

the question of guilty or not guilty, do say, not guilty: the Clerk asks, do he flee for it? and receiving for answer, no and say, God save the King and the Honourable Bench; and add to the pross over his Name in the indictment. Edw. 6c. 1733. non est. see for retraxit, quitted. Then the Clerk says, Gentlemen of the Jury Hearken to Your Verdict, as the Court hath Recorded it: You say that A.B. is not guilty of high treason whereof he stands indicted, and that he did not flee for it: and so you say all. Whereupon the prisoner is acquitted forthwith and Discharged, paying the Jailors fees.

In former time the Jury used to be fined for giving a Verdict Contrary to Evidence, or Contrary to the Direction of the Court in point of law. Kol. Rep. 50. 1 Koble Rep. 338. Raym. Rep. 138. But this course of fining Jurors upon such an Account, is condemned as illegal and Disused. Kol. Rep. 51.3 Koble Rep. 35. Hawkins pl. br. lib. 2 chap. 22 § 20. chap. 47 § 11. Because the Jury being by Law the proper Judges of Matter of fact, ought to be free in their Judgment of it without being overruled by the Judges. Neither is it possible that a Judge can certainly know that a Juror acts corruptly in giving his Verdict contrary to the strength of the Evidence delivered in court; seeing the Jury may be influenced by their own personal knowledge of the truth of the fact, of the Credit of the Witnesses, the Reputation of the Parties, and many other Circumstances Unknown to the Judge, and well known to the Jury who are of the Neighbourhood. So that Now when a Jury take upon them to find any Matter of Law Against the Direction of the Court, the Judges will receive it, styled Pract. Reg. 363. 644. For in such a case it is supposed, that the Judge when he Directed the Jury had not so much evidence of the Matter, as Occurred to them: and so facts Judicious. A Jury may give a Verdict that is false, and yet go according to their Conscience, Wakeman Jy. 99. oct. 1 Jy. 42. But where it appears to the Court, that the Jury have been unlawfully tampered with to give their Verdict, they are

fineable

The Verdict of a Jury who did cast lots for it was in one case set aside without any other punishment to them. 2 Levinz Rep. 140. But in a like case the Verdict was not only set aside, but also the Jury was ordered to attend to be fined. 2 Levinz Rep. 205.

When a prisoner is found guilty, and no other is found guilty of the like offence but himself, the Clerk of arraignments adds the court, with your Lordships pleasure that the Prisoner be called up to Judgement: And if they Direct for the Prisoner to be called up to the Bar to whom, when brought thither the Keeper set A.B. to the Bar to whom, when brought thither accordingly, the Clerk says, A.B. hold up thy hand: thou hast been indicted of high treason, and thou art pleaded not guilty, and for thy trial had put thy self upon God and thy country, which country have found thee guilty: what canst thou now say for thy self, why the court should not give thee Judgement to die according to the Law? Of. to the party convicted had at least thirty days to show Matter for staying his Judgment, Coke 1 Inst. 134. b. But now four days only for the most part are Judged to move in Arrest of Judgement. Hawkins pl. br. lib. 2 chap. 48 § 1. Tho the court may if they please enlarge the time. Thus 8 days were given to Doctor Oates upon a Conviction of perjury, oct. 2 Jy. 36. 57. As I said before (supra pag. 804. 805) a prisoner may make his Defense by Verbal Motion, or by putting formal pleas either before swearing the Jury, or after Conviction in Arrest of Judgement to stop sentence; and Motions that would not be received to quash Judgments for great Crimes, were so receivable in Arrest of Judgement. But now a prisoner or his Counsel cannot move in Arrest of Judgement any Exception for Miswriting, Mispolling, false or Improper Calling against an Indictment of high treason inferring Corrupti-
-on, and not Excepted in the Statute of 7 W. 3 cap. 3 or Misprision of such treason, if the Exception was not taken before Evidence given upon the Indictment, 7 W. 3 cap. 3 § 9 that is, before swearing the Jury, Rockwood Jy. 82. A prisoner is not allowed after Verdict to quarrel the Evidence. But