

king only. Either, 1. Filed by the attorney-general *ex officio*, for such misdemeanors as affect the king's person or government: or, 2. Filed by the master of the crown-office (with leave of the court of king's bench) at the relation of some private subject, for other gross and notorious misdemeanors. All differing from indictments in this; that they are exhibited by the informer, or the king's officer; and not on the oath of a grand jury.

(5.) An *appeal* is an accusation or suit, brought by one private subject against another, for larceny, rape, mayhem, arson, or homicide; which the king cannot discharge or pardon, but the party alone can release.

SECT. XXIV. *Of process upon an indictment.*

(1.) *Process* to bring in an offender, when indicted in his absence, is, in misdemeanors, by *venire facias*, distress infinite, and *capias*: in capital crimes, by *capias* only: and in both, by outlawry.

(2.) During this stage of proceedings, the indictment may be removed into the court of king's bench from any inferior jurisdiction, by writ of *certiorari facias*: and cognizance must be claimed in places of exclusive jurisdiction.

SECT. XXV. *Of arraignment, and its incidents.*

(1.) *ARRAIGNMENT* is the calling of the prisoner to the bar of the court, to answer the matter of the indictment.

(2.) Incident hereunto are, 1. The standing mute of the prisoner; for which, in petit treason, and felonies of death, he shall undergo the *peine fort & dure*. 2. His confession; which

is either *simple*, or by way of *approvement*.

SECT. XXVI. *Of plea, and issue.*

(1.) *THE plea*, or defensive matter alleged by the prisoner, may be, 1. A plea to the jurisdiction. 2. A demurrer in point of law. 3. A plea in abatement. 4. A special plea in bar; which is, 1st, *Autrefois acquit*; 2dly, *Autrefois convict*; 3dly, *Autrefois attain*; 4thly, A pardon. 5. The general issue, not guilty.

(2.) Hereupon *issue* is joined by the clerk of the arraigns, on behalf of the king.

SECT. XXVII. *Of trial and conviction.*

(1.) *TRIALS* of offences, by the laws of England, were and are, 1. By *ordeal*, of either fire or water. 2. By the *corfu*. Both these have been long abolished. 3. By *battel*, in appeals and improvements. 4. By the *peers* of Great-Britain. 5. *jury*.

(2.) The method and process of trial by *jury* is, 1. The impannelling of the jury. 2. Challenges; 1st, for cause; 2dly, peremptory. 3. *Tales de circumstantibus*. 4. The oath of the jury. 5. The evidence. 6. The verdict, either general or special.

(3.) *Conviction* is when the prisoner pleads, or is found guilty; whereupon, in felonies, the prosecutor is intitled to, 1. His expences. 2. Restitution of his goods.

SECT. XXVIII. *Of the benefit of Clergy.*

(1.) *CLERGY*, or the benefit thereof, was originally derived from the usurped jurisdiction of the popish ecclesiastics; but hath since been new modelled by several statutes.