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CRIMINAL PROCESS:

OR,

A VIEW OF THE WHOLE PROCEEDINGS TAKEN

IN

CRIMINAL PROSECUTIONS,

FROM

ARREST TO JUDGMENT AND EXECUTION:

INTENDED AS AN INTRODUCTION TO

THE STUDY AND PRACTICE OF CROWN LAW.

BY HENRY R. DEARSLY, ESQ.,

OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW.

PHILADELPHIA:
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1854.
KITE
WALTON.
TO RICHARD BETHELL, ESQ.,

FOR MANY YEARS MEMBER OF PARLIAMENT FOR THE EASTERN DIVISION OF YORKSHIRE,
AND UPWARDS OF FORTY YEARS CHAIRMAN OF THE EAST RIDING QUARTER
SESSIONS, THIS LITTLE BOOK ON CRIMINAL LAW IS
RESPECTFULLY DEDICATED BY

THE AUTHOR.
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CRIMINAL LAW.

CHAPTER I.

OF CRIMES AND THEIR DIVISION.

The design of the present work is to present the reader with the various steps which are taken in a criminal prosecution. And it may be as well, at the outset, to say something of crimes in general. All crimes, according to the law of England, are divided into treasons, felonies, and misdemeanors. The offence of treason, at common law, was somewhat indeterminate. The statute 25 Edw. III., c. 2, confirmed by subsequent statutes, determined what offences only for the future should be considered treason. Under this statute, the offence consists of six branches:—

1. When a man doth compass or imagine the death of our lord the king, of our lady his queen, or of their eldest son and heir.

2. If a man do violate the king's companion, or the king's eldest daughter unmarried.

3. If a man do levy war against our lord the king in his realm.

4. If a man be adherent to the king's enemies in his realm, giving to them aid and comfort in the realm or elsewhere.

5. If a man counterfeits the king's great or privy seal.

6. If a man slay the chancellor, treasurer, or the king's justices of the one bench or the other, justices in eyre, or justices of assize, and all other justices assigned to hear and determine, being in their places doing their offices.

FELONY, in the general acceptation of our English law, comprises every species of crime which occasioned at common law, the forfeiture of lands and goods. Sir Edward Coke says, that treason was anciently comprised under the name of felony: and in the statute 25 Edw. III., c. 2, speaking of some crimes, we find the following words:—"Whether they be treason or other felony." All treasons are therefore felonies though all felonies are not treasons. Learned but fanciful writers have given many derivations of the word felony. I think Sir Henry Spellman's is the most probable one. Felon, according to him, is derived from two northern words, namely, *fie*, which signifies *fief*; and *lon,*
which signifies price or value. Felony is, therefore, the same as "pretium feudii"—the consideration for which a man gives up his fief. These derivations are more amusing than instructive.

MISDEMEANOR is a term generally used in contradistinction to felony, and comprehends all indictable offences which do not amount to felony, as perjury, battery, libels, conspiracies, &c.

[ *3 ]

*CHAPTER II.

THE PROSECUTOR.

The first question to be considered upon the commission of an offence is, by whom is the offender to be brought to justice. Though every man is entitled to prefer an accusation against any one suspected of crime, criminal prosecutions for the most part are instituted in the name of the crown; and persons entitled to prefer accusations are bound by the strongest obligations both of law and reason, to do so; and those obligations are, in many cases, enforced by the law itself. Thus, in cases of treason and felony, a person knowingly concealing the crime is guilty of what is called a misprision of the crime. In the case of treason, he may be punished by the forfeiture of his goods, the loss of all profits of his lands during life, and imprisonment of his person for life. If a public officer conceal a felony, he is punishable by fine and imprisonment for a year and a day; and any person other than an officer, for the same offence, is punishable by fine and imprisonment in the discretion of the judges. Even in cases of misdemeanour, if the crime be of a public character, it is illegal to receive a consideration for suppressing a prosecution; and in a recent case in the Queen's Bench, it is questionable whether an arrangement for a compromise can be made even with the consent of the court. Magistrates have power, in order to compel persons to perform the duty imposed on them by law to prosecute, to bind them over to prosecute and give evidence, and, upon refusal, to commit them to prison. The law also holds out many inducements to persons to prosecute, and throws around a prosecutor every fair and reasonable protection, insomuch that he cannot even be sued for wrongly indicting a person, unless he has been actuated by malice, and the proceedings were destitute of any reasonable foundation.

[ *4 ]

CHAPTER III.

THE ARREST OF CRIMINALS.

We shall now shortly consider the law relative to arrest on a criminal charge before indictment. In every case of treason, felony, or
actual breach of the peace, a person may be arrested on suspicion before any indictment is preferred against him. Formerly, grave doubts existed as to whether a person could be arrested before a bill was found. The difficulty seems to have arisen from the wording of Magna Charta, which enacts that, "No one shall be taken or imprisoned but by the lawful judgment of his peers, or by the law of the land." An early exception was taken to the case of where a thief was taken in the manour—that is, with the stolen goods actually in his possession. Even in the case of misdemeanors, there are certain acts of parliament which authorise a justice to issue his warrant, as in the case of keeping a disorderly house. In every case of treason and felony, and actual breach of the peace, the offender may be apprehended without warrant, if such a crime has actually been committed by some one. The arrest may take place in the night as well as day, and on Sundays, as on other days,—the statute of 29 Charles II., s. 6, making an exception in treasons, felonies, and breaches of the peace. It may also be made in any place, so that even a clergyman, upon a criminal charge, whilst in the performance of divine service, may be arrested. Any private person present when a felony is committed, is enjoined by law to arrest the offender. He is also bound to assist an officer requiring his aid in the apprehension of a felon. If a felony has been actually committed, a private person may direct an officer to arrest the person he supposes to be guilty. If the offence be committed in the presence of another, he may justify breaking open doors in pursuit of the felon; but no private person can justify breaking open doors in apprehending another upon the mere suspicion of the commission of a felony. Constables, virtue offici, without warrant, for treason, felony, breach of the peace, and certain misdemeanors less than felony, may arrest another. A constable may also arrest one upon the bare information of others, without any positive knowledge of the circumstances upon which the suspicion is grounded. A constable may also break open doors to take a felon who may be in his own house, provided that he has given notice that he is a constable, and has been refused admission. Justices of the peace may arrest on the commission of a felony, or a breach of the peace in their presence, or by issuing a warrant on the evidence and complaint of another. Sheriffs are enjoined to arrest felons, and all persons are required to assist them. A coroner, as a conservator of the peace, in relation to all felonies, may arrest, or cause another to arrest, a felon. The secretary of state may also issue his warrant to apprehend persons suspected of state offences. He may also commit without oath. A warrant may be granted, in extraordinary cases, by the privy council, or secretaries of state, by the speaker of the House of Commons or Lords, by justices of gaol delivery, oyer and terminer, justices at sessions, or by a judge of the Court of Queen's Bench. By 11 & 12 Vict. c. 42, commonly called Jervis' Acts, it is enacted, by s. 1, that in all cases where a charge or complaint shall be made before any one or more of her Majesty's justices of the peace, that any person has committed, or is suspected to have committed, any treason, felony, or indictable misdemeanor, or other indictable offence whatsoever within the limits of the
jurisdiction of such justice or justices of the peace; or that any person guilty, or suspected to be guilty, of having committed any such crime or offence elsewhere out of the jurisdiction of such justice or justices, is residing, or being, or is suspected *to reside, or be within the limits of the jurisdiction of such justice or justices, then and in every such case, if the person so charged or complained against shall not then be in custody, it shall be lawful for such justice or justices of the peace to issue his or their warrant to apprehend such person. In some cases the party may be first summoned, and if the summons be not obeyed, a warrant may issue. The following are the forms, of such summons, &c.:

Information and Complaint for an indictable Offence.

To the constable of —, and to all other peace officers in the said [county] of —.

Whereas A. B. of —, [labourer], hath this day been charged upon oath before the undersigned, [one] of her Majesty's justices of the peace in and for the said [county] of —, for that he on — at —, did [&c. stating shortly the offence]: These are therefore to command you, in her Majesty's name, forthwith to apprehend the said A. B. and to bring him before [me], or some other of her Majesty's justices of the peace in and for the said [county], to answer unto the said charge, and to be further dealt with according to law.

Given under my hand and seal, this — day of —, in the year of our Lord —, at —, in the [county] aforesaid. J. S. (l. s.)

*Summons to a Person charged with an indictable Offence.

To A. B. of —, [labourer].

Whereas you have this day been charged before the undersigned, [one] of her Majesty's justices of the peace in and for the said [county] of —, for that you, on — at —, [&c. stating shortly the offence]: These are therefore to command you, in her Majesty's name, to be and appear before me on — at — o'clock in the forenoon at —, or before such other justice or justices of the peace for the same [county] as may then be there, to answer to the said charge, and to be further dealt with according to law. Herein fail not.

Given under my hand and seal, this — day of —, in the year of our Lord —, at —, in the county aforesaid. J. S. (l. s.)
Warrant where the Summons is disobeyed.

To the constable of ———, and to all other peace officers in the said [county] of ———.

Whereas on the ——— last past A. B. of ———, [labourer,] was charged before the undersigned, [one] of her Majesty's justices of the peace in and for the said [county] of ———, for that [etc. as in the summons]: And whereas [I] then issued [my] summons to the said A. B. commanding him, in her Majesty's name, to be and appear before [me] on ——— at ——— o'clock in the forenoon at ———, or before such other justice or justices of the peace for the same [county] as might then be there, to answer to the said charge, and to be further dealt with according to law: And whereas the said A. B. hath neglected to be or appear at the time and place appointed in and by the said summons, although it hath now been proved to me upon oath that the said summons was duly served upon the said A. B.: These are therefore to command you, in her Majesty's name, forthwith to apprehend the said A. B., and to bring him before me, or some other of her Majesty's justices of the peace in and for the said [county], to answer to the said charge, and to be further dealt with according to law.

Given under my hand and seal, this ——— day of ———, in the year of our Lord ———, at ———, in the [county] aforesaid. J. S. (l. s.)

*When the officer has made his arrest, according to the import of the warrant, he is, as soon as possible, to bring the offender to [9] the gaol, or before the justice. If a prisoner after arrest has escaped, the officer may follow him and retake him, wherever he find him, in the same or a different county. A rescue is a forcible setting at liberty against law of one arrested. The mere prevention of the arrest of one who has committed a felony is only a misdemeanor. But if an offender be taken and rescued, then, if the arrest were for felony, the rescuer is a felon; if for treason, a traitor.

By 22 Geo. III., c. 58, s. 2, it is made lawful for any one justice of the peace, upon complaint made before him upon oath that there is reason to suspect that stolen goods are knowingly concealed in any dwelling-house or other place, by warrant under his hand and seal, to cause every such place to be searched in the day time.

CHAPTER IV.

OF THE EXAMINATIONS.

Within a reasonable time after the arrest of an offender, it is the duty of the officer to bring the accused before the magistrate to be examined; and after investigation, to be committed, bailed, or discharged, as the magistrate may think right. The examinations of the prisoner and the
witnesses were principally regulated by statutes 1 & 2 P. & M. 
*c. 13, s. 4, and 2 & 3 P. & M. c. 10. The recent statute of 11
& 12 Vict. c. 42, has made some very valuable alterations. By the
former of those statutes, the magistrates have authority to bring before
them every person who may be a material witness for the prosecution; 
and, for this purpose, may issue his warrant for such person's attendance.
All the witnesses must be examined upon oath. The usual form of such
oath is, "You shall true answers make to such questions as shall be
demanded of you, so help you God." The examinations must be taken
in writing. By s. 17 of 11 & 12 Vict. it is enacted, that the magistrate,
before he commits an offender, or admits him to bail, shall take the state-
ment on oath, or affirmation, of those who know the facts and circumstance-
stances of the case. The same are to be reduced to writing, to be read
over and signed respectively by the witnesses. These examinations are
to be taken in the presence of the accused person, who is at liberty to
ask any questions produced against him. The following is the form of
a witness's deposition:—

Depositions of Witnesses.

The examination of C. D. of — [farmer] and E. F. of
to wit. — [labourer], taken on [oath] this — day of —, in the
year of our Lord —, at —, in the [county] aforesaid, before the
undersigned, [one] of her Majesty's justices of the peace for the said
[county], in the presence and hearing of A. B., who is charged this day
before [me], for that he the said A. B. on —, at — [&c. describing
the offence as in a warrant of commitment].

This deponent C. D. on his [oath] saith as follows [&c., stating the
deposition of the witness as nearly as possible in the *words he uses.
[ *11 ] When his deposition is complete, let him sign it.]

And this deponent E. F., upon his oath, saith as follows [&c.]

After the examinations of all the witnesses, on the part of the prose-
cution, are completed, the magistrate is bound to read, or cause to be
read, over the depositions of the witnesses, and to say to him these words,
or words to the like effect: "Having heard the evidence, do you wish
to say anything in answer to the charge. You are not obliged to say
any thing unless you desire to do so; but whatever you say will be taken
down in writing, and may be given in evidence against you upon your
trial." If the prisoner say any thing, the magistrate must take it down
in writing, read it over to him, and then sign it. This statement is kept
with the depositions. The magistrate, before the prisoner makes any
such statement, must further give him clearly to understand that he has
nothing to hope from any promise of favour, and nothing to fear from
any threat which may have been held out to him, to induce him to make
any admission or confession of his guilt. The following is the form of
the statement of the accused:—
The Statement of the Accused.

——: A. B. stands charged before the undersigned, [one] of her Majesty's justices of the peace, in and for the [county] aforesaid, this —— day of —— in the year of our Lord —— for that he the said A. B. on ——, at ——, [&c., as in the caption of the depositions]; and the said charge being read to the said A. B., and the witnesses for the prosecution, C. D. and E. F., being severally *examined in his presence, the said A. B. is now addressed by me as follows: "Hay- ing heard the evidence, do you wish to say anything in answer to the charge? you are not obliged to say any thing, unless you desire to do so; but whatever you say will be taken down in writing, and may be given in evidence against you upon your trial;" whereupon the said A. B. saith as follows:

[Here state whatever the prisoner may say, and in his very words, as near as possible. Get him to sign it if he will.]

A. B.

Taken before me at —— the day and year first above mentioned.

J. S.

The place where the examinations are taken is not an open court, as the justice may, if he think fit, order that no person shall have access to it. After the examinations, the magistrate binds over, by recognizance, the prosecutor and witnesses to appear at the next court where the accused is to be tried, then and there to prosecute and to give evidence. If any witness refuse to enter into recognizance, the magistrate may commit him to prison. The following are the forms:—

Recognizance to prosecute or give evidence.

——: Be it remembered, that on the —— day of —— in the year of our Lord —— C. D. of —— in the township of —— in the said county, farmer, [or C. D. of No. 2, —— street, in the parish of ——, in the borough of ——, surgeon of which said house he is tenant,] personally came before me, one of her Majesty's justices of the peace for the said county, and acknowledged himself to owe to our sovereign lady the queen the sum of ——, of good and lawful money of Great Britain, to be made and levied of his goods and chattels, lands and tenements, to the use of our said lady the queen, her heirs and successors, if he the said C. D. shall fail in the conditions indorsed.

Taken and acknowledged, the day and year first above mentioned, at ——, before me.

J. S.

*Notice of the said Recognizance to be given to the Prosecutor [*13 ] and his Witnesses.

Take notice, that you, C. D., of ——, are bound in the sum to wit. of —— to appear at the next court of [general quarter sessions
of the peace] in and for the county of ——, to be helden at ——, in the said county, and then and there [prosecute and] give evidence against A. B.; and unless you then appear there, and [prosecute and] give evidence accordingly, the recognizance entered into by you will be forthwith levied on you.

Dated this —— day of ——, 185—.

J. S.

Commitment of Witness for refusing to enter into the Recognizance.

To the constable of —— and to the keeper of the [house of correction] at ——, in the said [county] of ——.

Whereas A. B. was lately charged before the undersigned, [one] of her Majesty’s justices of the peace in and for the said [county] of ——, for that [&c., as in the summons to the witness], and it having been made to appear to [me] upon oath that E. F., of ——, was likely to give material evidence for the prosecution, [I] duly issued [my summons to the said E. F., requiring him to be and appear] before [me] on ——, at ——, or before such other justice or justices of the peace as should then be there, to testify what he should know concerning the said charge so made against the said A. B. as aforesaid; and the said E. F. now appearing before [me] or being brought before [me] by virtue of a warrant in that behalf, to testify as aforesaid, hath been now examined by [me] touching the premises, but being by [me] required to enter into a recognizance conditioned to give evidence against the said A. B. hath now refused so to do: these are therefore to command you the said constable to take the said E. F. and him safely to convey to the [house of correction] at ——, in the [county] aforesaid, and there deliver him to the said keeper thereof, together with this precept; and I do hereby command you the said keeper of the said [house of correction] to receive the said E. F. into your custody in the said [house of correction], there to imprison and safely keep him *until after the trial of the said A. B. for the offence aforesaid, unless in the meantime such E. F. shall duly enter into such recognizance as aforesaid in the sum of —— pounds, before some one justice of the peace for the said [county], conditioned in the usual form to appear at the next court of [oyer and terminer, or general gaol delivery, or general quarter sessions of the peace], to be holden in and for the [county] of ——, and there to give evidence before the grand jury upon any bill of indictment which may then and there be preferred against the said A. B. for the offence aforesaid, and to give evidence upon the trial of the said A. B. for the said offence, if a true bill should be found against him for the same.

Given under my hand and seal this —— day of ——, in the year of our Lord ——, at ——, in the [county] aforesaid.

Subsequent Order to discharge Witness.

To the keeper of the [house of correction] at ——, in the [county] of ——.

Whereas by [my] order dated the —— day of —— [instant], recit-
ing that A. B. was lately before then charged before [me] for a certain
offence therein mentioned, and that E. F. having appeared before me,
and being examined as a witness for the prosecution in that behalf, re-
fused to enter into a recognizance to give evidence against the said A.
B., and I therefore thereby committed the said E. F. to your custody,
and required you safely to keep him until after the trial of the said A.
B. for the offence aforesaid, unless in the meantime he should enter into
such recognizance as aforesaid: And whereas for want of sufficient evi-
dence against the said A. B., the said A. B. has not been committed or
holden to bail for the said offence, but on the contrary thereof has been
since discharged, and it is therefore not necessary that the said E. F.
should be detained longer in your custody: these are therefore to order
and direct you the said keeper to discharge the said E. F. out of your
custody as to the said commitment, and suffer him to go at large.

Given under [my] hand and seal, this —— day of ——, in the year
of our Lord ——, at ——, in the [county] aforesaid. J. S. (L. O.)

*The recognizances, depositions, &c., are then to be transmit-
ted to the court in which the prisoner is to be tried. The magis-
trate has the power of remanding the accused for any reasonable time
not exceeding eight clear days to the common gaol, house of correction,
prison, or other place of security. In all cases of felony, and in certain
misdemeanors, the magistrates may take bail at the time of examination;
and in all cases where a person charged with an indictable offence is com-
mitted to prison to take his trial for the same, it is lawful at any time
afterwards, and before the first day of the session at which he is to be
tried, for the magistrate who signed the warrant for his commitment to
admit him to bail. The following is the form of the recognizance of
bail:—

**Recognizance of Bail.**

Be it remembered, that on the —— day of ——, in the year of our
Lord ——, A. B., of ——, labourer, L. M., of ——, grocer, and N. O.,
of ——, butcher, personally came before [us] the undersigned, two of
her Majesty's justices of the peace for the said [county], and severally
acknowledged themselves to owe to our lady the queen the several sums
following: (that is to say), the said A. B. the sum of ——, and the said
L. M. and N. O. the sum of ——, each, of good and lawful money of
Great Britain, to be made and levied of their several goods and chattels,
lands and tenements, respectively, to the use of our said lady the queen,
her heirs and successors, if he the said A. B. fail in the condition in-
dorsed.

Taken and acknowledged, the day and year first above mentioned, at
—— before us,
J. S.
J. N.

**Condition in ordinary Cases.**

The condition of the within written recognizance is such, that whereas
The said A. B. was this day charged before [us], the justices within mentioned, for that [&c., as in the warrant]; if therefore the said A. B. will appear at the next court of oyer and terminer and general gaol delivery [or court of general quarter sessions of the peace] to be holden in and for the county of ——, and there surrender himself into the custody of the keeper of the [common gaol] there, and plead to such indictment as may be found against him by the grand jury, for or in respect of the charge aforesaid, and take his trial upon the same, and not depart the said court without leave,—then the said recognizance to be void, or else to stand in full force and virtue.

Condition where the Defendant is entitled to a Traverse.

The condition of the within written recognizance is such, that whereas the said A. B. was this day charged before [me], the justice within mentioned, for that [&c., as in the warrant or summons]; if therefore the said A. B. will appear at the next court of general quarter sessions of the peace [or court of oyer and terminer and general gaol delivery] to be holden in and for the county of ——, and there plead to such indictment as may be found against him by the grand jury, for or in respect of the charge aforesaid, and shall afterwards at the then next court of general quarter sessions of the peace [or court of oyer and terminer and general gaol delivery] surrender himself into the custody of the keeper of the [house of correction] there, and take his trial upon the said indictment, and not depart the said court without leave,—then the said recognizance to be void, or else to stand in full force and virtue.

A warrant of deliverance on bail is given for a prisoner after commitment, signed by the magistrate, and which is an authority to the gaoler to discharge the prisoner. The following is the form of the warrant.

Warrant of Deliverance, on Bail being given for a Prisoner already committed.

To the keeper of the [house of correction] at ——, in the said [county] of ——.

*Whereas A. B., late of ——, labourer, hath before [us two] *17] of her Majesty's justices of the peace in and for the said county, entered into his own recognizance, and found sufficient sureties for his appearance at the next court of oyer and terminer and general gaol delivery [or court of general quarter sessions of the peace] to be holden in and for the county of ——, to answer our sovereign lady the queen, for that [&c., as in the commitment], for which he was taken and committed to your said [house of correction]: these are therefore to command you, in her said Majesty's name, that if the said A. B. do remain in your custody in the said [house of correction] for the said cause, and for no other, you shall forthwith suffer him to go at large.

Given under our hands and seals, this —— day of ——, in the year of our Lord ——, at ——, in the [county] aforesaid. J. S. (L. s.) J. N. (L. s.)
When the whole of the evidence on the part of the prosecution has been heard, the magistrate either discharges or commits the prisoner to gaol. The following is the form of the warrant of commitment:

Warrant of Commitment.

To the constable of —— and to the keeper of the [house of correction] at ——, in the said [county] of ——.

Whereas A. B. was this day charged before me, J. S., one of her Majesty's justices of the peace in and for the said [county] of ——, on the oath of C. D., of ——, farmer, and others, for that [dec., stating shortly the offence]: these are therefore to command you, the said constable of ——, to take the said A. B., and him safely to convey to the [house of correction] at —— aforesaid, and there to deliver him to the keeper thereof, together with this precept; and I do hereby command you, the said keeper of the said [house of correction] to receive the said A. B. into your custody in the said [house of correction], and there safely keep him until he shall be thence delivered by due course of law.

Given under my hand and seal, this —— day of ——, in the year of our Lord ——, at ——, in the [county] aforesaid. 

J. S. (l. s.)

*CHAPTER V.  [ *18 ]

HABEAS CORPUS.

Whenever a person is restrained of his liberty, whether in prison or by a private person, and whether for a criminal or civil cause, he may, by habeas corpus, have his body, and the proceedings under which he is detained, removed to some superior jurisdiction having authority to examine the legality of the commitment, and on the return to the writ, he will be discharged, bailed, or remanded. There are three descriptions of writs of habeas corpus, namely, the habeas corpus ad subjiciendum, the habeas corpus ad deliverandum et recipiendum, and the habeas corpus cum causa. The principal habeas corpus act, 31 Cha. II. c. 2, was passed owing to the delays which arose from sheriffs and other officers having persons in custody, and neglecting to make returns to writs of habeas corpus. The writ is obtained by motion to the court in term, and by application to a judge in vacation. It must be signed by the judge by whom it is granted. The party to whom the writ is directed is bound to return the body within three days if twenty miles, ten days if within a hundred miles, and twenty days for any greater distance. The depositions, in obedience to a certiorari issued from the crown office with the habeas corpus, are returned by the magistrate *who committed, for the information of the court. Upon the writ being returned, the counsel for the prisoner may move to file the return, and that the prisoner be called into court and the return read; after which the counsel
proceeds to argue the illegality of the commitment. The judges, after argument, either discharge, bail, or remand the prisoner. The writ of habeas corpus ad deliberandum et recipiendum lies to remove a prisoner to take his trial in the county where the offence was committed; the writ of habeas corpus cum causa is issued by the bail of a prisoner on a criminal charge, in order to render him in their own discharge; upon the return an exoneretur is entered on the bail-bond.

CHAPTER VI.

OF THE COURTS OF CRIMINAL JURISDICTION.

The Court of Queen's Bench is the highest court in criminal cases within the realm. Its jurisdiction extends from high treason down to a breach of the peace; and this court may proceed on indictment for any offences removed by certiorari from inferior courts.

The commission of General Gaol Delivery is one directed to the judges themselves, the serjeants, queen's counsel, and the clerk of assize and associate. The commission is the same on each circuit. It commands them, four, three, or two of them, of which number there must [*20] be at least one of the *judges and serjeants specified, and authorises them to deliver the gaol at a particular town and the prisoners in it. They are commanded to meet at a particular time and place, and the commission informs them that the sheriff is commanded to bring all prisoners before them. Every description of office is cognizable under this commission.

