

(after they have got themselves cleared of their Doubts by the Judges or Advocates openly in face of court, and in presence of the pannel) are immediately ordered by the Clerkman of the Court to be sequestered, and to report their Verdict if the proof be short and clear, forth with before the Court the next day; and if other ways, to return at the next day or 12 of the Clock; and the whole is to attend them each under the pain of a certain sum as 200 Marks &c. Because the Jury might be gayered with, or other witnesses suborned by the pursuer, finding that those produced by him prove nothing; if, after finishing the proof the trial were continued to a new day. When the Jury have got furnished to them what things they want, as meat, drink, paper, pens, ink, candles, & Wax, a Maier shuts them up in a Locked Room, and waits at the door, till they, having done their business, call him to open and let them out. The Jury, after they are thus sequestered, choose a foreman called Chancellor, and also a Clerk out of their Number. The Clerk of the Court not being allowed to sit with them. Act of Regal. of the Justices Court 1672 Art. 4. Because, perhaps he might influence them too much. When the Verdict is laid before them it is read reasoned upon. It is generally thought, that a Justice may Judge according to their private knowledge. And it is Infinitum that a Justice may prove by themselves Act 6 J. 6 which is confirmed by a Decision of the Justice Court. Where pannels have desired, that witnesses might be received for the better Information of their Innocence of the Crime charged upon them: The Kings Advocate answered, that no witness could be received to inform the Assize, seeing they are both Judges and Witnesses, and to bring in their Verdict of the Pannel guilty or Not guilty, according to their knowledge and Conscience. Upon which the Justices refused to admit other witnesses to be produced by the pannel to the Assize, and ordered the Assize to proceed in the trial according as their knowledge and

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Conscience should Direct them 17 December 1623 John Hartly & Thomas Hartly. And an Assize upon their own knowledge found a pannel not guilty of Mutilation of a Mans right Arm wounded by him; Notwithstanding of a testificate subscribed by four Chirurgens and Doctars after Visitation of the wound, that the person Wounded was Mutilated and Disabled to use his Arm as before he Received the hurt 15 December 1630 John & Gilbert Kennedies. Again the Kingd Advocate having pursued persons up on the Notariety of their guilt of the Crimes of forestalling and Regrating libelled against them; the Assize were in that case made both Judges and Witnesses as themselves: who, in regard they knew Nothing of the Matter, pronounced and declared the pannel to be Cleare and Innocent of the Crimes charged upon them 24 Feb. 1646 William Doo & others. But Sir George Mackenzie (Crim. part 2 Tit. 235 & 5) from 1 to doubt if a Justice can Judge according to their private knowledge. Because, if Proof ought to be Led publicly in presence of the Assize and pannel, which cannot be Applied to the private knowledge of a Justice. 2. Judges ought to determine secundum Allegata & probata. 3. If a Justice might turn their Verdict upon their private knowledge, they could never be pursued for Error: seeing it were impossible to convict Men of having transgressed the Rule of private knowledge. And yet the same Sir George Mackenzie in another place (Crim. on Act by Parl. 6 J. 3) concludes from these words of that Act by, and fra it be knowne by the Inquest, that the persons be seized or furious, Conclude, that an Inquest may find a person to be Diot or furious upon their proper knowledge, they being both Judges and Witnesses by our law.

The Determination of the Jury about what is proved or not proved, is called their Verdict, q. d. *verdictum* or *dictum* *Veritatis*, the Dictate of truth the quiet fountain of Justice pro Veritate habetur. When the Matter is put to