

Concerning Indictments

An Indictment is nothing else but a certain plain Brief and certain narrative of an offence committed by any person, and of those necessary circumstances that concur to ascertain the fact and its nature. Therefore I shall consider 1^o Some Rules that concern Indictments in General, and 2^o The several parts of Indictments in their order:

1^o Formerly by the Law of England every Indictment ought regularly to have been in Latin as all pleadings in the courts of Law were. Because that being a fixed regular Language is not capable of so many changes and alterations as happen in vulgar Languages. But now all Indictments by laws require to be in the English tongue; 4 Geo. 2. cap. 26. 6 Geo. 2. cap. 6. For it was thought to be of much greater use and Importance, that they should be in a Language capable of being known and understood by the parties concerned, whose Lives and Liberties were to be affected thereby.

Concerning Evidence in crimes by the Law of England. 137.

n. 1. How taken in Hawkins p. l. crown Lib. 2. chap. 46 Sect. 3. 4. 5. 6. 7. 12. 14. 15.

n. 2. The Exceptions to a witness are of two kinds. 1. Exceptions to the credit of the witness, which do not at all disable him from being sworn, but something blunts the credibility of his testimony; in which the witness is allowed, but the credit of his testimony is left to the Jury who are judges of the fact, and also of the probability and improbability, or credibility or incredibility of the witness and his testimony. Such an exception be it against a father produced as witness for or against his son, or against a master for or against his servant; or a confessor; Hals placit. cor. toll. 2. pag. 276. 277. or against an Infidel admitted a witness Hals ibid. pag. 279. This exception to the credit of a witness answers to the practice in Scotland of receiving witnesses cum Nota. 2^o Exceptions to the competency of a witness which do exclude him from giving his testimony, and of these Exceptions the court is the judge, Hals ibid. pag. 277.