The commission of Oyer and Terminer is one to inquire, hear, and determine into the truth of all treasons, felonies, and misdemeanors therein specifically mentioned. The courts held in every county on the circuits, called the assizes, are held before the queen's commissioners, among whom are usually two of the judges. The six circuits of England date back as far as the year 1176. The judges of assize now sit by virtue of five commissions—namely, the Commission of the Peace, the Commission of Oyer and Terminer, the Commission of General Gaol Delivery, the Commission of Assize, and the Commission of Nisi Prius.

There are also the courts of sessions. These sessions are of four kinds—namely, Petty, Special, General, and Quarter Sessions. The General Quarter Sessions of the Peace is a court of record holden before two or more justices, one of whom must be of the quorum. This court, by statute 2 Henry V. c. 4, must be hold four times every year, in every English county, and oftener if occasion require. This court, as far as respects its jurisdiction to hear and determine indictments, appears to owe its origin to the statutes 18 Edward III. c. 2, and 34 Edward III. c. 1.
**CHAPTER VII.**

**PRINCIPALS AND ACCESSORIES.**

Definition of Offences.

Before we treat of indictments, it may be well to say something of those persons against whom an indictment lies, and then to give shortly a definition of the chief offences which are the subjects of indictments. An indictment lies against those who commit, procure, or assist in the commission of crimes, as well as against those who harbour offenders. All persons, save those exempted by the law itself, are liable to the penalties for disobedience of the law. The following are the exemptions:

*Infants.*—Within the age of seven years no infant can be guilty of felony. Between the ages of seven and fourteen an infant is deemed prima facie to be doli incapax; but this presumption may be rebutted by evidence of a mischievous discretion: indeed, it is said that an infant aged eight years may be indicted for murder, and hanged. There are instances on record of a child between eight and nine years being executed for arson, and a girl of thirteen years being executed for killing her mistress.

*Insane people* are not criminally responsible for their acts. Insanity may be divided into three kinds:

1. **Dementia naturalis, idiocy or natural fatuity.** According to Lord Coke, an idiot is one who is of non-sane memory from his birth, by a perpetual infirmity, without lucid intervals.

2. **Adventitious insanity, or dementia accidentalis,** which is either partial or total insanity.

3. **Dementia aequalis, or acquired madness.** If the primary cause of the phrenzy be involuntary, this species of insanity will excuse the offender equally with the former species of this malady.

If a person be subjected to the power of another, he is not responsible for his acts. Thus, if A. by force take the hand of B. in which is a weapon, and therewith kill C., A. is guilty of murder, but B. is excused. No threats, duress of imprisonment, or even an assault to the peril of his life, in order to compel another to kill C., is a legal excuse. In general, if a felony be committed by a wife in the presence of her husband, she is presumed to have acted under his coercion, and is excused from punishment. This presumption may, however, be rebutted by showing that the wife voluntarily took an active part in the commission of the offence.

A principal is either the actual perpetrator of the crime, or a person present, aiding and abetting. In some cases, a man may be a principal without being present, as where poison is laid by a person not present when it is taken; and, generally, whenever murder is committed in the absence of the murderer, or of any other guilty party, by means pre-
pared beforehand. A principal in the first degree is the actual perpetrator; a principal in the second degree is a person present, aiding and abetting. The presence must be sufficiently near to give assistance. An accessory is a person not present, but concerned in some manner with the felony, either before or after its commission. **Accessories before the fact** are persons absent at the time of the felony committed, who do yet procure, counsel, command, or abet another to commit a felony. **Accessories after the fact** are persons who, knowing a felony to have been committed by another, receive, relieve, comfort, or assist the felon, whether such felon be principal or accessory before the fact.

We shall now give a short definition of the principal offences known to the English law.

**Arson.**—This offence consists in the wilful burning of the house or outhouse of another man.

**Bigamy** is, when a person being married, shall marry any other person during the life of the former husband or wife, whether such second marriage shall have taken place in England or elsewhere.

**Burglary** (at common law) is the breaking and entering, between the hours of nine at night and six in the morning, into the dwelling-house of another with intent to commit a felony therein.

**Conspiracy** is the confederacy or agreement of two or more persons to injure an individual, or do any other unlawful act or acts prejudicial to the community, or even to do a lawful act by unlawful means.

**Embezzlement** is where any clerk or servant, or any person employed for the purpose or in the capacity of a clerk or servant, receives by virtue of such employment any chattel, money, or valuable security for or in the name or on the account of his master, and refuses to account for the same.

**False Pretences** is where a person by any false pretence obtains from any other person any chattel, money, or valuable security, with intent to cheat or defraud any person of the same.

**Forgery** may be defined as the false making of an instrument which purports on the face of it to be good and valid for the purposes for which it was created, with a design to defraud any person or persons.

**Homicide** is the killing another either innocently or feloniously.

**Larceny** (or theft) comprises both simple larceny and larceny with aggravation, as robbery. Simple larceny consists in the taking and carrying away of the personal goods of another with intent to deprive the owner of them.

**Libel** is the malicious publication of any defamatory or contumelious matter against another in print, writing, signs, or pictures.

**Manslaughter** is the unlawful killing of another without malice either express or implied.

**Murder** is where a person of sound memory, and of the age of discretion, unlawfully killeth another with malice aforethought, either expressed or implied.

**Perjury** is the swearing wilfully, corruptly, and falsely, in a matter material to the point in question, the oath being lawfully administered in some judicial proceeding.
**Rape** is when a man hath carnal knowledge of a woman by force and against her will.

**Receiving Stolen Goods** is the receiving any money, chattel, or valuable security, knowing the same to have been stolen.

**Riot** is where three or more actually do an unlawful act of violence with or without a common cause or quarrel, or even do a lawful act in a violent or tumultuous manner.

**Robbery** is the forcible taking from the person of another of goods or money to any value by violence, or putting him in fear.

**Sodomy** is having connection with another against the order of nature.

**Subornation of Perjury** is the procuring another person to commit perjury.

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**CHAPTER VIII.**

**INDICTMENTS.**

An indictment is defined to be a written accusation of one or more persons of a crime, presented, upon oath, by a jury of twelve or more men, termed a **Grand Jury.** Until very recently all the rules of pleading with respect to a declaration were applicable to an indictment. By a recent statute, 14 & 15 Vict. c. 100, the extreme niceties and refined technicalities are abolished. An indictment now is little [*26*] more than a simple statement of the offence, and such as good sense and regard for the accused alone would suggest. The first requisite in an indictment is that it should be framed with certainty. It must contain a certain description of the crime, so that a grand jury may not find a bill for one offence and the prisoner be tried for another. The facts of the crime should be stated with as much certainty as the case will permit. Thus, in an indictment for false pretences, it must show what the false pretences were, so that it may be seen whether they are such as come within the statute against false pretences. The court may now, on the trial of any indictment for felony or misdemeanour, amend such variances, provided they are not material to the merits of the case, and by which the defendant cannot be prejudiced in his defence, and may either proceed with or postpone the trial to be had before the same or another jury. These amendments apply to six classes:

1. The name of any county, riding, division, city, borough, town, corporate, parish, township, or place mentioned or described in the indictment.

2. The name or description of any person or persons, or body politic or corporate, stated to be the owner or owners of any property which forms the subject of any offence charged in the indictment.

3. The name or description of any person or persons, body politic or corporate, alleged to be injured or damaged, or intended to be injured or damaged, by the commission of the offence charged in [*27*] the indictment.

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4. The christian name or surname, or both christian name and surname, or other description of any person or persons named or described in the indictment.

5. The name or description of any matter or thing named or described in the indictment.

6. The ownership of any property named or described in the indictment.

There is no power, however, to amend the same identical particular more than once; and no amendment can be made so as to change the character of the offence.

We shall now shortly consider the different parts of an indictment. The venue in the margin expresses the county in which the prisoner is to be put upon his trial. It was necessary formerly, after every material allegation in the body of the indictment, to aver time and place, which was signified by the words "then and there," the "there" referring to the venue in the margin; but this now is no longer necessary, as by 14 & 15 Vict. sect. 28, c. 100 the venue in the margin is sufficient, except where local description is necessary, as in the case of housebreaking for example. Immediately after the statement of the venue in the margin, the indictment proceeds to show the presentment of the jury upon oath; the words are, "The Jurors for our Lady the Queen, upon their oath, present." The name and addition of the *party indicted should [*28] be inserted in the indictment, although any defects in this respect will not now vitiate an indictment. After the addition, it was usual to state the time when the offence was committed; but now the omission of the statement of time at which the offence was committed, in any case where time is not of the essence of the offence (as in the case of burglary), is immaterial.

The next is the description of the offence, and this ought to be set forth plainly and with certainty, so as not to clog the record, as Mr. Justice Buller observes, with unnecessary matter. The indictment should charge a man with a particular specified offence, and not with being an offender in general. Thus it would not do to charge a man with being a common thief or a common conspirator, or with any other such indistinct accusation; for, if this were allowed, no man could frame a defence to an accusation so vague and general. There are still, however, certain technical terms used in the description of the offence, as the word "knowingly," in receiving stolen goods, &c.; the word "traitorously," in treason; the word "burglariously," in burglary. In the crime of murder, the words "male aforethought;" so in rape, the words "feloniously ravished" and "carnally knew" are necessary. A formal conclusion against the form of the statute in such case made and provided, and against the peace of our sovereign lady the queen, her crown, and dignity, such as was formerly necessary, will not now, by its omission invalidate an indictment.

[*29] In cases of felony it is not usual to charge more than one distinct offence, except in instances of embezzlement and larceny, in one indictment. In these excepted cases such power is given by statute, under certain conditions. There is not, however, in point of law,
any objection to the insertion of several distinct felonies of the same degree, though committed at different times. An indictment containing a count for felony and a count for a misdemeanor would be bad for misjoinder. All formal objections for defects on the face of the indictment must now be taken by demurrer or motion, to quash such indictment before the jury shall be sworn, and not afterwards, and the court may amend such defects.

We shall now proceed to give a few forms of indictments as simplified by the present state of the law:

For Murder.

Yorkshire The jurors for our lady the Queen, upon their oath, pre-
to wit. sent, that I. S., on the 1st day of May, in the year of our Lord, 1852, feloniously, wilfully, and of his malice aforethought did kill and murder C. D.

For Manslaughter.

Yorkshire The jurors for our lady the Queen, upon their oath, pre-
to wit. sent, that A. B., on the 1st day of October, in the year of our Lord, 1852, feloniously did kill and slay C. D.

For Rape.

Yorkshire The jurors for our lady the Queen, upon their oath, pre-
to wit. sent, that A. B., on the 1st of October, in the year of our Lord, 1852, violently and feloniously did make an assault in and upon one C. D., and then violently and against her will feloniously did ravish and carnally know the said C. D., against the form of the statute in such case made and provided.

For Forgery and Uttering.

Yorkshire The jurors for our lady the Queen, upon their oath, pre-
to wit. sent, that A. B., on the 1st day of October, in the year of our Lord, 1852, feloniously did forge a certain will, purporting to be the last will of one George Smith, with intent to defraud, against the form of the statute in such case made and provided. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said A. B., on the day and year aforesaid, feloniously did offer, utter, dispose of, and put off a certain forged will, purporting to be the last will of one George Smith, with intent to defraud him the said A. B., at the time he so offered, uttered, disposed of, and put off the same forged will as aforesaid, then well knowing the same to be forged, against the form of the statute in such case made and provided.
For Housebreaking.

Yorkshire | The jurors for our lady the Queen, upon their oath, present, to wit. | sent, that A. B., on the 1st day of October, in the year of our Lord, 1852, at the parish of Keyingham, in the county of York, feloniously did break and enter the dwelling-house *of T. J. O., there situate, and then and there, in the said dwelling-house, feloniously did steal, take, and carry away two coats of the value of £5, of the goods and chattels of T. J. O., against the form of the statute in such case made and provided.

For Receiving Stolen Goods.

Yorkshire | The jurors for our lady the Queen, upon their oath, present, to wit. | that A. B., on the 1st day of October, in the year of our Lord 1852, feloniously did receive one horse, of the goods and chattels of C. D., before then feloniously taken, stolen, and driven away; he, the said A. B., at the time when he so received the said horse then well knowing the same to have been feloniously taken, stolen, and driven away, against the form of the statute in such case made and provided.

For Embezzlement as Clerk.

Yorkshire | The jurors for our lady the Queen, upon their oath, present, to wit. | that A. B., on the 1st day of October, in the year of our Lord 1852, being then clerk to C. D., did, by virtue of his said employment, and whilst he was so employed as aforesaid, receive and take into his possession certain money to a large amount, to wit, to the amount of £50, for the said C. D. his master, and then fraudulently and feloniously did embezzle the same; and so the jurors aforesaid, upon their oath, do say, that the said A. B., then, in *manner and form aforesaid, feloniously did steal, take, and carry away the said money, the property of the said C. D. his master, from the said C. D. his master, against the form of the statute in such case made and provided.

It will be seen, from the foregoing forms, that an indictment now is nothing more than a simple and intelligible statement of the offence charged against the prisoner.

CHAPTER IX.

OF THE GRAND JURY, AND THE PRESENTMENT AND FINDING OF THE BILL.

It will now be necessary to say something of the Grand Jury, and the mode and manner of presenting and finding the bill, since in the last
chapter we considered the structure of the indictment itself. That which is presented to the Grand Jury is technically called a bill, and when found an indictment. The bill is presented to the Grand Jury of the county in which the offence was committed. The Grand Jury must consist of twelve at least, and may contain any greater number, not exceeding twenty-three. Twelve at least of the jury must agree in finding a bill. All persons serving on this jury must be good and lawful men, liege subjects of the queen, and not aliens. Outlaws, even in a civil action, persons convicted of treason or felony, or any species of crimen falsi, as conspiracy or perjury, are incapacitated. The prisoner may challenge before the bill is presented any man who is thus disqualified. If he discovers it after the finding of the bill, he may plead it in avoidance and answer over to the felony.

The property qualification of grand jurors is not very clear. It has been disputed whether they need be even freeholders; but it is absolutely necessary at common law that all the Grand Inquest should be inhabitants of the county for which they are sworn to inquire. By 33 Hen. VI. c. 2, grand jurors in the county of Lancaster must have £5 per annum, and, in Yorkshire, by 7 & 8 Wm. III. c. 32, they must possess £80 a year in land, either freehold or copyhold, and are not eligible before they have attained twenty-one years. In practice, as Mr. Justice Blackstone observes, the jurors are usually gentlemen of the best figure in the county. Many persons are exempted from serving for the Grand Jury under the 13 Edw. I., stat. 1, c. 38.

We shall now consider the mode of summoning the Grand Jury. Upon the summons of any sessions of the peace, and in cases of commissions of oyer and terminer, and gaol delivery, there issues a precept, either in the name of the queen or of two or more justices, directed to the sheriff, upon which he is to return twenty-four or more out of the whole county, from whom the Grand Jury is selected. In particular counties the practice somewhat varies. Every summons of jurors is to be made by the sheriff, his officer, or lawful deputy six days before the time appointed to serve. The mode of proceeding to swear and charge the Grand Jury is thus:—At the assizes, when the judge comes into court, the crier makes proclamation for keeping silence, whilst the commissions of Assize and Nisi Prius, Oyer and Terminer, and General Gaol Delivery for the county are read by the clerk of arraigns. The sheriff then returns the precepts and writs of Assize and Nisi Prius. The names of the justices of the peace, coroners, constables, &c., are then called over. After this the Grand Jury are called by the crier by their names and additions. The marshal or crier then swears the jury: the foreman by himself; the rest by three at a time. The form of oath to the foreman is as follows:—My Lord, or Sir (as the foreman's title or name may be), you, as foreman of this grand inquest for the body of this county of A., shall diligently inquire and true presentment make of all such matters and things as shall be given you in charge; the queen's counsel, your fellows, and your own, you shall keep secret; you shall present no one for envy, hatred, or malice, neither shall you leave any one unpresented for fear, favour or affection, gain, reward or hope thereof;
but you shall present all things truly, as they come to your knowledge, according to the best of your understanding,—so help you God. The marshal then administers to the rest of the jury the following oath:—

[*35"]

The same oath your foreman hath taken on his part, you and every of *you shall truly observe on your part,—so help you God.

After they are all sworn, the crier counts them, and makes this proclamation:—"Oyez! oyez! oyez! my lords, the queen’s justices, do strictly charge and command all manner of persons to keep silence whilst her Majesty’s proclamation against profaneness and immorality be openly read, upon pain of imprisonment.” The proclamation is then read, after which the crier makes further proclamation thus:—"Oyez! oyez! oyez! my lords, the queen’s justices, do strictly charge and command all manner of persons to keep silence whilst the charge is given to the Grand Inquest." The judge then delivers his charge. The following proclamation is then made:—"Oyez! oyez! oyez! all justices of the peace, coroners, stewards of leets and liberties, and other officers that have taken any inquisition or recognizance, let them deliver them into court forthwith, that my lords, the queen’s justices, may proceed thereon; and all manner of persons bound by recognizance to prefer any bill of indictment against any prisoners in the gaol of this county, or others, let them come forward and prosecute, or they will forfeit their recognizance.”

The Grand Jury having been sworn, charged, and empowered to execute the duties of their office, the bill must be preferred before them. It is previously engrossed on parchment. All the proceedings before the Grand Jury are secret. Witnesses that are material to the finding of an indictment are *compellable to attend by subpoena issuing out of the Crown Office. The Grand Jury hear the evidence on the part of the prosecution only. After they have heard the evidence they are to decide whether the bill shall be found or rejected. Twelve of them must concur in finding a bill. If they find "a true bill," it is returned in court with "a true bill" indorsed on it; and if rejected, "not a true bill." When the jury have made these endorsements, the clerk of assize asks them if they agree that the court should amend all matter of form, altering no matter of substance.

**CHAPTER X.**

**OF THE CAPTION OF THE INDICTMENT.**

The caption is no part of the indictment; it is only a copy of the style of the court at which the indictment was found. It is a formal statement describing the court before which the indictment was found. The name of the county must be stated in the margin; the court where the indictment was found; the place where the court was held; the time of taking the indictment; the names of the justices, their addition and
authority; the oath and names of jurors, and the conclusion. The following is a form of a caption to an indictment:—

**Yorkshire** Be it remembered, that at the sessions of oyer and terminer, to wit. of our sovereign lady the queen, holden at the Castle of York, in *and for the county of York, on Monday, the * day of —, in the fifteenth year of the reign of our sovereign lady Victoria, Queen of Great Britain and Ireland, before the Honourable Sir Cresswell Cresswell, Knight, one of the justices of our said lady the queen, of her Court of Common Pleas, the Hon. Sir William Wightman, knight, one of the justices of our said lady the queen, assigned to hold pleas before the queen herself, and others their fellows justices of our said lady the queen, assigned by letters-patent of our said lady the queen, under her great seal of Great Britain and Ireland, to the said Sir Cresswell Cresswell, Knight, Sir William Wightman, and others their fellows justices of our said lady the queen, and to any two or more of them directed, of whom one of them, the said Sir Cresswell Cresswell, and Sir William Wightman, amongst others in the said letters-patent named, our said lady the Queen willed to be one to inquire more fully the truth by the oath of good and lawful men of the said county, and by other ways, means, and methods by which they should, or might, the better know, as well within liberties as without, by whom the truth of the matter might be the better known and inquired into of all treasons, misprision of treason, insurrections, rebellions, counterfeiting, clippings, washing, false coining, and all other falsities of the moneys of Great Britain and other dominions whatsoever; and of all murders, felonies, manslaughters, killings, burglaries, rapes of women, unlawful meetings and conventicles, unlawful utterings of words, *assemblies, misprisions, confederacies, false allegations, tress.* passes, riots, routs, retentions, escapes, contempts, falsities, negligencies, concealments, maintenances, oppressions, champerties, deceits, and all other evil doings, offences, and injuries whatsoever; and also the accessories of them within the county aforesaid, as well within liberties as without, by whomsoever and in what manner soever done, committed, or perpetrated; and by whom or to whom, when, how, and after what manner, and of all other articles and circumstances concerning the premises and every of them, or any of them, in any manner whatsoever; and the said treasons, and other the premises, according to the laws and customs of England, for this time to hear and determine by the oath of twelve jurors (here insert names), good and lawful men, of the county aforesaid, now here sworn and charged to inquire for our said lady the queen for the body of the said county.

It is presented in manner and form as followeth, that is to say, Yorkshire to wit.—The jurors, &c. (here set forth the indictment).
CHAPTER XI.

OF THE REMOVAL OF THE INDICTMENT BY CERTIORARI.

The writ of Certiorari is a writ issuing out of Chancery or the Queen's Bench; directed in the queen's name to the judges or officers of inferior courts, commanding them to return the records of a cause pending before them, in order that the party may have more time and speedy justice before her, or such of her justices as she shall assign, to determine its merits.

The Court of Queen's Bench having a general superintendency over all courts of inferior jurisdiction, may award a certiorari to remove the proceedings from any of them, except some particular statute or charter invests them with absolute judicature. The writ is returned into the Court of Queen's Bench in order that the issue may be tried at bar or nisi prius. It lies to remove all judicial proceedings, except where otherwise directed by the express provisions of some particular statute. The proper time for either party to apply for a certiorari is before issue has been joined on the indictment. In order to remove the indictment, the defendant must make an affidavit stating the grounds upon which the application is founded. The affidavit should be intituled in the Queen's Bench, and not in the name of the prosecution in the court below. If the application be made in term time, it must be made through counsel, for a rule to show cause why a writ of certiorari should not issue. In vacation, the affidavit is merely laid by a solicitor before a judge at chambers, who, if he thinks fit, grants his fiat for the certiorari. These forms are not essential where the prosecutor wishes to remove the indictment. The writ must be directed to the judge or magistrates of the inferior court. Immediately it is allowed and served, it operates as a supersedeas. The return to the writ of certiorari is to be made to the party to whom it is directed. The proper mode of making the return seems to be to endorse on the back of the writ, "The executor of this writ appears in a certain schedule hereunto annexed;" then to send the schedule on a distinct piece of parchment. The schedule must be upon parchment.

CHAPTER XII.

THE ARRAI GMENT OF THE PRISONER, &c.

The bill having been presented, and the indictment found, the next step is to arraign the prisoner. In all cases of felony it is necessary that the prisoner should personally attend, and that fact must appear on the record. The arraignment consists of three things:—

1. Calling the prisoner to the bar by his name.

2. Reading the indictment to him so that he may understand the charge.
3. Demanding of him whether he is or is not guilty, and asking him how he will be tried.

The first ceremony is intended as an identification of the prisoner. The intention of reading the indictment is that the prisoner may fully understand the charge. He is entitled to have it so slowly read over to him that he may take it down in writing, so that if he wished to plead autrefois acquit, the indictment may be taken down, so as to be correctly stated in the plea. Upon *this, the clerk says, “How say you; [ ́*41 ] are you guilty or not guilty?” If the prisoner confesses the charge, the confession is recorded, and nothing is done till judgment; if he denies it, he answers, “Not guilty,” upon which the clerk of arraigns, on the part of the crown replies that the prisoner is guilty, and that he is ready to prove the accusation; and this is done in an abbreviated form, by entering on the indictment two monosyllables, “cul prit;” cul, which means culpabilis, or guilty, and prit, which is put for presto sum verificari, and imports that he is ready to prove his words.

CHAPTER XIII.

PLEADINGS UPON INDICTMENTS.

We come now to consider the various modes by which a prisoner places upon the record his objection or answer to the charge alleged against him. They are:

1. Pleas to the Jurisdiction.
2. Demurrers.
3. Dilatory Pleas.
4. Pleas in bar of the Indictment.

Mixed of Record and Fact.

1. Autrefois acquit.
2. Autrefois attaint.
3. Autrefois convict.

Pleas to the Matter of the Indictment.

1. Not guilty.
2. Special Pleas.

*In considering the nature of the several pleas, we come to examine those which the prisoner may offer to the jurisdiction [ ́*42 ] of the court. They may be successfully relied on when the court has no cognizance of the crime alleged on the record, as where a party was accused of rape at the sheriff’s court. This plea must always be pleaded before the general issue, because by pleading Not Guilty, the defendant
admits the power of the court to try him. To this plea of jurisdiction the crown may demur or reply instanter; and if the court determine against the plea, the defendant will have judgment to answer over to the felony.

The next mode by which the defendant may object to the indictment is by demurrer, and which means that the party will go no further, because the indictment is defective in substance or in formal statement. All formal defects of an indictment are to be taken by demurrer before the jury are sworn.

Pleas in abatement are founded either on some defect apparent on the face of the indictment, without reference to any extrinsic fact, or are founded upon some matter of fact extrinsic of the record, which renders the indictment insufficient. If a plea in abatement be found against the defendant in a case of felony, he shall have judgment of respondeat ouster.

Special pleas in bar show that the defendant ought not to be called upon to answer the indictment. The principal of these are a previous acquittal, conviction, and pardon.

*The plea of autrefois acquit is founded upon the principle, that no man shall be placed in peril more than once upon the same accusation. In order to entitle a prisoner to this plea, it is necessary that the crime charged be precisely the same, and that the former indictment, as well as the acquittal, was sufficient. If the charge be in truth the same, although the indictment differ in immaterial circumstances, the defendant may plead his previous acquittal with proper averments. The plea of autrefois acquit is of a mixed nature, and consists partly of matter of record and partly of matter of fact. The matter of record is the former indictment and acquittal; the matter of fact is the averment of the identity of the offence, and of the person as formerly indicted. In a case of felony, if the plea is held to be bad, the judgment is respondeat ouster, and the prisoner is then tried on the merits.

