

Tit. 1.

What Circumstances are Necessary to infer
the Crime of Perjury and what do not import

To infer the Crime of Perjury there must be a full and deliberate swearing: Whereby swearing full is thus surpris'd and vertuous or Mistake of the Question is Excluded Code 3 Just. 167. 5 Mod. Rep. 350 Hawkins pl. Cr. lib. 1 chap. 69. § 2. So. Vost. C. Comm. ad Fel. § 2. Jur. n. 32. Not is he who swears a false Oath believing it to be true guilty of Perjury. Id. in Clar. 3 perjurium n. 12. Because he doth not then intend and swearing fully in a Difficult Matter, is not intended to be perjury. Id. but only presumed to have been mistaken. In C. Clar. lib. 3 perjurium n. 10. If he took pains to inform himself about what he was swearing. But the Difficulty should not excuse him if he Deposeth Rastall, not being at pains to understand it. M. Lewis Crim. part 1, pt. 25. 51 Infer. One must swear absolutely and Directly, not as he thinks believes or Remembers. For if he Remembers No thing, he cannot be punished for perjury Code 3 Just. 166. Hawkins ibid. 57. Albeit it may be pleaded, that all oaths are oaths of Credulity in things not falling under the senses, and a Man should not swear upon his Oath, in such a manner, except he be certain and have sufficient previous Information. It is said that when a Man swears a thing true in fact and doth not know it to be so, as when he swears upon the Value of a thing he never saw or knows, he swears it all together as great as if it had been false in as much as he will fully swear he knows a thing to be true, which at the same time he knows nothing of, and Importantly Endeavours to induce the Oath upon the Oath, to proceed upon the Credit of a Deposition which any Stranger might make as well as he Code 3 Just. 166. Hawkins pl. Cr. lib. 1 chap. 69. § 6. But it was resolved by the Court of King's Bench, that this is a false Oath in law before God, which satis dicitur. Cotton habet l. 2. C. 2.

Q. 20 Rob. Crad. Yet it is not such perjury as the law takes Notice of, 3 Mod. Rep.

21 A false Oath whereby no person is or can be hurt Injured or Grieved, as that which is not in a thing material to the Issue or point in Question, but wholly foreign to it, or of no Consequence in the Decision of the Cause, as not tending to aggravate or Extonuate the Damages, nor likely to induce the Jury to give a Reading Credit to the Substantial part of the evidence; tho' it is punishable in foro poli, is not considered perjury in foro domestico or in humane Courts of Justice. Gul. Clare per totum lib. 5 § Perjurium n. ii Code 3 Just. 167 Hawkins ibid. 58. Because it is not supposed, that one swears a trial, which himself without any Design. Q. 2. If upon a trial, which the Question is whether such a one is innocent or guilty or not, a witness introduces his Evidence, by giving a History of a Journey which he took to see the party, and happens to swear falsely in Relation to some of the Circumstances of the Journey: This because more by Tolls and insignificant, doth not amount to a witness's perjury. But if the Scope of a Question put to a witness about Circumstances not material, by Examining as to his knowledge of the Substance, and he him strictly concerning the Circumstances, and he give a particular and distinct account of the Circumstances, which after wards appears to be false he cannot but be guilty of perjury, in as much as No thing can be more apt to induce a Jury to give Credit to the Substantial part of a Man's Evidence, than his appearing to have an Exact and particular knowledge of all the Circumstances relating to it. And it must be so Arbitrio Fidei is to follow mind, from the Consideration of the Circumstances of particular cases, whether the Matter in which perjury is assigned, be wholly Importunate and insignificant or punishable as perjury or Not, Hawkins ibid. 58. However it is clear, that a Man may be as well guilty of perjury by a false Oath tending to Extonuate or aggravate the Damages, as