

they consider of the matter of the Bill, and either find it or not find it; as the Evidence appears to them credible and sufficient, or otherwise, and then they return it; but it may be very reasonable, if the matter be weighty or difficult, and the Jury be not very able, or the Prosecution be too slack or over violent, to hear the Evidence given in Court, that so the Jury may be the better assisted in doing their Duty.

Whilst the Juries be abroad, the usual way is to hear Motions touching Settlements of poor persons, and other things relating thereunto; and to call persons bound over to the Peace or the Good Behaviour; but it may not be best to discharge them until the end of the Sessions, for fear persons may come to prefer Bills against them, or to complain of them when the Birds are flown.

And because the Arraignment and Trial of Prisoners is a great part of the business of Sessions, I will take notice of some parts thereof, and Proceedings thereupon.

Towards the end of the Sessions, when it appears what Bills are come in against the Prisoners, the Gaoler being called to set his Prisoners to the Bar, and the Crier being called to make a Bar, that is, to dispose of the company that a way be made open from the Court to the Prisoners, that the Court, Jury and Prisoners may see each other; one of the Prisoners is called to: *A. B.* hold up thy Hand; (this is done to notify him to the Court, the Jury and Standers by.) Thou *A. B.* standest indicted by the name of *A. B.* of, &c. (name him as he is named in the Indictment, &c.) for that thou, or that thou with others, &c. (and so recite the whole Indictment in English; which done) How sayst thou *A. B.* art thou guilty of this Felony and Burglary, or Felony and Robbery, or Felony and Murder, (as the case is) whereof thou standest indicted, or not guilty? If the Prisoner say Guilty, then the Confession is recorded, and no more done as to him till Judgment; but if he say Not Guilty, then the Clerk says, *Culp. prst.* (i. e. Guilty already.) How wilt thou be tried? It is usual to say, By God and the Country; but if the Prisoner stand Mute, and will not plead, 'tis best to ask him three or more times, and to tell him the danger of standing Mute, and the grievousness of the Judgment, *de peine fort & duro*; and if yet he will stand Mute, nothing more can be done concerning him; but to record it. But if he plead Not Guilty, so record it; and in like manner all the rest of the Prisoners. And if two, three or more, they being called to severally, thus, You *A. B.* hold up thy Hand; you *C. D.* &c. and so of the rest. Then say, You *A. B.* by the name of *A. B.* of, &c. and You *C. D.* by the name of *C. D.* of, &c. and so the rest; for that you, &c. (and so recite the substance of the Indictment.) Then call to them severally to plead, &c. (The word Arraign cometh from the French word *Arranger*, *ordine collocare*, *quia rei ordine vocantur ad Rostra seu Cancellor, que nos Barram vocamus*, saith Skinner.) Which done, the Prosecutors are called on the Recognizances to give evidence; which done, the Jury are called on their Panel; (for a Return cannot be made upon a *Venire facias* made the same Sessions, and a Trial had thereupon in the same Sessions, as is held 22 E. 4. Fitz. Coron. p. 44. & Stamf. l. 3. c. 5. f. 156. in case of Justices of Peace in their Sessions; much less can they nominate or direct the immediate return of by-standers. But otherwise it is in case of the Justices of Gaol-delivery: therefore consider whether a Trial can be had of a Felon the same Sessions he pleads, unless he con-

§. 10.
Arraign-
ment.