TRIAL BY JURY.

SPEECH

DELIVERED BY

THE CHIEF JUSTICE OF MALTA,

ON THE

16TH JANUARY 1832.

TWO ADDRESSES delivered on occasions similar to the present, have been already published. The following sheets contain a Third, intended to have been spoken at once, but which it was thought more convenient to deliver on two separate days. For the purpose of reading, however, the intended connection is here restored.

TRIAL BY JURY is an Institution so important, in its essential principle, that every modification of it, in practice, becomes interesting to the philosophic Lawyer. The different habits of thought and feeling in different countries require a correspondent variety in the modifications. Those adopted at Malta have turned principally on the practical difficulty which had been previously experienced in enabling the Jurors to gain Instruction from the Court in matter of law, and in inducing them to return Verdicts at once rational and unanimous.

The want of English Law Books at Malta, and the Non-Publication of the Trials there having hitherto left the Legal Practitioners much at a loss for information, the Chief Justice has endeavoured to supply this deficiency by a general view of the *System of Procedure* practised in the Jury Court.

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ADDRESS

TO

THE MALTESE BAR,

AT THE

OPENING OF THE FOURTH COMMISSION FOR TRIAL BY JURY.

GENTLEMEN,

1.—THIS is the Fourth Commission issued under the provisions of the Proclamation of the 15th of October 1829, a day memorable for the happy establishment, in these Islands, of *Trial by Jury*.

2.—Had I doubted of the public opinion, entertained at Malta, respecting that Institution, or of the gratitude cherished by the Maltese towards SIR FREDERICK PONSONBY, for the part he took in procuring for them so inestimable a benefit, all my doubts must have been removed, on seeing so numerous and respectable an audience assembled to hear the present Address; and remembering, that during the late Trial, a crowd of persons (amounting to near a Thousand souls) day after day filled every part of this vast Hall, and remained quiet and attentive, for six hours together, to hear the evidence summed up, my doubts must have been removed, on hearing the words of that Ornament of our Bar,[1] who with so much energy addressed the Court and the Jury, in praise of this form of Trial.

3.—" One of the most important duties, and at the same " time one of the most sacred privileges of Man in Society, " (said the eloquent Advocate) is certainly that of judging " and being judged by his Equals; especially in matters of " Criminal Jurisdiction, on which depend the liberty, the " life, and the honor of our fellow citizens."

[1] Dr. Bruno.

4.—" The utility of so admirable a judicial system was " never questioned by those nations of classic antiquity " who have left us their history, and whose authority has " since become the guide of the most enlightened commu- " nities. In our own times, too, this Institution is con- " secrated by the practice of three great Nations, whom " alone posterity will be justified in comparing with Athens " and with Rome. The British Monarchy has religiously " preserved, and will ever preserve, as the Palladium of it's " Freedom, this liberal Institution—France re-established " it, as a sufficient compensation for years of vicissitude " and disaster—The United States of America have scru- " pulously retained it, as a precious remembrance of the " Mother Country."

5.—" The most gracious and liberal of Sovereigns, " anxious for the right administration of Justice, and for " the individual security of all his subjects, has conferred " on us this gift; and where shall the Maltese be found, " who will not recognize it's importance and value? Who " will dare to oppose a few petty inconveniences or priva- " tions to this admirable concession, which when once " assimilated (as we have reason to hope it will be) to the " system of the Mother Country, will for ever secure us " from capricious or oppressive judgments? Who will not " rejoice to leave to his own children, and to the whole " rising generation, this important guarantee of individual " safety and natural liberty?"

6.—" It has been said, that the Natives of these Islands " are not yet fitted for so liberal an institution; and that " the Institution itself is inconvenient and injurious to the " interests of individuals. It is not true—the assertion is " a Calumny! Seventeen trials have been conducted before " Juries, and seventeen times have this Honorable Court, " and the impartial Magistrate who presides over it, pro- " claimed their entire satisfaction, and belied the first " assertion."

7. " The second assertion, namely, that such a judicial " procedure is inconvenient and injurious, is refuted by the " fact, that the Jurors have, throughout all the Trials, " shown the greatest calmness and patience. Yesterday— " only yesterday, they declared, that they were ready to " remain, not merely for a single night, but, if necessary, " for whole days longer, so that the defence of the Priso- " ners might be unrestrained and perfect."

8.—" And who would venture to complain of a slight " inconvenience or a trifling privation, while his fellow- " creatures were languishing in chains, and in the trembling " expectation of a Judgment of Life or Death ? No, Gentle- " men of the Jury, endowed as you are with probity and " honor, you will not consider as lost, those days which " you devote, in calmness and patience, to the protection, " the support, and the recognition of Innocence."

9.—These are sentiments worthy of an enlightened Lawyer, a liberal Maltese, and a loyal subject of the British Crown. They are sentiments common, I am persuaded, to all the well-informed Inhabitants of these Islands, with the exception of a very few, whose opinions I shall hereafter notice.

10. Yet, Gentlemen, favorable as you are to Trial by Jury in general, I am well aware that there are many particulars respecting it, on which most of you require some additional information. The few books of English Criminal practice, which exist at Malta, are not easily to be met with; nor are they applicable in all points to the system of Jury Trial here established. You have seen that system in operation for six Sessions; but there are no published Reports of the cases decided during that period; much less is there any Book or Code exhibiting in detail the rules of practice which have been followed.

11.—It is this defect, which, to the best of my humble abilities, I shall now endeavour to supply. I shall consider the measures sanctioned by the Proclamations of the 15th of October 1829, 2d of August 1830, and 26th of September 1831, and directed by the Commission just read to be put in execution, as forming together one entire *System of Criminal Procedure.* I shall state the principles which distinguish that system from others; and I shall deduce from those principles the rules which have guided the practice of this Court. My task will necessarily occupy a longer portion of time than is usually devoted to Judicial Addresses; but you will remember, that the circumstances, in which we are placed, require from me not only the duties of a Judge, but in some degree those of a Teacher. I must explain to the Legal Profession, and to the great body of Jurors, that System, which they must assist my learned Colleagues and myself to administer.

12.—A necessity for some established forms of Judicial Proceeding is one of the earliest results of civil union. The Law creates all the rights of social man; and to the Law

every violator of those rights is civilly or criminally responsible. Criminal Jurisprudence has two great branches, the Penal Code, which fixes the penalty due to every Offence, and the Code of Procedure which endeavours to provide, that punishment shall fall only on the guilty head. This latter office of Criminal Legislation is at once the most difficult, and the most interesting.

13.—It is difficult, because, what with the uncertainty of human affairs, what with the limited range of our intellect, and what with the obscurity in which evil-doers commonly contrive to shrowd their actions, it is seldom possible to trace with certainty all the steps of crime: and since the voice of humanity commands us rather to leave ten guilty persons unpunished, than to punish one that is innocent, it would seem, at first sight, that the Magistrate must bear the sword in vain, since fearing to strike the good, he could not venture to punish the wicked.

14.—On the other hand, the more abstruse the problem is, which aims at combining the punishment of guilt with the security of Innocence, the more interesting does that study become, which leads to its solution. Now this end is attainable (so far as human fallibility permits) by establishing a certain order and method in the prosecution of crimes—certain rules to direct the enquiry, the accusation, the proof, the trial, the sentence, the execution, in short, to guide every step which leads to a sound administration of justice. But this order, this method, these rules, constitute the art of *Criminal Procedure*, an art, which, like all other human inventions, is at first imperfect, and advances by slow degrees towards improvement.

15.—The highest practicable point of improvement in Criminal Procedure is that, which affords to the innocent the greatest possible security against condemnation, and leaves to the guilty the least possible chance of escape. The means, however, must bear a certain proportion to the end. Offences are of infinite shades and degrees of criminality; but, for the ordinary purposes of reasoning, it may suffice to include them in three classes, those of slight *transgression*, more serious yet not alarming *delinquency*, and atrocious *Crime*; and a like proportion might perhaps be adopted in their respective modes of prosecution.

16.—Transgressions of a light and trivial sort, although they do not require all the formalities of an ordinary suit, must neither be left without restraint, nor punished capriciously. To these, then, a *summary Procedure* may be

applied, simple in its forms, limited in its powers, and exercised only by the Magistrates charged with the general superintendance of public peace and good order.

17.—Cases of heavier delinquency, or crime, demand an enquiry, at once more rigorous and more solemn; inasmuch as the consequences both of impunity, and of punishment, are in these more serious. Hence, in all civilized nations, there have been adopted, for the prosecution of such offences, forms of *Ordinary Procedure* more deliberate, more complex, and requiring the superintendance of Judges of a higher order, and of greater professional skill and experience. The questions of fact and of law arising in such cases are left in many tribunals (and particularly in the ordinary "*Criminal Court*" of these Islands) to the decision of the same Judges; nor do I mean to contend that this mode of trial may not often answer the substantial purposes of justice, especially where the criminality is not of an aggravated character.

18.—But where the public safety has been deeply injured, where a flagrant crime has been committed, or is suspected to have been committed, and where an awful punishment may fall upon the head, either of a Criminal or of an Innocent person, are we not imperiously commanded by Justice and by Humanity to use all possible means to avoid error in the balance of judgment? Are we not bound to carry to the highest degree which circumstances may permit the perfecting of our Criminal Procedure?

19.—Now all men agree, in the present day, that the most perfect Criminal Procedure is that which establishes a just *division of the judicial functions* between certain Judges of *Fact*, and other Judges of *Law*, the former taken by lot, and the latter forming a permanent body.

20.—In explaining the first principles which arise from this great Truth, I will take as my guide, not an Englishman, accustomed to the usages of his native Tribunals, but a Neapolitan—that GAETANO FILANGIERI, who fifty years ago sent forth his immortal Treatise upon the SCIENCE of LEGISLATION, a work which would be admirable, were it the labour of a long life, but which appears miraculous, when we remember that it was published by a young man of only twenty-seven years of age. True it is, that his own country has not profited by his enlightened labours: nay, it has even, in copying the French Codes, rejected all that has relation to *Juries*, as inconsistent (I suppose) with the principles of the Neapolitan Monarchy. That very incon-

sistency, however, may perhaps render the Jury system by so much the fitter for the circumstances of a Dependency of the British Crown.

21.—" England," says Filangieri, " if in the Penal De- " partment (of her Criminal Law) she be equally defective " with other nations, is at the same time admirable in that " which concerns the Procedure."[1] " In England, the " Depositaries of the Law are not Judges of Fact—It is " not a body of Officers of the Crown, it is not the Magis- " trates who examine into the truth or falsehood of the " charge. The British Constitution has not allowed this " terrible function to be always discharged by the same " hands."—" Men of like condition with the Accused, " favored by public opinion, recognized by the Accused " himself to be impartial, and invested with a temporary " ministry, which lasts no longer than the Trial itself for " which they are chosen, are the only Judges to whom the " Law entrusts the examination of the Fact, and the fate " of the Accused in criminal Trials."[2]

22.—On the other hand, " Although every man of com- " mon sense and known probity may judge of the truth " or falsehood of a charge, these qualities alone suffice not " to judge of the Law." " For this, an acquaintance with " the Law is necessary; and that acquaintance pre-sup- " poses a particular application to and profound study of " jurisprudence. But one cannot hope to find all this " positive and legal learning in a private citizen chosen " for the Trial of Facts. It is therefore necessary to have " in the State a permanent body of Judges."[3] " And " therefore (says Filangieri in another place) have the " English recognized the advantage of subdividing and " combining the several parts of the judiciary functions, " so that one might be a check upon the other."[4] I add, that they not only serve as a check upon each other, but still more as an assistance to each other, in the administra- tration of Justice, in the protection of Innocence, and in the fulfilment of a sacred duty towards God and towards man.

23.—In fact, what a consolation is it to the mind of a Judge of Law, in that terrible moment when he is ordered by the Law to pronounce a sentence of Death against a Fellow Creature, and a Fellow Citizen, to know that the

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[1] Science of Legislation, Book III. ch. 1.
[2] Ibid. ch. 16.
[3] Ibid. ch. 19, art. 10.
[4] Ibid. ch. 16.

truth of the Accusation depends not upon his own opinion, but has been established as a fact unanimously, and after a rigorous examination by Seven respectable, impartial Men, chosen by lot, and ever more inclined to mercy than to severity!

