

*ibid.* Another condition is that application be made for it. The copy is to be delivered five days before trial, but the construction is that it is to be delivered five days before the day of arraignment, which is the prisoner's time for pleading; and it was also laid down at the meeting of the judges in Gregg's case, that these five days are exclusive of the day of delivery and day of arraignment; and so of the copy of the panel of jurors, mentioned in sec. 7, the two days must be exclusive of the day of delivery and day of trial. And although that section provides that the prisoner shall have a copy of the panel duly returned by the Sheriff, yet if the copy should happen to be delivered before the return of the precept, which on a Commission of *Oyer* and *Terminer* in England, as with us, is commonly made returnable on the day intended for trial, it will be sufficient, Fost. 229-230. In a tract entitled, "The Method of Trial of Commoners in Cases of High Treason," published by order of the House of Lords in the year 1709, usually to be found annexed to the edition of the Statutes published in that year, and a book of high authority, it is directed that the additions of the Dwelling Places and Professions of the Jurors be inserted in the Copy of the Panel, but Sir Michael Foster, *ubi supra*, observes that the Act does not require that exactness, and the practice is otherwise. Objections to mistakes in the indictment, &c., under sec. 9, are expressly required to be taken before *evidence given* in open Court, but the construction, according to Sir M. Foster *ubi supra* is, that exceptions grounded on these mistakes must be taken *before plea pleaded*; see, however, 1 East, P. C. ch. 2, sec. 46. As to the practice as to the assignment of counsel in England, see 1 East, P. C. ch. 2, sec. 51.

As to the evidence. Under the present Act it is to be observed, that the evidence given on the indictment stands on the same footing as the evidence on the trial. The Act addresses itself to the proof of the overt acts, and, therefore, though it requires two witnesses to each Treason, two wit-  
**602** nesses are not necessary with respect to a collateral \*fact, such as the party being a natural-born subject, Fost. 240. But in the construction of sec. 4 it has been held as to the proof of the overt acts, that one witness to one overt act of the same treason in the county where the trial is had, and another to a different overt act of the same treason in a different county are sufficient, 1 East, P. C. ch. 2, sec. 65. The Constitution of the U. S. Art. 3, sec. 3, requires two witnesses to the same overt act, or confession in open Court, see, however, 1 Burr's trial, 196. And the Act of Oct. 1777, ch. 20, sec. 29, also provided, that no person should be convicted of treason or misprision of treason against the State, unless by the oath of two lawful witnesses to prove each separate and distinct fact charged in the indictment as treason or misprision of treason, except the prisoner, willingly and without force or violence, confess the same in open Court. The Act of Feb. 1777, ch. 20, sec. 2, also provided, as to the treasons mentioned therein, that, if any prisoner should stand mute, or peremptorily challenge above the number of twenty of the panel, he should be adjudged guilty, &c. But neither of these Acts is included in the Code. The Act of 1862, ch. 235,<sup>1</sup> enacts the punishment of treason, upon

<sup>1</sup> Code 1904, Art. 27, secs. 413-421.