

to a Vote, the plurality decided it. For the allowing a Neg
 two to each Jury Man, as is done in England, might be
 Much abused by any Stubborn person, who finding him
 self able to outfast his Colleague, may happen to sta
 out so long till he force the Rest to sacrifice their Con
 sioness to their Stomach, and come over against the
 light and Inclination to join with him in the vote. In
 George Mackenzie (Conn. part 2 p. 2355) found to the
 that a Verdict is Null, if the greater Number be non
 Legit, tho' the Rest were positive and Clear: being
 words absurd that if all the 15 gave one word Uncle
 in their opinion, that one should condemn or absolve
 Vide vol. 1 pag. 958. Year that Author (Confess on act,
 sect. 3 Part. 2 Ch. 2) concludes, that no Assizes in Brit
 nals may be non Legit: because the Chancellor of the
 Assize should Mark how every Individual Assize
 whether he Condemns or Absolves Act of Regal.
 the Justice Court 1672 art. 9. The Verdict of the Jury
 formed thus: At Edinburgh the 8. of Dec. 1733, the Assize
 having Inclosed, did charge &c. to be their Chancellor
 and &c. to be their Clerk, and having considered the
 dictment (or Criminal letters) at the instance of &c.
 Majesty's Advocate (or at the instance of &c. with the
 Concurrence of &c. his Majesty's Advocate) against H. B.
 not, with the Lord Justice General, Justice Clerk and
 Commissioners of Justiciary their Interlocutor thereon
 and the Depositions of the Witnesses, (or the sworn
 Judicial Confession or other Evidence) adduced for proof
 thereof, they do, by the plurality of Voices (or all in
 Voices find &c. in witness whereof these present have
 signed by our Chancellor and Clerk in our Names, place
 and date foresaid. The Verdict being Voted and writ
 is subscribed by the Chancellor and Clerk of the
 and Closed with this Direction on the back of it, to
 Right Honourable, the Lord Justice General, Justice
 Clerk, and other Commissioners of Justiciary at

Edinburgh, and the seal of the Chancellor put upon it, who
 keeps it till the Court meet. The Act for regulating the Jus
 tice Court 1672 (art. 9) ordains the Chancellor of the Assize to
 Mark what way every Individual person who is upon the
 Assize shall vote whether Condemning or Absolving, on
 the same paper wherein the Verdict of the Assize is written.
 But a Verdict being objected against as Null, for that Nothing
 was Marked on it to Make Appear how each Assize voted
 the objection was Rejected. ~~tho'~~ In respect it was Answered
 for the purpuses, of some Assizes of error were by the Convention
 of Estates 1689 declared a grievance, Chancellors of Justice
 discontinued Marking the several Votes, and their practice
 in that particular hath been ever approved of by the Court.
 the Reason for such Marking of the Votes, Viz. that the
 Behaviour of the several Members of Justice might be
 known in case of an Assize of error having Comf. 2. being
 the Act of Regulation doth not say, that the omission to mark
 the Votes shall infer a Nullity of the Verdict; it is discre
 tionary to the Court to Determine the Import of that o
 mission. Albeit it was Rejected for the pannel, in which
 Law Appoints any thing to be done and prescribes a Cer
 tain form to be observed in the Doing thereof, tho' it is
 Null if that form be not observed L. 5 C. de Legibus. 2. The
 Only Reason of Marking how the Assize voted was not
 that prosecutors might know whom to pursue for error;
 but also that pannels might thereby have a Check up
 on Chancellors of Assize, that they might not by Mistake
 or other ways say, that there was a plurality of Voices
 against them, when really there was not. And the such
 a Regulation had been designed for Assizes of Error,
 Assizes of Error are not yet Abrogated by any Statute.
 Yea tho' they were abolished, yet in many cases non est
 hoc cessante Ratione legit. 3. Albeit Verdicts of this kind
 have been admitted when not objected against, yet
 Judgement was never given in favour of such Verdicts
 against