24.—And for these seven Men, what a consolation is it to know, that no accusation will be brought before them, until it has been legally drawn up in clear and precise terms, and divested of legal technicalities; that no legal proof will be excluded from their consideration, and no illegal proof admitted; that after a long conflict of proofs and arguments they will have the assistance of a person accustomed to such altercations, to connect the thread of ideas, to estimate the relative weight of the evidence, to destroy the sophisms which may have been advanced, and so to discover the truth!—What a consolation, that every one of them is left to the exercise of his own conscience in deciding on the bare and simple fact!—and finally, that the application of that fact to the Law, with all it's consequences, is entrusted to other persons, destined to that office by the Law itself!—Moreover, every one of these seven Men sees himself on a sudden elevated to a Magistracy, temporary indeed, but most honorable, and becomes the safeguard of Innocence, and the support of Justice: on him are turned the eyes of all his countrymen, and he, by protecting their rights, acquires a title to their gratitude and veneration; and this too, without injuring in the slightest degree the dignity of the Judges of Law: Nay, a good Judge of Law, who fulfils, before the Public, those duties with which he is charged, in a Jury Trial, may be certain, that he will be more and more honored and commended by the Public, and more and more approved and esteemed by his Sovereign.

25.—And then what a satisfaction to the Public, to see, that so many precautions are used, that so many functions are combined, that so many individuals co-operate—to what end?—to prevent the slightest injustice from being done to the humblest of the Citizens! The Government has voluntarily stripped itself of every means of oppression: The Legislator has voluntarily called on the People to assist him in the sacred duty of defending the rights of all and of each. The King acts by means of his Judges, and the People by means of Jurors chosen from among themselves—a happy union of the rights of the Sovereign with those of his Subjects—and admirably suited to the spirit of a Constitutional Monarchy!

26.—Such, Gentlemen, is the *Division of Judicial Functions*, which, agreeably to the doctrine of Filangieri, constitutes the essential characteristic of Trial by Jury. To this division all the rules of practice peculiar to that mode of Trial must bear reference; howsoever the Procedure may be modified in other respects. Let us proceed then (still following the principles of Filangieri) to enquire how the division of Judicial Functions operates on the peculiar system established in this Court.

27.—It may be convenient to consider that system first as a *whole*, and secondly as divided into successive *parts* or stages.

28.—Regarding it as a whole, I would call your attention, first to the *organization*, secondly to the *jurisdiction*, and thirdly to the *standard of decision*.

29.—The *organization* comprehends two parts essentially different, namely, the *Court*, and the *Jury*. The *Court* is a permanent body, but the excellence of the Jury consists in being (as Filangieri expresses it) "a momentary ministry." The members of the Court (except the Chief Justice, who is always one) are Commissioners annually appointed to that office by the local Government. They have hitherto been Maltese Judges, two of whom, with the Chief Justice, constitute a *Quorum*, or number competent to hear and determine the matters brought into solemn discussion. For certain business of minor importance one suffices, with the Chief Justice; and for adjournments and similar acts, one alone.

30.—For the purpose of regulating systematically the judicial acts, as well ordinary as executive, the local Government names two *Officers of the Court*, whose duty is extremely important, and consequently involves an extensive and strict responsibility. These are the *Registrar* and the *Marshal*, each of whom has his *Commission* in writing, according to the practice of the superior Courts in England, a practice founded on very solid reasons both of public good and of advantage to the individual; since it may happen (indeed the thing took place a few days ago) that a complaint is preferred against these officers, for negligence, or other misconduct. If in this, or in any other manner, the rights or duties of the officers should be called in question, the Court, whose duty it is to examine into such accusations by interrogatory and affidavit,[1] would take into consideration the Commission itself, as a necessary

[1] See the Case of *Bryant*, 4 Term Rep. 716, and 5 Term Rep. 509.

basis of decision. These Commissions authorize each of the Officers to nominate a Deputy, with the approbation of Government; but it does not seem that the approbation must necessarily be in writing, although a written document might perhaps in such case be preferable.[1]

31. The Court, with the aid of it's Officers, is to maintain order not only during the public sittings, but in the intervening stages of procedure. The Court is likewise the Guardian of the Laws and public rights, and especially of the Rights of the Prisoner. It cannot therefore allow a Prisoner to suffer any injustice from the negligence of a Prosecutor, a Magistrate, or any other person.[2] In short, on all such occasions, and on various others, the Court is to supply what would otherwise be wanting to the right administration of justice; and it would be a great irregularity to interrupt it's decisions, or to call them in question after they have been pronounced. It may not be amiss here to observe, that though the Commissioners sit in a certain order on their bench, yet if a superior Judge of any other part of His Majesty's Dominions, a Peer of the Realm, or other person of distinction, happens to be present at the public arguing of a case, the Chief Justice usually requests him (according to the practice on like occasions in England) to seat himself upon the Bench, beside the Commissioners,[3] a courtesy which I understand was practised towards my learned friend, Sir JOHN RICHARDSON, when he some years ago honored the Criminal Court of these Islands with his presence.

32.—The Jurors, as not forming part of the Court, are not named in the first article of the Proclamation of the 15th of October 1829, but in Articles 17, 18, 19, &c. where they are charged with their proper functions.[4] Filangieri, speaking of the legal requisites to be sought for in the Judges of fact, says, "the Law can only fix the negative qualities, determining rather who can not be, than who should be chosen. It should therefore belong," says he, "to the President, to select from those who are eligible, the individuals best calculated to discharge their functions with success."[5]

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[1] Nomination of W. Mackenzie, 30 May 1830.

[2] *Rex* v. *Buttigieg*, &c. 30 Sept. 1830. See also 1 Leach, 310, and 1 Chitty, 87.

[3] *Rex* v. *Cilia*, 4 Oct. 1831.

[4] Ibid. 17 Oct. 1831.

[5] Sci. Leg. Book III. ch. 19, art. 6

33.—The Proclamation divides the Jurors into two Classes, namely, *Foremen*, and *Common Jurors*, charging every Foreman to assist the others in trying the Facts, and to explain to them the degree in which, according to his own judgment, any particular fact is proved or not proved. The qualifications of Common Jurors are nearly those required by Filangieri. The President, however, has not the power of making any selection from among them: only, the Court may excuse those who absent themselves with a reasonable cause, and two Commissioners may strike out the names of persons not qualified or liable to serve. Every thing else is performed by the Registrar and Marshal.

34.—Fortunately for these Islands, the Registrar appointed on the first establishment of this Court was the late Mr. JOSEPH ONOFRIO, whose name I can never utter, without calling to mind his virtues, his talents, and the zeal which he displayed in fulfilling his duties towards his Country and towards his Sovereign.

> His saltem accumulem donis, et fungar inani
> Munere. - - - - - - - - - - -

He is gone to a better state of existence, and (beyond a doubt) will receive a far greater reward than what he might have expected in this life; but his fellow-citizens ought not to let his meritorious services fall into oblivion, since without them it would perhaps have been impossible to have carried into execution the Law establishing *Trial by Jury*. The first steps on introducing a new Procedure into any country, are always difficult, and there were various causes which increased the labour of Mr. Onofrio. Of these I do not now intend to speak: suffice it for me to explain the manner in which was formed what Filangieri calls "the President's *Album*," that is to say, a Book annually drawn up and containing the names of all those who are liable to be called upon to serve as Jurors during the year.

35.—The Book for the first year was thus formed. The Registers of the Piracy Court were examined, for the names of those persons who had served therein as Jurors; Notes were procured from the Public Officers, of the individuals in their respective employ; private information was obtained respecting the Merchants and other Gentlemen resident in Valletta; circulars were addressed to the Deputy Lieutenants of *Casals*, calling upon them to supply Lists of the Inhabitants possessing the qualifications required by the Proclamation; and application was made to the Collector of Land Revenues, who furnished a Catalogue of the occu-

pants of houses or land belonging to Government. The Marshal, moreover, made his own enquiries, by calling in person upon more than One Hundred individuals at their respective houses, in order to ascertain whether they possessed, or did not possess, the qualifications required by Law, especially that of being competently versed in the English or Italian language.

36.—All the names, having been alphabetically arranged, after the necessary deductions and corrections, were finally registered in a book, in the different Lists and Classes required by the Proclamation, that is to say, one List of the *Foremen of the British Class*, another of the *Foremen of the Maltese Class*, one of the *Common Jurors of the British Class*, and another of the *Common Jurors of the Maltese Class;* and the book, so arranged, was submitted to the Deputy Inspector General of Executive Police, and the two Senior Magistrates of Judicial Police, and was confirmed by their signatures. The Books of succeeding years have been formed in like manner. From these books a certain number of names has been extracted every Session in the manner directed by Law, and from the Sessional Lists each Jury is drawn at hazard, so that it becomes morally impossible that any individual should in any manner whatever influence the formation of a single Jury. The only discretion left to the Registrar and Marshal is that which results from the relative number of Foremen and Common Jurors in the annual Book; for the number of the former must be a seventh of the whole contained in the British and Maltese Classes respectively,[1] and as the individuals qualified to act as Foremen very much exceed the necessary proportion, the Registrar and Marshal must select for that service, those who, may reasonably be thought likely to discharge the duty most effectually.

37.—The organization then of the establishment, including as well the Jury as the Court and it's officers, is fully provided for by law. We have next to consider the jurisdiction.

38.—*Jurisdiction*, as the word implies, is a power of declaring what is or is not the law.[2] In the division of judicial functions therefore, it belongs to the *Court* exclusively: and an objection to the jurisdiction of the *Jurors* is a mere nullity, their function being to declare what is or is not the fact.[3]

[1] Procl. 2 Aug. 1850, s. 8.
[2] Ulp. D. 2. 1, 1.
[3] *Rex* v. *Cilia*, 17 Oct. 1831.

39.—This Court is authorized to hear and determine such crimes and offences as are specified in the Commissions annually issued to it by the local Government, which crimes and offences have hitherto been only of the gravest kind, importing, in the principal offenders, a punishment either capital, or for life. The Government however may extend or limit this sphere as it thinks fit; but the Jurisdiction is always fixed *ratione delicti*. Therefore a minor under the age of eighteen years may be tried before this Court for a capital crime; although in the application of the penalty, if his minority be legally proved, the Court must have regard to the personal exemption from capital punishment allowed to such minors by the law of Malta.[1] If the offence of the principal be within the jurisdiction, that of the accessory is also within it, whatever may be the punishment prescribed for the latter by Law.[2] Nor is it necessary that the principal and accessory should be tried together.[3] The jurisdiction, however, must appear on the face of the Indictment; and therefore, if the facts alleged in the Indictment do not constitute an offence within the jurisdiction, the Prisoner cannot be tried.[4]

40.—When a judicial establishment is organized, and it's jurisdiction is settled, it becomes necessary to fix a *Standard* for the decision of all questions which may arise within the jurisdiction. Now these must either be questions of Fact, or questions of Law; and in the division of judicial functions, there are two standards of decision, namely, a *moral certainty of the fact*, and a *legal criterion of the Law*.