The plea of autrefois convict depends, like the one we have just considered, on the principle that no man shall be in peril more than once for the same offence. The crime must be the same as that for which the defendant was before convicted, and the conviction must have been lawful on a sufficient indictment. When a prisoner has either personally obtained a pardon for himself, or is included in a general pardon, he must plead that privilege specially, as otherwise the court is not bound to notice it. If there be variance between the denomination of the defendant in the indictment and in the pardon, or in his addition, he may show, by proper averment of identity, that the same person is intended.

A pardon by public act of parliament need not be pleaded, as the court must notice it ex officio.

The plea of Not Guilty is called the general issue, and is pleaded by the prisoner, viva voce, at the bar. This plea makes it incumbent on the prosecutor to prove every fact and circumstance constituting the offence alleged in the indictment. The defendant may give in evidence
under this plea, not only everything which negatizes the allegation in the indictment, but also all matter of excuse and justification.

CHAPTER XIV.

OF THE JURY AND PROCEEDINGS ON TRIAL.

In this chapter we shall treat of trial by jury, or, as it is sometimes called, trial by the country.

When the defendant upon an indictment has pleaded Not Guilty, the trial is by twelve jurors of the county where the fact is alleged in the indictment to have been committed. This jury is called, the Petit Jury, by way of distinction from the Grand Jury. Every man between the ages of twenty-one and sixty, residing in any county in England, who shall have within the same county £10 per annum, in lands or tenements, freehold or copyhold, *or who shall have within the same county lands held by lease for twenty-one years or longer, shall [*45] be qualified and liable to serve on juries. Peers, judges, clergymen and priests, dissenting clergymen, serjeants and barristers-at-law actually practising, doctors of law, practising attorneys, solicitors and proctors, and many others, are exempt from serving. No person attainted of treason or felony, or convicted of any infamous crime, unless he has obtained a free pardon, can serve. Besides the ordinary and special jury, there is one which aliens and denizens are by law entitled to demand. It is called a jury de medeitate linguae. It originates with 28 Edw. I. c. 13, which enacts, that in all inquests taken against aliens and denizens, half the jury shall be aliens, and half denizens. An alien must claim this privilege before the jury are sworn. The jury are the judges of the fact, as the judges are of the law.

The sheriff having returned into court the panel of the jury, and the time for trial having arrived, the clerk addresses them as follows:— “You good men that are empanelled to try the issue joined between our sovereign lady the queen and the prisoner at the bar, answer to your names.” When this is done, and a full jury appears, the clerk addresses the prisoner thus:—“These good men that you shall now hear called are those which are to pass between our sovereign lady the queen and you; if, therefore you, or any of you, will challenge them, or any of them, you must do so as they come to the book to be sworn, before they are sworn, and you shall be heard.” The clerk then calls [*46] each juror by name and swears him.

Now is the proper time for challenging the jury. A challenge is an exception to the jurors, and is either to the array or to the poll; to the array when the whole number empanelled are objected to, and to the poll when exception is made to one or more of the jurors as not indifferent. A challenge to jurors is divided into peremptory challenge and challenge for cause. Challenges to the array or the poll may be made either by the crown or by the defendant. Formerly, on the part of the crown, any
number of jurors might have been peremptorily challenged by merely quod non boni sunt pro rege; but under the stat. 33 Edw. I., when the panel has been exhausted, the crown must assign cause. No challenge can ever be made either to the array or to the polls until a full jury appear. Challenges on behalf of the defendant are either peremptory or with cause. Peremptory challenges are such as are made without assigning any reason, and which the court are compelled to allow. At common law the defendant might peremptorily challenge thirty-five. At the present day, in all cases of treason, the prisoner has still thirty-five peremptory challenges; but in murders, and all other felonies, only twenty. In no case of a misdemeanor can a peremptory challenge be allowed. Challenges for cause are of two kinds:—

1. To the whole array.
2. To individual jurymen.

*Some of the causes of a principal challenge are as follows:—

[ *47 ] If the sheriff be the actual prosecutor or the party aggrieved, or if the sheriff be of actual affinity to either of the parties, or if he return an individual at the request of the prosecutor or defendant, if the challenge to the array be determined against the party by whom it is made, he may afterwards have his challenge to the polls. These challenges are either to the principal or to the favour. The most important causes of the first of these descriptions of challenges are propter honoris respectum, that is, where a peer is called to be sworn for the trial of a commoner; propter affectum, on account of some personal objection to the juror, as alienage or non-qualification in respect of age or property; propter affectum, that is, on the ground of some actual or presumed partiality in the juryman challenged; and propter delictum, that is where a juror has been attained of felony, or convicted of an infamous crime, or is under outlawry.

A challenge to the array must be made in writing; but where it is to a single individual, "I challenge him," and "we challenge him," for the queen is sufficient. The defendant is entitled to have the whole of the panel read over in his hearing, so that he may see who they are that appear. When a challenge has been made it lies with the court to direct the mode in which it shall be tried.

When a challenge is made to the poll, if it be a *principal

[ *48 ] challenge for some apparent partiality, it is sufficient if the ground be made out to the satisfaction of the court. But a challenge to the favour is left to the discretion of the triers. The triers being chosen, the following oath is administered to them:—"You shall well and truly try whether A. B. stand indifferent to the parties to this issue, so help you God." When the challenges are completed, and a full jury ready, the clerk administers the following oath:—"You shall well and truly try and true deliverance make between our sovereign lady the queen and the prisoners at the bar whom you shall have in charge, and a true verdict give according to the evidence, so help you God." As each juror is sworn he is set apart in the box; the clerk then counts them over. The crier then makes this proclamation:—"If any one can inform my lords, the Queen's justices, the Queen's serjeant, or the Queen's attor-
ne, or this inquest, to be taken between our sovereign lady the Queen and the prisoners at the bar, of any treasons, murders, felonies, or other misdemeanors committed or done by them, or any of them, let him come forth and he shall be heard for the prisoners now standing at the bar on their deliverance; and all others bound by recognizance to give evidence against the prisoners at the bar, let them come forth and give their evidence, or they will forfeit their recognizance,—God save the Queen!"

*CHAPTER XV.*

**OF THE TRIAL AND EVIDENCE.**

Having in the last chapter spoken of the jury, and the mode of challenging them, we shall now speak of the trial itself. The jury being sworn and assembled in their box, the clerk of arraigns addresses them thus, "Look upon the prisoner, you that are sworn, and hearken to the evidence." He then proceeds to read an abstract of the indictment, in the following form: A. B. stands indicted by the name of A. B. &c. (here reading the indictment, or rather the material part of it,) after which he adds, "Upon this arraignment he has pleaded not guilty, and for his trial hath put himself upon the country, which country you are; so that your charge is to inquire whether he be guilty of the felony whereof he stands indicted, or not guilty."

The counsel for the prosecution now opens the case by laying a short statement of the facts before the jury, so that they may understand the bearing of the evidence which follows. This statement, to the honour of the bar, is always calm and temperate, the learned counsel always taking care to abstain from everything which may unfairly prejudice or bias the minds of the jury; indeed, such opening address is, as it should be, a simple outline of the facts to be proved in evidence, together with such comments as are necessary to render them intelligible to the jury.

*After this statement is concluded, the counsel for the prosecution proceeds to call his evidence, to prove the charge contained in the indictment; and this naturally leads us to a consideration of the doctrine of evidence in criminal prosecutions. However, it will perhaps be well to say something as to those who are competent to be witnesses.*

There are two kinds of exceptions to witnesses—the one to their competency, and the other to their credibility. We now speak of the exception to their competency alone. Such an objection goes to show that a witness ought not to be sworn at all, on account of some incapacity or defect. As a general rule, all persons may be witnesses who are capable of understanding the obligations of an oath. The first objection arises from the inability of the witness to understand the meaning of an oath, by reason of infancy or defect of intellect. Thus a person insane cannot be sworn whilst labouring under that malady, though he may, if he
recover his reason, in a lucid interval. A person deaf and dumb from his birth who understands signs, and who has a sense of moral obligation, may be examined, through the instrumentality of one who has been accustomed to converse with him by signs. Children, however young, if they understand the obligation of an oath, are competent witnesses. Formerly, there prevailed an opinion that a child under the age of nine or ten was incompetent. But this notion is exploded. In some cases, where a child appears to evince intelligence, but still does not understand the nature of an oath, a judge, sooner than allow justice to be defeated, will order the trial to be postponed, and direct that such child in the meantime shall be instructed upon the nature and obligations of an oath. Every person who believes not in the existence of a God, and in future rewards and punishments, cannot be a witness.

Before the Revolution, a notion seemed to prevail that no witness could be sworn but upon the Old or the New Testament; but since that epoch, it has been a settled practice to admit all persons to be sworn according to the ceremonies of their respective religions, provided they believe in a God, a future existence in which there is a dispensation of rewards and punishments. Thus a Mahometan may be sworn upon the Koran; a Gentoo, according to the mode of administering an oath in his own country; and a Scotch Covenanter, according to the mode of his faith. To those who frequent criminal courts in London, it is not an unusual sight to see a Chinese taking the oath by breaking a saucer. If it be suspected that one is incompetent upon the ground of belief, he should be examined upon the voire dire (veritatem dicere;) and he cannot be asked as to any particular tenets he may hold, but simply whether he believes in a God and a state of future retribution. Quakers are allowed to affirm by act of parliament, as they believe all swearing illegal, by a too literal reading of the seventh chapter of Matthew, ver. 37, wherein it is said, "Swear not at all." For a long time their affirmation was rejected in criminal, though admitted in civil cases. The relationship of husband and wife destroys competency, and parties so intimately connected are not permitted to give evidence which may tend to criminate each other. Thus, on an indictment for bigamy, the first wife cannot be a witness; the second may, after proof of the first marriage, because, in the eye of the law, the second was no marriage at all.

There are some exceptions to this rule, justified by necessity. Thus a lawful wife is a good witness against the husband in case of violent injury to her person; and the dying declaration of the wife, if the husband be suspected of having murdered her, may be read as evidence on his trial. Another ground of incompetency, until the passing of the statute 6 & 7 Vict. c. 85, was infamy. Thus, persons committed of treason, felony, piracy, premunire, perjury, forgery, or any species of the crimen falsi, were incompetent. But this statute enacts, that no person offered as a witness shall be excluded, by reason of incapacity from crime or interest, from giving evidence, either in person or by deposition, on the trial of any issue, civil or criminal, in any court, or before any judge, jury, sheriff, coroner, magistrate, having authority to receive and
examine; but every such person may be offered as a witness. An accomplice was always considered a competent witness; and upon his evidence alone, according to the strict letter of the law, a prisoner may be convicted: but the judges invariably concur in their practice, in advising juries never to convict upon the uncorroborated evidence of an accomplice. Having spoken of what witnesses are incompetent, we shall now proceed with a view of the trial, and in the next chapter speak of evidence in general. The credibility to be attached to any witness is a question for the jury alone.

When the witnesses for the prosecution are brought into court, they are called by their names to be sworn. The clerk of arraigns, desiring the witness to take the book in his right hand, then says to him, "The evidence you shall give between our sovereign lady the queen and the prisoner at the bar shall be the truth, the whole truth, and nothing but the truth, so help you God." The witness must be sworn in open court, so that his manner may be observed, and he may be subjected to cross-examination on behalf of the prisoner. Before the examination commences, the crown may require that the witnesses should go out of court, so that they may be examined in the absence of each other; and the same request will be granted as a matter of indulgence to the prisoner. When the witness is sworn, he is examined by the counsel for the prosecution, or if none be retained, by the judge presiding. This latter course is a bad practice lately crept in from a false economy, placing the judge in the awkward dilemma of being both prosecutor and defender of the prisoner; for where a prisoner is undefended, the law presumes that the judge will act in the place of his counsel. It is usual for one counsel only to examine the same witness. In examination in chief, the counsel should take care not to put leading questions to the witness; that is, questions in such a form as suggest the answer desired; but still he must state his question so that no material circumstance is omitted. If a witness appears desirous of concealing the truth, or to favour the prisoner, the court will allow a latitude bordering on cross-examination to the prosecuting counsel. A witness must not read his evidence, but he may refresh his memory from any memoranda book or paper, provided he can afterwards swear to the fact from his own knowledge.

During his examination, a witness cannot be compelled to answer any question which may subject him to a criminal accusation. When the examination in chief of the witness is concluded, the prisoner, or his counsel, may cross-examine as to every part of his evidence. In cross-examination, great latitude is allowed, so much so that questions may be asked respecting matters communicated in a professional confidence, for if the opposite side have brought forward counsel or solicitor, they have broken the ties which bind him to silence. Leading questions are also allowed in cross-examination; and, in order to try the credit of a witness, facts may be supposed which have no real existence; but this right should be exercised very sparingly, as it may tend to distract the minds of the court and jury from the question at issue; and a counsel ought at once to bow to any intimation from the court that there is a departure
from the issue. In *cases of misdemeanor, it has lately been contended that a bill of exceptions will lie; but it is not felt that, in a small treatise of this kind, one need enter into this question. When the evidence for the prosecution is concluded, the prisoner makes his defence through his counsel, and then, if advisable, proceeds to call evidence; after this, the prosecuting counsel is, if evidence be called, entitled to a reply. The attorney and solicitor-general have a right to reply, in all cases, on the part of the crown, whether evidence be called for the defence or not.

If it is impossible to conclude the trial in one day, the court may adjourn, from day to day, until the trial is completed. If a juror be taken ill during the trial, though of a capital offence, or die, the jury may be discharged, and the prisoner must be tried by another jury. Besides this, the crown, with the consent of the prisoner, may withdraw a juror, in order either to try him again or to put off the trial. During the trial, and whilst the court are sitting, the judges have a power to punish contempts, and they may fine a person offending, and command it to be immediately levied. When the evidence and speeches on both sides are concluded, the judge sums up the evidence. The jury then consider their verdict. If they cannot agree, they retire to a private room to deliberate, in the custody of a bailiff, who is sworn as follows: "You swear that you will keep this jury without meat, drink, or fire, candlelight only excepted. You shall suffer *none to speak to them, neither shall [*56] you speak to them yourself, excepting to ask them whether they are agreed, without leave of the court, so help you God." The jury cannot separate until they are agreed, without the special permission of the court. The judges, however, may adjourn whilst they deliberate. A jury, charged and sworn in a capital case, cannot be discharged until they have given a verdict, unless one of the jury be taken dangerously ill, so that fatal consequences might ensue. When they have come to an unanimous determination, they return into court to deliver their verdict. The clerk calls them over by their names, and asks them if they are agreed, and then says, "How say you, gentlemen, is the prisoner guilty or not guilty?" The clerk then enters the verdict on the record. The formal proceedings of the trial are now closed.

We shall now, before treating of verdict, and the subsequent proceedings thereon, proceed, in the next chapter, to speak of evidence in general as applicable to criminal prosecutions.

CHAPTER XVI.

ON EVIDENCE.

There is no great difference in the rules of evidence between civil and criminal proceedings. In the latter, however, a greater caution prevails, from an anxiety of the judges to look more favourably, where life, liberty, and reputation are at stake, towards the prisoner, than they do perhaps
in civil cases. The rules of credibility are the same in both cases. Nothing can be given in evidence which does not directly tend to the proof or disproof of the matter in issue; therefore, as Mr. Phillipps lays it down in his "Law of Evidence," it is not allowable, upon the trial of an indictment, to show that the prisoner has a general disposition to commit the same kind of offence as that for which he stands indicted. But, where several felonies are so connected together as to form an entire transaction, upon an indictment for the one, the other may be proved, to show the character of the transaction. An exception to this general rule appears to prevail in the case of forgery; the prosecutor being allowed to give evidence of other instances of his having committed the same offence for which he is indicted.

Upon a recent trial for uttering a forged bank note upon the northern circuit, before Mr. Justice Cresswell, the counsel for the prisoner raised an objection to the reception of this kind of evidence; but the learned judge admitted it on the ground that he was bound by precedent. It may be gathered, however, from the important case of Regina v. Oddy, argued before the Lord Chief Justice and four of his learned brethren, in the Court of Criminal Appeal, that the tendency of the courts is not to extend any further this species of evidence. That was an indictment containing counts for stealing and for receiving the property of A., knowing it to be stolen. At the trial it was proved that the cloth mentioned in the indictment had been stolen in the night, between the 2d and 3d of March, A. D. 1851, from a mill, and was the property of the party named in the indictment. The prisoner gave a false account of the manner in which he became possessed of the cloth. The prosecuting counsel proposed to give in evidence of the possession by the prisoner of four other pieces of cloth, which had been stolen between the 4th and 5th December, A. D. 1850, from another mill, and which cloth was the property of different owners. Prisoner's counsel objected to the reception of this evidence. The learned recorder, before whom the case was tried, admitted the evidence. The lord chief justice, in giving judgment in the Court of Criminal Appeal, thought the evidence ought not to have been received, and observed—"The English law does not permit the issue of criminal trials to depend on this species of evidence. The proposed evidence would only show the prisoner to be a bad man; it would not be direct evidence of the particular fact in issue—namely, that, at the time he received these articles, he knew them to be stolen. The cases of uttering with a guilty knowledge certainly go very far, and I should be very unwilling to apply their principle generally to the criminal law."

It is difficult to draw a distinction in principle between the reception of such evidence in the case of uttering and receiving stolen property, without it be in this, that, in the former case, a person having previously uttered forged instruments might be presumed to have a better knowledge of the character of a forged instrument. Where it is necessary to prove malice, acts not included in the indictment are admissible in evidence. Thus, if A. be charged with the murder of B., it is competent to show that A., on other occasions, had attempted to assass-
nate B. On an indictment for rape, the prisoner may give general evidence of the woman's character for want of chastity, and he may even go so far as to show that she has been criminally connected with him before. It is necessary for a prosecutor to substantiate with evidence every material part of the indictment. And as now, since the recent stat. 1& 15 Vict. c. 100, nothing should appear upon the face of the indictment in the shape of immaterial averment, it may be said to be necessary to prove the indictment; and, as a general rule, he must prove so much as proves the substantive crime stated, though not to the extent charged. Any thing superfluous need not be proved, although stated on the face of the indictment.

One witness is sufficient proof in all cases, except in treason and perjury. In the latter case, it used to be thought that two witnesses as to the falsity of the perjury assigned were necessary; but this doctrine has, since the case of Regina v. Boulter, decided in the Court of Criminal Appeal in 1852, been somewhat modified. In that case it seems to have fallen from the judges that the evidence of one witness, and something more in the shape of corroboration, would be sufficient.

*From the secrecy with which crimes are committed, juries are often compelled to receive evidence merely of a circumstantial and presumptive character. This species of evidence ought to be received with great caution, as there are many melancholy instances of persons who have suffered death, upon this kind of evidence, for offences of which they were innocent. Circumstantial and presumptive evidence should be of the clearest and strongest nature.

It is a general rule, that the best evidence the nature of the case admits of must be produced; and, if it cannot, then the next best evidence. And this is an infallible rule both in civil and criminal cases, for a suppression of the strongest testimony induces a vehement presumption, that if it were brought forward, it would be against the party who is desirous of evading it. For instance,—supposing a copy of a deed to be offered in evidence, and it is known that the original is in the possession of the person offering the copy, a suspicion is naturally thrown upon its correctness, for why produce a copy when he possesses the original? No parol evidence will be admitted of the contents of a writing in the power of the party offering it to produce. If it be proved, however, that the original has been lost or destroyed, or that it is in the hands of the defendant, a copy may be given as the best evidence; and if no copy has been taken, parol evidence may be received of its contents. As a general and inflexible rule, hearsay evidence is inadmissible.

*The law admits of no evidence but such as is delivered upon oath. Declarations, however, of a witness at another time may be adduced to invalidate or confirm his evidence. A dying declaration is receivable, provided the person at the time of making it had no hope of recovery. The confession of a prisoner may also be given in evidence against him at his trial; but, as I have shown in another part, that statement must be made voluntarily, and without threat or solicitation. As this kind of evidence is open to suspicion, from the fear or terror of a sudden accusation, and liable, like all hearsay evidence, to be misre-
ported, it should be only received under peculiar circumstances. The confession must be taken altogether, so that any part which may be in his favour may be considered by the jury. It should be free from all suspicion. The law of England acts upon a principle diametrically opposite to those continental nations who employ torture to extort confessions. An English court receives such confession most unwillingly, and with the greatest delicacy. Such confession can only be evidence against the person making it.

All evidence divides itself into parol and written. I have already said sufficient upon the former. I shall now add a few words upon written evidence. These are public documents or records, private papers in the handwriting of the party or others, and depositions duly taken before the magistrates. Public acts of parliament prove themselves, as the judges are bound to take judicial notice of them. *A [*62] private act of parliament must, however, be examined before the parliament roll before it can be given in evidence. State matters may be proved by the production of the Gazette Muster Books; and the returns of the Navy Office are evidence of the death of a party so returned. Corporation books, regularly kept, are evidence, as also heralds' books, and the minutes of visitation. The daily book of a prison is good evidence to show the time of a prisoner’s discharge, though not of his commitment. The records of the court are good evidence against persons who are parties to them. Deeds or papers in the possession of third persons, and material to the trial, must be obtained by serving the person with a subpoena duces tecum. He is, under such subpoena, bound to produce them. A prisoner is not bound, however, to produce evidence against himself, the maxim being nemo tenetur se ipsum accusare. If a necessary document be traced to a prisoner’s possession, and he will not produce it, secondary evidence may be given of its contents. A deed more than thirty years old proves itself. In other cases, it must be proved by the subscribing witness, if he be living; if dead, by proving that the signature is the handwriting of the party by whom it professes to have been written.

We shall now say something of the kind of proof by which handwriting is to be disproved or established. If a person has seen another write the document in question, he should be called; if, however, no person has seen the document written, the evidence of a person [*63] acquainted with the handwriting of the party may be received, to establish or overthrow the identity of the document in question. The witnesses so called must have actually seen the party write, or have received letters from him which bear his signature. This last species of evidence often brings a very strong moral certainty both as to the person and the signature; and the habit of receiving and answering letters may furnish oftentimes a better means of speaking to handwriting than having occasionally seen the person write at long intervals. Since the celebrated case of Algernon Sydney, the evidence of a person who has merely occasionally seen the supposed writing of the party in indorsements upon bills will not be received in evidence. Much doubt has existed respecting the admissibility of a mere comparison of handwriting, where no
witness has seen the party write, or has received letters authenticated with his signature; and it is clear that the evidence of a third person to prove merely from his own skill and practice, that the same individual wrote two distinct papers ought to be rejected.

At the last Central Criminal Sessions, held at the Old Bailey, in the case of Regina v. Lewis Coleman and Joseph Gurney, who were indicted for forgery and uttering a forged bill of exchange, Mr. Justice Cresswell refused to receive the evidence of a scientific gentleman, who was called to prove that the drawing, acceptance, and indorsement were all in the same handwriting; and his *lordship, in a lucid judgment, explained the principles upon which such evidence was inadmissible, according to English law. Such scientific witness, it appears, would not be rendered competent by having seen the party write since the commencement of the prosecution, if called upon to give evidence in the prisoner's favour.

A person employed to detect a forgery may, it appears, be called to state whether, in his opinion, the handwriting produced in court is a natural or a disguised one. It appears, that where a written document is the very subject of the prosecution, and is required by the provision of the legislature to be stamped, and where the stamp act forbids its being offered in evidence unless it is so stamped, it cannot be received without the provisions of the legislature have been complied with. Such document may, however, be read for collateral purposes. This general rule, however, has by a course of decision been somewhat modified, for in cases of forgery it has been decided that a fictitious instrument may be given in evidence which the prisoner intended to pass for a valid one, though no stamp had been affixed of legal denomination or value.

Depositions of witnesses taken before a magistrate may, under certain circumstances, be received in evidence. We have, in a previous part of this little book, shown the mode in which these depositions should be taken before the magistrate; and where duly taken, and purporting to be signed by the magistrate, they may be read where the witness is dead, unable to travel, or kept away by the *defendant's contrivance.

Where two or more prisoners are jointly indicted, and a deposition is offered in evidence, upon proof of one of the prisoner's procuring and contriving the absence of such witness, it is the duty of the learned judge to tell the jury that it is only evidence against the prisoner so contriving the absence; and this was decided by the Lord Chief Justice and judges of the Queen's Bench, in the case of the Queen against Scaife and Roeke, a case which had been removed from the Borough General Quarter Sessions at Hull into that court by writ of certiorari. A new trial was granted in that case; and it is remarkable, that it is the first case upon record of a new trial having been granted in a case of felony. We shall have to refer to this case more fully when we come to speak about new trials.
CHAPTER XVII.

VERDICT.

Having somewhat digressed in the last chapter from the proceedings of the trial, in order to consider the evidence applicable to criminal cases in general, we shall now resume our inquiry by a consideration of the verdict.

In all cases of treason and felony a verdict must be delivered openly in court, and in the presence of the prisoner. In trials for misdemeanors, however, a privy verdict may be given, and the presence of the defendant is not essential.

*A verdict may either be general as to the whole charge, partial as to a part, and special where the jury find the facts, and leave the legal inference to the judge. A jury may find a general verdict if they think fit so to do. Such a general verdict includes both the law and facts of the case. There are many cases in which it may be prudent for the jury to find the facts specially, and leave the inference to the judge as to the law, where that is doubtful. Formerly, in the cases of libel, it was held that the jury were only to find the mere fact of authorship or publication, and that the judges were to determine as to the libellons quality of the document which formed the subject of the charge. There was much discussion upon the question by Lord Erskine, in the case of the Dean of St. Asaph. The 32 Geo. III. c. 60, enacted that the whole question should be left to the jury.

