowledge of the Law upon the Matter, and may give their Verdict generally, as is put in their Charge. As for Example, upon all *General Issues*, as *Not Guilty* pleaded in Trespass; *Nil debet*, in Debt; *Nul tort nul Disseisire*, in Assize. *Ne disturba pas in quare impedit*, tho' it be Matter of Law, whether the Defendant be a Trespasser, a Debtor, Disseisor, or Disturber, in the particular Cases in Issue, yet the Jury find not (as in a *Special Verdict*) the Fact of every Case by itself, leaving the Law to the Court, but find for the Plaintiff or Defendant upon the Issue to be tried, wherein they resolve both the Law, and the Fact complicately, and not the Fact by itself. And so upon *Not Guilty* to an Indictment of Felony, Breach of the Peace, Trespass, &c. and other Cases, where the Law and Fact are complicate and join'd, they may determine upon both: Yet I must give them my Lord *Coke's* Caution, which is, That altho' the Jury, if they

will, may take upon the Knowledge of the Law, and give a General Verdict, yet it is dangerous for them so to do; for if they mistake the Law, they run into the Danger of an Attaint. Therefore, to find the Matter specially, is the safest Way, where the Case is doubtful, To conclude, the Maxim I cited before, *Ad questionem Facti non respondent Judices, Ad questionem Legis non respondent Juratores*, literally taken is true; for if it be demanded, what is the Fact? The Judge cannot answer it: If it be ask'd, what is the Law in the Case? The Jury cannot answer it. But upon the General Issue, if the Jury be ask'd the Question, Guilty, or Not? which includes the Law, they resolve both Law and Fact, in answering *Guilty*, or *Not Guilty*. So as tho' they answer not singly to the Question, What is the Law; Yet they determine the Law in all Matters, where Issue is join'd and try'd, but where the Verdict is Special. But in such Cases, the Judge cannot of himself answer or determine one Particle of the Fact, but must leave it to the Jury, with whom let it rest and continue for ever, as the best kind of Trial in the World for finding out the Truth; and the greatest Safety of the just Prerogative of the Crown, and the just Liberties of the Subject; and he that desireth more
for

*Duncomb
T. per Pais.*

for either of them, is an Enemy to both.

Gentlemen, I have already exceeded the Bounds of a Preface, and my own Design ; but as the Extensiveness of the Subject, has been the Occasion of it, so it must be my Excuse. I must ingeniously confess, that besides Common and Statute Laws, I have borrow'd from many of the *Learned*, who are dead, that I might pay the *Ignorant*, who are living, in Sterling Law and Reason : Which the candid Gentlemen of the Long Robe, I hope, will easily pardon, since herein I follow their Example, who seldom print, or plead, without making Use of the Reports and Precedents of their Predecessors. And as for the little motly *Momus's*, who will seek for a Knot in a Bulrush, the best Way of Answering them, is, by the *eloquent Silence* of Contempt.

THE

THE
C H A R G E.

YOU are chosen, Gentlemen, out of the Body of this County, to represent every particular Member thereof, and for their Service you are summon'd to appear here this Day. The solemn Oath you have now taken, and the excellent Proclamation you have heard read, will, in great measure, instruct you in the Nature of your Duty, and ought also to be your chiefest Motive to the due Performance of it. But because you are sworn to present not only such Offences as come to your Knowledge, but such also as shall be given you in Charge, it becomes my Duty, as this Time, to give you an Account, what Crimes and Offences ought to be the Subject of your Inquisition, and are within the Jurisdiction of this Court to punish. But before I proceed to the particular Articles of my Charge, give me Leave to excite your Diligence and Attention, by laying before you the great Importance of the Duty now incumbent

cumbent on you. And this, Gentlemen, will soon appear to you, if you please to consider, that the Subject whereon it is grounded, is no less than the Continuation of our happy Government both in Church and State; the due Execution of our excellent Laws, and the Preservation of our Gracious Sovereign, on whom no small Part of our Happiness depends. These, Gentlemen, are Topics, on which it is harder not to say too much, than find Matter to enlarge upon: But let it suffice, at present, to remind you, that we have the Happiness to live under a Government so equal, and so well poiz'd, that it has all the Advantages of Liberty, beyond a Commonwealth, and all the Marks of Royal Sovereignty, without the Danger of a Tyranny: The Nature of our Government, above all others, is most exactly suited to the Situation of our Country, and the Temper of the Natives; an Island, being more proper for Commerce and Defence, than for extending its Dominions on the Continent; for what the Valour of its Inhabitants might gain, it could not so easily preserve: Therefore, neither the Arbitrary Power of one in a Monarchy, or of many in a Commonwealth, could make us greater than we are.