41.—First as to fact—the Jurors, being the exclusive Judges of the facts alleged and given to them in charge, are to pronounce (every man according to the dictates of his own reason and conscience) that such facts are either *proved* or *not proved*; and this a Juror can always pronounce with moral certainty; because he only declares what he *thinks*. It is a common but erroneous notion, that a Juror is required to be *absolutely certain* of the truth of every fact that he declares to be proved, that is to say, as certain as he is of what he sees with his own eyes, or what he can mathematically demonstrate to be true. This error arises from not considering what is meant by certainty. Filangieri very justly remarks, that by certainty we mean not the

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[1] *Rex* v. *Attard* & *Mifsud*, 25 May 1830.
[2] Procl. 15 Oct. 1829, s. 1.
[3] *Rex* v. *Cremona*, 26 May 1830.

absolute Truth or Falsehood of any thing (which indeed is often to be known only by Divine Wisdom,) but what we ourselves *think* about it. We think that what we can demonstrate mathematically is certain: this is the kind of certainty called *metaphysical*, or demonstrative. We think that what we see with our own eyes is certain: this is the kind of certainty called *physical*; but neither of these is the sort of certainty required in a judicial question of fact, whether proposed for decision in this Court or in any other. On all such questions the kind of certainty required is that which is called *moral*, and which Filangieri thus explains: "Moral certainty is nothing but the *state of our mind*, "when we are convinced that a fact really happened, which "did not pass before our own eyes."[1] Now there is no state of mind in which a sane man can be, who having heard evidence of a fact does not think it either proved or not proved.

42.—Some theoretical persons contend, that this moral certainty must be carried to a very high pitch indeed, in order to justify a sentence either of acquittal or of condemnation—that it must constitute (as they express themselves) an "objective probability in the highest degree."[2] But such is not the spirit either of the English law, or of our own. Our law, like the English, looks to practical utility, and therefore contents itself with the exercise of a sound judgment, "such as is in daily use; such as we apply to the "most momentous of our own concerns and interests."[3] We do not trouble ourselves with the legal fiction of a Jury forming "one moral person," and "bound to the same "rules which serve to guide an individual."[4] We simply say to each Juror, "*you* shall truly declare, whether, in "*your judgment*, the facts alleged are proved, or not proved, "by the evidence produced upon the trial."[5] This plain exercise of the judgment furnishes the true and only standard of decision for a Juror under the present Commission.

43.—The standard of decision for the Court is different. The Court must apply to all the questions, which it has to decide, a *legal Criterion*. This Criterion is to be found in the Law, either written or customary; and it is applicable alike to questions arising under the Penal system, and under the system of Procedure. The Interpretation of the

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[1] Scienz. Legisl. l. 3. c. 13.
[2] Sonnenfels. Maggior. dei Voti. s. 10.
[3] Speech, 15 Feb. 1830. s. 80.
[4] Sonnenfels. s. 4.
[5] Procl. 15 Oct. 1829, s. 24.

written Law, when established by repeated decisions, obtains a customary force, rendering it part of the Law itself; [1] and though the recent erection of this Court has not yet afforded time for such a rule to operate very extensively on our own decisions, yet by always aiming at consistency, and deviating as little as possible from what has been once decided, we shall gradually find that the Legal Criterion will from this course be much improved; nor is there any weight in the objection that a contrary rule was formerly laid down in regard to the decision of the "Supreme Magistracy of Justice," [2] for in that Court there being no division of the judicial functions, the decisions involved the fact as well as the law. [3]

44.—In questions of penalty under the present Commission, the Legal Criterion is furnished by certain parts of the "Municipal Compilation," so far as regards all principal Offenders, and some Accessories; and so far as regards all other Accessories, it is to be found in the decisions of the Criminal Court acting on the principles of the Roman law. In questions of Procedure the case is different: there the chief rules are those laid down in the Proclamations of 15th October 1829, 2d August 1830, and 26th September 1831, in the Regulations of 31 May 1830, and in some few of subsequent date; and the subordinate rules are either plainly deducible from these, or from the practice of Courts of a similar constitution with our own. Generally speaking, the practice of the Criminal Court on the points on which it is not expressly adopted by the Proclamations just mentioned cannot bind this Court, by reason of the great difference in it's constitution; but in cases of doubt as to the procedure, it will commonly be better to consider the practice of England. The English authorities however will have no weight, where they are in contradiction to the principles of our own Proclamations; which must necessarily happen on several points, owing to the modifications which the English Trial by Jury has undergone in adapting it to the circumstances of Malta.

45.—Thus far I have considered the System established in this Court, as a *whole*. I now come to speak of it in it's *parts*, as divided into successive stages of proceeding. These may be most simply and conveniently discussed

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[1] "Exempla per frequentem usum in consuetudinem transeunt, tanquam Legem tacitam."—*Bacon*, Aphorism. 21.

[2] Drit. Mun. l. 1, c. 8, s. 40. [3] *Rex* v. *Cilia*, 17 Oct. 1831.

under three heads—the *proceedings preparatory to Trial*—the *Trial*—and the *Sentence*.

46.—The proceedings preparatory to trial may be again subdivided into three parts,—the *Enquiry*, the *Accusation*, and the *assembling of the Court and Jury*.

47.—Under the term *Enquiry*, I include all the exercises of the Inquisitorial function, such as the *arrest*, the *precognition*, and the *committal for trial*. But before I proceed to speak of these more particularly, Gentlemen, let me remind you of the different character which the Inquisitorial function has assumed at different periods in the history of Criminal Jurisprudence. At first it was unknown, its place being supplied by the accusatorial function. Any person might accuse; but without an accuser no step was taken toward trial. This rule seems to have prevailed at Rome, until the end of the Republic; but under the Emperors, we find Judges proceeding *ex officio* against certain offences, and we also find subordinate officers employed to make inquisition into notorious offences, and report them to the Prefect of the City.[1] Inquisition, however, did not become an ordinary mode of proceeding against all offences, until it was made so by the Canon Law.[2] It afterwards was adopted into the municipal law of most European countries; and particularly was known to the English law, under the name of *Presentment* and *Inquest*.[3] In some systems it perverted the whole judicial procedure, involving it from beginning to end in mystery, and converting it into a tremendous engine of oppression. In others, however, it was reduced within reasonable bounds, as a mere *precognition* necessary with a view to the subsequent exercise of the accusatorial function. In this manner it is now exercised in Malta, partly by the Officers and Magistrates of Police, and partly by the Crown Advocates.

48.—I need not now speak of Inquests held in cases of sudden death, violence and the like, nor of the *arrest* of detected or supposed offenders; the practice in these respects being well known, and not differing from that followed for several years before this Court was established.

49.—The *Precognition*, or examination before the Police Magistrates, however, requires more particular notice. The

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[1] Ulpian, D. 26. 10. 3. & D. 48. 52; Alexand. C. 9. 46. 1; Const. C. 9. 22. 22; Gordian. C. 9. 2. 7.

[2] Lancellot. Comp. Jur. fo. 69.

[3] 4 Blackst. Comm. 301.

Laws relating to this stage of the proceeding were all anterior to the establishment of Trial by Jury. They authorize the examinations so taken to be made evidence in certain cases on the trial of a Prisoner, but as it is manifest that the rules of Evidence in a Court, where there is a division of judicial functions, must differ greatly from those which prevail in a Court which has no such division, so the drawing up of a document to serve as evidence, in the one, may require much more caution than is necessary in the other. And, in fact, the Commissioners present at the Third Session observed, that for the purpose of producing Depositions made before the Magistrates as Evidence in the Court of Special Commission, some very necessary corrections must be made in the mode of taking them.[1]

50.—The practice of the Justices of Peace in England (which might serve as a model to our Magistrates, as far as relates to the Examination and Committal) is as follows:—They take the examination in full. They are not bound to hear witnesses for the defence, where it appears that it would be altogether useless to do so;[2] but there are very few cases in which if the Prisoner were to allege that he had witnesses on his part, a wise Magistrate would refuse to hear them;[3] nay, the Magistrate frequently allows time, as well to the Accused as to the Accuser, to bring forward witnesses, until he is persuaded in his own conscience, that there are valid reasons, either to liberate the Prisoner, or to commit him for a Criminal Trial;[4] since without valid reasons the Liberty of a Citizen should not be restrained, much less should his Honor be stained by an infamous accusation.

51.—The Examination is taken, and the Witnesses are sworn, in presence of the Prisoner, to whom the whole of the evidence is read, and (if necessary) interpreted. The Magistrate warns him that he is not obliged to accuse himself, and that any confession which he may make may be produced against him upon his trial.[5] The Prisoner has the right of cross-examining the Witnesses;[6] and of this right it is also usual to give him notice.[7] It has however been decided by Lords TENTERDEN and WYNFORD, in conjunction with two other eminent Judges, that in these

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[1] *Rex* v. *Cutajac*, 22 Sept. 1830. [2] Stat. 7 Geo. 4. c. 64. s. 1.
[3] Carrington, 7. [4] Chitty, 74. 77. [5] 1 Chitty, 85.
[6] 1 Chitty, 79. [7] *See* Russell & Ryan, 340.

preparatory examinations, the Prisoner has no right to the assistance of an Advocate, unless the Magistrate should allow him one for the satisfaction of his own doubts.[1]

52.—The Depositions are regularly drawn up as nearly as may be in the very words of the Witnesses, or in the exact translation thereof, avoiding legal terms not used, and perhaps not understood by them, as was wisely recommended by Baron GARROW.[2] The examination of a Prisoner is considered rather as the privilege of innocence, than as a means of discovering the guilt of the accused;[3] and it is for that reason, not strictly interrogative like that of a Witness;[4] much less can the Prisoner be enticed, induced by threats, or compelled to confess. All that has been said either by a Witness or by a Prisoner, should properly be written down in the first, and not in the third person.[5] The Magistrate certifies with his signature that the deposition of the Witness was made upon oath, in the presence and hearing of the Prisoner: and where there exists any doubt upon this point, the English Judges proceed with much delicacy in regard to the admitting of such depositions as evidence.[6] The Interpreter also must be sworn, and must sign as having been so.

53.—In case the Examination be conducted before one Magistrate only, and he remain in doubt respecting the guilt of the Accused, he calls to his assistance another Magistrate, and if the latter also remain in doubt, the two Magistrates may discharge the Prisoner on sufficient bail to appear in Court in case any Indictment be brought against him within a fixed term.[7]

54.—The Magistrates, whether they commit a Prisoner for Trial, or release him upon Bail, require of the witnesses a personal engagement to present themselves in Court, in case the Indictment be brought forward there within a limited period,[8] and they themselves transmit to the Court all the examinations,[9] which might be done here by the Crown Advocates, after they had made use of the compilation in preparing the proofs.

55.—The Justices of the Peace in England are generally persons of rank; I myself know many who possess an in-

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[1] 1 Barne & Cres. 57.

[2] Chetwynd's Burn. Tit. Examination, p. 1005. [3] 1 Chitty, 84.

[4] Dick J. Examination, III. [5] Carrington, II.

[6] 1 Leach, 457. 501, 2; Leach, 561; Russell & Ryan, 341.

[7] Stat. 7 Geo. 4. c. 64. s. 1. [8] Ibid. s. 2. [9] Ibid.

come of Five or Six Thousand Pounds a year, and upwards; but the Law subjects them all, (so far as concerns the strict observance of the rules which I have cited) to the power of the Court in which the Criminal Trial takes place; and the Court may summarily punish any failure in their duty, with a fine at discretion, according to the circumstances.

56.—I should think, that the English practice might advantageously be established here by Law, as far as relates to the Examinations preparatory to a Trial in this Court. In great part it is so, and some other parts have been recommended by two of my learned Colleagues and myself to Government, who in consequence issued certain Instructions to the Magistrates. With regard to the Bail in Criminal cases, however, I know that some learned persons doubt whether it be suitable to the circumstances and habits of the Maltese. Upon this point, I do not intend to give an opinion; only I will cite Filangieri, who says, "A law "most favorable to the personal Liberty of Man, which the "Romans borrowed perhaps of the Athenians, and which "the English have since borrowed from the Romans, pro-"hibited the Magistrates from detaining the Accused in "prison, if he could find a citizen who would answer for "his person. That Law only excepted from this benefit, "persons charged with the highest crimes."[1] Such too was the rule sanctioned by the Emperor Antoninus, "Divus "Pius rescripsit, non esse in vincula conjiciendum eum "qui fide jussores dare paratus est, nisi tam grave scelus "admisisse eum constet, ut neque fide jussoribus, neque "militibus committi debeat."[2]

57.—When the examining Magistrate finds sufficient ground for instituting an ordinary criminal procedure against a Prisoner, he commits him for trial, and transmits the examinations to the Crown Advocates to serve as the basis of an Indictment. The Crown Advocates, however, are not precluded from pursuing the enquiry further, and in some cases they may even commit a Prisoner for trial themselves, though he has been liberated by the Magistrate. Finally, if the Crown Advocates resolve on indicting the Prisoner, they appear as his Prosecutors. In what manner this union of the inquisitorial and accusatorial functions affects our system of Trial by Jury, it may be worth while to consider.

