

Autre foict convict, that is, a Conviction on an Appeal or Judgment of felony, may be pleaded to An Judgment or Appeal of the same felony; and a Conviction of Man slaughter in An Appeal of Death, may be pleaded in bar of a subsequent Judgment or appeal of the same death Hawkins ibid. §10. Because the Party ought not to be brought twice in Danger of his life. Tho a Conviction of Man slaughter on An Judgment of Death, cannot be pleaded to An Appeal as well as to An Judgment, unless the person so convicted be admitted to his Clergy, or at least have prayed it: because the 3<sup>rd</sup> Stat. cap. 11. expressly giving an Appeal against a person Attainted cannot but be thought to give it as well against a person Convicted; since every Attainder includes a Conviction and more, and it is wholly owing to the Default of the Court, which shall not prejudice any one, that a person convicted is not attainted Hawkins ibid. But there seems to be no Authority, that a Conviction of one felony may be pleaded in Bar of another Hawkins ibid. And a person cannot upon the Account of his being admitted to his Clergy bar a subsequent prosecution for another felony not within the Benefit of Clergy 6 Eliz. cap. 4 & 14 Eliz. cap. 7 §5.

If any pleads the prisoner hath put in Amount not to a Confession of the Crime, he may traverse the Judgment, that is deny the Truth of it (from the French word traverse to thwart or oppose) by pleading the General issue, or pleading to the Verdict not guilty, and so laying issue upon the matter, where of the Issues are Consequentes is a Trial.

When the prisoner being asked if he be guilty or not guilty doth Move objections or plead against the Judgment and these Motions or plead are overruled, or when without such Moving or pleading he answers not guilty: the Pleas of Arraignments turn the Charge of guilt upon him, according to the Tenor of the Judgment, & the

§ 30. Stat. in Arraignments - is nothing else, but the calling a prisoner to the Bar of the Court to Answer the matter charged upon him by Indictment or Appeal. See to arrange is in Latin, a Reclamem, porgere, in French, a resson, or arraigner, a resson, the way of the Stat. Cu. 2. fol. 2. pag. 216.

this Replication, Culprit how will thou be tried? Culprit, is culpabilis or paratus sum Verificans. Cul being an abbreviation of the Latin culpabilis and proff or proff (now proff) an old french word for Ready. So that, the Clerk pronouncing that word, is as much as to say, that the prisoner is guilty of the Crime charged upon him, and the Crown is Ready to prove it. Doctor Hutchinson (Hist. offay Concern. Witchcraft chap. 11) supposes, that when a prisoner is asked how he will be tried? it is a Continuation of the Question put to them in old times when they had the Pleas of being tried by a jury, or by one of those ways by Combat, or the Decretory Mansel, or by Carrying hot iron, or passing through hot plow sharer, or putting their hands into hot water, or swimming of them in cold. So the Question how will thou be tried? <sup>the Prisoner answers</sup> by God and my country. The Clerk then pleads God send thee a good Solicitor; and writes over the Prisoners Name on the Judgment, the time when he pleaded not guilty thus, per adjournment &c. die 8<sup>ca</sup>. 1733 p. 10. for in perfit se super patriam he put himself upon his country and then bids the Keeper take him from the Bar. The Prisoner having pleaded not guilty, and put himself upon his country, is said to be arraigned because then those who sue for the King may orderly proceed Coke, Just 263 a. <sup>provid. Appendix pag. 127. 131.</sup> A prisoner who hath pleaded not guilty may soon after the Clerk hath recorded his plea, drop or withdraw it, and Confess the Judgment; which is Entres thus, A. B. Postea or Relicta Verificans Cognovit Judicatum, Kel. Rep. 11. Hawkins pl. Cr. lib. 2. Chap. 31 §1. If a prisoner plead not guilty, and when asked how he would be tried, stand mute, it is as if he had not plead so: but if after pleading not guilty, and putting himself upon his country for trial, he stand mute, the Court shall proceed upon his trial, Coke Just 178. Hale pl. Cr. 226. Kel. Rep. 37. Hawkins ibid. 305.