And

And as we are thus happy in the Constitution of our State, so are we yet more blessed in that of our Church. A Church, Gentlemen, which in its spiritual State, as we are Christians, is most conformable to the Rules of Christ, to the Apostolical Practice, and to the Primitive Institution ; in its rational State, as we are Men, its Doctrines are very agreeable to the Reason of Mankind ; its Precepts most becoming the purest and strictest Laws of Nature, Virtue and Morality ; in its political State, as we are *Englishmen*, its Interest is inseparable from the Interest of our Nation and Government ; so that I may, without Arrogance, affirm, that the only Reason why our Church is not more generally embraced and admired, is, because the Purity of its Doctrine, the Sobriety of its Devotions, the Moderation of its Discipline, and the Largeness of its Charity, are not more impartially and calmly consider'd, or more generally understood.

As for the Excellency of our Laws, Gentlemen, the daily Advantages we receive from them, gives them a Character beyond all the Rhetorick imaginable.

And to crown all our Joys, we are govern'd by a King (Gentlemen) in whom Religion and Policy, Justice and Clemency,

Clemency, Majesty and Humility, are so harmoniously temper'd with all other Virtues and Graces, that 'tis morally impossible to distinguish which is predominant.

And yet, I fear, that there are not wanting Malecontents amongst us, who surfeiting themselves on too much Happiness, would perswade the People they might yet be happier by a Change. 'Twas indeed the Policy of their old Fore-father, when himself was fallen from the Station of Glory, to seduce Mankind into the same Rebellion with him, by telling him he might yet be freer than he was, that is, more free than his Nature would allow, or God was pleas'd to make him. We have already all the Liberty that Free-born Subjects can desire to enjoy; and all that is beyond That, is but Licentiousness; for the Suppression whereof, this excellent Proclamation you have heard read, was publish'd by the express Command of our Gracious Sovereign. Now, Gentlemen, I desire you to consider it, not only as the Command of our Great Sovereign upon Earth, but (as indeed it is) the very Dictates of that Supreme Being, by *whom Kings Reign*, and Princes decree Justice. Ingratitude amongst Men, was always esteemed one of the foulest Crimes, how much more towards
that

that Supreme Giver of all good Things we enjoy, even our very Being; and what is more requir'd of us but to amend our Lives, according to His holy Word. This being so much our substantial Interest, one would think should need no other Motive to our strict Performance of it, did we but all strive to outvy each other in Virtue and Goodness, and observe that golden Rule, of *Doing as we would be done by*, we should not differ about such trivial Matters, as now we shamefully do. You may observe, Gentlemen, that the Design of this, is for the *Punishment of Wickedness and Vice, and for the Maintenance of God's true Religion and Virtue*: For when Men have obliterated the Law of God, written in their Hearts, despis'd fraternal Correption, and rejected the Gospel preached to them by the Ministers thereof: The Government has wisely provided corporal and pecuniary Punishments, and Ministers of Justice for the Execution of them; for the Punishment of the Pocket, or a sound Whipping to some, is more effectual Rhetorick, than the Preaching of Divine Vengeance from the Pulpit; for such lewd Wretches have a fordid Notion, that Preaching is only a Trade, and to the Ministers of the Gospel, Godliness is great Gain: For the Correction therefore,

fore, of such, his Majesty has directed the secular Laws to be put in Execution.

Having now, Gentlemen, the particular Articles and Division of your Charge, and the Proclamation laid before you, I hope you will consider of the solemn Oath you have taken; and if you know of any Offences against either, present them unto us: I desire also you will look back upon the Presentments of your Predecessors, and take Care to see, that through Negligence, or worse, they have not been stifled in the Prosecution; for,

— *Quid non Mortalia pectora cogis
Auri sacra fames.*

The DIVISION of the
C H A R G E
I N T O
O F F E N C E S
Against the L A W.

OFFENCES against the Law, whereof the Reverend Judges, or inferior Justices of the Peace, have Power to enquire, by their Commissions, are of two Kinds.

First, Capital Offences, for which the Offender shall lose his Life, or suffer *Ultimum Supplicium*.

Secondly, Fineable Offences, or Contempts, for which the Offender shall not Die, but shall be punished in his Body, Goods, or Lands, according to the Quality of the Offence.

Again, Capital Offences are of two Sorts, namely, *Treason* or *Felony*.

And *Treason* is likewise two-fold, *High-Treason* and *Petit-Treason*.