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[1] Scienz. Legisl. l. 3. c. 6.

[2] Ulp. D. 48. 3. 3.

58.—I have already mentioned that *accusation* by private Citizens was the most ancient practice, and that *inquisition* by public officers was subsequently introduced. Each mode of proceeding, taken alone, had it's inconveniences; Inquisition was found oppressive, and Accusation ineffectual, and therefore various means of combining them together were adopted. In England, the Inquisitorial Power was vested in the Justices of Peace, and the Grand Jury, and this served as a check on any abuse of the Accusatorial power by private Prosecutors. I have heretefore expressed the hope, (in which I concur with my learned friend, Sir JOHN RICHARDSON) that the time may not be far remote, when that precious part of the English Institutions, a *Grand Jury*, may be established at Malta; but for the present, I admit, that the power of preferring Indictments should be left, where it now is, in the hands of the Crown Advocates.

59.—In most continental nations, the exclusive right, both of enquiry and of accusation, was vested in a Public Officer, called a *Fiscal*, to whose rank and office, at Malta, the joint Crown Advocates have succeeded. But I must call your particular attention, Gentlemen, to the contrast between the office of Fiscal under a despotic Government, and the same office under a Constitutional Monarchy. Under a Despot, this "Vindicatore publico," of whom FILANGIERI speaks so contemptuously,[1] is a mere subaltern of the *executive* power; one who receives orders, like any other subaltern, and who accuses or liberates blindly, without any regard to the justice of the case, the innocence of the Accused, or the interest of the Public. Under a Constitutional Monarch, how much more noble is the Fiscal's station! He becomes a *judicial* officer. He combines the inquisitorial functions with the accusatorial, and acts in both on his own official responsibility. In his inquisitorial duties, he supplies the place of a *Grand Jury*; and as a Prosecutor, he prefers no accusation against a fellow-citizen, which is not "regulated by such reasonable and credible "evidence, as *he* in *his* deliberate and conscientious opinion, "thinks likely to lead to the Prisoner's just conviction."[2] On such grounds as these, the King's Attorney General in England files Informations, in cases of Misdemeanor.

60.—This honorable charge is borne at Malta by two joint Crown Advocates, Gentlemen of an exalted rank in

[1] Sci. Leg. l. 3, c. 3.

[2] Procl. 2 Aug. 1830, s. 1.

their profession, and next in dignity to His Majesty's Judges. They may act together, or separately; but in all difficult cases, it is advisable for them to assist each other; and as most cases, in a newly established Court, present some difficulty, it would be advisable for them generally to conduct the business of this Court together, for the first few years.

61.—In the inquisitorial part of their duty, they ought not to rely too confidently on the examinations taken by the Magistrates. Those Gentlemen may have proceeded very carefully, and yet there may be much more to be learnt by strict Inquiry. The Crown Advocates, therefore, should minutely inspect the depositions taken before the Magistrates, to see whether they betray any marks of bias, passion, interest, or exaggeration, on the part of the Witnesses. They should, in every such case, reexamine the Witnesses, themselves; and should no less carefully interrogate any other Witness, that might be discovered; bearing always in mind, that the same Witnesses, when produced on the Trial, will have to undergo a rigorous cross-examination. In the case last brought before this Court, the Commissioners observed with great satisfaction, that one of the Crown Advocates[1] had not only examined several witnesses personally, but had visited the spot where the offence was committed, and had caused a plan of the premises to be made, in order to enable the Court and the Jury more clearly to comprehend the testimony.

62.—I come now to the *Accusation*, the Corner stone of the whole criminal suit, and which therefore demands the most minute and careful attention. "The right of punish-" ing (says BECCARIA) belongs not to any one individual " in particular, but to the society in general;"[2] and "as the " Public has delegated all its powers and rights, with regard " to the execution of the laws, to one visible Magistrate, " all affronts to that power and violations of those rights, " are immediately offences against him to whom they are " so delegated by the public. He is therefore the proper " person to prosecute for all public offences and breaches " of the Peace."[3] In England, therefore, as well as in Malta, the King is always the nominal Accuser. In the former country, any private person may present a Bill of Indictment in the name of the King to the Grand Jury, and

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[1] Dr. Caruana.

[2] Crimes and Punishments, c. 46.

[3] 1 Black. Com. 268.

such private person is called the Prosecutor; but here the private individual can only offer his complaint to the Police Magistrate, who, if he find sufficient reason for so doing, transmits it to the Crown Advocates, and these latter become the Prosecutors.

63.—The Public Prosecutor, however, is carefully limited in the exercise of his accusatorial functions. The first limitation is, that "the Indictment shall relate to the complaint "made against the Prisoner before the Magistrate, so far "as regards the general nature and species of the offence."[1] If, therefore, in the course of further enquiry, the Crown Advocates find reason to suspect the Prisoner of a separate Offence, they must remit him to the Magistrates for examination. This rule, however, does not extend to such circumstances as may be found to have merely aggravated or mitigated the offence originally complained of.

64.—He is next directed to proceed only in the competent Court, and to regulate his charge by the proofs which he has to produce. These are directions extremely necessary to be kept in view. To present an Indictment in this Court, when the facts alleged do not constitute a crime within the jurisdiction, or to allege a crime within the jurisdiction, without a probability of being able to support it by credible proofs, to the satisfaction of a reasonable Jury, would be to discredit at once the Court and the Prosecutor; and it is manifest that Public Justice is better consulted by prosecuting a minor offence, which *can*, than a greater which *cannot* be proved.

65.—Assuming, however, that in any given case there are sufficient grounds for an Indictment, it remains next to be considered how this important Instrument should be drawn up; and here it will be necessary to keep constantly in view the nature of the Tribunal before which the Accusation is to be preferred.

66.—The most essential requisite, and that which may be said to include all others, is an exact *Accuracy*. "There "is hardly any degree of exactness which can be called "sufficient, (says FILANGIERI) when the result must be "the disturbance of a man's peace. In proportion as the "Accusation is precise, innocence is sheltered, calumny "becomes difficult, and all arbitrary latitude of decision on "the part of the Judges is circumscribed."[2]

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[1] Procl. 2 Aug. 1830. [2] Scienz. Leg. l. 3. c. 4.

67.—Now Accuracy exists either in the *form*, or in the *substance* of an Indictment.

68.—Respecting the *form*, our Law says, that the *Fact* must be absolutely distinguished from the *Law*, by stating each in a distinct and separate *Allegation;* and that each of these allegations may be in one or several *articles.*[1] By absolutely separating the Fact from the Law, there is effected that perfect division of the judiciary functions between the Court and the Jury, which the disposition of the Maltese people, and the circumstances of these Islands, render not only desirable, but indispensable. The Jurors, though men of good sense and sound reason, do not in general belong to the legal profession, and therefore cannot of themselves understand the terms of the Law; nor would it be easy for them, with their preconceived habits and notions, to comprehend the instructions which might be given on such a subject by the Court at the moment of a trial. The Law therefore prescribes, that only the allegation of Facts shall be read and given to them in charge,[2] so that they may apply their whole attention to the Facts alone.

69.—The separation of the Articles resembles in some degree what is occasionally practised in England, by dividing an Indictment into several articles, called *Counts.* Our system, however, is more simple. In England, each article or *Count* contains a narrative of the whole offence, related indeed differently, because it has a view to different legal consequences; but by a fiction of Law, it is supposed that each Count alleges a separate crime, committed at a different time from the others.[3] According to our system, the Indictment is one sole act, and all its parts are referable to each other. The narrative of Fact does not suppose a variety of offences, but relates the circumstances as they really occurred, and is only divided into separate articles, for the clearer understanding of the whole;[4] and in order to enable the Jurors the better to exercise their judicial functions, in deciding that the substantial parts of the statement are proved or not proved.

70.—From what has been said, it appears manifestly unnecessary that every article of Fact taken separately should allege an offence within the jurisdiction, provided the facts

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[1] Procl. 15 Oct. 1829, s. 5.
[2] Ibid. s. 26.
[3] 3 Term Rep. 106.
[4] Procl. 15 Oct. 1829, s. 5.

alleged in all the articles taken together constitute such an offence.[1]

71.—The Accuracy of an Indictment in regard to substance may be found in the allegation of Fact, or in that of Law. Let us first consider the allegation of *Fact*. Now to be accurate, this must be *positive, clear, certain, comprehensive*, and at the same time *specific*.

72.—I say, first that the allegation of Fact must be *positive*. In the Inquisitorial stage of the proceedings suspicions and uncertainties are necessarily acted upon, but upon coming to the *Accusatorial* part, a firmer ground must be taken. No man ought to be put in jeopardy of his life or character but on a charge of some action positively criminal. In England the Court does not receive an Accusation, until the Grand Jury have upon oath declared that they believe it to be true; and our Crown Advocates, upon presenting an Indictment, assert that they really and in their conscience believe that all and each of the facts therein alleged are true. Now truth being a positive thing, it is requisite that it be alleged positively. This principle is established in the English procedure, and is equally applicable to ours. "It is "a general rule (says Chitty) that the charge should be "expressed *positively*, and not with a '*that whereas*' or by "way of recital."[2] For this reason, "an Indictment "charging a man *disjunctively* is void, as where it finds "that A. killed B. or eaused him to be killed; that A. forged "a paper, or caused it to be forged; for here are distinct "offences, and it appears not of which of them the Indic-"tors have accused the Defendant."[3] Therefore where a statutory Law says that it shall be a capital crime to commit a robbery by night, with the breaking of a door, in a *house, shop, tavern* or *magazine*,[4] it is not sufficient to allege that the Prisoner committed a robbery by night, with the breaking of a door "in a *room, house, possession*, or *magazine*,"[5] nor yet "in a *room, house, possession* or *building*:"[6] since neither of these allegations asserts *positively* that the robbery was committed in such a place as to bring the offence within the provisions of that Law.

73.—The allegation of Fact ought to be *clear* and *certain*. I combine together these qualities, for so BLACKSTONE

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[1] *Rex* v. *Agius & Mifsud*, 15 Feb. 1830. [2] 1 Chitty, 231.
[3] Hawkins, Pl. Cr. B. 2, c. 25, s. 51. [4] Dir. Munic. Coll. s. Cost. 1.
[5] *Rex* v. *Mifsud & Attard*, 25 May 1830.
Rex v. *Mercieca & Cammenzuli*, 26 May 1830.

says, " The offence should be alleged with clearness and " certainty."[1]

74.—The arrangement of the parts of a statement conduces much to it's clearness, and therefore it was that the formal division of this part of the Indictment into articles was adopted. The object of an Indictment is to charge the Prisoner with a Crime, cognizable by the Law. Now every such crime consists of one or more *overt acts*, each attended with a *criminal intention*. A crime is called *simple* where the overt acts constitute one plain offence, without any circumstances of peculiar aggravation; and it is said to be *qualified* when it is attended with circumstances which in the eye of the Law aggravate the criminality. Where the crime is simple, the overt act may easily be set forth in a single article; but where it is a qualified crime, it will be found most convenient to allege each separate aggravation in a separate article. Thus if the offence be a *Theft*, attended with the breaking open of a door, or with *personal violence* or the like, the most distinct mode of relating the transaction will be to state in the first article the *Theft*, in the second the *breaking*, in the third the *violence*, &c. to each of which the Jurors may reply " proved" or " not proved." If then, they say the first article is proved, and the second not proved, their Verdict will be in substance and effect exactly similar to that of an English Verdict, of " Guilty of " the Larceny, but not of the Burglary," or " Guilty of " stealing the goods charged, but not to the value of Ten " Shillings," or the like. It will also agree with the declaration of a French Jury, " l'accusé est coupable d'avoir " commis le crime avec telle circonstance, mais il n'est pas " constant qu'il l'ait fait avec telle autre," &c.[2] Thus also SONNENFELS has accurately distinguished two questions of fact, in each accusation, namely, one as to the main offence, the other as to the aggravations.[3]

75.—Moreover, since of all offences, whether simple or qualified, criminal intention is a necessary part, and since intention is a matter of fact, this also must be charged in the allegation of facts. Criminal intention is made up of *guilty knowledge* and of *guilty will*. These in some English Indictments are expressed with considerable diffuseness, as " not " having the fear of God before his eyes, but being moved " and seduced by the instigation of the Devil, and contriving

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[1] 4 Bl. Com. 306. [2] Code d'Instruct. Crim. No. 345.
[3] Maggior. di Voti. s. 3.