The jury may find a partial verdict, by saying not guilty of a part, but guilty of the residue of the charge. Thus, upon an indictment for murder, a prisoner may be convicted of manslaughter; on a charge of burglary, he may be convicted of larceny, and acquitted of the burglary. In a case of robbery, if it appear that the property was not taken from the person by violence or putting in fear, he may be convicted of larceny. Until recently, under the 7 Will. IV. & 1 Vict. c. 85, s. 11, on the trial of an indictment for any felony which included an assault, the prisoner might have been convicted of the assault only, if the evidence proved no more. The statute, however, *created great confusion in the principles of criminal law, and from its inconvenience has been [*67] recently repealed by the legislature.

That statute clashed with a general and well established rule of law, which was, that upon an indictment for felony, a person should not be convicted of a misdemeanor. And the reason of this seems to be well founded, as defendants, in cases of misdemeanor, were entitled to certain privileges and advantages which those charged with felony were not. Therefore, by allowing a person indicted for felony to be convicted of misdemeanor, it was virtually depriving a defendant of those advantages. In an indictment for perjury, it is sufficient if one of the assignments of perjury be proved. In larceny, if any one of the articles enumerated in the indictment be proved to have been stolen, that will be sufficient. It
was formerly thought, that where the evidence went to show the commission of a higher offence in degree than that charged in the indictment, it was necessary for the court to discharge the jury; but recent decisions, and even a statutable enactment, has set this matter at rest; and now, if the evidence is sufficient to support the minor charge, though it prove something more, it is sufficient.

A jury have a right, in all criminal cases, to find a special verdict. They find the facts, and refer the matter of law to the judge. Such a verdict must state the facts themselves, and not the evidence adduced to prove them; and, as the court cannot supply by intendment or implication any defect in the statement, all the facts necessary to enable the court to give judgment must be found. Thus, an indictment charging a robbery from the person, the evidence being a taking up of the prosecutor’s money from the ground in his presence, a special verdict stating that the defendant struck the money out of his hand, and immediately took it up, was held insufficient, because it did not expressly state that he was present at the taking of it up. If the jury find all the substantial parts of the charge, they are not bound to follow the technical language of the indictment. Thus, upon a charge for forgery of a bank note, the jury found that the prisoner erased and altered it by changing the word “two” into “five.” This was held to be sufficient. After a statement of the facts, the jury ought not to draw any legal conclusion, for that is the province of the court; and such conclusion, if drawn, will be treated as superfluous; and if they exceed their duty in so doing, the court will pronounce such judgment as they think warranted by the facts. It was formerly thought, that in a capital case a special verdict could not be amended; but it is now held, that although a special verdict could be amended in matters of fact, yet the court may amend a mere error of form in capital cases, and more especially where such alteration is to fulfill the evident intention of the jury.

If a jury, through mistake or partiality, deliver an improper verdict, the court may, before it is recorded, desire them to reconsider it. They *cannot, however, be allowed to make any alteration after the verdict is recorded.

When the prisoner is convicted by the jury, he is either at once called upon to show cause why the judgment of the court should not be passed upon him, or made to stand by, to await the delivery of his sentence. When a prisoner is acquitted upon the merits on a sufficient indictment, he is forever discharged from that accusation. In this respect our law differs from the civil, which merely discharged him from that accuser, allowing other prosecutions to be instituted at future periods. After such acquittal he may at once be set at liberty; but it is the usual practice at the assizes not to apply for a prisoner’s discharge until the Grand Jury be dismissed, as it might be possible that during their session other bills might be preferred against the defendant.

Under 39 & 40 Geo. III. c. 94, s. 1, if, upon the trial of any person for treason, murder, or felony, his insanity at the time of the commission of the offence is given in evidence, and the jury acquit him, it is necessary that they should find specially whether he was insane at the time of
the commission of the offence, and to declare whether he is acquitted upon such ground of insanity. If the jury find in the affirmative, it is the duty of the court before whom he was tried to make an order that he shall be kept in strict custody until the pleasure of the queen be known; and the queen may order the imprisonment of such person during pleasure. By the 3 & 4 Vict. c. 54, s. 3, the same provisions are extended to persons charged with misdemeanor. If a prisoner, upon his arraignment, is insane, and so found by a jury empanelled for that purpose, the court may order such finding to be recorded, and the prisoner to be confined until her Majesty's pleasure be known, which is in effect until he is in such a sound state of mind as to be able to plead.

If one of the jury die before the delivery of the verdict, the remaining eleven will be discharged, and a new jury may at once be sworn, or a new juror added to the eleven, and he may be tried immediately. The same course may be adopted where a juror is taken so ill as not to be able to remain on the jury. In the case where a juror is added to the eleven, they must be sworn anew, and the prisoner is entitled again to have his challenges. If the trial is not concluded on the same day on which it began, the judge has authority to adjourn it from day to day. In such cases the jury, on a trial for treason or felony, are kept together during the night, under charge of an officer of the court. This is not done, however, in cases of misdemeanor; but the court may, if they think fit, even in misdemeanor, order that they may so be detained, as in cases of felony.

*CHAPTER XVIII. [*71]*

OF PROCEEDINGS BETWEEN VERDICT AND JUDGMENT.

A special verdict, involving points of difficulty and importance, and formed at the assizes, may be removed, by certiorari, into the Court of Queen's Bench. When the offence is capital, the prisoner is immediately asked, by the clerk of arraigns, what he has to say why judgment of death should not be pronounced against him; and this is done immediately after conviction. Where a prisoner has been found guilty in the Court of Queen's Bench, whether on an indictment originally taken there, or removed thither by certiorari, the mode of proceeding is somewhat different. All the authorities in the books go to show, that in cases of felony or treason no new trial can in any case be granted; and it is said, if the conviction appears to be improper, the judge may respite the execution, to enable the defendant to apply for a pardon. Though this position is for the most part correct, it must be received with some qualification, for it has now been decided, by the judges of the Court of Queen's Bench, that where a case of felony is removed, by certiorari, from an inferior jurisdiction into their court, a new trial may be granted, for a misdirection, at the trial, of the learned judge who tried the case. And the principle seems to be this: that where such [*72]*
a case is removed into the Court of Queen's Bench, and is sent down to be tried at Nisi Prius, that all the incidents of a trial at Nisi Prius attach to it. This was decided in the case of Regina against Rooke and Seafie, which was an indictment for felony, and which was removed, by certiorari, into the Court of Queen's Bench, and the record sent down to be tried at Nisi Prius, at the Yorkshire Assizes. This is the only case we can find in the books of a new trial having been granted in a case of felony. And it is important to know this, as a prisoner upon a charge of felony will, by a removal of the record into the Queen's Bench, have an advantage he would not possess if tried by an inferior court.

In all cases of misdemeanor after a conviction, the superior courts may grant a new trial. Inferior courts have no power to do so upon the merits, but only for an irregularity in the proceedings. After a special verdict, a venire facias de novo is the proper mode of proceeding; and, after a general verdict, an application for a new trial. The difference between a new trial and a venire facias de novo is, that the former may be granted upon the ground of improper direction, misconduct of jurors, and for a variety of other causes; whilst the latter is only grantable where some mistake is apparent on the record. A new trial cannot in general be granted on the part of the prosecutor after the defendant has been *acquitted, though the verdict should appear to be against [*73] evidence. The motion for a new trial is made upon affidavits of the circumstances. The defendant may, at any time between conviction and sentence, but not afterwards, move the court in arrest of judgment. This motion must be grounded on objections which appear upon the face of the record itself; therefore no defect in evidence, or improper conduct at the trial, will be sufficient. Even if the defendant omits to make any motion in arrest of judgment, the court may, if they are satisfied that the defendant has not been convicted of an offence in law, arrest the judgment. If the judgment be arrested, all the proceedings are set aside, and a judgment of acquittal given. There is no bar, however, to a fresh indictment.

CHAPTER XIX.

OF JUDGMENT.

Sentence, in capital cases, is usually given immediately after the conviction; and it may be observed that, in all capital cases except high treason, the court before which the offender is committed is authorised to abstain from pronouncing judgment of death, if it shall be of opinion that the offender is a fit subject to be recommended for the royal mercy. Before judgment is pronounced, in such cases, upon the prisoner, the crier makes a proclamation, commanding all manner of persons [*74] *to keep silence whilst sentence of death is passed upon the prisoner at the bar, upon pain of imprisonment. It is necessary that the prisoner should be first asked if he has anything to say why the judg-
ment of the court should not be passed upon him; and it is necessary that this should appear upon the face of the record. It is not to be expected that, in a small work of this kind, we can enter into the various punishments inflicted by the law; and we can only refer the reader who may want further information upon this subject to Mr. Archbold's or Mr. Russell's excellent works upon Criminal Law.

When the defendant is acquitted upon the merits, the proper entry upon the record is—"Whereupon all and singular the premises being seen and fully understood by the court of our lady the queen now here, it is considered and adjudged by the said court that the said defendant be discharged of the premises, and do depart hence without delay."

When the judgment is pronounced, it should be entered upon the record. The record so made up, in case of felony, states the session of Oyer and Terminus, the commission of the judges, the presentment of the grand jury by name, the indictment, the delivery of the indictment into court, the arraignment, the plea, the issue, the award of the jury process, the verdict, the asking the prisoner why sentence should not be passed on him, and the judgment passed by the judges.

*CHAPTER XX. [ *75 ]

OF WRIT OF ERROR.

A writ of error to reverse a judgment lies from all inferior jurisdictions to the Queen's Bench, and from thence to the House of Lords. Lord Mansfield, in speaking of writs of error, says, that until the reign of Queen Anne, a writ of error, in any criminal case, was held to be merely ex gratia. It was then laid down, that writs of error, in criminal cases, were not grantable ex debito justitiae, but ex gratia regis; and that, in such a case, a man ought to make application to the king, and he will refer to his counsel, and if they certify that there is cause, he will grant a writ of error.

In the third year of the reign of Anne, it was resolved by ten of the judges, that in every case under treason and felony, a writ of error was not merely a matter of favour, but of right, and ought to be granted. But even in misdemeanors, this is only to be understood to mean where there is probable cause of error. It does not issue as a matter of course, but under the fiat of the attorney-general. If probable grounds are laid before the attorney-general, and he improperly refuse to issue his fiat, the court will compel him so to do.

A writ of error lies, for all defects, upon the face of the indictment, and which are not cured by verdict, for any irregularity in the awarding of the jury process, defect in the caption, for irregu. [*76 ] - larity in the verdict or judgment, for the omission of the demand of the defendant what he has to say why the court should not proceed to judgment against him. In cases where a writ of error is allowed for any
mis-awarding of the jury process, the court should direct the sessions to
award a venire de novo.

During the time the writ is pending, in treason and felony, the pris-
one remains in custody. In misdemeanors, however, he may be admit-
ted to bail. In cases of wilful delay and neglect to prosecute the writ,
the court will order it to be quashed.

CHAPTER XXI.

RECORD OF CONVICTION AND JUDGMENT FOR MURDER.

Having now reviewed the proceedings from arrest to judgment, it
may be as well to present the reader with a view of those same proceed-
ings as they would appear upon a record when made up. We have taken
a case in which the prisoner is supposed to have been tried and convicted
of murder at the assizes, the record of which trial and conviction would
be as follows:—

Yorkshire, } “Be it remembered, that at the General Session of our lady
 to wit. } the queen, of Oyer and Terminer, holden at the castle of
York, in and for the said county of York, on Friday, the twelfth
[ *77 ] *day of March, in the fifteenth year of the reign of the lady
Victoria, queen of Great Britain, before Sir Cresswell Cresswell, one of
the justices of our said lady the queen, of her Court of Common Bench,
and others their fellows justices of our said lady the queen, assigned by
letters-patent of our said lady the queen, under her great seal of Great
Britain, made to them the aforesaid justices and others, and any two or
more of them, whereof one of them, the said Sir Cresswell Cresswell, and
Sir Thomas Noon Talfourd, our lady the queen would have to be one to
inquire, by the oath of good and lawful men of the county aforesaid, by
whom the truth of the matter might be the better known, and by other
ways, methods, and means, whereby they could or might the better
know, as well within the liberties as without, more fully the truth of all
treasons, insurrections, rebellions, counterfeiting, clippings, wastings,
false coinings, and other falsities of the moneys of Great Britain, and of
other kingdoms or dominions whatsoever; and of all murders, felonies,
manslaughters, killings, burglaries, rapes of women, unlawful meetings
and conventicles, unlawful utterings of words, unlawful assemblies, mis-
prisions, confederacies, false allegations, trespasses, riots, routs, reten-
tions, escapes, contempts, falsities, negligences, concealments, mainten-
ances, oppressions, champerties, deceits, and all other misdeeds, offences,
and injuries whatsoever; and also the accessories of the same within the
county aforesaid, as well within liberties as without, by whom-
soever and howsoever done, *had, perpetrated, and committed;
and by whom, to whom, when, how, and in what manner, and of all
other articles and circumstances in the said letters-patent of the said
lady the queen specified, the premises, and every or any of them, how-
soever concerning, and for this time to hear and determine the said treasons and other premises according to the laws and customs of the realm of England.

And also keepers of the peace and justices of the said lady the queen, assigned to hear and determine divers felonies, trespasses, and other misdemeanors committed within the county aforesaid, by the oath of William Bethell, William Constable Maxwell, Francis Cholmley, Edward Petre, Charles Langdale, Joseph Smith, William Raines, Richard Savage, Thomas Joseph Owst, David Burton, George Pelsant Dawson, William Lidell, Francis Lawley, Laurence Hall, and Charles Carter, Esquires, good and lawful men of the county aforesaid, then and there impannel, sworn, and charged to inquire for the said lady the queen, and for the body of the said county—it is represented that Andrew Smith, late of the parish of Cottingham, in the said county, labourer, on the tenth day of June, in the year of our Lord 1851, feloniously, wilfully, and of his malice aforesaid, did kill and murder Joseph Jones; whereupon the sheriff of the county aforesaid is commanded that he omit not for any liberty in his bailiwick, but that he take the said Andrew Smith, if he may be found in his bailiwick, and him safely keep to answer to the felony and murder whereof he stands indicted; *which said indictment the said justices above named, afterwards, to wit, at the [ *79 ] delivery of the gaol of the said lady the queen, helden at York, in and for the county aforesaid, on Friday, the eighteenth day of March, in the said fifteenth year of the reign of the said lady the queen, before the said justices and their fellows justices of our said lady the queen, assigned to deliver her said gaol of the county aforesaid of the prisoners herein being, by their proper hands to deliver here in court of record in form of the law to be determined; and afterwards, to wit, at the delivery of the said gaol of the said lady the queen, of her county aforesaid, on the said eighteenth day of March, in the said fifteenth year of the reign of the said lady the queen, before the said justices of the said lady the queen, above named, and other their fellows aforesaid, here cometh the said Andrew Smith, under the custody of William Empson Stead, esquire, sheriff of the county aforesaid, in whose custody in the gaol of the county aforesaid, for the cause aforesaid, he hath been before committed, being brought to the bar here in his proper person by the said sheriff, by whom he is here also committed; and forthwith being demanded concerning the premises in the said indictment, above specified and charged upon him, how he will acquit himself thereof, he says that he is not guilty thereof, and thereof for good and evil he puts himself upon the country; and Sir John Bayley, baronet, clerk of the assizes for the county aforesaid, who prosecutes *for our said lady the queen [ *80 ] in this behalf, doth the like. Therefore let a jury thereupon here immediately come before the said justices of the lady the queen, and others their fellows aforesaid, of free and lawful men, of the county of York aforesaid, by whom the truth of the matter may be the better known, and who are not of kin to the said Andrew Smith, to recognise, upon their oath, whether the said Andrew Smith be guilty of the felony and murder in the indictment aforesaid, because as well the said Sir John
Bayley, who prosecutes for the said lady the queen in this behalf, as the said Andrew Smith, have put themselves upon the said jury; and the jurors of the said jury, by the sheriff for this purpose impanelled and returned, to wit, David Williams, John Smith, Thomas Horn, Charles Nokes, Richard May, Walter Duke, Matthew Lyon, James White, Oliver Green, Bartholomew Nash, and Henry Long, being called, come, who, being elected, tried, and sworn to speak the truth of and concerning the premises, upon their oath, say, that the said Andrew Smith is guilty of the felony and murder aforesaid, on him above charged in the form aforesaid, as by the indictment aforesaid. And upon this, it is forthwith demanded of the said Andrew Smith, if he hath or knoweth anything to say wherefore the said justices here ought not, upon the premises and verdict aforesaid, to proceed to judgment and execution against him, who nothing farther saith, unless as he before had seen. Whereupon, all and singular, the premises *being seen, and by the said justices here fully understood, it is considered by the court here that the said Andrew Smith be taken to the gaol of the said lady the queen, of the said county of York, from whence he came, and from thence to the place of execution, on Monday now next ensuing, being the twenty eighth of this instant, March, and there be hanged by the neck until he be dead."

CHAPTER XXII.

OF REPRIEVES AND PARDONS.

The term reprieve is derived from reprendre, to keep back, and is virtually the withdrawal of the sentence for an interval of time, and operates in delay of execution. A reprieve may be either granted by her majesty, or by the judge who tried the case, or from the operation of law, in circumstances which render an immediate execution inconsistent with humanity and justice. When it proceeds ex mandatio regis, or from the mere pleasure of the crown, the intention of her majesty may be signified by a verbal message; but the more usual course is to send the reprieve under the privy signet. A reprieve proceeding from the judge himself, or one, as it is called, ex arbitrio judicis, is merely discretionary. This power belongs of right to every tribunal invested with authority to award execution. It may even be exercised in cases of treason.

*There are some cases in which a judge, ex necessitate legis, is bound to reprieve: thus, where a woman is convicted of treason or felony, she may allege pregnancy in delay of execution. This has been a rule in England from the earliest period, and seems to have been borrowed from the laws of ancient Rome, which directs quod praegnantis mulieris damnae poena differatur quod pariat. To render this plea available, she must be quick with child; and if she so allege, a jury of twelve matrons are empanelled and sworn, to try whether or not she is
quick with child. They then retire with her to some convenient place and make an examination; and if they find in the affirmative, she is reprieved until after delivery. Another ground for which the judge is bound to grant a reprieve is the insanity of the prisoner.

As the queen is herself the legal prosecutor in every indictment for crime, it follows, that she may, by means of a pardon, remit any punishment due to public justice, or any fine, after the offence has been committed. By the Act of Settlement, no pardon under the great seal of England can be pleadeable in bar of an impeachment; but when the proceedings are finished, her prerogative is no further limited. And history furnished a remarkable instance in the case of the six noblemen, who, in 1715, joined with the Pretender, and who received the royal pardon. The prerogative of pardon is generally a matter of pure discretion, to be exercised by the crown in the manner it deems proper. A pardon may be granted either by a *general act of pardon or by virtue of a special pardon under the great seal. In order to render it valid, [*83] it must express with sufficient accuracy the crime it is intended to forgive. A general pardon of all felonies would be bad. An act of grace by parliament need not specify any particular instance of crime. A pardon may be extended to the subject on any condition her majesty pleases to annex, whether precedent or subsequent, on the performance of which the validity of the pardon depends; and, in general, a pardon to felons is granted on the condition of transportation, and this is allowed by the Habeas Corpus Act and subsequent statutes.

The effect of a pardon is to give the prisoner new capacity, credit, and character; so much so, that he may sustain an action for being called a felon as though he had never been convicted.

CHAPTER XXIII.

OF CRIMINAL INFORMATIONS.

We shall now proceed, in this chapter, to say something of criminal informations. They are of two kinds, one in the name of the queen, the other at the suit of an informer; we shall speak, in the first place, of the former.

A criminal information is filed in the name of the queen, for the punishment of offences affecting *the interests of the public. The difference between a criminal information and an indictment is, [*84] that the former is tried upon the mere allegation of the officer by whom it is preferred, while the latter is founded upon the finding of a grand jury. Moreover, unlike an indictment, an information may be altered in substance and amended at any time before trial; and though the defendant should be acquitted, no action will lie for a malicious prosecution, as the leave of the court in which it is filed must first be obtained. Indeed, wherever a court of competent jurisdiction has once sanctioned a
prosecution, this establishes that there was probable cause for instituting it, and no action lies, though the prosecution fail.

The filing of criminal informations existed at common law. Mr. Justice Blackstone observes, speaking of informations, in the fourth volume of his Commentaries, as follows: "As the king was bound to prosecute, or, at least, to lend the sanction of his name to a prosecutor, whenever a grand jury informed him, upon their oaths, that there was a sufficient ground for instituting a criminal suit; so when his immediate officers were otherwise sufficiently assured that a man had committed a gross misdemeanor, either personally against the king or his government, or against the public peace or good order, they were at liberty, without waiting for any farther intelligence, to convey that information to the Court of King's Bench by a suggestion on the record, and to carry on the prosecution in his majesty's name."

[*85] "For offences affecting the queen, her ministers, or the state, informations are filed ex officio by the attorney-general. The 4 & 5 W. & M. c. 18, greatly abridged the powers of coroners with regard to informations in which a private individual was virtually the prosecutor; but this statute does not affect informations filed ex officio. Informations lie for misdemeanors only, for no person where life is in question, or indeed in any case of treason or felony, can be called upon to answer until the charge has been sanctioned by the oaths of a grand jury.

Informations ex officio are filed by the attorney-general alone, though, if there be a vacancy in that office, it may be done by the solicitor-general. They may be filed for any offence, below the degree of felony, which tends to disturb the government, or to interfere with the interests of the public or the safety of the crown, such as libels on the government or crown officers, obstruction of revenue officers, or the bribing of public officers. The attorney-general is the sole judge of what public misdemeanors he will prosecute. The following is the commencement of an information ex officio:—

"Be it remembered, that A. B., attorney-general of our sovereign lady the now queen, who for our said lady the queen prosecutes in this behalf, in his proper person comes here into the court of our said lady the queen, before the queen herself at Westminster, in the county of Middlesex, on, &c., and for our said lady the queen giveth the court here to understand, and be informed that, &c." [*86] The substance of the charge then follows with the same accuracy and precision as in an indictment, after which it concludes thus: "Whereupon the said attorney-general of our said lady the queen, who for our said lady the queen in this behalf prosecutes, prays the consideration of the court here in the premises, and that due process of law may be awarded against the said C. D., the defendant in this behalf, to make him answer to our said lady the queen touching and concerning the premises aforesaid." The whole is then signed by the attorney-general, and filed in the Crown Office.

The attorney-general having filed his information, it is brought on for trial at such time as is convenient to that officer. In case of unnecessary delay, the defendant may apply to the court to fix a time for the trial.
The case is generally tried at the Nisi Prius side of the Queen's Bench. The attorney-general is entitled to a trial at bar, if he prefers it. If the defendant be acquitted, if a nolle prosequi be entered, he has to defray his own expenses, as the crown neither receives nor pays costs. Judgment is not pronounced until moved for by the attorney-general. The defendant then, either personally or through his counsel, addresses the court in mitigation of punishment.

We shall now consider informations filed in the name of the master of the Crown Office. The master of the Crown Office stands in the same relation to the public as the attorney-general in relation to the crown. These latter informations may be divided into two classes: namely, those against magistrates for misconduct in their office, and those filed against private individuals. The jurisdiction over informations [*87] is virtually vested in the Queen's Bench, as the 4 & 5 W. & M. c. 18, prohibits the master of the Crown Office from filing informations without the leave of the court. The court will grant leave to file a criminal information for offences below the degree of felony, which, though they do not affect the government, still materially concern the public welfare. Thus it would be allowed for offences against God, religion, or morality, as for blasphemy or obscene writings, for an imposture, and for conspiring to defraud, attempting to prejudice the minds of a jury by distributing handbills for that purpose, for libelling or obstructing magistrates in the discharge of their duty.

It is necessary now, since the 4 & 5 W. & M. c. 18, to disclose to the court upon affidavits the grounds upon which it is exhibited. The affidavits being prepared, the prosecutor, by his counsel, moves the Court of Queen's Bench for a rule, calling upon the defendant to show cause why leave should not be granted to file an information. If a rule is obtained at the proper time, cause is shown; if the rule is made absolute, the party is then bound to enter into a recognizance to prosecute; the information is then filed. An information may be amended at any time before the trial: after it is filed, the defendant either pleads or demurs, after which issue is joined; and notice of trial being given, the matter is then brought before the court. Either *party may have a special jury if they think fit. Informations of the Crown Office [*88] against magistrates are subjected to the same rules as those against private individuals.

CHAPTER XXIV.

OF THE COURT OF CRIMINAL APPEAL.

Previously to the 11 & 12 Vict. c. 78, when any objection was taken on any indictment for treason or felony concerning which the judge entertained doubts, it was usual to reserve the case for the consideration of all the judges. The Court of Quarter Sessions, however, had no power to reserve questions for the consideration of the judges; conse-
quently, by the 11 & 12 Vict. c. 78, it is enacted, that when any person shall have been convicted of any treason, felony, or misdemeanor before any Court of Oyer and Terminer, or Gaol Delivery, or Court of Quarter Sessions, the judge or commissioner, or justices of the peace, before whom the case was tried, may reserve any question of law for the consideration of the justices of either bench and barons of the exchequer, and may respite the execution of the judgment until the question shall have been decided. The prisoner may until such decision, in the discretion of the judge, be either committed to prison or admitted to bail. The judge or commissioner, or Court of Quarter Sessions, shall state a case to be remitted to the said justices and barons, showing what the question of law is which they have to decide; and the said justices and barons have full power and authority to hear and determine the said question or questions, and to reverse, affirm, or amend any judgment, or to arrest the judgment. If the judgment should be reversed, avoided, or arrested, and the defendant shall be in prison, the sheriff or gaoler shall forthwith discharge him.

