

Law of England, it is merely declaratory of what had been the common Law for Centuries before; (1) and My Lord Bacon, in his Argument upon the Case of the Postnati, says "It is plain that, if a Subject of England had conspired the Death of the King in foreign Parts, it was by the common Law of England Treason". (2) I shall not trouble your Honors with any further Observations on this Clause of the Statute. I cannot conceive that any great Expectations of Success have been formed upon it. The other Clause on which the second Count of the Indictment is drawn, is in these Words, "If a Man be adherent to the King's Enemies, in his Realm, giving to them Aid or Comfort in the Realm or elsewhere he is guilty of Treason." From the obvious Meaning of these Words, to give Aid or Comfort to the King's Enemies, in any Part of the World, is Treason; for, otherwise the Word "elsewhere" has no Import whatever. The Cases put by My Lord Hale clearly shew, that the Construction of this Clause is not confined to Acts of Adherence committed within the Realm but generally extends to all Acts of Adherence wherever committed. "If," says he, there be a War between the King of England and France, and then a temporary Peace is made, and within the Time of that Truce an Englishman goes into France and stays there, and returns before the Truce expired, this is not an Adherence to the Enemy within the Statute;" but he adds from the Authority of the Record from which he draws this Opinion, that if the Englishman, during his stay in France, had confederated or conspired with the Enemy or assisted them towards further Hostilities, that it would have been an Adherence. He puts a second Case "If an Englishman, says he, during a War between the King of England and France, be taken by the French, and there swears Fealty to the King of France, if it be done voluntarily, it is an Adherence." In both these Cases the Act which constitutes the Treason is committed without the Realm, yet, both are put as Instances of Treason within the Statute. Were it necessary to adduce further Authorities, the Statute 35th. of Henry VIII. Cap. 2. might be cited. This Act was made for the Trial of Treasons committed out of the King's Dominions. "And in it," says My Lord Bacon, after putting the Case of conspiring the Death of the King abroad, "you shall find no Words at all of making any new Case of Treason which was not Treason before; but only of ordaining a Form of Trial." Ergo it was Treason before.

(1) Vide Eder's Principles of Penal Law. p. 119.

(2) Bacon's Works. 4th. Vol. p. 192.

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