" and intending feloniously to kill and murder such a person, " did knowingly, wilfully and feloniously do so and so." The style of our Indictments is in this respect more brief; but the Prosecutor avers that the Prisoner acted throughout the whole transaction knowing, wilfully and wickedly, with intent to steal, rob, murder or the like. In some cases, each article averring an overt act has been followed by another averring a criminal intention, but this does not seem in general to be advisable; the last Indictment here preferred contained six articles of overt act, and one of intention referring to all the preceding, which appears to be the better practice.

76.—Clearness has thus been found to be promoted by dividing the allegation of fact into articles; but this alone will not suffice if the averments in each article be not made with a precise certainty. " It is necessary in every crime," (says the great Lord MANSFIELD) " that the Indictment " charge with certainty and precision, so as to be understood " by every body."[1] And this for the three reasons expressed by Lord Chief Justice DE GREY, namely,

> " First, In order that the defendant may know of what " offence he is called to give account."
>
> " Secondly, In order that the Jury may be warranted in " their verdict."
>
> " And, Thirdly, In order that the Court may see upon " the Record an offence so described, as to be able to " apply the penalty prescribed by Law."[2]

77.—In order to be " understood by all," the expressions used must be such as are intelligible to all. I recollect a case, which happened in my youth, where an Advocate, too conversant with ancient literature, addressing himself to a Jury, said that the adverse party had thrown before the door of his Client " a quantity of *quisquilious* matter;" unfortunately for him, the Jurors did not understand this Latin word, and so the learned gentleman lost his cause. Now there are many technical terms in the law, which are not less remote from common discourse than the word *quisquilious*. In an allegation of *Fact*, which is to be submitted to the judgment of a Jury, such terms ought either to be altogether omitted, or explained by others better adapted to the general understanding.

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[1] Term Rep. 69. [2] Cowp. 632.

78.—This observation is equally applicable, even though the technical term should be one employed in a Statute. "Neither doth it seem to be always sufficient (says HAWKINS) to pursue the very words of the Statute, unless by "so doing you fully, directly, and expressly allege the fact, "in the doing or not doing whereof the offence consists, "without any the least uncertainty or ambiguity."[1] Such is the English rule, and it appears *a multo fortiori* to be the practice of this Court, where the judicial functions are so much more distinctly divided. We have, for instance, a Statutory law which punishes capitally a Robbery committed by means of an "*Adulterine*" key,[2] in relation to which offence may be consulted REYNALDUS,[3] and the authors by him cited, as MUTA, GIZZARELLUS, SANFELICE, NORBONA, CORTIA, DE LUCA, CABALLUS, &c. But to what purpose would it be to state to Jurors that a robbery was committed by means of an "adulterine" key? They would not be able on their oaths to say that such a robbery was proved, or not proved; because they would not understand the meaning of the words, unless they were all lawyers, or were all to receive and to understand the instruction which the Court might give them on that subject. I have however already observed, that for the Court to give such instruction at the Trial, however consonant to the English practice, would be as little suitable to Maltese habits and feelings, as it would be to the spirit and even to the letter of the Proclamation of 1829.

79.—The rule, therefore, which the Court has laid down is this: When a Term, employed in a written Law, bears, in legal construction, the same sense which it does in ordinary discourse, it may be used, without any explanation, in an allegation of facts; but when its legal and technical is different from its common and popular meaning, then the use of it in an Indictment must either be confined to the allegation of Law; or if introduced into the allegation of facts, (for the purpose of more easily connecting the narrative together) the Prosecutor must add, in plainer language, a statement of those facts and circumstances which the Term legally imports.

80.—We have had occasion to apply the former part of this rule to the words "*Violenza personale*," used in the law of 19 November 1785, and the latter to the words

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[1] Pl. Crown, B. 2, c. 25, s. 111. [2] Drit. Munic. Coll. 1, c. 1.
[3] Obs. Crim. cap. 14.

"*sparare dolosamente*," used in the law of 1st December 1786. We considered that the Legislator, in the former of these examples, meant neither more nor less by the words "personal violence," than any private Individual means when he uses them in ordinary conversation, and therefore if they were employed in an allegation of facts, a Juror would naturally and reasonably expect them to be sustained by proof of some such act, as the Legislator himself contemplated; for instance, compelling a man to give up his property by presenting a pistol at him.[1] On the other hand, where the Legislator made it a capital crime to shoot at a man "maliciously" (*sparare dolosamente*) we considered that the Italian word "dolosamente," which a Juror might probably understand of mere sportive malice, exercised without the least possibility or intent of doing more than frightening a person, was certainly intended by the Legislator to be confined to a design of killing the person shot at; and therefore, if used at all in the allegation of facts, it was absolutely necessary that the Prosecutor should subjoin an averment that the Prisoner shot so near, and in such a direction and manner, as to be likely to kill, and with an intent so to do.[2] When this Law was framed, the Legislator might safely use words in a legal and technical sense without fear of their being misunderstood by the Judges of fact, who at that time were men of legal education; but as the present Judges of fact are not necessarily so circumstanced, the consequence of addressing to them the bare words of a Statutory Law might be to lead them into the most fatal errors; insomuch that a Juror intending to declare a fact proved, amounting to a mere misdemeanor, might join in a verdict subjecting the Prisoner to Capital Punishment!

81.—It is further essential to the accuracy of an Indictment, that the Allegation of Facts should be at once *comprehensive* and *specific*. It "must contain a complete "description of such facts and circumstances as will con-"stitute the crime; a statement of a legal result is bad. "As an instance of this rule, it has been holden that an "Indictment for escaping from prison, without showing the "original cause of imprisonment is not maintainable."[3] The Prosecutor indeed ought not to make any superfluous, and much less any inconsistent averment;[4] and therefore our

[1] *Rex* v. *Borg*, 20 Sept. 1830.
[2] *Rex* v. *Attard*, 21 Sept. 1830.
[3] 1 Chitty 227.
[4] 2 Leach, 660.

law expressly prohibits all "matters of fact irrelevant to the law alleged;"[1] but it as expressly enjoins the pleading of all the "facts constituting the offence charged." And in order to know what facts constitute an offence under a Statute, we must not follow the mere nude words of the Statute, but consider also what the fixed and certain interpretation of the Courts has established as the true and genuine sense of those words. This Court therefore has decided, that though the Law of the 19th November 1785 speaks of "*breaking of doors*," yet as the word "*doors*" is always interpreted to signify the exterior or principal doors, it is necessary to allege in an Indictment, that the door in question is an exterior or principal door.[2] So, though the same Law speaks of thefts committed "*by means of ladders*," yet as the interpretation requires that the ladder shall have been applied to the outer or principal wall, the Court has decided, that to include the offence under this clause, it must be alleged, that the wall to which the ladder was applied was an outer or principal wall.[3]

82.—Nor is it enough that the allegation of Fact be comprehensive, it must also be *specific*. In some Courts, several Indictments may be united in one single Trial, and several Offences in one single Indictment. But according to the provisions of our Law, a Jury is sworn to try the facts expressed in one single Indictment.[4] Neither can several Offences be included in the same Indictment, unless one or more of them serve to qualify the principal crime, or be connected with it, so as to form one single operation. For instance, if a Prisoner were charged with a "third Theft," the two preceding convictions ought to be alleged, as qualifying the one under prosecution; and in the case of a Robbery with personal violence, though the violence alone might be an offence, yet being committed for the purpose of Robbery, it might be considered as connected with the Robbery, and chargeable in the same Indictment.

83.—No Indictment, however, should charge two or more independent and separate offences. "If it appear," says Mr. Justice Buller, "before the Defendant has pleaded, or "the Jury are charged, that he is to be tried for separate

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[1] Procl. 15 Oct. 1829.

[2] *Rex* v. *Buttigieg* & others, 20 Sept. 1830.

[3] *Rex* v. *Sant & Spiteri*, 17 Oct. 1831.

[4] Procl. 15 Oct. 1829, s. 18.

" offences, it has been the practice of the Judges to quash " the Indictment, lest it should confound the Prisoner in his " defence, or prejudice him in his challenge of the Jury."[1] It is also to be observed, that the joining of separate offences together in one Indictment might embarrass the Jurors, whose judicial functions ought to be reduced, as far as possible, to the utmost simplicity.

84.—The Law has, on the other hand, provided, that a rule so necessary to the defence of Innocence shall not redound to the prejudice of Justice. For if a Prisoner is committed by the Magistrates to be tried for several offences, the Public Prosecutor may at his own discretion present as many Indictments as there are offences, and each in the competent Court. He may also reserve some, until the others have been tried, provided there be no unnecessary delay.[2]

85.—The *specification* of the offence regards as well the *Offender*, and the *Party injured*, as the *Crime* itself. The Indictment must " set forth as accurately as may be the " proper name and description of every person *charged as* " *an offender*."[3] Without the specification of the *name*, a considerable part of the evidence would often be difficult to be understood: and in Malta this remark is moreover applicable to the *Agnomen*, which (except in certain cases) must be stated in the Indictment.[4] The general description of the *rank* in society occupied by the Prisoner must be expressed.[5] I also think that the Prosecutor should state generally the age of the Prisoner, it being reserved to the latter to refute such statement, at any stage of the proceedings, even after sentence. The Indictment ought not to allege the Prisoner to be a person of *bad fame*, except in those cases where the Law expressly mentions that circumstance as entering into the constitution or aggravation of the offence.[6] In any other instance this would be a violation of the rule which requires the Indictment to be specific.

86.—Several offenders may be included in one Indictment. If, however, some facts belong to one of them, and others to another, the first facts must be charged in one article, and the others in a different one. Where there are several persons accused, some of them may be *Principals*,

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[1] 3 Term Rep. 106.
[2] Procl. 2 Aug. 1830, s. 2.
[3] Procl. 15 Oct. 1829, s. 5
[4] Reg. 1, 10 Oct. 1831.
[5] Reg. 2, 10 Oct. 1831.
[6] *See* Drit. Munic. l. 5, c. 5, s. 34.

and some *Accessaries* in various manners and degrees: it does not seem, however, to be necessary to give them such denominations; because, according to the spirit of our Proclamations, it is a question of Law whether the facts proved constitute a man principal or accessary, and in what degree. On the other hand, the Accessary may be tried alone; [redacted] a valid exception on his part, that he was not indicted together with the Principal.[1]

87.—In regard to the Party injured, it is not always requisite to specify the person; since the murder of an unknown individual, or the stealing of property belonging to an unknown proprietor, are surely punishable acts. However, as the name and description of the injured party, and even those of third persons, often serve to fix more securely the truth of the fact alleged, therefore such particulars ought to be specified as often as the Prosecutor can state them with certainty.[2]

88.—The Offence must be specifically alleged, as regards the *quality*, the *quantity*, the *place*, the *time*, &c.

