Express, but indirect and Consequentiall gathered by Deba
and Reasoning not obvious to all Capacities.

2d Proof by Notoriety of the fact, when the Judge d
that such a thing is publickly known or acknowledged to
true by the whole Vicinity, the Not by all the Nation. As
Relation of husband, Wife, parent or Child, is proved by ba
held and Reputed such; that lands lye in such a shire or fu
diction is taken for granted &c. Such evidence is not Gen
=ted by some particular persons being Ignorant of the Mat
So be it is known to the Generality. Its Reckoned Notorium
what a Judge sees and hears done presently before him or
dgement: for the a Judge ought not to Determine upon his
private knowledge or light, but secundum allegata & probata
Not his knowledge of the Notoriety Sufficeth. But that is not Ali
=oned Notorium which he Remembers ex Intervallo, unless the fan
be inserted in some Jud. acts. Such Notorium being pre
=tio probata, Need No farther proof, but may be pleaded &c
Farin. de Delict. 2 nat. 21 n. 79. 80. 81. 110. And not Determin
what is Notorium belongs to the Judge Prosp. Farin. ibid. n
Proof by Notoriety may be taken off by a stronger positive Bor
=rary Evidence offered in due time.

Non-usus de presumptionibus Ecclesiae
Ex proxim.

3d Presumptions (from pre before & Sumo to take, q. d.
Anticipation of some thing for truth before the ordinary proof
Dare Conjectural Evidence of a doubtful Matter from probab
Arguments, or Consequences drawn from facts that are kn
to serve for Discovery of the truth of facts that are Uncertai
and which one seeks to prove; whether it be that causes are
Judged of by their effects or Effects by their Causes, or that
truth is Discovered by other principles. They Differ from
fictions, in so far as those things are presumed which are
thought to be true, where as a fiction is a Supposition of Law
that some thing really is, which certainly is not; Farinacius d
=diciis Quest. 76 n. 244. For law has Legitimate fictions
whereon it builds the truth of its Justice. It owes us inpp
=Suppositions, and for the Current peoy things which the
=ver Informs us were Invented. As Astrology Makes use of
=cycles, Excentricks and Concentricks to carry on the Pro
=ons of the Stars; As when an heir is feigned to be the same
=for with his Deceased predecessor or when an Infant in the
Bomb is Esteemed to be born if that Supposition will be to
its advantage after it is born l. 26 ff de Statu Hom. &c. wh
he who lets by Another is Supposed to let himself in which
cases affection will not endure proof to the Contrary, as pr
=Sumption often does Farin. ibid. n. 245. 246. 247. 248.
Altho Indicium, presumptio, Conjectura, Suspicio Signum & Ad
nem

Adminiculum have their own Strict and Distinguishing Sig
=nifications, Yet they are often in the Civil law and by the
Doctors of it used promiscuously to express one and the same
thing, Farin. ibid. n. 263 & Sqq. Some presumptions pass for
truths without any Necessity of being Corroborated by Stronger
proofs, others have no other effect, than that they form a bare
Conjecture, which leaves some doubt.

A presumption is either of Man i.e. the Judge or of law.

A presumption of Man arisseth wholly from the Discre
=tion and penetration of the Judge, who draws it from probable
Circumstances of the fact, without any Express law to Direct
him upon such a presumption of the cause by its effect,
it was that Solomon formed his Judgement in that Controverse
betwixt the two Harlots Contending for the Living Child
1 Kings 3. 27. He foresaw the Commotions that would be
produced in the heart of the Mother by the fear of the death
of her Child, and Judged of the one by the tenderness the expressed
that she was the true Mother of the Child: and by the Indifference
and Insensibility of the other, that the Child was to her a
Stranger. Of these presumptions of Man some are Violent
or Strong c. 12 X de presumpt. upon which may be grounded
a sure and Certain Judgement. Others form only a Conjecture
without Certainty whereof some are probable, some Light or Weak.
Concerning which there can be no Certain Rules laid down: but
in Every case it will depend on the prudence of the Judge, to Discern
whether the presumption be well or ill grounded, and what effect
it may have to serve as a proof l. 3 § 2 ff de Justit.

Presumptions of law, are Either Juris of law simply, or Juris
=ris & de Jure, of and by the Law.

A Presumption of law, is what the law or Custom holds to
be true, till the Contrary appear by positive proof. The Civil
law furnisheth a Round of these presumptions, with which the
treatises of the Doctors are Hugely Swelled. Nor do we want
a Bundance of them in our law: Whereof some are General, that
take place in Many or Most cases; and other Specially, that respect
only particular cases. The Motives in the Narratives of Acts of
Parliament for Introducing such laws, are presumptions of law,
and those presumptions which the Lords of Session do Ordinarly
Sustain in their Decisions, are Reckoned such. I shall give
the following Instances of presumptions of law. 1d Quia ex pra
sumitur bonus or Nemo praesumitur Malus, every Man is pre=
=sumed to be honest. Bil Where a Man is known to be habitual=
=ly guilty of one particular Vice, this is an admiscible with other
Circumstances for presuming him to Continue so: As this Article
in the in the Indicted Manner of Improbation may be used
that the Defender is known to have forged other Writs, this
the