The third section enacts, that the jurisdiction and authority given to the justices of either bench and barons of the exchequer shall and may be exercised by the said justices and barons, or five of them at least, of whom the lord chief justice of the Court of Queen’s Bench, the lord chief justice of the Common Pleas, and the lord chief baron of the Court of Exchequer or one of such chiefs, at least, shall be part. Their judgments are to be delivered in open court, after hearing counsel, if the prosecutor or prisoner desire it. The justices and barons have power to cause the case submitted to them to be sent back and amended. The judge at the trial has authority to reserve, not only questions of law raised by the evidence, but also questions of law which arise upon the record. The court generally sits in the Exchequer Chamber.
An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to persons charged with indictable offences.—August 14, 1848.

Whereas it would conduce much to the improvement of the administration of criminal justice within England and Wales if the several statutes and parts of statutes relating to the duties of her Majesty's justices of the peace therein with respect to persons charged with indictable offences were consolidated, with such additions and alterations as may be deemed necessary, and that such duties should be clearly defined by positive enactment: Be it therefore declared and enacted by the queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that in all cases where a charge or complaint (A.) shall be made before any one or more of her Majesty's justices of the peace for any county, riding, division, liberty, city, borough, or place within England or Wales, that any person has committed or is suspected to have committed any treason, felony, or indictable misdemeanor, or other indictable offence whatsoever, within the limits of the jurisdiction of such justice or justices of the peace, or that any person guilty or suspected to be guilty of having committed any such crime or offence elsewhere out of the jurisdiction of such justice or justices is residing or being or is suspected to reside or be within the limits of the jurisdiction of such justice or justices, then and in every such case, if the *person so charged or complained against shall [*92] not then be in custody, it shall be lawful for such justice or justices of the peace to issue his or their warrant (B.) to apprehend such person, and to cause him to be brought before such justice or justices, or any other justice or justices for the same county, riding, division, liberty, city, borough, or place, to answer to such charge or complaint, and to be further dealt with according to law: Provided always, that in all cases it shall be lawful for such justice or justices to whom such charge or complaint shall be preferred, if he or they shall so think fit, instead of issuing in March, 1854.—20
the first instance his or their warrant to apprehend the person so charged or complained against, to issue his or their summons (C.) directed to such person, requiring him to appear before the said justice or justices at a time and place to be therein mentioned, or before such other justice or justices of the same county, riding, division, liberty, city, borough, or place as may then be there; and if after being served with such summons in manner hereinafter mentioned he shall fail to appear at such time and place, in obedience to such summons, then, and in every such case, the said justice or justices, or any other justice or justices of the peace for the same county, riding, division, liberty, city, borough, or place, may issue his or their warrant (D.) to apprehend such person so charged or complained against, and cause such person to be brought before him or them, or before some other justice or justices of the peace for the same county, riding, division, liberty, city, borough, or place, to answer to the said charge or complaint, and to be further dealt with according to law: Provided nevertheless, that nothing herein contained shall prevent any justice or justices of the peace from issuing the warrant hereinbefore first mentioned at any time before or after the time mentioned in such summons for the appearance of the said accused party.

2. And be it enacted, that in all cases of indictable crimes or offences of any kind or nature whatsoever committed on the high seas, or in any creek, harbour, haven, or other place in which the admiralty of England have or claim to have jurisdiction, and in all cases of crimes or offences committed on land beyond the seas, for which *indictment may legally be preferred in any place within England or Wales, it shall be lawful for any one or more of her Majesty’s justices of the peace for any county, riding, division, liberty, city, borough, or place within England or Wales in which any person charged with having committed or with being suspected to have committed any such crime or offence shall reside or be, or shall be supposed or suspected to reside or be, to issue his or their warrant (E.) to apprehend the person so charged, and to cause him to be brought before him or them, or some other justice or justices of the peace for the same county, riding, division, liberty, city, borough, or place, to answer to the said charges, and to be further dealt with according to law.

3. And be it enacted, that where any indictment shall be found by the Grand Jury in any Court of Oyer and Terminer or General Gaol Delivery, or in any Court of General or Quarter Sessions of the Peace, against any person who shall then be at large, and whether such person shall have been bound by any recognizance to appear to answer to the same or not, the person who shall act as clerk of the indictments at such Court of Oyer and Terminer or Gaol Delivery, or as clerk of the peace at such sessions, at which the said indictment shall be found, shall at any time afterwards, after the end of the Sessions of Oyer and Terminer or Gaol Delivery or Sessions of the Peace at which such indictment shall have been found, upon application of the prosecutor, or of any person on his behalf, and on payment of a fee of one shilling, if such person shall not have already appeared and pleaded to such indictment, grant unto such prosecutor or person a certificate (F.) of such indictment having
been found; and upon production of such certificate to any justice or justices of the peace for any county, riding, division, liberty, city, borough, or place in which the offence shall in such indictment be alleged to have been committed, or in which the person indicted in and by such indictment shall reside or be, or be supposed or suspected to reside or be, it shall be lawful for such justice or justices, and he and they are hereby required, to issue his or their warrant (G.) to apprehend such person so indicted, and to cause him to be brought before such justice or justices, or any other justice or justices for the same county, riding, division, liberty, city, borough, or place, to be dealt with according to law, and afterwards, if such person be thereupon apprehended and brought before any such justice or justices, such justice or justices, upon its being proved upon oath or affirmation before him or them that the person so apprehended is the same person who is charged and named in such indictment, shall, without further inquiry or examination, commit (H.) him for trial, or admit him to bail, in manner herein-after mentioned; or if such person so indicted shall be confined in any gaol or prison for any other offence than that charged in the said indictment, at the time of such application, and production of the said certificate to such justice or justices as aforesaid, it shall be lawful for such justice or justices, and he and they are hereby required, upon it being proved before him or them upon oath or affirmation that the person so indicted and the person so confined in prison are one and the same person, to issue his or their warrant (I.) directed to the gaoler or keeper of the gaol or prison in which the person so indicted shall then be confined as aforesaid, commanding him to detain such person in his custody until by her Majesty's writ of habeas corpus he shall be removed therefrom, for the purpose of being tried upon the said indictment, or until he shall otherwise be removed or discharged out of his custody by due course of law.

4. And be it enacted, that it shall be lawful for any justice or justices of the peace to grant or issue any warrant as aforesaid or any search warrant on a Sunday as well as on any other day.

5. And be it enacted, that in cases where a justice of the peace for any county, riding, division, liberty, city, borough, or place shall be also justice of the peace for a county, riding, division, liberty, city, borough, or place next adjoining thereto or surrounded thereby, it shall and may be lawful for such justice of the peace to act as such justice for the one county, riding, division, liberty, city, borough, or other place whilst he is residing or happens to be in the other such county, riding, division, liberty, city, borough, or other place, in all matters and things hereinbefore or hereafter in this act mentioned; and that all such acts of such justice, and the acts of any constable or other officer in obedience thereto, shall be as valid, good, and effectual in the law to all intents and purposes as if such justice at the time he shall so act as aforesaid were in the county, riding, division, liberty, city, borough, or other place for which he shall so act; and all constables and other officers for the county, riding, division, liberty, city, borough, or place for which such justice shall so act as aforesaid, are hereby authorized and required to obey the warrants, orders, directions, act or acts of such justice which
in that behalf shall be granted, given, or done, and to do and perform their several offices and duties in respect thereof, under the pains and penalties to which any constable or other officer may be liable for a neglect of duty; and any such constable or other peace officer, or any other person, apprehending or taking into custody any person offending against law, and whom he lawfully may and ought to apprehend or take into custody, by virtue of his office or otherwise, in any such county, riding, division, liberty, city, borough, or place, may lawfully take and convey such person so apprehended and taken as aforesaid to and before any such justice of the peace for such county, riding, division, liberty, city, borough, or place, whilst such justice shall be in such adjoining county, riding, division, liberty, city, borough, or place as aforesaid, and the said constables and other peace officers, and all such other persons as aforesaid, are hereby authorized and required in all such cases so to act in all things as if the said justice of the peace were within the said county, riding, division, liberty, city, borough, or place for which he shall so act.

6. And be it enacted, that it shall be lawful for any justice or justices of the peace acting for any county at large, or for any riding or division of such county, to act as such at any place within any city, town, or other precinct, being a county of itself, or otherwise having exclusive jurisdiction, and situated within, surrounded by, or adjoining to any such county, riding, or division respectively, and that all and every such act and acts, matters and things, to be so done by such justice or justices within such city, town, or precinct, as justice or justices for such county, riding, or division respectively, shall be as valid and effectual in law as if the same had been done within such county, riding, or division respectively, to all intents and purposes whatsoever: Provided always, that nothing in this act contained shall extend to give power to the justices of the peace for any county, riding, or division, not being also justices for such city, town, or other precinct, and not having authority as justice of the peace therein, or any constable or other officer acting under them, to act or intermeddle in any matters or things arising within any such city, town, or precinct, in any manner whatsoever.

7. And whereas doubts have arisen whether the powers given to justices by an act passed in the session of parliament held in the second and third years of the reign of her present Majesty, intituled, An Act for the better Administration of Justice in detached Parts of Counties, are applicable to cases of summary jurisdiction and to acts merely ministerial: Be it hereby declared and enacted, that all the acts of any justice or justices, and of any constable or officer in obedience thereto, shall be as good in relation to any detached part of any county which is surrounded in whole or in part by the county for which such justice or justices acts or act, as if the same were to all intents and purposes part of the said county; and all constables and other officers of such detached part are hereby required to obey the warrants, orders, and acts of such justice or justices, and to perform their several duties in respect thereof, under the pains and penalties to which any constable or other officer may be liable for a neglect of duty.

8. And be it enacted, that in all cases where a charge or complaint
for any indictable offence shall be made before such justice or justices as aforesaid, if it be intended to issue a warrant in the first instance against the party or parties so charged, an information and complaint thereof (A.) in writing, on the oath or affirmation of the informant or of some witness or witnesses in that behalf, shall be laid before such justice or justices:

Provided always, that in all cases where it is intended to issue a summons instead of a warrant in the first instance, it shall not be necessary that such information and complaint shall be in writing, or [*97] be sworn to or affirmed in manner aforesaid, but in every such case such information and complaint may be by parol merely, and without any oath or affirmation whatsoever to support or substantiate the same: Provided also, that no objection shall be taken or allowed to any such information or complaint for any alleged defect therein in substance or in form, or for any variance between it and the evidence adduced on the part of the prosecution before the justice or justices who shall take the examination of the witnesses in that behalf, as herein-after mentioned.

9. And be it enacted, that upon such information and complaint being so laid as aforesaid the justice or justices receiving the same may, if he or they shall think fit, issue his or their summons or warrant respectively as hereinbefore is directed to cause the person charged as aforesaid to be and appear before him or them, or any other justice or justices of the peace for the same county, riding, division, liberty, city, borough, or place, to be dealt with according to law; and every such summons (C.) shall be directed to the party so charged in and by such information, and shall state shortly the matter of such information, and shall require the party to whom it is so directed to be and appear at a certain time and place therein mentioned before the justice who shall issue such summons, or before such other justice or justices of the peace of the same county, riding, division, liberty, city, borough, or place as may then be there, to answer to the said charge, and to be further dealt with according to law; and every such summons shall be served by a constable or other peace officer upon the person to whom it is so directed by delivering the same to the party personally, or if he cannot conveniently be met with, then by leaving the same with some person for him at his last or most usual place of abode; and the constable or other peace officer who shall have served the same in manner aforesaid shall attend at the time and place and before the justices in the said summons mentioned, to depose, if necessary, to the service of such summons; and if the person so served shall not be and appear before the justice or justices at the *time and place mentioned in such summons, in obedience to the same, then it shall be lawful for such justice or jus- [*98] tices to issue his or their warrant (D.) for apprehending the party so summoned, and bringing him before such justice or justices, or some other justice or justices of the peace for the same county, riding, division, liberty, city, borough, or place, to answer the charge in the said information and complaint mentioned, and to be further dealt with according to law: Provided always, that no objection shall be taken or allowed to any such summons or warrant for any alleged defect therein in substance or in form, or for any variance between it and the evidence...
adduced on the part of the prosecution before the justice or justices who shall take the examination of the witnesses in that behalf, as hereinafter mentioned; but if any such variance shall appear to such justice or justices to be such that the party charged has been thereby deceived or misled, it shall be lawful for such justice or justices, at the request of the party so charged, to adjourn the hearing of the case to some future day, and in the meantime to remand the party so charged, or admit him to bail, in manner hereinafter mentioned.

10. And be it declared and enacted, that every warrant (B.) hereafter to be issued by any justice or justices of the peace to apprehend any person charged with any indictable offence shall be under the hand and seal or hands and seals of the justice or justices issuing the same, and may be directed either to any constable or other person by name, or generally to the constable of the parish or other district within which the same is to be executed, without naming him, or to such constable and all other constables or peace officers in the county or other district within which the justice or justices issuing such warrant has or have jurisdiction, or generally to all the constables or peace officers within such last-mentioned county or district, and it shall state shortly the offence on which it is founded, and shall name or otherwise describe the offender; and it shall order the person or persons to whom it is directed to apprehend the offender, and bring him before the justice or justices issuing the said warrant, or before some other justice or justices of the peace for the same county, riding, division, liberty, city, borough, or place, to answer to the charge contained in the said information, and to be further dealt with according to law; and it shall not be necessary to make such warrant returnable at any particular time, but the same may remain in force until it shall be executed; and such warrant may be executed by apprehending the offender at any place within the county, riding, division, liberty, city, borough, or place within which the justice or justices issuing the same shall have jurisdiction, or in case of fresh pursuit at any place in the next adjoining county or place, and within seven miles of the border of such first-mentioned county, riding, division, liberty, city, borough, or place, without having such warrant backed as hereinafter mentioned; and in all cases where such warrant shall be directed to all constables or other peace officers within the county or other district within which the justice or justices issuing the same shall have jurisdiction, it shall be lawful for any constable, headborough, tithingman, borsholder, or other peace officer for any parish, township, hamlet, or place within such county or district, to execute the said warrant within any parish, township, hamlet, or place situate within the jurisdiction for which such justice or justices shall have acted when he or they granted such warrant, in like manner as if such warrant were directed specially to such constable by name, and notwithstanding the place in which such warrant shall be executed shall not be within the parish, township, hamlet, or place for which he shall be such constable, headborough, tithingman, borsholder, or other peace officer: Provided always, that no objection shall be taken or allowed to any such warrant for any defect therein in substance or in form, or for any variance...
between it and the evidence adduced on the part of the prosecution before the justice or justices who shall take the examinations of the witnesses in that behalf, as hereinafter mentioned; but if any such variance shall appear to such justice or justices to be such that the party charged has been thereby deceived or misled, it shall be lawful for such justice or justices, at the request of the party so charged, to adjourn the hearing of the case to some future day, and in the meantime to remand the party so charged, or to admit him to bail, in manner hereinafter mentioned.

*11. And be it enacted, that if the person against whom any such warrant shall be issued as aforesaid shall not be found [*100] within the jurisdiction of the justice or justices by whom the same shall be issued, or if he shall escape, go into, reside, or be, or be supposed or suspected to be, in any place in England or Wales, out of the jurisdiction of the justice issuing such warrant, it shall and may be lawful for any justice of the peace for the county or place into which such person shall so escape or go, or in which he shall reside or be, or be supposed or suspected to be, upon proof alone being made on oath of the handwriting of the justice making such warrant, to make an indorsement (K.) on such warrant, signed with his name, authorizing the execution of such warrant within the jurisdiction of the justice making such indorsement, and which indorsement shall be sufficient authority to the person bringing such warrant, and to all other persons to whom the same was originally directed, and also to all constables and other peace officers of the county or place where such warrant shall be so indorsed, to execute the same in such other county or place, and to carry the person against whom such warrant shall have issued, when apprehended, before the justice and justices of the peace who first issued the said warrant, or before some other justice or justices of the peace in and for the same county, riding, division, city, liberty, borough, or place, or before some justice or justices of the county, riding, division, liberty, city, borough, or place where the offence in the said warrant mentioned appears to have been committed: Provided always, that if the prosecutor, or any of the witnesses upon the part of the prosecution, shall then be in the county or place where such person shall have been so apprehended, the constable or other person or persons who shall have so apprehended such person may, if so directed by the justice backing such warrant, take and convey him before the justice who shall have so backed the said warrant, or before some other justice or justices of the same county or place; and the said justice or justices may thereupon take the examinations of such prosecutor or witnesses, and proceed in every respect in manner hereinafter directed with respect to persons charged before a justice or [*justices of the peace with an offence alleged to have been committed in another county or place than that in [*101] which such persons have been apprehended.

12. And be it enacted, that if any person against whom a warrant shall be issued in any county, riding, division, liberty, city, borough, or place in England or Wales, by any justice of the peace, or by any judge of her Majesty's Court of Queen's Bench, or justice of Oyer and Termi-
ner or Gaol Delivery, for any indictable offence against the laws of that part of the United Kingdom, shall escape, go into, reside, or be, or be supposed or suspected to be, in any county or place in that part of the United Kingdom called Ireland, or if any person against whom a warrant shall be issued in any county or place in Ireland, by any justice of the peace, or by any judge of her Majesty's Court of Queen's Bench there, or any justice of Oyer and Terminer or Gaol Delivery, for any crime or offence against the laws of that part of the United Kingdom, shall escape, go into, reside, or be, or be supposed or suspected to be, in any county, riding, division, liberty, city, borough, or place in that part of the United Kingdom called England or Wales, it shall and may be lawful for any justice of the peace in and for the county or place into which such person shall escape or go, or where he shall reside or be, or be supposed or suspected to be, to indorse (K.) such warrant in manner hereinbefore mentioned, or to the like effect, and which warrant so indorsed shall be a sufficient authority to the person or persons bringing such warrant, and to all persons to whom such warrant was originally directed, and also to all constables or other peace officers of the county or place where such warrant shall be so indorsed, to execute the said warrant in the county or place where the justice so indorsing it shall have jurisdiction, by apprehending the person against whom such warrant shall have been granted, and to convey him before the justice or justices who granted the same, or before some other justice or justices of the peace in and for the same county or place, and which said justice or justices before whom he shall be so brought shall thereupon proceed in such manner as if the said person had been apprehended in the said last-mentioned county or place.

[*102] 13. And be it enacted, that if any person against whom a warrant shall be issued in any county, riding, division, liberty, city, borough, or place in England or Wales, by any justice of the peace, or by any judge of her majesty's Court of Queen's Bench, or justices of Oyer and Terminer or Gaol Delivery, for any indictable offence, shall escape, go into, reside, or be, or be supposed or suspected to be, in any of the Isles of Man, Guernsey, Jersey, Alderney, or Sark, it shall be lawful for any officer within the district into which such accused person shall escape or go, or where he shall reside or be, or be supposed or suspected to be, who shall have jurisdiction to issue any warrant or process in the nature of a warrant for the apprehension of offenders within such district, to indorse (K.) such warrant in the manner hereinbefore mentioned, or to the like effect; or if any person against whom any warrant, or process in the nature of a warrant, shall be issued in any of the Isles aforesaid, shall escape, go into, reside, or be, or be supposed or suspected to be, in any county, riding, division, liberty, city, borough, or place in England or Wales, it shall be lawful for any justice of the peace in and for the county or place into which such person shall escape or go, or where he shall reside or be, or be supposed or suspected to be, to indorse (K.) such warrant or process in manner hereinbefore mentioned, and every such warrant or process, so indorsed, shall be a sufficient authority to the person or persons bringing the same, and to all persons to whom
the same respectively was originally directed, and also to all constables and peace officers in the county, district, or jurisdiction within which such warrant or process shall be so indorsed, to execute the same within the county, district, or place where the justice or officer indorsing the same has jurisdiction, and to convey such offender, when apprehended, into the county or district wherein the justice or person who issued such warrant or process shall have jurisdiction, and carry him before such justice or person, or before some other justice or person within the same county or district who shall have jurisdiction to commit such offender to prison for trial, and such justice or person may thereupon proceed in such and the same manner as if the said offender had been apprehended within his jurisdiction.

*14. And be it declared and enacted, that if any person against whom a warrant shall be issued by any justice of the peace for [*103] any county or place within England or Wales or Ireland, or by any judge of her Majesty's Court of Queen's Bench or justice of Oyer and Terminer or Gaol Delivery in England or Ireland, for any crime or offence against the laws of those parts respectively of the United Kingdom of Great Britain and Ireland, shall escape, go into, reside, or be, or be supposed or suspected to be, in any place in that part of the said United Kingdom called Scotland, it shall be lawful for the sheriff or steward depute or substitute, or any justice of the peace of the county or place where such person or persons shall go into, reside, or be, or be supposed or suspected to be, to indorse (K.) the said warrant in manner hereinbefore mentioned, or to the like effect, which warrant so indorsed shall be a sufficient authority to the person or persons bringing such warrant, and to all persons to whom such warrant was originally directed, and also to all sheriffs, officers, stewards, officers, constables, and other peace officers of the county or place where such warrant shall be so indorsed, to execute the same within the county or place where it shall have been so indorsed, by apprehending the person against whom such warrant shall have been granted, and to convey him into the county or place in England, Wales, or Ireland, where the justice or justices who first issued the said warrant shall have jurisdiction in that behalf, and to carry him before such justice or justices, or before any other justice or justices of the peace of and for the same county or place, to be there dealt with according to law, and which said justice or justices are hereby authorized and required thereupon to proceed in such and the same manner as if the said offender had been apprehended within his or their jurisdiction.

15. And be it enacted, that if any person against whom a warrant shall be issued by the lord justice general, lord chief justice clerk, or of the lords commissioners of justiciary, or by any sheriff or steward depute or substitute, or justice of the peace, of that part of the United Kingdom of Great Britain and Ireland called Scotland, for any crime or offence against the laws of that part of the United Kingdom, shall escape, go into, reside, or be, *or shall be supposed or suspected to be, in any county or place in England or in Ireland, it shall be lawful [*104] for any justice of the peace in and for the county or place into which
such person shall escape or go, or where he shall reside or be, or shall be supposed or suspected to be, to indorse (K.) the said warrant in manner hereinbefore mentioned, and which said warrant so indorsed shall be a sufficient authority to the person or persons bringing the same, and to all persons to whom the same was originally directed, and also to all constables and other peace officers of the county or place where the justice so indorsing such warrant shall have jurisdiction, to execute the said warrant in the county or place where it is so indorsed, by apprehending the person against whom such warrant shall have been granted, and to convey him into the county or place in Scotland next adjoining to that part of the United Kingdom called England, and carry him before the sheriff or steward depute or substitute, or one of the justices of the peace, of the same county or place, and which said sheriff, steward depute or substitute, or justice of the peace, is hereby authorised and required thereupon to proceed in such and the same manner, according to the rules and practice of the law of Scotland, as if the said offender had been apprehended within such county or place in Scotland last aforesaid.

16. And be it enacted, that if it shall be made to appear to any justice of the peace, by the oath or affirmation of any credible person, that any person within the jurisdiction of such justice is likely to give material evidence for the prosecution, and will not voluntarily appear for the purpose of being examined as a witness at the time and place appointed for the examination of the witnesses against the accused, such justice may and is hereby required to issue his summons (L. 1) to such person, under his hand and seal, requiring him to be and appear at a time and place mentioned in such summons before the said justice, or before such other justice or justices of the peace for the same county, riding, division, liberty, city, borough, or place as shall then be there, to testify what he shall know concerning the charge made against such accused party; and if any person so summoned shall neglect or refuse to appear at the time and place appointed by the said summons, and no just excuse [*105] shall be offered for such neglect or refusal, then (after proof upon oath or affirmation of such summons having been served upon such person, either personally or by leaving the same for him with some person at his last or most usual place of abode,) it shall be lawful for the justice or justices before whom such person should have appeared to issue a warrant (L. 2) under his or their hands and seals to bring and have such person at a time and place to be therein mentioned before the justice who issued the said summons, or before such other justice or justices of the peace for the same county, riding, division, liberty, city, borough, or place as shall then be there, to testify as aforesaid, and which said warrant may, if necessary, be backed as hereinbefore is mentioned, in order to its being executed out of the jurisdiction of the justice who shall have issued the same; or if such justice shall be satisfied by evidence upon oath or affirmation that it is probable that such person will not attend to give evidence without being compelled so to do, then, instead of issuing such summons, it shall be lawful for him to issue his warrant (L. 3) in the first instance, and which, if necessary, may be backed as aforesaid; and if on the appearance of such person so sum-
moned before the said last mentioned justice or justices, either in obedience to the said summons or upon being brought before him or them by virtue of the said warrant, such person shall refuse to be examined upon oath or affirmation concerning the premises, or shall refuse to take such oath or affirmation, or having taken such oath or affirmation, shall refuse to answer such questions concerning the premises as shall then be put to him, without offering any just excuse for such refusal, any justice of the peace then present, and having there jurisdiction, may by warrant (L. 4) under his hand and seal commit the person so refusing to the common gaol or house of correction for the county, riding, division, liberty, city, borough, or place where such person so refusing shall then be, there to remain, and be imprisoned for any time not exceeding seven days, unless he shall in the meantime consent to be examined and to answer concerning the premises.