89.—The Quality of the offence depends not only on the overt acts alleged, but more especially on the criminal intention, or *malus animus*; but as an intention can only be inferred from external circumstances, certain articles of Fact may be added, for the sole purpose of determining the intention of the principal act. Thus an intention of fraud might be inferred from a number of contrivances,[3] an intention of uttering spurious coin, from the having in possession a large quantity of the same;[4] an intention of slaying, from the having fired twice at the same person,[5] or from the having fired so close, or in such a direction as appeared likely to cause death.[6] For this reason the Court, in a case of Infanticide, admitted the allegation, that the Prisoner was not married, and that during her pregnancy she had endeavoured to cause abortion; since, had these facts been proved, they might have had much influence in determining the question of intention respecting her treatment of the infant after birth.[7] On the other hand, the Court decided, that it was not sufficient to allege a criminal intention without alleging external facts from which such an intention might reasonably be inferred.[8]

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[1] 1 Chitty, 267; *Rex* v. *Cremona*, 26 May 1830. [2] 1 Chitty, 213.
[3] *Rex* v. *Sheppard*, Russ. & Ry. 169. [4] *Rex* v. *Fuller*, ibid. 308.
[5] *Rex* v. *Vake*, ibid. 531. [6] *Rex* v. *Hitchen*, ibid. 95.
[7] *Rex* v. *Cini*, 21 Sept. 1830. [8] *Rex* v. *Attard*, 20 Sept. 1830.

90.—The *Quantity* of the offence is to be specified. By this word "quantity" I mean the number, kind, and value of articles stolen, the number and situation of wounds inflicted, and other similar particulars. The English Law is upon this point remarkably minute. In an Indictment under the Statute 9 Geo. 1, c. 22, it is not sufficient to say that the Prisoner stole "certain animals," but it must be precisely stated *what* those animals were.[1] Nor does it suffice to say in an Indictment, "*furatus est oves*," without expressing the *number*;[2] nor to say "slew," without stating the *means* of slaying;[3] nor to say that the person killed, died "in consequence of the wound," without alleging that the wound was *mortal*:[4] and in general (though this is not always necessary) the width and depth of a wound are stated, the instrument employed, and the time which elapsed between its infliction and the death of the party. "To some superficial minds (says Filangieri) this exactness "may appear too minute and superfluous, but men of "reflection will justly estimate its importance." The true measure of particularity in these matters is a sound discretion, so as not to load the Indictment with a mass of detail, nor to render it on the other hand obscure to the Court and Jury, and prejudical to the Defence.

91.—Accuracy must also be observed carefully in the *allegation of law*. The Law applicable to the offence must be stated in one or more articles. In general, a single article has been found sufficient; but where the Principal Offender was punishable by a Statutory Enactment, and the Accessary only by the Common Law, the allegation of law was properly divided into two articles.[5] The Common Law may be cited in general terms; but a Statutory Enactment must be cited specifically. The specification however need not be more minute than is sufficient to give the Prisoner fair means of defence.[6]

92.—The Accuser is bound to use no unnecessary delay in drawing up his Indictment, which, when prepared, is to be presented through the Registrar to the Chief Justice, with a Translation; and copies of both are to be forwarded to the Prisoner, at least six days before his Trial. The

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[1] *Rex* v. *Chelkley*, Russ. & Ry. 258.
[2] Haw. P. C. 183.
[3] Haw. P. C. B. 2, c. 23. 5. 84.
[4] 1 Leach, 96.
[5] *Rex* v. *Spiteri* & others, 28 Dec. 1831.
[6] *Rex* v. *Vella*, 24 May 1830; *Rex* v. *Cutajar*, 25 May 1830.

Chief Justice convokes a Session as soon as it can conveniently be held after an Indictment is presented; allowing (for public convenience) fifteen days previous notice; so that a long confinement of any prisoner previous to trial can only happen in very extraordinary cases.

93.—The question of granting a *List of Witnesses* to the Prisoner, previously to the trial, has been fully considered. It is a privilege not given by the Proclamation: it is contrary to the universal practice in England, except in cases of High Treason, and also contrary to opinions strongly expressed by eminent English Judges;[1] and the Court apprehended that in these Islands it would afford very great facilities to the tampering with witnesses, and tend extremely to embarrass the Jurors in forming a just opinion of the weight of the evidence. For these reasons, the Court did not deem itself authorized to grant to the Prisoner the privilege in question.[2]

94.—The interests of justice require that the Public Prosecutor should have the power of abandoning a prosecution in whole or part, either when he finds that the Prisoner is in whole or part innocent, or when the Prisoner is admitted as a Witness against his Partners in guilt, or when public justice can be better satisfied by putting the accusation in a different shape. For these various purposes our Law has provided, by permitting the Prosecutor to enter a *Nolle Prosequi*, as to the whole, or a *Cession* of part of the Indictment.[3] A *Nolle Prosequi* is entered, as matter of public convenience, and does not necessarily imply any defect in the original charge.[4] It ought however to be absolute in its form, and not conditional.[5] When it is entered, the Court, upon motion and argument, may either liberate the Prisoner, or detain him to be indicted anew, according to circumstances; but the Prosecutor must file his new Indictment within a reasonable time, to be limited by the Court, so as to prevent the Nolle Prosequi from being used vexatiously.

95.—Having thus considered the Enquiry and the Accusation, I have next to speak of the *assembling of the Court and Jury*. The Precept issued for the holding of a Session appoints a day for the meeting of the Court, and a subse-

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[1] 4 Term Rep. 692. 694.
[2] *Rex* v. *Moore*, 18 Jan. 1831.
[3] Procl. 26 Sept. 1831, s. 2.
[4] *Rex* v. *Sant & Spiteri*, 10 Oct. 1831.
[5] *Rex* v. *Dalli & others*, 3 Oct. 1831.

quent day for the meeting of the Jury, annexing a list of Foremen and Common Jurors, who are to attend for the Session. If any persons are unduly placed on that list, their names may be removed, on memorial to the Chief Justice; and if any have lawful excuses for non-attendance, these will be allowed by the Court.

96.—I have already observed that the proportion of English Jurors summoned for each Session is greater than it ought to be, and I have no doubt but that this will soon be remedied by law. Before the present mode of trial was put in practice, no one imagined that the Maltese Jurors would be able to exercise their functions, without aid and instruction; but they have so far exceeded all expectation, in the intelligence and ability which they have shown, that although it may not be proper to form any Jury without including one or two Englishmen, yet all the Commissioners agree that it is perfectly unnecessary to require (as is now done) three or four in each Jury.

97.—A greater strictness may also be exercised in scrutinising the ability of the Jurors, as to their skill in the English and Italian languages. Allowing fully for this, I apprehend there will be found of the Maltese class 300 individuals qualified to act as Common Jurors, and 50 as Foremen, whilst the British class of Foremen and Common Jurors together will scarcely reach 80. As a Session, with us, has never had more than three trials, and in general need not have above one or two, it seems useless to summon so large a number as 60, which is the present custom. I am of opinion that 45 would be amply sufficient, to provide for Challenges and non-attendances, as well as for those required on each trial. I should therefore suggest that the Sessional List should include 24 Common Jurors of the Maltese and 12 of the British class, and 6 Foremen of the Maltese and 3 of the British class; and that in drawing the names, there should be only two of the British class on each Jury, namely, either the Foreman and one Common Juror, or if the Foreman were a Maltese, then two British Common Jurors. By these means, the labour of each class would be nearly in proportion to their relative numbers.

98.—"During the Session" (says FILANGIERI) "the "Judges of Fact ought to be maintained at the expense of "the Government."[1] The justice of this rule is manifest;

[1] Scienz. Legisl. l. 3, c. 19, art. 13.

for if the Public avails itself of the time and talents of an individual, to discharge an important and delicate duty, it ought not surely to burthen him besides with an expense greater perhaps than that of his ordinary mode of living. The local Government, with its accustomed liberality, has recognised this principle, by ordering, that an adequate payment shall be made for this purpose, as matter of general regulation.[1]

99.—I have gone through the proceedings which fall under the first head of my intended examination—I mean the *proceedings preparatory to Trial;* and I now come to consider the second head, that is to say, *the Trial itself*, which, in consequence of the distribution of the judiciary functions, is necessarily divided into three absolutely distinct and separate branches, forming three hearings, the first, of Law, before the Court alone, upon the *preliminary questions;* the second, of Fact, before the Court and Jurors together, upon the *merits of the case;* and the third, of Law, before the Court alone, upon the *incidental questions* arising out of the previous proceedings.

100.—Not to inconvenience the Gentlemen summoned to serve as Jurors with useless attendance, it has been determined, that the *preliminary pleadings* shall in every case be heard on the day preceding that fixed for the discussion of the merits.[2] A *quorum* of the Commissioners, then, being present, the Prisoner is put to the Bar, assisted by his Advocate; the whole of the Indictment (both in Law and in Fact) is read and interpreted to him; and he, or his counsel, is heard, to show cause why the facts of the case shall not be tried forthwith.[3]

101.—The cause shown generally turns either upon the substance or form of the *Indictment*, or upon the *putting off the Trial*, and it's determination falls under the province of the Judges of Law. FILANGIERI, speaking of the functions of these Judges, says, " We have already observed, " that we must not expect to find a complete knowledge of " Law in Judges of Fact. Now in many circumstances, " the *examination of the Accusation* would require an ac- " quaintance with the provisions of the Law, or at least " with several legal principles. In these cases, therefore, " the Judges of Law should instruct those of Fact what

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[1] Chief Secretary's Letter, 24 Dec. 1831.

[2] Reg. 30 May 1830, Nos. 1. 4. & 6. [3] Procl. 15 Oct. 1829, s. 16.

" kind of allegation they ought to have before their eyes on " such a Trial."[1]

102. This function of the Judges of Law is exercised, according to our system, either by *quashing* or by *amending* the Indictment. The Court quashes an Indictment, if the same does not charge an Offence within the Jurisdiction of the Court, or if it does not charge such offence, certainly, positively, distinctly, and fully, but hypothetically, alternatively, or in the way of argument or narrative, or imperfectly, by not alleging all the facts necessary to constitute the offence, or by not alleging any Law applicable to the offence. But the Court does not quash an Indictment because it contains matter alleged in some prior Indictment already quashed, or matter alleged in some prior Indictment upon which a *Nolle Prosequi* has been registered before judgment, or matter abandoned or struck out in the correction of a prior Indictment.

103.—The Court amends an Indictment, which does not deserve to be quashed, if there be in it any error arising from imperfection in the writing, spelling, or grammatical construction, or any superfluity of a letter, word, or sentence, or any mistake in a name, or erroneous addition to the same, or if any allegation or inference of Law be introduced into the allegation of facts, or *vice versâ*, or if any fact be alleged which is irrelevant to the offence principally charged; or if the external act and the criminal intent which constitute such offence be alleged in the same article; and in case the Indictment charge two or more separate offences, the Court offers the Prosecutor his choice, upon which accusation he will proceed, suspending for the time the other, or others; but the Court does not strike out any word or words of material import relative to the principal charge; nor does it add any new allegation either of Fact, or of Law, nor substantially alter any such allegation, neither does it reject as irrelevant any fact which forms part of the same course of action with the offence principally charged, and which is in such manner connected with the same, as to show, by reasonable inference, the *animus* of the act charged as Criminal. When an Indictment has been amended by the Court, if the correction be such as to require deliberation on the part of the Prisoner, for the arrangement of his defence, a reasonable time is granted to him for such purpose.

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[1] Scien. Leg. B. 3, c. 19, art. 12.

