

upon Motion, he may put the same into the form of a plea, to have the Judicial <sup>opinion</sup> of the Court entered upon Record, that he may be relieved by writ of Error, if the Judgment of the Court be wrong. The prisoner may make and put in his Defences and plead either, of before the Jury is sworn. Or 2<sup>d</sup> In Arrest of Judgment after he is brought in guilty. He may before, but not after pleading not guilty, at least not after swearing the Jury, make a Verbal Motion to quash the Indictment for miswriting, mispolling, false and improper Latin. He may also move to have the Indictment quashed upon some other ground of Informality or Insufficiency. But no Motion to quash the Indictment is allowed after the Jury is charged, who must give their Verdict by Acquitting or Convicting, and cannot be Discharged till they give it. Nor was it ever intended, that a Jury after they are sworn to try a Matter of fact should stand idle, while the prisoner moves a point of law, which should have been moved before they came to the Bar, *Rockwood Gry. 20. 27. H. 1. 1. 1.* The Statute *Cof 7 W. 3 cap. 39* says only, that no Indictment of high treason whereby any Corruption of Blood not excepted in the said Statute, or for Misprision of such treason shall be quashed on a Motion of the prisoner or his Counsel for Miswriting or Mispolling false or improper Latin, unless Exception be taken in court by him or them before any Evidence given upon the Indictment. But these words the Expression of Evidence given, which signified the Main part of the trial, the parliament intended to comprehend the whole proceedings, beginning, if not from pleading the General issue, at least from swearing the Jury, *Rockwood Gry. 32.* And yet solem, if ever, both the Judges allow Motions to quash Indictments of treason Murder or any Great offence, till they be Made in Arrest of Judgment: but always say to the Prisoner Demur or plead *Rockwood Gry. 26. 33.* Which leads me to the pleadings usually put in against Indictments. A prisoner upon his Arraignment pleads either in Abatement, or Demur to the Indictment, or pleads in Bar,

Bar, or pleads over to the felony, that is *pleads not guilty*, which is called pleading the General issue.

A plea in abatement, is that the suit may cease for that time, because if the Matter in question ought to be tried in another court, and the Judge is incompetent, which is termed a foreign plea or pleading to the Jurisdiction of the court, which ought to be sworn to be true *sty. 1. 435. 2<sup>d</sup>* because of some Informality in the Indictment, as a Misnomer in the prisoners Christian Name. But then the Prisoner will not be Dismissed, but he must give his true Name, and by that name he may be forthwith indicted *de Novo*, Hawkins *pl. Cr. lib. 2 chap. 34 52.* For Regularly a Defendant shall not be Dismissed for Insufficiency in an Indictment or Appeal for a Capital crime.

If his Dilatory plea be overruled, and he thinks that the Indictment is insufficient in law i.e. that the fact as set forth will not Maintain the Action brought, or as we say is not Relevant to infer the Conclusion of the Libel, he may Demur to it or *Morari in Lego*, which, to use the Scottish law term, is to Debate the Relevancy, to join issue upon a point of law in the Indictment, allowing the fact to be true as laid therein, and Resolving the point of law arising thereupon to the Judgment of the Court. Which Demuror in the opinion of Sir Edward Coke *(2 Inst. 178)* & Sir Matthew Hale *(pl. Cr. 243)* amounts so far to a Confession of the Indictment as laid, that if the Indictment prove to be good in law, Judgment and Execution shall go against the prisoner, as if he had been Convicted. But howsoever the law may stand in Relation to a General Demuror Conceding in Bar of an Indictment or Appeal, or a Demuror to a plea in Bar which admits the facts, or to a Replication to such a plea it hath been adjudged that