

Thus to prevent all suspicion of sinister proceeding in trials, no Mandamus is laid to the Jury to instruct them, while the Evidence is giving, upon pain of Imprisonment Book 1st p. 36. Nor is any Juror after words sworn, to go from the Bar without Leave of the Court, for any cause whatsoever, till the Evidence is finished, and the Directions of the Court given, and then he get Leave, he is attended with a keeper styled Pract. Reg. 338. But the Court may give the Jury leave to Drink at the Bar, if the parties Consent to it. The oaths of Witnesses are Not Recorded, but the Judges, Jury men, parties, and the Counsel on both Sides, do, for the help of their Memories, take Notes from the Mouth of the Witnesses, of what they say.

It's a Maxim in law that witnesses cannot testify in the Negative, but may in the affirmative only Bode & full 662. For Witnesses in Negatives are of little Value Bode Gry. 56. Nor are Matters of law to be proved by Witnesses, but only to be Decided by the Judges: quod Constat furia opera postum no Juriget, Bode ibid. 2^o / No Evidence shall be admitted of any Overt Act of high treason, whereby Corruption of Blood may be Made, that is not Expressly laid in the Indictment, W. 3 cap. 358 That is, Evidence of a Distinct Act that ^{has} no Relation or Direct Conduency to prove the Overt Act Mentioned tho it should Conduce to prove the same Species of treason. But Evidence of an Overt Act not laid in the Indictment, may be given to prove An Overt Act Laid, Vaugh. Gry. 14. Rockwood Gry 74. Where several Acts are Laid in An Indictment, ~~whereas the same are~~ of high treason, the proof of Any of them Maintains the Indictment, as Much as if every one of them Were proved Hawkins pl. Br. lib. 2 chap. 46 § 35. 3^o / Confess or Report of what Another man said, is no Evidence either for or against the prisoner Hale pl. Br. 262. Lough Gry 22. Lord Russell Gry. 48. Hawkins ibid. § 14. Tho that other Man be Disabled to

to come into court himself *Hawkins. Gry. 31* Not only because it is not upon Oath, but also because the other side hath No opportunity of a cross Examination. But it may be Made use of by Way of Judgement or illustration of what is properly Evidence, as to Establish the Testimony or Credibility of Another Witness, Viz. if one Witness should swear, that he did hear the other Declare the same thing formerly, Oath, *Gry. 70.* This the hearsay from others be not Immediate Evidence of treason Against the prisoner, to affect him; Yet it may prove that there was a General Conspiracy to destroy the sovereign, and subvert the Government &c. *Gry. 56.* Again, what the prisoner hath been heard to say at Another time, may be given in Evidence for him as well as Against him *Hawkins p. l. fr. lib. 2 chap. 46 § 3 & 14.* And also what a Witness hath been heard to say at another time, may be given in Evidence either to invalidate or confirm the Testimony which he gives in court. *Hawkins ibid. § 14. 4.* If a Witness be sworn to a particular thing, and speaks to Another he was not sworn to give account of, this can be No Evidence Oath, *Gry. 65.* But Evidence May be given in treason, to show the temper of the prisoner's spirit, and how his Inclination hath run all along, tho that be not the thing he is Directly called in Question for. *Rouse try. G. 70. 5.* Albeit the treason for which a person is Indicted, must be laid in the County where it was Committed, and Must be found by a Jury of the Neighbourhood in that County. Yet the Evidence of the fact may be in other Counties *Rel. Rep. 38.* Thus Henry Vane being Indicted in the County of Midd. before for compassing the Death of King Charles the first, and Intending to subvert the Government; it was Resolved that Laying war in Surrey might be given in Evidence, as an Overt Act of the compassing. *Rel. Rep. 15.* Much More may Evidence of felony Committed at one place of a County, Maintain an Indictment that laid it in Another place of the same County. *Hale p. 1.*