104.—I have said that no unnecessary delay in the proceedings is permitted by Law. This rule is common to the Prisoner and to the Prosecutor. Such delays are refused to the Prisoner, because by their means the administration of Justice might suffer, as the Witnesses might die, or the written evidence be lost. They are forbidden to the Prosecutor, because, says FILANGIERI rightly, " whether the " individual, to be tried, be guilty or innocent, the delaying " of the Trial augments to him the torture of suspense."[1] But when the delay appears evidently to be necessary to the right administration of Justice, the Court may and ought to grant it. It is not granted, however, for a trifling reason, as because the Indictment was amended in a single immaterial word, as for instance, " Strada Botannico," instead of " Strada Brittanica."[2]

105.—The great Lord MANSFIELD has said, " that no " Crime is so atrocious, no Procedure so urgent, but that " the Trial may be postponed if sufficient reasons be alleged " in support of the demand."[3] CHITTY, after specifying various reasons which were held sufficient in different cases, adds, that " the reason most frequently alleged is the ab- " sence of a material Witness."[4] This Court has allowed such a reason, as well on the demand of the Prisoner,[5] as on that of the Prosecutor.[6] " When it appears," says CHITTY, " that the Witnesses are in a foreign country, " without any probability of a speedy return, the Court has " refused the postponement."[7] And so did this Court, upon the second application of a Prisoner, where it had been alleged the first time, that the Witness would probably return by a certain ship, which afterwards came in without him.[8]

106.—" It seems," says CHITTY, " that if the Witness " were not absent when notice was given of the Trial, the " Court will not grant the postponement for any subsequent " absence."[9] " And where there is any suspicion, the " Court will require that the circumstances be specifically " alleged upon oath, and not only that the person absent is " an important Witness, but that the applicant has used " every possible means to procure his attendance, and that

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[1] Sci. Leg. B. 3, c. 19, art. 14.
[2] *Rex* v. *Moore*, 18 Jan. 1831.
[3] 1 Blackst. Rep. 514.
[4] 1 Chitty, 491.
[5] *Rex* v. *Cutajar*, 26 May 1830.
[6] *Rex* v. *Buttigieg* & others, 19 April 1830.
[7] 1 Chitty.
[8] *Rex* v. *Cutajar*, 20 Sept. 1830.
[9] 1 Chitty, 492.

" there is a well grounded expectation of his arrival in a " certain given time, for which it is asked that the Trial be " postponed."[1] The Commissioners had in view this rule in a case where the Prosecutors applied for a third postponement of the Cause.[2]

107.—After the conclusion of the preliminary pleadings, of Law, comes the *Hearing upon the merits* of the case in point of Fact. This may be distinguished into three parts, viz. the *Contestation*, the *Discussion*, and the *Verdict*.

108.—The *Contestation* is proceeded upon, in this manner. The Prisoner, on being asked by the Court, whether he be Guilty or Not Guilty, may answer Yes, or No. If, after being solemnly interrogated, he deliberately pleads *Guilty*, the Court admonishes him in the most serious manner of the legal consequences of such an answer, and allows him a short time to retract it; but in case the Prisoner persists in his answer, this is considered to be the voice of his conscience, especially after having had the Indictment under his consideration for at least six days, and thus become acquainted with the legal consequences of his plea. Indeed, no question of fact would in such case remain for the decision of the Jurors, unless it were doubted whether the Prisoner was in his right senses, and then a Jury must be charged to examine into this incidental question. When the Prisoner stands mute, he is considered to mean, that he is " Not Guilty," according to the wise regution of the Law of Sardinia;[3] and then, (or if he really plead Not Guilty) the discussion of the principal question comes on before the Jury.[4]

109.—I consider the *choice of the Jurors*, together with the Contestation; because as soon as the cause has been contested by a plea of Not Guilty, the functions of the Judges of Fact come into operation. On the day destined to this part of the proceedings, therefore, in open Court, and in the presence of the Prisoner, the choice of the Jurors takes place, by lot out of the whole number on the list for the Session. The Jury consists of Seven Members, of whom the Foreman is a person more experienced than the others; and, to avoid more completely all partiality, and secure a reasonable trial, part are Englishmen, and part Maltese. The Prosecutor and the Prisoner have each an

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[1] 1 Chitty, 493. [2] *Rex* v. *Buttigieg* & others, 20 Sept. 1830.
[3] Leg. Civ. e Crim. 1827, No. 1707. [4] Procl. 15 Oct. 1829, s. 17.

equal right to except, upon reasonable grounds, against a Juror. "The motives of such challenges," says FILANGIERI, "should be regulated by the well-known prin-" "ciples of the Common Law."[1] In all the experience which we have had, the selection has been so equitable and impartial, that there has not been a single challenge upon the grounds of favor, enmity, or relationship; the few objections which have been made, turned solely upon the competency or incompetency of the individuals in the English and Italian languages. As soon as a Jury has been drawn and sworn, which is generally done in less than half an hour, the other Gentlemen on the Lists are dismissed; a rule having been made for their accommodation, that not more than one Indictment shall be tried in a day.[2]

110.—The *Discussion* comprehends, 1. The *Reading* of the Allegation of Fact. 2. The *Opening* of the Accusation by the Prosecutor, followed by the production of his Evidence. 3. The opening of the *Defence*, with the Evidence in it's support. 4. The *Argument of the Prosecutor* upon the whole case. 5. The *contrary Argument* of the Prisoner, or his Advocate. And, 6. The *Summing up* by the Court.

111.—Nothing is *read* to the Jurors but the allegation of Fact; but of this they are supplied with a copy and translation. The other parts of the Indictment would only serve to embarrass them in the exercise of their functions, which are to apply the evidence produced upon the Trial to the facts alleged, and to decide whether the latter are proved by it, or not proved.

112.—The *Opening* as well of the Accusation as of the Defence should be made as briefly as possible, so as to touch only upon the points of fact to be proved, and to specify the witnesses who are to corroborate each point, but not to address to the Court or Jury remarks of a general nature, which at this stage of the Proceedings would only serve to distract the attention of the Jurors from the real merits of the cause, or perhaps would direct it to assertions of which no proof might afterwards be produced.

113.—Before speaking of the Evidence which is to be considered, in this Court, I think it necessary to touch upon the nature of Evidence in general.

114.—By the word *Evidence*, I mean whatever can conduce to establish, affirmatively or negatively, the facts

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[1] Sci. Leg. B. 3, c. 19, art. 9.

[2] Reg. 30 May, No. 5.

brought to trial, either on the part of the Prosecutor, or on that of the Prisoner.

115.—The *Species* of Evidence are various, and so are the *Rules* applicable thereto.

116.—The *Species* may be distinguished as relates to the *Origin*, to the *Form*, to the *Substance*, to the *Manner*, or to the *Effect* of the evidence.

117.—As to *Origin*, the evidence is derived, either from the *Confession* of one of the parties, or from the *Proofs* brought forward against him.

118.—The *Confession of the Prosecutor* is deduced from the Act of Accusation "*Qui ponit, fatetur.*" It may also be established by the declarations of the Prosecutor himself in Court. The *Confession of the Prisoner* comes either from himself directly, or through Witnesses, who assert that they have heard him utter, or seen him sign a declaration, or that they know his signature, or otherwise.

119.—The *Proofs* to be considered are those only which are legally produced upon the trial by one or other of the parties.

120.—The Evidence, as to *Form*, is either *written*, or given *vivâ voce*.

121.—Written Evidence is either *Public* or *Private*. Certain public documents carry with them irresistible credit, in Law, and even private writings are often the best evidence of what the parties signing them intended to do, or believed to be true, at the moment of subscribing; but with regard to other facts, the writing of an Individual is manifestly inferior to the result of an examination of the same person *vivâ voce*. "Alia est auctoritas præsentium Testium, alia "Testimoniorum quæ recitari solent."[1]

122.—Evidence, as to it's *substance*, is distinguished as well in *quality* as in *quantity*.

123.—In regard to quality, [redacted] either *worthy of consideration*, or *unworthy*. If worthy, it is either *direct* or *circumstantial*, and the presumption may be either *violent* or *reasonable*. In general, evidence is rejected as unworthy of consideration, which concerns irrelevant facts, or facts which have come to the Witness's knowledge by [redacted].

124.—In regard to *quantity*, it may be considered whether a fact be established by *one* or *more* proofs, and whether the credit of such proofs be *corroborated* or *impeached* by others.

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[1] Callist. D. 22. 5. 3.

125.—Evidence is also distinguished in kind according to the *manner* in which it is given, that is, as relates to *Place*, whether given *in public*, or *in private*; as relates to *solemnity*, whether *with* or *without oath*; and as relates to *Enunciation*, whether it be *spontaneous* or *in reply* to questions; and whether these be *leading* questions or *not*; whether proposed by the Parties in the course of *Examination*, *Cross-examination*, or *Re-examination*, or by the Judges of Fact or of Law.

126.—Lastly, with regard to *Effect*, some Evidence is *inadmissible*, being forbidden by Law; other Evidence is *admissible*, but carries with it more or less weight, according as the person giving it possesses *more* or *fewer requisites* for giving a fair evidence of any kind.

127.—Now these *Requisites* may be reduced to *Knowledge*, *Conscientiousness*, and *Freedom from restraint*.

128.—Whoever has not Knowledge, whether from general *defect of intellect*, or from particular *ignorance of the facts* in dispute, cannot be a good witness. Defect of intellect may be total, as in persons *Insane*; or partial, either on account of *Age*, whether too early or too much advanced; or from want of *Education*, as in the case of rustics, and other such persons.

129.—Positive defect of *Conscientiousness* is owing either to a total *absence of Religious Sentiments*, or to a perversity displayed in the perpetration of certain *Crimes*. There are, besides, some sentiments, which, though in themselves laudable, may have a secret influence upon the right perception of truth, and so diminish the credit due to a deposition. Such are the sentiments of *close friendship*, of *relationship*, and of *conjugal affection*; and besides all these there is the stimulus of *private interest*, which oftentimes unknown to us, and against our will, influences the conscience and the reason in a manner inconsistent with the perception of pure and simple truth.

130.—The last requisite is *Freedom from restraint*. If he from whom the evidence proceeds deliver it under the impulse of fear, or hope, or corruption, it is not really his evidence; the only force that ought to be applied is that of Public Justice compelling a Witness to appear, and binding his Conscience by the solemnity of an Oath to declare the truth.

131.—To these different kinds of Evidence certain *general rules* are applicable, of which some are recognised in all

Courts of Justice, and others are peculiarly adapted to the practice of Courts for Jury Trial.

132.—In all Courts, it is a rule, that the burthen of proving a fact rests on the party who asserts it. "Ei incumbit probatio qui dicit, non qui negat."[1] And further, that he must produce the best evidence which the nature of the cause admits.[2] Not, to be sure, the best in *quantity*, that is, *all* the evidence possible in every cause; but the best in *quality*,[3] so that it should not appear that he had kept back, or voluntarily omitted to produce evidence of a more important character. On the other hand, having satisfactorily proved all that is material, he will not be required to establish every minute circumstance; or as the rule is technically expressed in the English law, "the substance only of the Issue need be proved."[4] But lastly, all Courts with more or less strictness require that the evidence laid before them, if not convincing, should at least be legal.

133.—Let us next see, what are the general rules adapted, in conformity with the preceding, to the practice of *Courts which act with the aid of a Jury*. That division of the judicial functions being established which constitutes the essential characteristic of this mode of trial, to whom does it belong to determine what is legal evidence, or what is the best evidence? Let FILANGIERI answer this question. "How can any one decide," (says he) "on the existence "of legal proof, unless he first know what proof the law "requires? Now as this knowledge cannot be presumed "in a Judge of Fact, it therefore becomes necessary to join "to the other functions of the Judges of Law, this duty of "instructing the Judges of Fact, what are the provisions of "the Law which concern the evidence adduced on either "side."[5] In this manner "are combined the moral cer-"tainty, and the legal criterion;" and thus the law "becomes "a check upon the discretionary power of the Judges (of "Fact) and the conscience of the Judges (of Fact) becomes "a remedy for the necessary imperfection of the Law "itself."[6] Upon these reasons is founded the rule of the English Law, that "the competency of Witnesses, and the "admissibility of evidence are to be decided by the Judge "who tries the cause."[7]

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[1] Paul. D. 22. 3. 2.
[2] Gilbert, Buller, Starkie, Phillips, &c.
[3] 2 Russell, 669.
[4] Phillips, 190.
[5] Sci. Legis. l. 3, c. 19, art. 12.
[6] Sci. Legis. l. 3, c. 14.
[7] 1 Phillips, 295.

