

Every Caption of an Indictment is erroneous, which doth not set forth with proper Certainty, both the Court in which and the Jurors by whom, and also the time when and place at which, the Indictment was found, Hawkins pl. Cr. lib. 2 chap. 25 § 120. It must show, 1st that the Indictment was taken before such a court as has Jurisdiction over the Jurisdiction. 2^d that the Jurors who found it were of the County City or Burgh or other Precinct for which the Court was holden, and at least twelve in Number, and that they found the Indictment upon their oaths. It must set forth a certain day and Year of the King when the Court was holden, before which the Indictment was found, and the stile of the day and Year should be in no figures but Roman. If such a Caption either set forth no place at all where the Indictment was found, or do not show with sufficient Certainty, that the place set forth is within the Jurisdiction of the Court before which it was taken, it is insufficient, Hawkins ibid. § 121 & seq.

Some General Rules concerning Indictments.

1st The special Manner of the whole fact ought to be set forth particularly with such Certainty that it may judicially appear to the Court, that the Jurors have not gone upon insufficient promises, Hawkins pl. Cr. lib. 2 chap. 25 § 53. In describing some Crimes, special words of Art must be used, which no periphrasis or Circumlocution whatsoever will supply, as proditoria in any Indictment of treason, Coke 3 Inst. 15. Rolle pl. Cr. 11. contra Ligantia sua Dobitum in any Indictment

ment of treason against the Kings person 4 Mod. Rep. 166. Hawkins ibid. § 53. Murderum & Mordavit in an Indictment of Murder; Rapit in an Indictment of Rape; Mayhemavit in an Indictment of Mayhem; Burglariter or Burgulariter, or Burglariter in an Indictment of Burglary; Rapuit in an Indictment of Rape; and felonies in any Indictment of any felony whatsoever. Hawkins ibid. The Charge must be laid positively, and the want of a direct Allegation of any thing Material in the Description of the Substance, Nature or Manner of the Crime, cannot be supplied by any Intendment, Imphlication or argument whatsoever, Stamp. pl. Cr. § 6. Hawkins ibid. § 62. Nor is an Indictment Charging a Man with jointly with such or such other fact good, but all together. See Hawkins ibid. § 60. Regularly every Indictment must Charge a man with some particular offence, or offence with several such offences particularly and Certainly Expressed, and not with being an offender in General; for no one can know what Defence to make to a Charge so Uncertain, or to plead it either in bar or abatement of a subsequent prosecution; Neither can it appear that the facts given in Evidence against the Defendant on such a General Accusation, are the same of which the Jurors have accused him; nor can it judicially appear to the Court, what punishment is proper for an offence so loosely Expressed, Hawkins ibid. § 61. And in all Prosecutions for Crimes and Misdemeanors by writing and speaking, the particular word supposed to be Criminal ought to be Expressly Mentioned or specified in such Indictment, Sacher. Cr. 448. Col. 8. But a man may be Generally Indicted as a Common Barrator, without showing any particular facts in the Indictment by which he appears to be so, Hawkins ibid. & lib. 1 chap. 81 § 9. Because Barratry is an offence of a Complicated Nature Consisting in the Repetition of Divers Acts in Disturbance of the Common Peace, all which it would be too prolix to Enumerate; and a Common Barrator is a term of Art appropriated by the law to this