17. And be it enacted, that in all cases where any person shall appear or be brought before any *justice or justices of the peace charged with any indictable offence, whether committed in England or [*106] Wales, or upon the high seas, or on land beyond the sea, or whether such person appear voluntarily upon summons or have been apprehended, with or without warrant, or be in custody for the same or any other offence, such justice or justices, before he or they shall commit such accused person to prison for trial, or before he or they shall admit him to bail, shall, in the presence of such accused person, who shall be at liberty to put questions to any witness produced against him, take the statement (M.) on oath or affirmation of those who shall know the facts and circumstances of the case, and shall put the same into writing, and such depositions shall be read over to and signed respectively by the witnesses who shall have been so examined, and shall be signed also by the justice or justices taking the same; and the justice or justices before whom any such witness shall appear to be examined as aforesaid shall, before such witness is examined, administer to such witness the usual oath or affirmation, which such justice or justices shall have full power and authority to do; and if upon the trial of the person so accused as first aforesaid it shall be proved, by the oath or affirmation of any credible witness, that any person whose deposition shall have been taken as aforesaid is dead, or so ill as not to be able to travel, and if also it be proved that such deposition was taken in the presence of the person so accused, and that he or his counsel or attorney had a full opportunity of cross-examining the witness, then, if such deposition purport to be signed by the justice by or before whom the same purports to have been taken, it shall be lawful to read such deposition as evidence in such prosecution, without further proof thereof, unless it shall be proved that such deposition was not in fact signed by the justice purporting to sign the same.

18. And be it enacted, that after the examinations of all the witnesses on the part of the prosecution as aforesaid shall have been completed, the justice of the peace or one of the justices by or before whom such examination shall have been so completed as aforesaid shall, without requiring the attendance of the witnesses, read or cause to be read to the accused the depositions taken against *him, and shall say to him these words, or words to the like effect: "Having heard the evidence, [*107]
do you wish to say any thing in answer to the charge? you are not obliged to say any thing unless you desire to do so, but whatever you say will be taken down in writing, and may be given in evidence against you upon your trial;” and whatever the prisoner shall then say in answer thereto shall be taken down in writing (N.), and read over to him, and shall be signed by the said justice or justices, and kept with the depositions of the witnesses, and shall be transmitted with them as hereinafter mentioned; and afterwards upon the trial of the said accused person the same may, if necessary, be given in evidence against him, without further proof thereof, unless it shall be proved that the justice or justices purporting to sign the same did not in fact sign the same: Provided always, that the said justice or justices before such accused person shall make any statement shall state to him, and give him clearly to understand, that he has nothing to hope from any promise of favour, and nothing to fear from any threat which may have been holden out to him to induce him to make any admission or confession of his guilt, but that whatever he shall then say may be given in evidence against him upon his trial, notwithstanding such promise or threat: Provided nevertheless, that nothing herein enacted or contained shall prevent the prosecutor in any case from giving in evidence any admission or confession or other statement of the person accused or charged, made at any time which by law, would be admissible as evidence against such person.

19. And be it declared and enacted, that the room or building in which such justice or justices shall take such examinations and statement as aforesaid shall not be deemed an open court for that purpose; and it shall be lawful for such justice or justices, in his or their discretion, to order that no person shall have access to or be or remain in such room or building without the consent or permission of such justice or justices, if it appear to him or them that the ends of justice will be best answered by so doing.

20. And be it enacted, that it shall be lawful for the justice or justices before whom any such witness shall be examined as aforesaid, to bind by recognizance (O. 1) the prosecutor and every such witness to appear at the next Court of Oyer and Terminer or Gaol Delivery, or Superior Court of a County Palatine, or Court of General or Quarter Sessions of the Peace, at which the accused is to be tried, then and there to prosecute, or to prosecute and give evidence, or to give evidence, as the case may be, against the party accused; which said recognizance shall particularly specify the profession, art, mystery, or trade of every such person entering into or acknowledging the same, together with his christian and surname, and the parish, township, or place of his residence; and if his residence be in a city, town, or borough, the recognizance shall also particularly specify the name of the street, and the number (if any) of the house in which he resides, and whether he is owner or tenant thereof or a lodger therein; and the said recognizance being duly acknowledged by the person so entering into the same, shall be subscribed by the justice or justices before whom the same shall be acknowledged, and a notice (O. 2) thereof, signed by the said justice or justices, shall at the same time be given to the person bound thereby;
and the several recognizances so taken, together with the written information (if any); the depositions, the statement of the accused, and the recognizance of bail (if any) in every such case, shall be delivered by the said justice or justices, or he or they shall cause the same to be delivered to the proper officer of the court in which the trial is to be had, before or at the opening of the said court on the first day of the sitting thereof, or at such other time as the judge, recorder, or justice who is to preside in such court at the said trial shall order and appoint: Provided always, that if any such witness shall refuse to enter into or acknowledge such recognizance as aforesaid, it shall be lawful for such justice or justices of the peace, by his or their warrant (P. 1), to commit him to the county gaol or house of correction for the county, riding, division, liberty, city, borough, or place in which the accused party is to be tried, there to be imprisoned and safely kept until after the trial of such accused party; unless in the meantime such witness shall duly enter into such recognizance as aforesaid before some one justice of the peace for the county, riding, division, liberty, city, borough, or place in which [*109] such gaol or house of correction shall be situate: Provided nevertheless, that if afterwards, from want of sufficient evidence in that behalf or other cause, the justice or justices before whom such accused party shall have been brought, shall not commit him or hold him to bail for the offence with which he is charged, it shall be lawful for such justice or justices, or any other justice or justices of the same county, riding, division, liberty, city, borough, or place, by his or their order (P. 2) in that behalf, to order and direct the keeper of such common gaol or house of correction where such witness shall be so in custody, to discharge him from the same, and such keeper shall thereupon forthwith discharge him accordingly.

21. And be it enacted, that if, from the absence of witnesses, or from any other reasonable cause, it shall become necessary or advisable to defer the examination or further examination of the witnesses for any time, it shall be lawful to and for the justice or justices before whom the accused shall appear or be brought, by his or their warrant (Q. 1), from time to time to remand the party accused for such time as by such justice or justices in their discretion shall be deemed reasonable, not exceeding eight clear days, to the common gaol or house of correction, or other prison, lock-up house, or place of security in the county, riding, division, liberty, city, borough, or place for which such justice or justices shall then be acting; or if the remand be for a time not exceeding three clear days, it shall be lawful for such justice or justices verbally to order the constable or other person in whose custody such party accused may then be, or any other constable or person to be named by the said justice or justices in that behalf, to continue or keep such party accused in his custody, and to bring him before the same or such other justice or justices as shall be there acting at the time appointed for continuing such examination: Provided always, that any such justice or justices may order such accused party to be brought before him or them, or before any other justice or justices of the peace for the same county, riding, division, liberty, city, borough, or
place, at any time before *the expiration of the time for which
such accused party shall be so remanded, and the gaoler or officer
in whose custody he shall then be shall duly obey such order: Provided
also, that, instead of detaining the accused party in custody during the
period for which he shall be so remanded, any one justice of the peace
before whom such accused party shall so appear or be brought as afore-
said, may discharge him, upon his entering into a recognizance (Q. 2, 3),
with or without a surety or sureties, at the discretion of such justice,
conditioned for his appearance at the time and place appointed for the
continuance of such examination; and if such accused party shall not
afterwards appear at the time and place mentioned in such recognizance,
then the said justice, or any other justice of the peace who may then and
there be present, upon certifying (Q. 4) on the back of the recognizance
the non-appearance of such accused party, may transmit such recogni-
zance to the clerk of the peace of the county, riding, division, liberty,
city, borough, or place within which such recognizance shall have been
taken, to be proceeded upon in like manner as other recognizances, and
such certificate shall be deemed sufficient prima facie evidence of such
non-appearance of the said accused party.

22. And whereas it often happens that a person is charged before a
justice of the peace with an offence alleged to have been committed in
another county or place than that in which such person has been appre-
hended or in which such justice has jurisdiction, and it is necessary to
make provision as to the manner of taking the examinations of the wit-
nesses, and of committing the party accused, or admitting him to bail in
such a case; be it therefore enacted, that whenever a person shall appear
or shall be brought before a justice or justices of the peace in the county,
riding, division, liberty, city, borough, or place wherein such justice or
justices shall have jurisdiction, charged with an offence alleged to have
been committed by him in any county or place within England or Wales
wherein such justice or justices shall not have jurisdiction, it shall be
lawful for such justice or justices, and he and they are hereby required
to examine such witnesses, and receive such evidence in proof of such
charge as shall be produced before him or *them, within his or
their jurisdiction; and if in his or their opinion such testimony
and evidence shall be sufficient proof of the charge made against such
accused party, such justice or justices shall thereupon commit him to
the common gaol or house of correction for the county, riding, division,
liberty, city, borough, or place where the offence is alleged to have been
committed, or shall admit him to bail, as heretofore mentioned, and shall
bind over the prosecutor (if he have appeared before him or them) and
the witnesses by recognizance accordingly, as is hereinbefore mentioned;
but if such testimony and evidence shall not in the opinion of such jus-
tice or justices be sufficient to put the accused party upon his trial for
the offence with which he is so charged, then such justice or justices
shall bind over such witnesses as he shall have examined, by recogni-
zance, to give evidence, as hereinbefore is mentioned, and such justice or
justices shall, by warrant (R. 1,) under his or their hand and seal or
hands and seals, order such accused party to be taken before some jus-
tice or justices of the peace in and for the county, riding, division, liberty, city, borough, or place where and near unto the place where the offence is alleged to have been committed, and shall at the same time deliver the information and complaint, and also the depositions and recognizances so taken by him or them, to the constable who shall have the execution of such last mentioned warrant, to be by him delivered to the justice or justices before whom he shall take the accused in obedience to the said warrant, and which said depositions and recognizances shall be deemed to be taken in the case, and shall be treated to all intents and purposes as if they had been taken by or before the said last-mentioned justice or justices, and shall, together with such depositions and recognizances as such last-mentioned justice or justices shall take in the matter of such charge against the said accused party, be transmitted to the clerk of the court where the said accused party is to be tried, in the manner and at the time hereinbefore mentioned, if such accused party shall be committed for trial upon the said charge, or shall be admitted to bail; and in case such accused party shall be taken before the justice or justices last aforesaid by virtue of the said last-mentioned warrant, the constable or other person or persons to whom the said warrant shall have been directed, and who shall have conveyed such accused party before such last-mentioned justice or justices, shall be entitled to be paid his costs and expenses of conveying the said accused party before the said justice or justices; and upon the said constable or other person producing the said accused party before such justice or justices, and delivering him into the custody of such person as the said justice or justices shall direct or name in that behalf, and upon the said constable delivering to the said justice or justices the warrant, information (if any,) depositions, and recognizances aforesaid, and proving by oath the handwriting of the justice or justices who shall have subscribed the same, such justice or justices to whom the said accused party is so produced, shall thereupon forthwith ascertain the sum which ought to be paid to such constable or other person for conveying such accused party and taking him before such justice or justices, as also his reasonable costs and expenses of returning, and thereupon such justice or justices shall make an order (R. 2.) upon the treasurer of the county, riding, division, or liberty, city, borough, or place, or if such city, borough, or place shall be contributory to the county rate of any county, riding, division, or liberty, then upon the treasurer of such county, riding, division, or liberty respectively to which it is contributory, for payment to such constable or other person of the sum so ascertained to be payable to him in that behalf, and the said treasurer, upon such order being produced to him, shall pay the amount to the said constable or other person producing the same, or to any person who shall present the same to him for payment: Provided always, that if such last-mentioned justice or justices shall not think the evidence against such accused party sufficient to put him upon his trial, and shall discharge him without holding him to bail, every such recognizance so taken by the said first-mentioned justice or justices as aforesaid shall be null and void.

23. And be it enacted, that where any person shall appear or be
brought before a justice of the peace charged with any felony, or with any assault with intent to commit any felony, or with any attempt to commit any felony, or with obtaining or attempting to obtain property by false pretences, or with a misdemeanor in receiving property stolen or obtained by false pretences, or with perjury or subornation of perjury, or with concealing the birth of a child by secret burying or otherwise, or with wilful or indecent exposure of the person, or with riot, or with assault in pursuance of a conspiracy to raise wages, or assault upon a peace officer in the execution of his duty, or upon any person acting in his aid, or with neglect or breach of duty as a peace officer, or with any misdemeanor for the prosecution of which the costs may be allowed out of the county rate, such justice of the peace may, in his discretion, admit such person to bail, upon his procuring and producing such surety or sureties as in the opinion of such justice will be sufficient to ensure the appearance of such accused person at the time and place when and where he is to be tried for such offence; and thereupon such justice shall take the recognizance (S. 1, 2,) of the said accused person and his surety or sureties, conditioned for the appearance of such accused person at the time and place of trial, and that he will then surrender and take his trial, and not depart the court without leave; and in all cases where a person charged with any indictable offence shall be committed to prison to take his trial for the same, it shall be lawful, at any time afterwards, and before the first day of the sitting or session at which he is to be tried, or before the day to which such sitting or session may be adjourned, for the justice or justices of the peace who shall have signed the warrant for his commitment, in his or their discretion, to admit such accused person to bail in manner aforesaid; or if such committing justice or justices shall be of opinion that for any of the offences hereinbefore mentioned the said accused person ought to be admitted to bail, he or they shall in such cases, and in all other cases of misdemeanors, certify (S. 3) on the back of the warrant of commitment his or their consent to such accused party being bailed, stating also the amount of bail which ought to be required, it shall be lawful for any justice of the peace, attending or being at the gaol or prison where such accused party shall be in custody, on production of such certificate, to admit such accused person to bail in manner aforesaid; or if it shall be inconvenient for the surety or sureties in such a case to attend at such gaol or prison to join with such accused person in the recognizance of bail, then such committing justice or justices may make a duplicate of such certificate (S. 4) as aforesaid, and upon the same being produced to any justice of the peace for the same county, riding, division, liberty, city, borough, or place, it shall be lawful for such last-mentioned justice to take the recognizance of the surety or sureties in conformity with such certificate, and upon such recognizance being transmitted to the keeper of such gaol or prison, and produced, together with the certificate on the warrant of commitment as aforesaid to any justice of the peace attending or being at such gaol or prison, it shall be lawful for such last-mentioned justice thereupon to take the recognizance of such accused party, and to order him to be discharged out of custody as
to that commitment, as hereinafter mentioned; and where any person shall be charged before any justice of the peace with any indictable misdemeanor other than those herein-before mentioned, such justice, after taking the examinations in writing as aforesaid, instead of committing him to prison for such offence, shall admit him to bail in manner aforesaid, or if he have been committed to prison, and shall apply to any one of the visiting justices of such prison, or to any other justice of the peace for the same county, riding, division, liberty, city, borough, or place, before the first day of the sitting or session at which he is to be tried, or before the day to which such sitting or session may be adjourned, to be admitted to bail, such justice shall accordingly admit him to bail in manner aforesaid; and in all cases where such accused person in custody shall be admitted to bail by a justice of the peace other than the committing justice or justices as aforesaid, such justice of the peace so admitting him to bail shall forthwith transmit the recognizance or recognizances of bail to the committing justice or justices, or one of them, to be by him or them transmitted, with the examinations, to the proper officer: Provided, nevertheless, that no justice or justices of the peace shall admit any person to bail for treason, nor shall such person be admitted to *bail, except by order of one of her Majesty's secretaries of state, or by her Majesty's Court of Queen's Bench at [*115] Westminster, or a judge thereof in vacation: Provided also, that when, in cases of misdemeanor, the defendant shall be entitled to a traverse at the next assizes or quarter sessions, and shall not be bound to take his trial until the second assize or sessions, in every such case the recognizance (S. 1,) of bail shall be conditioned that he shall appear and plead at the next assizes or sessions, and then traverse the indictment, and that he shall surrender and take his trial at such second assizes or sessions, unless such accused party shall, before he enter into such recognizance, choose and consent to take his trial at such first assizes or sessions, in which case the recognizance may be in the ordinary form herein-before mentioned.

24. And be it enacted, that in all cases where a justice or justices of the peace shall admit to bail any person who shall then be in any prison charged with the offence for which he shall be so admitted to bail, such justice or justices shall send to or cause to be lodged with the keeper of such prison a warrant of deliverance (S. 5,) under his or their hand and seal or hands and seals, requiring the said keeper to discharge the person so admitted to bail, if he be detained for no other offence, and upon such warrant of deliverance being delivered to or lodged with such keeper he shall forthwith obey the same.

25. And be it enacted, that when all the evidence offered upon the part of the prosecution against the accused party shall have been heard, if the justice or justices of the peace then present shall be of opinion that it is not sufficient to put such accused party upon his trial for any indictable offence, such justice or justices shall forthwith order such accused party, if in custody, to be discharged as to the information then under inquiry; but if, in the opinion of such justice or justices, such evidence is sufficient to put the accused party upon his trial for an indict-
able offence, or if the evidence given raise a strong or probable presumption of the guilt of such accused party, then such justice or justices shall, by his or their warrant (T. 1) commit him to the common gaol or house of correction for the county, riding, division, *liberty, city, borough, or place to which by law he may now be committed, or, in the case of an indictable offence committed on the high seas, or on land beyond the sea, to the common gaol of the county, riding, division, liberty, city, borough, or place within which such justice or justices shall have jurisdiction, to be there safely kept until he shall be thence delivered by due course of law, or admit him to bail as hereinbefore mentioned.

26. And be it enacted, that the constable or any of the constables or other persons to whom the said warrant of commitment shall be directed shall convey such accused person therein named or described to the gaol or other prison mentioned in such warrant, and there deliver him, together with such warrant, to the gaoler, keeper, or governor of such gaol or prison, who shall thereupon give such constable or other person so delivering such prisoner into his custody a receipt (T. 2) for such prisoner, setting forth the state and condition in which such prisoner was when he was delivered into the custody of such gaoler, keeper, or governor; and in all cases where such constable or other person shall be entitled to his costs or expenses for conveying such person to such prison as aforesaid, it shall be lawful for the justice or justices who shall have committed the accused party, or for any justice of the peace in and for the said county, riding, division, or other place of exclusive jurisdiction wherein the offence is alleged in the said warrant to have been committed, to ascertain the sum which ought to be paid to such constable or other person for conveying such prisoner to such gaol or prison, and also the sum which should reasonably be allowed him for his expenses in returning, and thereupon such justice shall make an order (T. 2) upon the treasurer of such county, riding, division, liberty, or place of exclusive jurisdiction, or if such place of exclusive jurisdiction shall be contributory to the county rate of any county, riding, or division, then upon the treasurer of such county, riding, or division respectively, or, in the county of Middlesex, upon the overseers of the poor of the parish or place within which the offence is alleged to have been committed, for payment to such constable or other person of the sums so ascertained to be payable to *him in that behalf; and the said treasurer or [*117] overseers, upon such order being produced to him or them respectively, shall pay the amount thereof to such constable or other person producing the same, or to any person who shall present the same to him or them for payment: Provided nevertheless, that if it shall appear to the justice or justices by whom any such warrant of commitment against such prisoner shall be granted as aforesaid that such prisoner hath money sufficient to pay the expenses, or some part thereof, of conveying him to such gaol or prison, it shall be lawful for such justice or justices, in his or their discretion, to order such money or a sufficient part thereof to be applied to such purpose.

27. And be it enacted, that at any time after all the examinations
aforesaid shall have been completed, and before the first day of the assizes or sessions or other first sitting of the court at which any person so com-
mited to prison or admitted to bail as aforesaid is to be tried, such per-
son may require and shall be entitled to have, of and from the officer or
person having the custody of the same, copies of the depositions on which
he shall have been committed or bailed, on payment of a reasonable sum
for the same, not exceeding at the rate of three halfpence for each folio
of ninety words.

28. And be it enacted, that the several forms in the schedule to this
act contained, or forms to the same or the like effect, shall be deemed
good, valid, and sufficient in law.

29. And be it enacted, that any one of the magistrates appointed or
hereafter to be appointed to act at any of the police courts of the metrop-
olis, and sitting at a police court within the Metropolitan Police Dis-
trict, and every stipendiary magistrate appointed or to be appointed for
any other city, town, liberty, borough, or place, and sitting at a police
court or other place appointed in that behalf, shall have full power to do
alone whatsoever is authorized by this act to be done by any one or more
justice or justices of the peace; and that the several forms in the sche-
dule to this act contained may be varied, so far as it may be necessary
to render them applicable to the police courts aforesaid, or to the court
or other place of sitting *of such stipendiary magistrate; and
that nothing in this act contained shall alter or affect in any man-
ner whatsoever any of the powers, provisions, or enactments contained in
an act passed in the tenth year of the reign of his late Majesty King
George the Fourth, intituled An Act for improving the Police in and
near the Metropolis, or in an act passed in the third year of the reign of
her present Majesty, intituled An Act for further improving the Police
in and near the Metropolis, or in an act passed in the same year of the
reign of her present Majesty, intituled An Act for regulating the Police
Courts in the Metropolis, or in an act passed in the fourth year of the
reign of her present Majesty, intituled An Act for better defining the
Powers of Justices within the Metropolitan Police District.

30. And be it enacted, that it shall be lawful for the Lord Mayor of
the city of London, or for any alderman of the said city, for the time
being, sitting at the Mansion House or Guildhall Justice Rooms in the
said city, to do alone any act, at either of the said Justice Rooms, which
by any law now in force, or by any law not containing an express enact-
ment to the contrary hereafter to be made, is or shall be directed to be
done by more than one justice; and that nothing in this act contained
shall alter or affect in any manner whatsoever any of the powers, provi-
sions, or enactments contained in an act passed in the third year of the
reign of her present Majesty, intituled An Act for regulating the Police
in the City of London.

31. And be it enacted, that the chief magistrate of the Metropolitan
Police Court at Bow Street for the time being shall be a justice of the
peace of and for the county of Berks, if his name be inserted in the
commission of the peace for that county, without possessing the qualifi-
cation by estate required by law in that behalf, and without taking any oath of qualification.

32. And be it enacted, that the town of Berwick-upon-Tweed shall be deemed to be within England for all the purposes of this Act, but nothing in this Act shall be deemed or taken to extend to Scotland or Ireland, or to the Isles of Man, Jersey, or Guernsey, save and except the several provisions respectively hereinbefore contained respecting the backing of warrants, and also nothing in this Act shall be deemed to alter or affect the jurisdiction or practice of her Majesty's Court of Queen's Bench.

33. And be it enacted, that this Act shall commence and take effect on the second day of October, in the year of our Lord one thousand eight hundred and forty-eight.

34. And be it enacted, that the following statutes and parts of statutes shall from and after the day on which this Act shall commence and take effect be and the same are hereby repealed; (that is to say,) a certain Act of Parliament made and passed in the thirteenth year of the reign of his late Majesty King George the Third, intituled An Act for the more effectual Execution of Criminal Laws in the two parts of the United Kingdom; and a certain other act made and passed in the twenty-eighth year of the reign of his said late Majesty King George the Third, intituled An Act to enable Justices of the Peace to act as such in certain Cases out of the Limits of the Counties in which they actually are; and so much of a certain other act made and passed in the forty-fourth year of the reign of his said Majesty King George the Third, intituled An Act to render more easy the apprehending and bringing to trial Offenders escaping from one part of the United Kingdom to the other, and also from one County to another, as relates to the apprehension of Offenders escaping from Ireland into England, or from England into Ireland, and to the backing of warrants against such offenders; and so much of a certain other act made and passed in the forty-fifth year of the reign of his said Majesty King George the Third, intituled An Act to amend two Acts of the thirteenth and forty-fourth years of his present Majesty, for the more effectual Execution of the Criminal Laws, and more easy apprehending and bringing to trial Offenders escaping from one part of the United Kingdom to the other, and from one county to another, as relates to the bailing of Offenders escaping from Ireland into England, or from England into Ireland; and also a certain other act made and passed in the fifty-fourth year of the reign of his said late Majesty King George the Third, intituled An Act for the more easy apprehending and trying of Offenders escaping from one part of the United Kingdom to the other; and also a certain other act made and passed in the first year of the reign of his late Majesty King George the Fourth, intituled An Act to amend an Act made in the twenty-eighth year of the reign of King George the Third, intituled "An Act to enable Justices of the Peace to act as such in certain Cases out of the Limits of the Counties in which they actually are;" and so much of a certain other act made and passed in the third year of the reign of his said late Majesty King George the Fourth, intituled An Act for the more
speedy Return and Levying of Fines, Penalties, and Forfeitures, and Recognizances estreated, as relates to the Form of Recognizances, and to the notice to be given to persons acknowledging the same; and so much of a certain other act made and passed in the seventh year of the reign of his said late Majesty King George the Fourth, intituled An Act to enable Commissioners for trying Offences upon the Sea, and Justices of the Peace, to take Examinations' touching such Offences, and to commit to safe Custody Persons charged therewith, as relates to the taking of such examinations, and the commitment of persons so charged, by justices of the peace; and so much of a certain other act made and passed in the said seventh year of the reign of his said late Majesty King George the Fourth, intituled An Act for improving the Administration of Criminal Justice in England, as relates to the taking of bail in cases of felony, and to the taking of the examinations and informations against persons charged with felonies and misdemeanors, and binding persons by recognizance to prosecute or give evidence; and so much of a certain act made and passed in the sixth year of the reign of his late Majesty King William the Fourth, intituled An Act for preventing the vexatious Removal of Indictments into the Court of King's Bench, and for extending the Provisions of an Act of the fifth year of King William and Queen Mary, for preventing Delays at the Quarter Sessions of the Peace, to other indictments, and for extending the Provisions of an Act of the seventh year of King George the Fourth as to taking Bail in cases of Felony, as relates to the taking of bail in cases of felony; and so much of a certain other act made and passed in the seventh year of the reign of his said late Majesty *King William the Fourth, intituled [*121] An Act for enabling Persons indicted for Felony to make their Defence by Counsel or Attorney, as relates to the right of parties charged with offences to have copies of the depositions or examinations against them; and all other act or acts or parts of acts which are inconsistent with the provisions of this Act; save and except so much of the said several acts as repeal any other act or parts of acts, and also except as to proceedings now pending to which the same or any of them are applicable.

35. And be it enacted, that this Act may be amended or repealed by any act to be passed in the present session of Parliament.

SCHEDULE

(A.)

Information and complaint for an indictable offence.

