

The Justices Opinion touching the Commission by which the Justices sit at Newgate.

The Justices at *Newgate* sit by virtue of two Commissions, *viz.* Gaol-delivery, and *Oyer and Terminer*.

By the Commission of Gaol delivery, they may try all Prisoners in the Gaol, or by bail, or such as be indicted, and will render themselves generally for all Felonies; and also for such other offences as are particularly assigned to them by Statute.

The Statute of 4 *Eliz.* 3. *cap.* 2. doth give them power to receive Indictments against Prisoners, or such as are upon Bail, and to proceed to try the same, *viz.* Indictments taken before the Justices of the Peace, and by Equity thereof, all Indictments before Coroners, 3 *Mar. Bro. Commission. omnium* 24. saith, the Commission is, *Ad Deliberand. Gaol. de prison. in eisdem existen.* But they cannot take Indictments as Justices of Gaol-delivery, but being Justices of the Peace, they may take Indictments against Prisoners, but not against them that be at large; forasmuch as no power is given them, consequently they must have means to do so, which is by Indictments. *Id quarend.*

Howsoever it is clear, That they may inquire of many offences, and take Indictments in such Cases where power by the Statute is given to the Justices of Gaol-delivery; in such Cases where they have authority by Law or Statute, there the title of Indictment is, that *ad gaolam deliberand. tent.* before the Commissioners of Gaol-delivery *J.S.* was indicted, and the Record must be made up so.

And whereas by the Statute of 4 *Eliz.* 3. *cap.* 2. Indictments taken before Justices of Peace or Coroners, or any other against any Prisoner, then the Entry of the Indictments is returned taken, *Memorand. quod ad generalem Sessionem tent.* before *A.B.C.* Justices *ad pacem in Com. Middlesex* or *London*, *J.S.* was indicted, and then tried before Justices of Gaol-delivery, and by virtue of the said Statute, Indictments taken before Justices of the Peace of *London* or *Middlesex*, are tried before the Justices of Gaol-delivery.

The Commissioners of *Oyer and Terminer* is *Ad triand. inquirend. audiend. & determinand.* They may inquire of all offences mentioned in the Commission, albeit the offenders be at large, but they cannot try Prisoners upon Indictments taken before any other than themselves, as the Justices of Gaol-delivery may by the aforesaid Statute, unless there be a special Commission made, as it was in the Case of the Earl of *Leicester*, mentioned in *Plow. Com.* for the ordinary Commission of *Oyer and Terminer* is *ad inquirend. audiend. & determinand.* Therefore they cannot determine of things unless they made inquiry first; and on the other side also the Justices of Gaol-delivery may try Indictments taken before Justices of the Peace; yet if one be indicted before Commissioners of *Oyer and Terminer*, the Justices of Gaol-delivery cannot try the same, because the Record of the Commission of *Oyer and Terminer* are to be returned in the *Kings Bench.* 44 *E. 3.* 31. 3 *Mar. Br. Com.* 24.

The Commission and the Records of the proceedings before the Justices of Gaol-delivery, are to be returned to the *Custos Rotulor.* of the County, when the same persons are Justices of Gaol-delivery, and of *Oyer and Terminer*, they may sit the same day and place, and inquire by the same Jury, but the Entry of the Records must be several, according as the Indictment is.

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