High

High Treasons are also of two Sorts, *Treasons at Common Law*, and *Treasons by Act of Parliament*.

All such Acts as are High Treason by the ancient Common Law of *England*, were declared, and particularly express'd in Parliament in the 25th Year of King *Edward* the 3d. And this Declaration was then made, at the special Petition of the Lords and Commons, that they might know what was High Treason, and in what Cases they should incur the Danger and Suspicion thereof; for that in the Time of the *Barons Wars*, when every Man was subject to Danger and Suspicion, and during the Minority of King *Edward the Third*, many Men were accused and condemned of High Treason, when as it was conceived, their Offences were not of so high and heinous a Nature as High Treason, by the ancient Law of the Land.

Therefore, in the Statute of the 25th of *Edw. 3.* such Acts as the Law did then adjudge High Treason, are declar'd and express'd, and do consist in these five Points ensuing.

First, to compass or imagine the Death of the King, the Queen, or the Prince their eldest Son and Heir, is Treason. 1.

And intending Death, or bodily Harm, Maiming, Wounding, or a Restraint of the King's Person, &c. The Offenders shall

shall be adjudged Traitors, by a later Stat. Also, if any one shall send to a foreign Prince to invade the Kingdom, shall assemble the People together to take the King into Custody, provide Arms to kill the King, or shall be guilty of any open Act, shewing a Design to Depose or Imprison the King, upon Proof made of Words signifying to what Intent such Acts were done; these, and such like, are a sufficient Declaration of compassing the Death of the King, and are Overt Acts to make a Man guilty of High Treason.

2. *Secondly*, To violate the King's Wife, or the King's eldest Daughter unmarried, or the Wife of the Prince the King's eldest Son and Heir, is Treason.

And violating the Queen's Person, was always High Treason by the Law, by Reason it destroy'd the Certainty of the King's Issue, and consequently rais'd Contention about the Succession. If the Wife of the King consents to the Adultery, it is Treason in her: But this extendeth not to a Queen Dowager, 3. *Rep.* 9.

3. *Thirdly*, To levy War against the King, or to adhere to the King's Enemies, within the Realm or without, is Treason.

But as in Cases of Treason there must be an Overt Act; a Conspiracy or Compassing to levy War, is no Overt Act, unless

less a War be actually levied: But if a War is actually levied, then the Conspirators are all Traitors, tho' they are not in Arms. And if two or more conspire to levy War, and one of them only raises Forces, this shall be Treason in all Persons raising Forces for any publick End or Purpose, and putting themselves in a Posture of War, by choosing Leaders, &c. and opposing Constables, or Guards, though they assemble to pull down Bawdy Houses, &c. are guilty of Treason. Sid. 358.

Fourthly, To counterfeit the King's Great Seal, Privy Seal, or Money current within the Realm, is Treason. 4.

Counterfeiting the King's Seal has been Treason from the earliest Date. But this does not extend to the affixing of the Great Seal by the Chancellor to a Patent, without Warrant, &c. for there must be an actual Counterfeiting the King's Seal; and therefore compassing to Counterfeit it, is no Treason.

Fifthly, To kill the King's Chancellor, or Treasurer, or Justices of either Bench, &c. sitting in their Places, and executing their Offices, is Treason. 5.

All these Acts are High Treason against the King's Person, and his Majesty Royal, by the Judgment of the ancient Common Law of England.

Besides these Treasons at Common Law, divers other Acts, tending to the Diminution of the Crown, and Ruin of the Commonwealth, and which were unknown, and unheard of in the Times of *Edw. 3.* have been made and adjudged Treason by sundry subsequent Acts of Parliament. And these Treasons which were unknown unto our Ancestors, for the Space of four hundred Years after the *Norman Conquest*, have been invented, and practised since the great Change made in the State Ecclesiastical by King *Hen. 8.* For the Pope's usurped Authority, being abolish'd, and the King's Supremacy in Causes Ecclesiastical, established by Act of Parliament in the twenty eighth Year of King *Hen. 8.* Which was a Year of Jubile to the Subjects of *England*, for that they were manumitted and set free, from the base Slavery of the Court of *Rome*, whereunto they had been Subjects for divers Ages before : Yet some there were that would not be free, but desired to continue Slaves to the Pope still, and therefore deserved to have their Ears bor'd and nailed to the Gates of *Rome*, as a Mark of perpetual Servitude. But because it yet lay in the Power of Subjects to renounce their Allegiance ; the Wisdom of the Parliament did then set down an Oath, to be administred to all
the