

Some General Rules concerning Indictments

- * N. l. 1. The special manner of the whole tract ought to be set forth with such certainty that it may judicially appear to the court, that the Indictors have not gone upon infirm or uncertain promises Hawkins pl. ca. 2. ch. 25 § 59.
- * And in describing some crimes special words of art must be used, which no person = his or circumstance, what so ever will supply, as proditoris in any Indictment of Treason Coke 3 Inst. 15 Hals. pl. ca. 11. contra legem sua dicitur in an Indictment of Treason against the Kings for 4 Mod. Rep. 166 Hawkins ibid. § 53.
- * Murder & Murderer in an Indictment of Murder; copit in an Indictment of Larceny Mayhemer in an Indictment of Mayhem; Burglariter or Burglariator or Burglariator in an Indictment of Burglary; Rapuit in an Indictment of Rape; and Falsario in an Indictment of any Forgery what so ever. Hawkins ibid.
- * The charge must be laid positively, and the want of a direct allegation of any thing material in the description of the substance, nature or manner of the crime cannot be supplied by any Imputation or Argument what so ever. Staunf. pl. ca. 196 Hawkins ibid. § 62.
- * Nor is an Indictment charging a man disjunctively with fact or further fact good, but altogether void. Hawkins ibid. § 60.
- * Regularly every Indictment must charge a man with some particular offence, or else with several such offences particularly, & certainly expressed, and not with being an offender in general; for no one can know what offence to make to a charge so general, uncertain, or to plead it either in Bar or abatement of a subsequent prosecution; neither can it appear that the facts given in Evidence against the Defendant or further general Accusation are the same of which the Indictors have accused him; neither can it judicially appear to the court, what punishment is proper for an offence so largely expressed. Hawkins ibid. § 61.
- * And in all prosecutions for crimes and misdemeanors by writing and speaking the particular words supposed to be criminal, ought to be expressly mentioned, or expressed in such Indictments. 4 Mod. Rep. 448 Ed. 8. ibid. vol. 2. pag. 365.
- * But a man may be generally Indicted as a common Barretor, without showing any of the particular facts in the Indictment by which he appears to be so. Hawkins ibid. 2. Lib. 1. ch. 81 § 9.
- * For cause Barretory is an offence of a complained nature consisting in the repetition of diverse acts in disturbance of the common peace, all which it would be too prolix to enumerate; and a common Barretor is a Term of Art appropriated by the Law to this purpose.
- * In fine, where one material part of an Indictment is repugnant to another the whole is void. Hawkins ibid. Lib. 2. ch. 25 § 64.

- * 2. That one may not be troubled for another, the person Indicted should be certainly described by his Name and Addition, of what Estate Degree or Mystery he is, and what Town, Hamlet place & County he liveth 1 H. 5. ch. 5. Misnomer or Misnaming of his Christian Name or name of Baptism doth make an Indictment fall. But no Indicted can take any Advantage of a misnomer in an Indictment, notwithstanding such misnomer has no manner of an affinity with his true one, and he was never known by it. Hale pl. ca. 243 Hawkins ibid. § 70. & 71.
- * A Bishop of an Irish Diocese may be as well described by the addition of his Bishoprick as an English Bishop may by the Addition of an English one: but no one can be well described by a temporal dignity in England or any other nation besides his own, because no such dignity conveys a man a higher Title than that of Esquire. Hawkins ibid. ch. 23 § 108.
- * Gentleman or Esquire or Yeoman or Labourer, ~~and the like~~ are all of them good additions for the Estate and Degree of a man. Gentlewoman or widow, or Gentlewoman or Spinster or wife of J. S. are all of them good additions of the Estate and Degree of a woman. Hawkins ibid. § 110.
- * But Burgeese citizen, and servant are all of them too general, and therefore not good additions or no state or degree either of man or woman. Coke 2 Inst. 668 Hawkins ibid. § 111.
- * Merchant, Apothecary, the of bagabond, Heretic, and the like are insufficient additions of ones Mystery Trade or occupation. Coke 2 Inst. 668. Hawkins ibid. § 114.
- * Additions in English are as good as in Latin, where there are several dependants of different names having the same Addition, it is best to repeat after each other names, and a fine being of the same name and Addition with the further might be distinguished in a fine for the Degree = hon as the addition of resident to the other addition. Hawkins pl. ca. 2. ch. 23 § 115. inst. ch. 25 § 72.
- * If an Indictor named with an insufficient Addition or without any addition at all in an Indictment he cannot afterwards take advantage of the want of the Addition. Coke 2 Inst. 670. Hawkins pl. ca. 2. ch. 23 § 123. inst. ch. 25 § 72.
- * It is strange by his appearance and return he is named to be the person intended and so constant de persona.
- * The other persons besides the defendant mentioned & returned in the Indictment should all be described with condonant certainty, that the defendant may not be hindered in making his Defence, and plead in the Indictment to a subsequent prosecution, but where in common prosecution there may be very difficult if not impossible, to know the names of persons referred to in an Indictment that may be good without naming any of them: as where one is indicted for having knowingly ~~received~~ and harboured a thief, whose name is unknown by name, who yet might be known to carry on such a practice to the common nuisance of the country; in which case such a general Charge is maintainable, though the necessity of the thing. And where one is indicted for disseising of his lands that no person can disseise who he was, or needs a stranger unknown to the country is quare, stain or to be had, an Indictment against the offender for having killed or received quantum ignominis good. Again, in the Indictment of the Regicides for the Murder of King Charles the first, it being unknown who was the executioner, it was agreed that the fact was well laid, as done per quendam ignominis with a vizor on his face, and the persons particularly named were indicted as present aiding and assisting thereto. Hawkins pl. ca. 2. ch. 25 § 73. Mol. Rep. 10.