The information and complaint of C. D. of [Yeoman], to wit. taken this day of in the year of our Lord 18 , before the undersigned, [one] of her Majesty's justices of the peace in
and for the said [county] of who saith that [&c., stating the offence].

Sworn before [me], the day and year first above mentioned, at

J. S.

(B.)

Warrant to apprehend a person charged with an indictable offence.

To the constable of and to all other peace officers in the said [county] of
WHEREAS A. B. of [labourer] hath this day been charged upon oath before the undersigned [one] of her Majesty's justices of the peace in and for the said county of for that he on at did [&c., stating shortly the offence]: These are therefore to command you, in her Majesty's name, forthwith to apprehend the said A. B., and to bring him before [me], or some other of her Majesty's justices of the peace in and for the said [county], to answer unto the said [*122'] charge, and to be further dealt with according to law.

Given under my hand and seal, this day of in the year of our Lord at in the [county] aforesaid.

J. S. (l. s.)

(C.)

Summons to a person charged with an indictable offence.

To A. B. of [labourer].
WHEREAS you have this day been charged before the undersigned, [one] of her Majesty's justices of the peace in and for the said [county] of for that you on at [&c. stating shortly the offence]: These are therefore to command you, in her Majesty's name, to be and appear before me on at o'clock in the forenoon at or before such other justice or justices of the peace for the same [county] as may then be there, to answer to the said charge, and to be further dealt with according to law. Herein fail not.

Given under my hand and seal, this day of in the year of our Lord at in the county aforesaid.

J. S. (l. s.)

(D.)

Warrant where the summons is disobeyed.

To the constable of and to all other peace officers in the said [county] of
WHEREAS on the last past A. B. of [labourer] was charged before the undersigned, [one] of her Majesty's justices of the peace in and for the said [county] of for that [&c. as in the summons]:
And whereas [J] then issued [my] summons to the said A. B., commanding him, in her Majesty's name, to be and appear before [me] on:

at o'clock in the forenoon at or before such other justice or justices of the peace for the same [county] as might then be there, to answer to the said charge, and to be further dealt with according to law: And whereas the said A. B. hath neglected to be or appear at the time and place appointed in and by the said summons, although it hath now been *proved to me upon oath that the said summons was duly served upon the said A. B.: These are therefore [*123] to command you, in her Majesty's name, forthwith to apprehend the said A. B., and to bring him before me, or some other of her Majesty's justices of the peace in and for the said [county], to answer to the said charge, and to be further dealt with according to law.

Given under my hand and seal, this day of in the year of our Lord at in the [county] aforesaid.

J. S. (L. s.)

(W.)

Warrant to apprehend a person charged with an indictable offence committed on the high seas or abroad.

For offences committed on the high seas the warrant may be the same as in ordinary cases, but describing the offence to have been committed "on the high seas, out of the body of any county of this realm, and within the jurisdiction of the admiralty of England."

For offences committed abroad for which the parties may be indicted in this country the warrant also may be the same as in ordinary cases, but describing the offence to have been committed "on land out of the United Kingdom, to wit, at in the kingdom of," or "at in the East Indies," or "at in the West Indies," or as the case may be.

(C.)

Certificate of indictment being found.

I hereby certify, that at [a court of Oyer and Terminer and General Gaol Delivery, or a court of General Quarter Sessions of the Peace,] holden in and for the [county] of in the said [county], on a bill of indictment was found by the Grand Jury against A. B., therein described as A. B. late of [labourer], for that he [dc. stating shortly the offence], and that the said A. B. hath not appeared or pleaded to the said indictment.

Dated this day of 184.

J. D.

Clerk of the Indictments on the circuit; or Clerk of the peace of and for the said [county].
Warrant to apprehend a person indicted.

To the constable of and to all other peace officers in the said [county] of

WHEREAS it hath been duly certified by J. D. clerk of the indictments on the [circuit] of [county] [that, &c., stating the certificate]: These are therefore to command you, in her Majesty’s name, forthwith to apprehend the said A. B., and to bring him before [me], or some other justice or justices of the peace in and for the said [county], to be dealt with according to law.

Given under my hand and seal, this day of in the year of our Lord at in the [county] aforesaid.

J. S. (L. s.)

Warrant of commitment of a person indicted.

To the constable of and to the keeper of the [Common Gaol, or House of Correction] at in the said [county] of

WHEREAS by [my] warrant under my hand and seal, dated the day of after reciting that it had been certified by J. D. [&c., as in the certificate], [I] commanded the constable of and all other peace officers of the said county, in her Majesty's name, forthwith to apprehend the said A. B. and to bring him before [me], the undersigned, [one] of her Majesty's justices of the peace in and for the said [county], or before some other justice or justices of the peace in and for the said [county], to be dealt with according to law: And whereas the said A. B. hath been apprehended under and by virtue of the said warrant, and being now brought before [me], it is hereupon duly proved to [me] upon oath that the said A. B. is the same person who is named and charged in and by the said indictment: These are therefore to command you the said constable, in her Majesty's name, forthwith to take and safely convey the said A. B. to the said [House of Correction] at in the said [county], and there to deliver him to the keeper thereof, together with this precept; and I hereby command you the said keeper to receive the said A. B. into your custody in the said House of Correction, and him there safely to keep until he shall be thence delivered by due course of law.

Given under my hand and seal, this day of in the year of our Lord at in the [county] aforesaid.

J. S. (L. s.)

Warrant to detain a person indicted who is already in custody for another offence.
To the keeper of the [Common Gaol, or House of Correction,] at
in the said [county] of

WHEREAS it hath been duly certified by J. D., clerk of the indictments on the
circuit [or clerk of the peace of and for the county of ], that, [dec., stating the certificate]: And whereas [I am] in-
formed that the said A. B. is in your custody in the said [Common
Gaol] at aforesaid, charged with some offence or other mat-
ter; and it being now duly proved upon oath before [me] that the said
A. B. so indicted as aforesaid, and the said A. B. in your custody as
aforesaid, are one and the same person: These are therefore to command
you, in her Majesty's name, to detain the said A. B. in your custody in
the [Common Gaol] aforesaid until by her Majesty's writ of Habeas
Corpus he shall be removed therefrom for the purpose of being tried
upon the said indictment, or until he shall otherwise be removed or dis-
charged out of your custody by due course of law.

Given under my hand and seal, this day of in the
year of our Lord at in the [county] aforesaid.

J. S. (l. s.)

(K.)

Indorsement in backing a warrant.

WHEREAS proof upon oath hath this day been made before me,
to wit: one of her Majesty's justices of the peace for the said [county]
of that the name of J. S. to the within warrant subscribed, is of
the handwriting of the justice of the peace within mentioned: I do
therefore hereby authorise W. T., who bringeth to me this warrant,
*and all other persons to whom this warrant was originally [*126]
directed, or by whom it may lawfully be executed, and also all
constables and other peace officers of the said [county] of to
execute the same within the said last-mentioned [county],(a) and to bring
the said A. B., if apprehended within the same [county], before me, or
before some other justice or justices of the peace of the same county, to
be dealt with according to law.

Given under my hand, this day of 184 .

J. L.

(I. 1.)

Summons of a witness.

To E. F., of [labourer].

WHEREAS information hath been laid before the undersigned, [one] of
her Majesty's justices of the peace in and for the said [county] of

* The words following this Asterisk are to be used only where the justice back-
ing the warrant shall think fit, and may be omitted in backing English warrants
in Ireland, Scotland, &c., or in backing Irish or Scotch warrants, &c., in England.
that A. B. [&c., as in the summons or warrant against the accused], and
it hath been made to appear to me upon [oath] that you are likely to
give material evidence for the [prosecution]: These are therefore to
require you to be and to appear before me on next at o'clock
in the forenoon at or before such other justice or justices of the
peace for the same county as may then be there, to testify what you shall
know concerning the said charge so made against the said A. B. as afore-
said. Ferein fail not.

Given under my hand and seal, this day of in the year
of our Lord in the [county] aforesaid.

J. S. (L. s.)

(L. 2.)

Warrant where a witness has not obeyed a summons.

To the constable of and to all other peace officers in the said
[county] of

Whereas information having been laid before the undersigned, [one] of
her Majesty's justices of the peace in and for the said [county] of
[*127] that A. B. [&c., as in the summons]; and it having *been made
to appear to [me] upon oath that E. F. of [labourer] was
likely to give material evidence for the prosecution, I did duly issue my
summons to the said E. F., requiring him to be and appear before me on
at or before such other justice or justices of the peace for the
same county as might then be there, to testify what he should know
respecting the said charge so made against the said A. B. as aforesaid.
And whereas proof hath this day been made before me upon oath of such
summons having been duly served upon the said E. F.: And whereas
the said E. F. hath neglected to appear at the time and place appointed
by the said summons and no just excuse has been offered for such
neglect: These are therefore to command you to bring and have the said
E. F. before me on at o'clock in the forenoon at or
before such other justice or justices of the peace for the same [county]
as may then be there, to testify what he shall know concerning the said
charge so made against the said A. B. as aforesaid.

Given under my hand and seal, this day of in the year
of our Lord in the [county] aforesaid.

J. S. (L. s.)

(L. 3.)

Warrant for a witness in the first instance.

To the constable of and to all other peace officers in the said
[county] of

Whereas information hath been laid before the undersigned, [one] of
her Majesty's justices of the peace in and for the said [county] of
that [&c., as in summons]; and it having been made to appear to [me] upon oath that E. F. of [labourer] is likely to give material evidence for the prosecution, and that it is probable that the said E. F. will not attend to give evidence without being compelled so to do: These are therefore to command you to bring and have the said E. F. before me on [a certain day] at o'clock in the forenoon at [or before such other justice or justices of the peace for the same [county] as may then be there, to testify what he shall know concerning the said charge so made against the said A. B. as aforesaid.

*Given under my hand and seal, this day of in the year of our Lord at in the [county] aforesaid. [*128]

J. S. (L. s.)

(L. 4.)

Warrant of commitment of a witness for refusing to be sworn or to give evidence.

To the constable of and to the keeper of the [House of Correction] at in the said [county] of

WHEREAS A. B. was lately charged before the undersigned [one] of her Majesty's justices of the peace in and for the said [county] of for that [&c., as in the summons]; and it having been made to appear to [me] upon oath that E. F. of was likely to give material evidence for the prosecution, I duly issued my summons to the said E. F., requiring him to be and appear before me on [or being brought before me by virtue of a warrant in that behalf, to testify as aforesaid], and being required to make oath or affirmation as a witness in that behalf, hath now refused so to do [or being duly sworn as a witness doth now refuse to answer certain questions concerning the premises which are here put to him], without offering any just excuse for such his refusal: These are therefore to command you the said constable to take the said E. F., and him safely to convey to the [House of Correction] at in the county aforesaid, and there deliver him to the said keeper thereof, together with this precept; and I do hereby command you the said keeper of the said [House of Correction] to receive the said E. F. into your custody in the said [House of Correction], and him there safely keep for the space of days for his said contempt, unless he shall in the meantime consent to be examined and to answer concerning the premises; and for your so doing this shall be your sufficient warrant.

Given under my hand and seal, this day of in the year of our Lord at in the [county] aforesaid.

J. S. (L. s.)
The examination of C. D. of [farmer] and E. F. of [labourer], taken on [oath] this day of in the year of our Lord at in the [county] aforesaid, before the undersigned, [one] of her Majesty's justices of the peace for the said [county], in the presence and hearing of A. B., who is charged this day before [me], for that he the said A. B. on [&c., describing the offence as in a warrant of commitment].

This deponent C. D. on his [oath] saith as follows [&c., stating the deposition of the witness as nearly as possible in the words he uses. When his deposition is complete let him sign it].

And this deponent E. F. upon his oath, saith as follows [&c.].

The above depositions of C. D. and E. F. were taken and [sworn] before me at on the day and year first abovementioned.

J. S.

Statement of the accused.

A. B. stands charged before the undersigned, [one] of her Majesty's justices of the peace in and for the [county] aforesaid, this day of in the year of our Lord for that he the said A. B. on [&c., as in the Caption of the Depositions]; and the said charge being read to the said A. B. and the witnesses for the prosecution, C. D. and E. F., being severally examined in his presence, the said A. B. is now addressed by me as follows: "Having heard the evidence, do you wish to say anything in answer to the charge? you are not obliged to say anything unless you desire to do so; but whatever you say will be taken down in writing, and may be given in evidence against you upon your trial;" whereupon the said A. B. saith as follows:

[Here state whatever the prisoner may say, and in his very words as nearly as possible. Get him to sign it if he will.]

A. B.

Taken before me at the day and year first above mentioned.

J. S.

Recognizance to prosecute or give evidence.

Be it remembered, that on the day of in the year of our Lord C. D. of in the township of in the said
county, farmer, for C. D. of No. 2, street, in the parish of in the borough of surgeon, of which said house he is a tenant, personally came before me, one of her Majesty's justices of the peace for the said county, and acknowledged himself to owe to our sovereign lady the Queen, the sum of of good and lawful money of Great Britain, to be made and levied of his goods and chattels, lands and tenements, to the use of our said lady the Queen, her heirs and successors, if he the said C. D. shall fail in the condition indorsed.

Taken and acknowledged, the day and year first above mentioned, at before me J. S.

**Condition to prosecute.**

The condition of the within-written recognizance is such, that whereas one A. B. was this day charged before me J. S., justice of the peace within mentioned, for that [dec., as in the caption of the depositions], if therefore he the said C. D. shall appear at the next Court of Oyer and Terminer or General Gaol Delivery [or at the next Court of General Quarter Sessions of the Peace] to be holden in and for the [county] of * and there prefer or cause to be preferred a bill of indictment for the offence aforesaid against the said A. B., and there also duly prosecute such indictment, then the said recognizance to be void, or else to stand in full force and virtue.

**Condition to prosecute and give evidence.**

Same as the last form to the asterisk*, and then thus:—"and there prefer or cause to be preferred a bill of indictment against the said A. B. for the offence aforesaid, and duly prosecute such indictment, and give evidence thereon as well to the jurors, who shall then inquire of the said offence, as also to them who shall pass upon the trial of the said A. B., then the said recognizance to be void, or else to stand in full force and virtue.

*Condition to give evidence.

Same as the last form but one to the asterisk*, and then thus:—"and there give such evidence as he knoweth upon a bill of indictment to be then and there preferred against the said A. B. for the offence aforesaid, as well to the jurors who shall there inquire of the said offence as also to the jurors who shall pass upon the trial of the said A. B. if the said bill shall be found a true bill, then the said recognizance to be void, or else to stand in full force and virtue."
(O. 2.)

Notice of the said recognizance to be given to the prosecutor and his witnesses.

Take notice, that you C. D. of        are bound in the sum to wit. of        to appear at the next court of [General Quarter Sessions of the Peace] in and for the county of        to be holden at in the said county, and then and there [prosecute and] give evidence against A. B.; and unless you then appear there, and [prosecute and] give evidence accordingly, the recognizance entered into by you will be forthwith levied on you. Dated this        day of 184 .

J. S.

(P. 1.)

Commitment of witness for refusing to enter into the recognizance.

To the constable of        and to the keeper of the [House of Correction] at        in the said [county] of

Whereas A. B. was lately charged before the undersigned, [one] of her majesty's justices of the peace in and for the said [county] of for that [as in the summons to the witness], and it having been made to appear to [me] upon oath that E. F. of        was likely to give material evidence for the prosecution, [I] duly issued [my summons to the said E. F., requiring him to be and appear] before [me] on at        or before such other justice or justices of the peace as should then be there, to testify what he should know concerning the said charge so made against the said A. B. as aforesaid; and the said E. F. now appearing before [me], [or being brought before *[me] by virtue of a [*132] warrant in that behalf, to testify as aforesaid,] hath been now examined by [me] touching the premises, but being by [me] required to enter into a recognizance conditioned to give evidence against the said A. B., hath now refused so to do: These are therefore to command you the said constable to take the said E. F., and him safely to convey to the [House of Correction] at        in the [county] aforesaid, and there deliver him to the said keeper thereof, together with this precept; and I do hereby command you the said keeper of the said [House of Correction] to receive the said E. F. into your custody in the said House of Correction, there to imprison and safely keep him until after the trial of the said A. B. for the offence aforesaid, unless in the meantime such E. F. shall duly enter into such recognizances as aforesaid, in the sum of        pounds, before some one justice of the peace for the said [county], conditioned in the usual form to appear at the next Court of [Oyer and Terminer or General Gaol Delivery, or General Quarter Sessions of the Peace,] to be holden in and for the [county] of        and there to give evidence before the grand jury upon any bill of indictment which may
then and there be preferred against the said A. B. for the offence aforesaid, and also to give evidence upon the trial of the said A. B. for the said offence, if a true bill should be found against him for the same.

Given under my hand and seal, this day of in the year of our Lord at in the [county] aforesaid.

(P. 2.)

Subsequent order to discharge the witness.

To the keeper of the [House of Correction] at in the [county] of

Whereas by [my] order dated the day of [instant], reciting that A. B. was lately before them, charged before [me] for a certain offence therein mentioned, and that E. F. having appeared before [me] and being examined as a witness for the prosecution in that behalf, refused to enter into a recognizance to give evidence against the said A. B., and I therefore thereby committed the said E. F. to your custody, and required you *safely to keep him until after the trial of the said A. B. for the offence aforesaid, unless in the meantime he should enter into such recognizance as aforesaid: And whereas, for want of sufficient evidence against the said A. B. the said A. B. has not been committed or helden to bail for the said offence, but on the contrary thereof has been since discharged, and it is therefore not necessary that the said E. F. should be detained longer in your custody: These are therefore to order and direct you the said keeper to discharge the said E. F. out of your custody as to the said commitment, and suffer him to go at large.

Given under [my] hand and seal, this day of in the year of our Lord at in the [county] aforesaid. J. S. (L. s)

(Q. 1.)

Warrant remandng a prisoner.

To the Constable of and to the [Keeper of the House of Correction] at in the said [county] of

Whereas A. B. was this day charged before the undersigned, [one] of Majesty's justices of the peace in and for the said [county] of for that [&c., as in the warrant to apprehend]; and it appears to me to be necessary to remand the said A. B. These are therefore to command you the said constable, in her Majesty's name, forthwith to convey the said A. B. to the [House of Correction] at in the said [county], and there to deliver him to the keeper thereof, together with this precept; and I hereby command you the said keeper to receive the said A. B. into your custody in the said House of Correction, and there safely keep him until the day of instant, when I hereby command you to have him at o'clock in the forenoon of the
same day before me, or before such other justice or justices of the peace for the said [county] as may then be there, to answer further to the said charge, and to be further dealt with according to law, unless you shall be otherwise ordered in the meantime.

Given under my hand and seal, this day of in the year of our Lord at in the [county] aforesaid. J. S. (l. s.)

[*134] *(Q. 2.)

Recognizance of bail instead of remand, on an adjournment of examination.

: Be it remembered, that on the day of in the year of our Lord A. B. of labourer, L. M. of grocer, and N. O. of butcher, personally came before me, one of her Majesty’s justices of the peace for the said [county], and severally acknowledged themselves to owe to our lady the Queen the several sums following; that is to say, the said A. B. the sum of and the said L. M. and N. O. the sum of each of good and lawful money of Great Britain, to be made and levied of their several goods and chattels, lands and tenements respectively, to the use of our said lady the Queen, her heirs and successors, if he the said A. B. fail in the condition indorsed.

Taken and acknowledged, the day and year first above mentioned, at before me,

J. S.

Condition.

The condition of the within-written recognizance is such, that whereas the within-bounden A. B. was this day [or on last past] charged before me, for that [&c., as in the warrant]: And whereas the examination of the witnesses for the prosecution in this behalf is adjourned until the day of instant; if therefore the said A. B. shall appear before me on the said day of instant at o’clock in the forenoon, or before such other justice or justices of the peace for the said [county] as may then be there, to answer [further] to the said charge, and to be further dealt with according to law, then the said recognizance to be void, or else to stand in full force and virtue.

(Q. 3.)

Notice of such recognizance to be given to the accused and his sureties.

: Take notice, that you A. B. of are bound in the sum of and your sureties L. M. and N. O. in the sum of each, that you [*135] A. B. appear before me J. S., one of her Majesty’s *justices of the peace for the [county] on the day of instant at o’clock in the forenoon, at or before such other justice or justices of the peace for the same [county] as may then
be there, to answer further to the charge made against you by C. D., and to be further dealt with according to law; and unless you A. B. personally appear accordingly the recognizances entered into by yourself and sureties will be forthwith levied on you and them.

Dated this day of 184.

J. S.

(Q. 4.)

Certificate of non-appearance to be indorsed on the recognizance.

I hereby certify, that the said A. B. hath not appeared at the time and place in the above condition mentioned, but therein hath made default, by reason whereof the within-written recognizance is forfeited.

J. S.

(R. 1.)

Warrant to convey the accused before a justice of the county, &c., in which the offence was committed.

To W. T., constable of and to all other peace officers in the said [county] of

WHEREAS A. B. of labourer, hath this day been charged before the undersigned, [one] of her Majesty's justices of the peace in and for the said county of for that [&c., as in the warrant to apprehend]: And whereas [I] have taken the deposition of C. D., a witness examined by [me] in this behalf; but inasmuch as [I] am informed that the principal witnesses to prove the said offence against the said A. B. reside in the [county] of C., where the said offence is alleged to have been committed. These are therefore to command you the said constable in her Majesty's name, forthwith to take and convey the said A. B. to the said [county] of C., and there carry him before some justice or justices of the peace in and for that [county], and near unto the [parish of D.], where the offence is alleged to have been committed, to answer further to the said charge before him or them, and to be further dealt with according to law; and [I] hereby further command you the said constable [*186] to deliver to the said justice or justices the information in this behalf, and also the said deposition of C. D. now given into your possession for that purpose, together with this precept.

Given under my hand and seal, this day of in the year of our Lord at in the [county] aforesaid.

J. S. (L. S.)

(R. 2.)

Order for payment of the constable's expenses.

To R. W., Esquire, treasurer of the said county of C.

WHEREAS W. T. constable of in the county of A., hath by virtue of March, 1854.—22
of and in obedience to a certain warrant of J. S. Esquire, [one] of her Majesty's justices of the peace in and for the said county of A., taken and conveyed one A. B., charged before the said J. S. with having [etc., stating shortly the offence], from in the said county of A. to in the said county of C., a distance of miles, and produced the said A. B. before me S. P., one of her Majesty's justices of the peace in and for the said county of C., and delivered him into the custody of by [my] direction, to answer to the said charge, and further to be dealt with according to law: And whereas the said W. T. hath also delivered to [me] the said warrant, together with the information in that behalf, and also the deposition of C. D. in the said warrant mentioned, and hath proved to [me] upon oath the handwriting of the said J. S. subscribed to the same: And whereas [I] have ascertained that the sum which ought to be paid to the said W. T. for conveying the said A. B. from the said county of A. to the said county of C., and taking him before [me], is the sum of and that the reasonable expenses of the said W. T. in returning will amount to the further sum of making together the sum of: These are therefore to order you, as such treasurer of the said county of C., to pay unto the said W. T. the said sum of according to the form of the statute in such case made and provided, for which payment this order shall be your sufficient voucher and authority.

Given under my hand, this day of 184.

J. P.

[*137]

*(S. 1.)

Recognizance of bail.

Be it remembered, that on the day of in the year of our Lord A. B. of labourer, L. M. of grocer, and N. O. of butcher, personally came before [us] the undersigned, two of her Majesty's justices of the peace for the said county, and severally acknowledged themselves to owe to our lady the Queen the several sums following, (that is to say) the said A. B. the sum of and the said L. M. and N. O. the sum of each, of good and lawful money of Great Britain to be made and levied of their goods and chattels, lands and tenements respectively, to the use of our said lady the Queen, her heirs and successors, if he the said A. B. fail in the condition indorsed.

Taken and acknowledged, the day and year first, above-mentioned at before us,

J. S.

J. N.

Condition in ordinary cases.

The condition of the within-written recognizance is such, that whereas the said A. B. was this day, charged before [us] the justices within-
mentioned, for that [&c., as in the warrant]; if therefore, the said A. B. will appear in the next Court of Oyer and Terminer and general Gaol Delivery [or Court of general Quarter Sessions of the Peace] to be holden in and for the county of and there surrender himself into the custody of the keeper of the [Common Gaol] there and then plead to such indictment as may be found against him by the Grand Jury, for or in respect of the charge aforesaid, and take his trial upon the same, and not depart the said court without leave, then the said recognizance to be void, or else to stand in full force and virtue.

Conditions where the defendant is entitled to a traverse.

The condition of the within-written recognizance is such, that whereas the said A. B. was this day charged before [me] the justice within-mentioned, for that [&c., as in the warrant or summons;] if therefore the said A. B. will appear at the next Court of General Quarter Sessions of the Peace, *[or Court of Oyer and Terminer and General Gaol Delivery] to be holden in and for the county of and [*138] there plead to such indictment as may be found against him by the Grand Jury for or in respect of the charge aforesaid, and shall afterwards at the then next Court of General Quarter Sessions of the Peace [or Court of Oyer and Terminer and General Gaol Delivery] surrender himself into the custody of the keeper of the [house of correction] there, and take his trial upon the said indictment, and not depart the said Court without leave, then the said recognizance to be void, or else to stand in full force and virtue.

(S. 2.)

Notice of the said recognizance to be given to the accused and his bail.

Take notice, that you A. B. of are bound in the sum of and your [sureties L. M. and N. O.] in the sum of each, that you A. B. appear, &c. [as in the condition of the recognizance] and not depart the said court without leave; and unless you the said A. B. personally appear and plead, and take your trial accordingly, the recognizance entered into by you and your sureties shall be forthwith levied on you and them.

