

The Clerk Reads the Indictment to the prisoner in the language of great Britain, and not in the Latin tongue in which it is written, but if he desire it he may also have it read to him in Latin, Charnock Gry. 8. A witness attends the Court to prove the delivery of a Copy of the Indictment to the Prisoner if there should be occasion.

The Indictment being read, the Clerk asks, how sayest thou A. B. art thou guilty of this high treason (or other Crime whereof you stand Indicted) or not guilty? If a prisoner Indicted of high treason stand mute or will not plead effectually, i. e. Answer Directly to the facts, Judgment may be given against him, as if he were convicted by Verdict or Confession, Coles Just. 14. 217. Hale pl. Cr. 226. Hal. Rep. 57. But one refusing to Answer according to Law, to the Indictment of ordinary felony for which Clergy is not allowed shall have the Judgment of pain forl & Durell the 3 Edw. 1 cap. 12. penance, and forfeit his goods or chattels 3 Edw. 1 cap. 12. Hawkins pl. Cr. lib. 2 chap. 30 § 14 & 19. If the Crime charge upon him doth not Exclude Clergy, he shall have the Benefit thereof, Hale pl. Cr. 231 384 W. & M. cap. 9 § 2. Hawkins ibid. § 24 & Chap. 33 § 27. When the Court sees Reason to doubt, if the prisoner stand mute wilfully and Contumaciously, or if he be Naturally Dumb and Want the Use of his tongue; they order the Sheriff to Return a jury on a pannel to try that Matter, 12 of which must be sworn thus: You shall Diligently Enquire, and true presentment Make for and on behalf of our Sovereign Lord the King, whether A. B. Prisoner at the Bar, being now here Indicted of high treason stand Mute fraudulently, wilfully and obstinately, or by the providence and Act of God, according to your Evidence and Knowledge so help you God. Lift the Book. Witness as must also be produced and sworn to prove the Matter against the prisoner. And if it be found that the prisoner is Dumb by the hand of God, the Judges of the Court will not only cause the Crime charged upon him to be Enquired of, but also all other

other matters which he might have pleaded in his Defense, Hale pl. Cr. 225. Hawkins pl. Cr. lib. 2 chap. 30 § 7. Since it is no way his fault that he doth not plead. If the Prisoner confess the fact, or own that he is guilty, the Confession is Recorded thus, per Adjournalment. — die — 1733 cogn. i. e. Cognovit Judicamentum. When the Chair man asks him what he can say in Arrest of Judgment, why sentence of Death should not pass upon him: because he may perhaps have a pardon to plead 3 Mod. Rep. 265. If he can say No thing in Arrest of Judgment; then the King Learns Counsel without more ado, ordinarily pray Judgment upon the Confession, and the Chair man or some other of the Judges pronounce it according to Law. This is called Attainder by Confession. But in the trial of William Parry Doctor of the Civil Law who was Executed 2 March 1584 for Conspiring and Compassing with Pope Gregory and Cardinal De Como to Murder Queen Elizabeth and to alter and subvert the Government and the Protestant Religion; the Queens Counsel thought fit notwithstanding that he Confessed himself guilty to produce Evidence against him for the satisfaction of the world, and vindication of the Justice of the Nation, that had been Imprudently slandered by the Emperors of Rome: And in respect persons here sometimes falsely Confessed themselves guilty, without Herifors of Campden in Gloucestershire who appeared many years after three (whereof one Confessed) had been hanged for his Murder; and seeing the truth of witches confession against themselves have been often doubted, the Confession of a Criminal ought to be backed with good Concurring Circumstances

When a prisoner stands upon his Defense, he may make it either by Motion or Tenor in English, or in the form of a plea, which is rendered in Latin and signed by Counsel to the effect when a thing is Denied up