Dated this day of 184 .

J. S.

(S. 3.)

Certificate of consent to bail by the committing justice indorsed on the commitment.

I hereby certify, that I consent to the within-named A. B. being bailed by recognizance, himself in and [two] sureties in each.

J. S.
DEARSLY'S CRIMINAL PROCESS.

(S. 4.)

The like on a separate paper.

WHEREAS A. B. was on the committed by me to the [house of correction] at charged with [dec., naming the offence shortly]:

I hereby certify, that I consent to the said A. B. being bailed by recognizance, himself, in and [two] sureties in each. Dated the day of 184.

J. S.

[*139]*

(S. 5.)

Warrant of deliverance on bail being given for a prisoner already committed.

To the keeper of the [house of correction] at in the said [county] of.

WHEREAS A. B., late of labourer, hath before [us, two] of her Majesty's justices of the peace in and for the said county, entered into his own recognizance, and found sufficient sureties for his appearance at the next Court of Oyer and Terminer and General Gaol Delivery [or Court of General Quarter Sessions of the Peace] to be holden in and for the county of to answer our sovereign lady the Queen, for that [dec., as in the commitment] for which he was taken and committed to your said [house of correction]: These are therefore to command you, in her said Majesty's name, that if the said A. B. do remain in your custody in the said [house of correction] for the said cause, and for no other, you shall forthwith suffer him to go at large.

Given under our hands and seals, this day of in the year of our Lord at in the [county] aforesaid.

J. S. (L. s.)
J. N. (L. s.)

(T. 1.)

Warrant of commitment.

To the constable of and to the keeper of the [house of correction] at in the said [county] of.

WHEREAS A. B. was this day charged before me J. S., one of her Majesty's justices of the peace in and for the said [county] of on the oath of C. D. of farmer, and others, for that [dec., stating shortly the offence]: These are therefore to command, you the said constable of to take the said A. B., and him safely to convey to the [house of correction] at aforesaid, and there to deliver him to the keeper thereof, together with this precept; and I do hereby command you the said keeper of the said [house of correction] to receive the
said A. B. into your custody in the said [house of correction], and there safely keep *him until he shall be hence delivered by due course [*140]
of law.

Given under my hand and seal, this day of in the year of our lord in the [county] aforesaid.

J. S. (L. s.)

(T. 2.)

Gaoler’s receipt to the constable for the prisoner, and justice’s order thereon for payment of the constable’s expenses in executing the commitment.

I HEREBY certify that I have received from W. T. constable of the body of A. B., together with a warrant under the hand and seal of J. S., Esquire, one of her Majesty’s justices of the peace for the [county] of ; and that the said A. B. was [sober, or as the case may be] at the time when he was so delivered into my custody.

P. K.

Keeper of the house of Correction [or Common Gaol] at

CONSTABLE’S EXPENSES:

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>For conveying the above A. B. from railway to railway</td>
<td>£ s. d.</td>
</tr>
<tr>
<td>For conveying him to and from the railway station.</td>
<td></td>
</tr>
<tr>
<td>For subsistence of prisoner whilst in custody after commitment</td>
<td></td>
</tr>
<tr>
<td>For his lodging nights at per night.</td>
<td></td>
</tr>
<tr>
<td>Constable days, at per day.</td>
<td></td>
</tr>
<tr>
<td>[One] assistant [if necessary] days, at per day.</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>£</strong></td>
</tr>
</tbody>
</table>

To R. W. Esquire, treasurer of the said [county] of .

WHEREAS W. T. constable of in the county of , hath produced unto me J. P., one of her Majesty’s justices of the peace in and for the said county of (wherein the offence hereinafter mentioned is alleged to have been *committed) the above receipt of P. K., [*141]

keeper of the [house of correction] at : And, whereas in pursuance of the statute in such case made and provided, I have ascertained that the sum which ought to be paid to the said W. T. for conveying the said A. B. from in the said county of to the said [house of correction] is and that the reasonable expenses of the said W. T. in returning will amount to the further sum of making together the sum of : These are therefore to order you, as such treasurer of the said county of to pay unto the said W. T. the said sum of according to the form of the statute in
such case made and provided, for which payment this order shall be
your sufficient voucher and authority.

Given under my hand, this day of 184.

J. P.

Received the day of 184 of the treasurer of the
order. £

[*142] *14 & 15 VICTORIA, CAP. 100.

An Act for further improving the Administration of Criminal Justice.
—August 7, 1851.

Whereas offenders frequently escape conviction on their trials by
reason of the technical strictness of criminal proceedings in matters not
material to the merits of the case: And whereas such technical strict-
ness may safely be relaxed in many instances, so as to insure the punis-
ment of the guilty, without depriving the accused of any just means of
defence: And whereas a failure of justice often takes place on the trial
of persons charged with felony and misdemeanor by reason of variances
between the statement in the indictment on which the trial is had, and
the proof of names, dates, matters, and circumstances therein men-
tioned, not material to the merits of the case, and by the misstatement
whereof the person on trial cannot have been prejudiced in his defence:
Be it therefore enacted by the Queen’s most excellent Majesty, by and
with the advice and consent of the Lords Spiritual and Temporal, and
Commons in this present Parliament assembled, and by the authority of
the same, as follows:

1. From and after the coming of this Act into operation, whenever
on the trial of any indictment for any felony or misdemeanor there shall
appear to be any variance between the statement in such indictment and
the evidence offered in proof thereof, in the name of any county, riding,
division, city, borough, town corporate, parish, township, or place
mentioned or described in any such indictment, or in the name or descrip-
tion of any person or persons, or body politic or corporate, therein stated
or alleged to be the owner or owners of any property, real or personal,
[*143] which shall form the subject of any offence charged therein, or
in *the name or description of any person or persons, body poli-
tic or corporate, therein stated or alleged to be injured or damaged, or
intended to be injured or damaged by the commission of such offence, or
in the Christian name or surname, or both Christian name and surname, or
other description whatsoever, of any person or persons whomsoever therein
named or described, or in the name or description of any matter or
thing whatsoever therein named or described, or in the ownership of any
property named or described therein, it shall and may be lawful for the
court before which the trial shall be had, if it shall consider such variance not material to the merits of the case, and that the defendant cannot be prejudiced thereby in his defence on such merits, to order such indictment to be amended, according to the proof, by some officer of the court or other person, both in that part of the indictment where such variance occurs and in every other part of the indictment which it may become necessary to amend, on such terms as postponing the trial to be had before the same or another jury, as such court shall think reasonable; and after any such amendment the trial shall proceed, whenever the same shall be proceeded with, in the same manner in all respects, and with the same consequences, both with respect to the liability of witnesses to be indicted for perjury and otherwise, as if no such variance had occurred; and in case such trial shall be had at Nisi Prius the order for the amendment shall be indorsed on the postea, and returned together with the record, and thereupon such papers, rolls, or other records of the court from which such record issued as it may be necessary to amend shall be amended accordingly by the proper officer, and in all other cases the order for the amendment shall either be indorsed on the indictment or shall be engrossed on parchment, and filed, together with the indictment, among the records of the court: Provided that in all such cases where the trial shall be so postponed as aforesaid it shall be lawful for such court to respite the recognizances of the prosecitor and witnesses, and of the defendant, and his surety or sureties, if any, accordingly, in which case the prosecutor and witnesses shall be bound to attend to prosecute and give evidence respectively, and the defendant shall be bound to attend to be tried, at the time and place to which such trial shall be postponed, without entering into any fresh recognizances for that purposes in such and the same manner, as if they were originally bound by their recognizances to appear and prosecute or give evidence at the time and place to which such trial shall have been so postponed: Provided also, that where any such trial shall be to be had before another jury, the crown and the defendant shall respectively be entitled to the same challenges as they were respectively entitled to before the first jury was sworn.

2. Every verdict and judgment which shall be given after the making of any amendment under the provisions of this Act shall be of the same force and effect in all respects as if the indictment had originally been in the same form in which it was after such amendment was made.

3. If it shall become necessary at any time for any purpose whatsoever to draw up a formal record in any case where any amendment shall have been made under the provision of this Act, such record shall be drawn up in the form in which the indictment was after such amendment was made, without taking any notice of the fact of such amendment having been made.

4. In any indictment for murder or manslaughter preferred after the coming of this Act into operation it shall not be necessary to set forth the manner in which or the means by which the death of the deceased was caused, but it shall be sufficient in every indictment for murder to charge that the defendant did feloniously, wilfully, and of his malice
5. In any indictment for forging, uttering, stealing, embezzling, destroying, or concealing, or for obtaining, by false pretences, any instrument, it shall be sufficient to describe such instrument by name or designation by which the same may be usually known, or by the purport thereof, without setting out any copy or fac-simile thereof, or otherwise describing the same or the value thereof.

[*145] 6. In any indictment for engraving or making the whole or any part of any instrument, matter or thing whatsoever, or for using or having the unlawful possession of any plate or other material upon which the whole or any part of any instrument, matter, or thing whatsoever shall have been engraved or made, or for having the unlawful possession of any paper upon which the whole or any part of any instrument, matter or thing whatsoever shall have been made or printed, it shall be sufficient to describe such instrument, matter or thing by any name or designation by which the same may be usually known, without setting out any copy or fac-simile of the whole or any part of such instrument, matter or thing.

7. In all other cases wherever it shall be necessary to make any averment in any indictment as to any instrument, whether the same consists wholly or in part of writing, print, or figures, it shall be sufficient to describe such instrument by any name or designation by which the same may be usually known, or by the purport thereof, without setting out any copy or fac-simile of the whole or any part thereof.

8. From and after the coming of this Act into operation, it shall be sufficient in any indictment for forging, uttering, offering, disposing of, or putting off any instrument whatsoever, or for obtaining or attempting to obtain any property by false pretences, to allege that the defendant did the act with intent to defraud, without alleging the intent of the defendant to be to defraud any particular person; and on the trial of any of the offences in this section mentioned it shall not be necessary to prove an intent on the part of the defendant to defraud any particular person, but it shall be sufficient to prove that the defendant did the act charged with an intent to defraud.

9. And whereas offenders often escape conviction by reason that such persons ought to have been charged with attempting to commit offences, and not with the actual commission thereof: For remedy thereof be it enacted, that if on the trial of any person charged with any felony or misdemeanor it shall appear to the jury upon the evidence that the defendant did not complete the offence charged, but that he was guilty only of an attempt to commit the same, such person shall not by reason thereof be entitled to be acquitted, but the jury shall be at liberty to return as their verdict that the defendant is not guilty of the felony or misdemeanor charged, but is guilty of an attempt to commit the same, and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an indictment for attempting to commit the particular felony or misdemeanor charged in
the said indictment; and no person so tried as herein lastly mentioned shall be liable to be afterwards prosecuted for an attempt to commit the felony or misdemeanor for which he was so tried.

10. And whereas it is enacted by a certain act of parliament passed in the first year of the reign of her present Majesty Queen Victoria, intituled An Act to amend the Laws relating to Offences against the Person, that "on the trial of any person for any of the offences therein-before mentioned, or for any felony whatever where the crime charged shall include an assault against the person, it shall be lawful for the jury to acquit of the felony, and to find a verdict of guilty of assault against the person indicted, if the evidence shall warrant such finding;" And whereas great difficulties have arisen in the construction of such enactment: For remedy therefore be it enacted, that the said enactment shall be, and the same is hereby repealed.

11. If upon the trial of any person upon any indictment for robbery, it shall appear to the jury upon the evidence that the defendant did not commit the crime of robbery, but that he did commit an assault with intent to rob, the defendant shall not by reason thereof be entitled to be acquitted, but the jury shall be at liberty to return as their verdict that the defendant is guilty of an assault with intent to rob, and thereupon such defendant shall be liable to be punished in the same manner as if he had been convicted upon an indictment for feloniously assaulting with intent to rob; and no person so tried, as is herein lastly mentioned, shall be liable to be afterwards prosecuted for an assault with intent to commit the robbery for which he was so tried.

12. If upon the trial of any person for any misdemeanor it shall appear that the facts given in *evidence amount in law to a felony,* [*147] such person shall not by reason thereof be entitled to be acquitted of such misdemeanor; and no person tried for such misdemeanor shall be liable to be afterwards prosecuted for felony on the same facts, unless the court, before which such trial may be had, shall think fit, in its discretion, to discharge the jury from giving any verdict upon such trial, and to direct such person to be indicted for felony, in which case such person may be dealt with in all respects as if he had not been put upon his trial for such misdemeanor.

13. If upon the trial of any person indicted for embezzlement as a clerk, servant, or person employed for the purpose, or in the capacity of a clerk or servant, it shall be proved that he took the property in question in any such manner as to amount in law to larceny, he shall not by reason thereof be entitled to be acquitted, but the jury shall be at liberty to return as their verdict, that such person is not guilty of embezzlement, but is guilty of simple larceny, or of larceny as a clerk, servant, or person employed for the purpose, or in the capacity of a clerk or servant, as the case may be, and thereupon such person shall be liable to be punished in the same manner, as if he had been convicted upon an indictment for such larceny; and, if upon the trial of any person indicted for larceny it shall be proved that he took the property in question in any such manner as to amount in law to embezzlement, he shall not by reason thereof be entitled to be acquitted, but the jury shall be at liberty
to return as their verdict that such person is not guilty of larceny, but
is guilty of embezzlement, and thereupon such person shall be liable to
be punished in the same manner as if he had been convicted upon an
indictment for such embezzlement; and no person so tried for embezzle-
ment or larceny, as aforesaid, shall be liable to be afterwards prosecuted
for larceny or embezzlement upon the same facts.

14. If upon the trial of two or more persons indicted for jointly re-
ceiving any property, it shall be proved that one or more of such persons
separately received any part of such property, it shall be lawful for the
jury to convict upon such indictment such of the said persons as shall be
proved to have obtained any part of such property.

[*148] 15. And whereas it frequently happens that the principal in
a felony is not in custody or amenable to justice, although several
accessories to such felony or receivers, at different times, of stolen pro-
erty, the subject of such felony may be in custody or amenable to jus-
tice: For the prevention of several trials be it enacted, that any number
of such accessories or receivers may be charged with substantive felonies
in the same indictment, notwithstanding the principal felon shall not be
included in the same indictment, or shall not be in custody or amenable
to justice.

16. It shall be lawful to insert several counts in the same indictment
against the same person for any number of distinct acts of stealing, not
exceeding three, which may have been committed by him against the
same person within the space of six calendar months from the first to the
last of such acts, and to proceed therein for all or any of them.

17. If upon the trial of any indictment for larceny it shall appear that
the property alleged in such indictment to have been stolen at one time
was taken at different times, the prosecutor shall not by reason thereof
be required to elect upon which taking he will proceed, unless it shall
appear that there were more than three takings, or that more than the
space of six calendar months elapsed between the first and the last of
such takings; and in either of such last-mentioned cases, the prosecutor
shall be required to elect to proceed for such number of takings, not
exceeding three, as appear to have taken place within the period of six
calendar months from the first to the last of such takings.

18. In every indictment in which it shall be necessary to make any
avertment as to any money, or any note to the Bank of England, or any
other bank, it shall be sufficient to describe such money, or bank note
simply as money, without specifying any particular coin or bank note; and
such allegation, so far as regards the description of the property, shall be sustained by proof of any amount of coin or of any bank note,
although the particular species of coin of which such amount was com-
posed, or the particular nature of the bank note, shall not be proved,
and in cases of *embezzlement and obtaining money or bank
[*149] notes by false pretences, by proof that the offender embezzled, or
obtained any piece of coin, or any bank note, or any portion of the value
thereof, although such piece of coin, or bank note, may have been deli-
vered to him in order that some part of the value thereof should be re-
turned to the party delivering the same, or to any other person, and such part shall have been returned accordingly.

19. Whereas by an act of parliament passed in England, in the twenty-third year of the reign of his late Majesty King George the Second, intituled an Act to render Prosecutions for Perjury and Subornation of Perjury more easy and effectual, and by a certain other act of parliament made in Ireland in the thirty-first year of the reign of his late Majesty King George the Third, intituled An Act to render Prosecutions for Perjury and Subornation of Perjury more easy and effectual, and for affirming the Jurisdiction of the Quarter Sessions in cases of Perjury, certain provisions were made to prevent persons guilty of perjury and subornation of perjury, from escaping punishment by reason of the difficulties attending such prosecutions: And whereas it is expedient to amend and extend the same: Be it enacted that, it shall and may be lawful for the judges or judge of any of the superior courts of common law or equity, or for any of her Majesty's justices or commissioners of assize, Nisi Prius, Oyer and Terminer, or Gaol Delivery, or for any justices of the peace, recorder or deputy recorder, chairman, or other judge, holding any General or Quarter Sessions of the Peace, or for any commissioner of bankruptcy or insolvency, or for any judge or deputy judge of any county court or any court of record, or for any justices of the peace in Special or Petty Sessions, or for any sheriff or his lawful deputy before whom any writ of inquiry or writ of trial from any of the superior courts shall be executed, in case it shall appear to him or them that any person has been guilty of wilful and corrupt perjury in any evidence given, or in any affidavit, deposition, examination, answer, or other proceeding made or taken before him or them, to direct such person to be prosecuted for such perjury, in case there shall appear to him or them a reasonable cause for such prosecution, and *to commit such person so directed to be prosecuted until the next Session of Oyer and Terminer, or Gaol Delivery for the county, or other district, within which such perjury was committed, unless such person shall enter into a recognizance, with one or more sufficient surety or sureties, conditioned for the appearance of such person at such next session of Oyer and Terminer or Gaol Delivery, and that he will then surrender and take his trial, and not depart the court without leave, and to require any person, he or they may think fit, to enter into a recognizance, conditioned to prosecute or give evidence against such person so directed to be prosecuted as aforesaid, and to give to the party so bound to prosecute, a certificate of the same being directed, which certificate shall be given without any fee or charge, and shall be deemed sufficient proof of such prosecution having been directed as aforesaid; and upon the production thereof the costs of such prosecution shall and are hereby required to be allowed by the court before which any person shall be prosecuted or tried in pursuance of such direction as aforesaid, unless such last mentioned court shall specially otherwise direct; and when allowed by any such court in Ireland, such sum as shall be so allowed shall be ordered by the said court to be paid to the prosecutor by the treasurer of the county in which such offence shall be alleged to have been committed, and the
same shall be presented for, raised, and levied in the same manner as the expenses of prosecutions for felonies are now presented for, raised, and levied in Ireland: Provided always, that no such direction or certificate shall be given in evidence upon any trial to be had against any person upon a prosecution so directed as aforesaid.

20. In every indictment for perjury, or for unlawfully, wilfully, falsely, fraudulently, deceitfully, maliciously, or corruptly taking, making, signing, or subscribing any oath, affirmation, declaration, affidavit, deposition, bill, answer, notice, certificate, or other writing, it shall be sufficient to set forth the substance of the offence charged upon the defendant, and by what court or before whom the oath, affirmation, declaration, affidavit, deposition, bill, answer, notice, certificate, or other writing, was taken, made, signed, or subscribed, without setting forth the bill, answer, information, indictment, declaration, or any part of any proceeding, either in law or in equity, and without setting forth the commission or authority of the court or person before whom such offence was committed.

21. In every indictment for subornation of perjury, or for corrupt bargaining or contracting with any person to commit wilful and corrupt perjury, or for inciting, causing, or procuring any person unlawfully, wilfully, falsely, fraudulently, deceitfully, maliciously, or corruptly to take, make, sign, or subscribe any oath, affirmation, declaration, affidavit, deposition, bill, answer, notice, certificate, or other writing, it shall be sufficient, wherever such perjury or other offence aforesaid shall have been actually committed, to allege the offence of the person who actually committed such perjury or other offence in the manner hereinaforesaid, and then to allege that the defendant unlawfully, wilfully, and corruptly did cause and procure the said person the said offence, in manner and form aforesaid, to do and commit; and wherever such perjury or other offence aforesaid shall not have been actually committed, it shall be sufficient to set forth the substance of the offence charged upon the defendant, without setting forth or averring any of the matters or things hereinbefore rendered unnecessary to be set forth or averred in the case of wilful and corrupt perjury.

22. A certificate containing the substance and effect only (omitting the formal part) of the indictment and trial for any felony or misdemeanor, purporting to be signed by the clerk of the court or other officer having the custody of the records of the court where such indictment was tried, or by the deputy of such clerk or other officer, (for which certificate a fee of six shillings and eightpence and no more shall be demanded or taken,) shall upon the trial of any indictment for perjury, or subornation of perjury, be sufficient evidence of the trial of such indictment for felony or misdemeanor, without proof of the signature or official character of the person appearing to have signed the same.

23. It shall not be necessary to state any venue in the body of any indictment, but the county, city, * or other jurisdiction named in the margin thereof shall be taken to be the venue for all the facts stated in the body of such indictment; provided that in cases where local description is or hereafter shall be required, such local description shall
be given in the body of the indictment; and provided also, that where an indictment for an offence committed in the county of any city or town corporate shall be preferred at the assizes of the adjoining county, such county of the city or town shall be deemed the venue, and may either be stated in the margin of the indictment, with or without the name of the county in which the offender is to be tried, or be stated in the body of the indictment by way of venue.

24. No indictment for any offence shall be held insufficient for want of the averment of any matter unnecessary to be proved, nor for the omission of the words "as appears by the record," or of the words "with force and arms," or of the words "against the peace," nor for the insertion of the words "against the form of the statute" instead of "against the form of the statutes," or vice versa, nor for that any person mentioned in the indictment is designated by a name of office, or other descriptive appellation instead of his proper name, nor for omitting to state the time at which the offence was committed in any case where time is not of the essence of the offence, nor for stating the time imperfectly, nor for stating the offence to have been committed on a day subsequent to the finding of the indictment, or on an impossible day, or on a day that never happened, nor for want of a proper or perfect venue, nor for want of a proper or formal conclusion, nor for want of or imperfect in the addition of any defendant, nor for want of the statement of the value or price of any matter or thing, or the amount of damage, injury, or spoil, in any case where the value or price, or the amount of damage, injury, or spoil, is not of the essence of the offence.

25. Every objection to any indictment for any formal defect apparent on the face thereof shall be taken, by demurrer or motion to quash such indictment, before the jury shall be sworn, and not afterwards; and every court before which any such objection shall be taken for any formal defect may, *if it be thought necessary, cause the indictment to be forthwith amended in such particular by some officer of the court [*153] or other person, and thereupon the trial shall proceed as if no such defect had appeared.

26. So much of a certain act of parliament passed in the sixtieth year of the reign of his late Majesty King George the Third, intituled an Act to Prevent Delay in the Administration of Justice in cases of Misdemeanor, as provides that "where any person shall be prosecuted for any misdemeanor by indictment at any Session of the Peace, Session of Oyer and Terminer, Great Session, or Session of Gaol Delivery, within that part of Great Britain called England, or in Ireland, having been committed to custody or held to bail to appear to answer for such offence twenty days at the least before the session at which such indictment shall be found, he or she shall plead to such indictment, and trial shall proceed thereupon, at such same Session of the Peace, Session of Oyer and Terminer, Great Session, or Session of Gaol Delivery respectively, unless a writ of certiorari for removing such indictment into His Majesty's Court of King's Bench at Westminster or in Dublin shall be delivered at such session before the jury shall be sworn for such trial," shall be and the same is hereby repealed.
27. No person prosecuted shall be entitled to traverse or postpone the trial of any indictment found against him at any Session of the Peace, Session of Oyer and Terminer, or Session of Gaol Delivery: Provided always, that if the court, upon the application of the person so indicted or otherwise, shall be of opinion that he ought to be allowed a further time, either to prepare for his defence or otherwise, such court may adjourn the trial of such person to the next subsequent session, upon such terms as to bail or otherwise as to such court shall seem meet, and may respite the recognizances of the prosecutor and witnesses accordingly, in which case the prosecutor and witnesses shall be bound to attend to prosecute and give evidence at such subsequent session without entering into any fresh recognizance for that purpose.

28. In any plea of autrefois convict or autrefois acquit it shall be sufficient for any defendant to state that he has been lawfully **convicted or acquitted** (as the case may be) of the said offence charged in the indictment.

29. Whenever any person shall be convicted of any one of the offences following, as an indictable misdemeanor; that is to say, any cheat or fraud punishable at common law; any conspiracy to cheat or defraud, or to extort money or goods, or falsely to accuse of any crime, or to obstruct, prevent, pervert, or defeat the course of public justice; any escape or rescue from lawful custody on a criminal charge; any public and indecent exposure of the person; any indecent assault, or any assault occasioning actual bodily harm; any attempt to have carnal knowledge of a girl under twelve years of age; any public selling, or exposing for public sale or to public view, of any obscene book, print, picture, or other indecent exhibition; it shall be lawful for the court to sentence the offender to be imprisoned for any term now warranted by law, and also to be kept to hard labour during the whole or any part of such term of imprisonment.

30. In the construction of this Act the word "indictment" shall be understood to include "information," "inquisition," and "presentment," as well as indictment, and also any "plea," "replication," or other pleading, and any Nisi Prius record; and the terms "finding of the indictment" shall be understood to include "the taking of an inquisition," "the exhibiting of an information," and the "making a presentment;" and wherever in this Act, in describing or referring to any person or party, matter or thing, any word importing the singular number or masculine gender is used, the same shall be understood to include and shall be applied to several persons and parties as well as one person or party, and females as well as males, and bodies corporate as well as individuals, and several matters and things as well as one matter or thing; and the word "property" shall be understood to include goods, chattels, money, valuable securities, and every other matter or thing, whether real or personal, upon or with respect to which any offence may be committed.

31. This Act shall come into operation on the first day of September one thousand eight hundred and fifty-one.

32. Nothing in this Act shall extend to Scotland.
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