134.—Here, Gentlemen, let me call your particular attention to that striking change in the system of evidence which necessarily results from the division of the judicial functions. In Courts where there is no such division, the Judge may, with little danger, receive almost any thing for proof; but he knows that he is bound by certain *canons of credibility*, to give credence to this proof and not to that; to give this the weight of a half proof, and that of a whole proof; to throw in the make-weights of *indicia* and *adminicula*, with a thousand other nice distinctions, which form great part of his professional study and experience. But on the contrary, where the judicial functions are divided, as they are in a Jury Court, the canons of credibility are left wholly to the good sense and sound reason of the Jury, assisted (if need be) by the advice, but never constrained by the authority, of the Court: and in the place of these canons are substituted certain positive rules of *admissibility*, with which the Jurors have nothing to do, and which are wholly within the functions of the Court. The Law says positively, this written evidence shall be received, and that shall not; this witness is *competent* to be heard by the Jurors, and this other is *incompetent:* and therefore the Court being the official guardian of the Laws, ought not to permit an inadmissible document to be read to the Jurors, or an incompetent witness to be examined in their presence. When once any evidence (written or oral) has been admitted by the Court, the Jurors must take it to be legal, and must give it weight, according to the greater or less degree of moral certainty, which, after full deliberation, it impresses on their consciences.

135.—It remains for me to show, that this Court has acted on the principles which I have stated, as well in deciding by its own authority upon the *admissibility* of evidence, as in advising the Jury on its *credibility*. And first I shall speak of evidence as regards its *Origin*. Under this head falls the *Confession* of a Prisoner. FILANGIERI contends, that "the direct testimony of the Prisoner against "himself ought not to be valid iu Law." He admits, however, that "if the Accused, in defending himself, manifest "his guilt, whether by confessing it altogether, or otherwise, such manifestation may determine the moral certainty of the Judges against him."[1] It is not easy to understand why direct testimony should be excluded, and

[1] Sci. Leg. c. 15.

indirect testimony, derived from the same person, allowed. Other writers admit judicial confession, and exclude extra-judicial The English system admits both, with this distinction, however, that the former is conclusive, being given solemnly in open Court, by pleading *Guilty;* while the latter only forms a part of the whole evidence in the cause, to be weighed together with the other evidence by the Jurors.

136.—Agreeably to the English Law, we admit as legal Evidence no Confession of a Prisoner, which is not absolutely free from any influence of hope or fear, excited by other persons.[1] If a free Confession, however, should appear to have been made in a state of debility arising from illness, it seems that the Court might admit it as evidence, leaving it to the Jury to make such deductions as the circumstances might require.[2]

137.—Proof, as well in writing as *vivâ voce,* is admitted of Confessions, judicial or extra-judicial.[3] Accordingly, this Court admitted a Confession made before a Magistrate on an examination in a case of Theft;[4] and on occasion of the viewing of a dead body;[5] and in the course of ordinary conversation with other persons.[6] The Confession must, however, be proved to have been legally made; and this proof results from the *vivâ voce* testimony of the Magistrate, or of his clerk, or of some other fit person present at the examination.[7] The Magistrate, however, is the most desirable witness of that fact. Thus have we acted in every case of Confession.

138.—Such a Confession, however, cannot be adduced as Evidence against other persons.[8] In case, therefore, it were reduced into writing, and included the names of other Prisoners, it could not be admitted as Evidence in an Accusation against them all, without the erasure of those other names.[9]

139.—Once admitted as Evidence, it may not be divided, but must be taken as a whole.[10] This principle also has

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[1] Hawkins, B. 2, c. 46, s. 34.
[2] *Rex* v. *Cini,* 29 Sept. 1830.
[3] Hawkins ut sup. 55. 30. 31.
[4] *Rex* v. *Agius* & others, 16 Feb. 1830.
[5] *Rex* v. *Moore,* 20 Jan. 1831.
[6] *Rex* v. *Sant & Spiteri,* 13 Oct. 1831; *Rex* v. *Spiteri* & others, 29 Dec. 1831.
[7] Hawkins, B. 2, c. 46, s. 33.
[8] Honor. & Theod. c. 9. 2. 17; Hawkins ut sup. s. 32.
[9] 2 Russ. 652; *Rex* v. *Spiteri* & others, 29 Dec. 1831.
[10] Hawkins ut sup. s. 40.

been recognised by the Court.[1] Evidence, however, may be given, that the Prisoner has varied, at different times, in his account of the fact in question; and particularly that he has explained it in a manner inconsistent with his defence upon the Trial.[2]

140.—The difference of *Form* between written or oral evidence, draws after it many important consequences. The learned RENAZZI, a modern Criminalist of high repute, speaks thus: "In criminal causes, the witnesses "themselves must by all means be produced, and not their "written depositions; and this not only to prevent the "introduction of fictitious evidence for the purpose of circumventing the Prisoner, but that the witnesses may be "the more easily and effectually examined. For many "things are committed to writing, and affirmed at a distance, which the author of them would not dare publicly "and with his own lips to avow, knowing that his voice, "his countenance, his change of color, and even the uneasy movement of his feet, might create a suspicion of "his falsehood."[3]

141.—I shall not now detain you with citing a long and eloquent passage to the same effect from SIR WILLIAM BLACKSTONE, the well known Rescripts of the Emperor HADRIAN,[4] nor the authority of JUSTINIAN,[5] nor, in short, the cloud of similar authorities that might easily be cited; but I shall just observe, that if the principles of Renazzi were suitable to the Courts in which he practised, where there was no division of judicial functions, they must be infinitely more adapted to the practice of this Court. The Proclamation of the 10th March 1827, drawn up by my honored friend SIR JOHN RICHARDSON, enacts (among other things) that the written Depositions of Witnesses, taken in the manner there prescribed before a Police Magistrate, shall be admissible as Evidence, provided that at the time of the trial the Witnesses be absent from the Island. It is manifest that this is an exception from one of the most important rules of evidence, namely, that which requires a Witness to be produced in open Court at the Trial, to be then and there examined and cross-examined *vivâ voce* by the Prosecutor, the Prisoner, the Court and the Jury, in open sight of all the Public. It is manifest that to admit such

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[1] *Rex* v. *Cini*, 28 Sept. 1830.
[2] *Rex* v. *Moore*, 21 Jan. 1831.
[3] Clem. Jur. Crim. L. 3, c. 12, s. 12.
[4] Callist. D. 22, t. 5, l. 3.
[5] Novell. 90, c. 5.

an exception may possibly be, on the one hand, to deprive an innocent man of the means of saving his life and his honor, and on the other hand, to enable an artful Criminal to escape, by means of false evidence corruptly given before a Magistrate.

142.—But the exception is just, when it is founded in absolute necessity. The admission of the written Deposition supposes, that without such evidence the cause could never have been legally tried at all—that the Deposition is the best evidence which the Party producing it ever had it in his power to produce,—and that he had in vain employed all possible means to obtain evidence of a superior quality. Moreover, the Proclamation of the 10th of March 1827 is, as it were, a mere Appendix to that of the 25th of April 1825, which was also drawn up by Sir John Richardson, and which expressly recognises the general rule obliging a party to produce the best evidence which the nature of the case admits.

143.—On these grounds, the Court, in a case of Life and Death, admitted as proof on the part of the Prosecutor, the written deposition of a Sailor, taken as the Prosecutor directs; the necessity for so doing being first shown, inasmuch as it appeared that the Deponent was absent from the Island at the time of trial, without any certain expectation of his return; and that the Prosecutor was not to blame for allowing his departure, or for omitting to bring on the cause for hearing before the Witness left the Island.[1]

144.—But in another case of Life and Death, where the Prosecutor produced the Depositions of five Sailors who were absent from the Island at the time of the trial, the Court unanimously rejected the evidence, on an objection made to it by the Counsel for the Prisoner, and on clear proof that the Deponents had all been present in the Island four different times, when the Prisoners (who had been detained eight months in gaol) might and ought to have been brought to trial.[2] Having afterwards communicated by letter, on the circumstances of this case, with the very learned Judge, who drew up the Proclamation, we had the satisfaction to learn that he considered our decision to be correct.

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[1] *Rex* v. *Cutajar*, 22 Sept. 1830.

[2] *Rex* v. *Butigieg* & others, 30 Sept. 1830.

145.—In speaking of Evidence with regard to its *quality*, I have observed that such as merits consideration is either direct or circumstantial. Of the latter species are most of those kinds of evidence which in the old law were called presumption, conjectures, *indicia*, *adminicula*, and the like. It may be supposed therefore by inexperienced persons, that the direct proof is always superior to the circumstantial or presumptive; but this, as I have on a former occasion shown, cannot be taken as a rule; nay, the circumstantial is often more convincing and satisfactory than the direct.[1] A learned English Judge, indeed, laid down a sound rule, which Jurors should always keep in mind, relative to proof presumptive, and that is, never to convict a man of Homicide until it is certain that a person has been killed; nor of Theft, until it is clear that some property has been stolen; which, indeed, is no other than the well known rule of the Maltese Bar, to prove the *delictum in genere*, before we come to proof of the *delictum in specie*. On this principle, I apprehend, it was, that the Gentlemen of the Jury proceeded, in the case of alleged *Infanticide*, which was tried last September twelvemonth. From the Prisoner's confession in writing, it appeared, that the Child was born in a very weakly state, and soon afterwards expired; and there being no other proof that the Child was ever alive, and much less that it was killed, the Jurors thought the case not probably established *in genere*; and therefore that it was impossible for them to say it was proved, *in specie*, against the Prisoner.[2]

146.—There is one kind of presumptive proof either for or against the Prisoner, which arises from his previous character. No doubt, a man of bad character may be more reasonably suspected of committing an offence than one who has always maintained an unsullied reputation; and therefore the existing law of Malta, in particular cases, allows the circumstances of the Prisoner's bad character to be pleaded, and of course to be proved against him: but those cases are not within the present jurisdiction of this Court. In all cases which we have to try, inasmuch as the Prisoner's character forms no constituent of the specific crime with which he is charged, it cannot enter into the Accusation; and as it cannot be pleaded, it consequently cannot be proved, as part of the case for the prosecution.[3] If

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[1] Speech, 15 Feb. 1830. s. 85. [2] *Rex* v. *Cini*, 29 Sept. 1830.
[3] *Rex* v. *Spiteri* & others, 28 Dec. 1831.

indeed the Prisoner thinks fit to introduce his own character into the cause, alleging that it is good, and that it therefore forms a presumption of his innocence, the Prosecutor may repel that presumption by a negative proof.[1]

147.—The Prosecutor, however, under the circumstances which I have last mentioned, cannot go further in his negative proof than the affirmative set up on the other side; that is to say, he cannot reply to a proof of general good character by proof that the Prisoner committed some particular evil action; for this would be to bring a specific accusation without notice, and consequently without affording just means of defence.[2] Therefore, where the Prisoner produced Witnesses of good character, and it was proposed on the part of the prosecution to show, in impeachment of this evidence, that he had once beaten his Father, the Court refused to admit evidence of that fact.[3]

148.—The Prisoner is always permitted to call Witnesses to speak to his general character, according to the nature of the offence charged;[4] and I agree with Mr. Serjeant Russell, that the good character of the party accused, satisfactorily established by competent Witnesses, is an ingredient which ought *always* to be submitted to the consideration of the Jury, together with the other facts and circumstances of the case.[5] As to these, *valeat quantum valere potest;* but even in case of guilt it may be of much importance by furnishing the Court or Jury with a fit reason for recommending the Prisoner to mercy.

149.—I have considered as a measure of the *quantity* of Evidence, not only the number of Witnesses brought to *impeach* or to *confirm* the credit of the former. Our law, derived from that of England, admits the sufficiency of a single Witness to prove a fact. I need not repeat what I have formerly said on this point,[6] but I would observe that when the Law required two Witnesses, the same Law, as a necessary consequence in practice, was forced to resort to the use of torture. The wisdom of Cicero, and the eloquent Beccaria, and the example of free and rational England, prevailed over the barbarous logic of the Rack; but we must take the benefit with it's natural accompaniment, the admissibility and legal conclusiveness of a single Witness.

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[1] Hawkins P.C. B. 2, c. 46, s. 194; 1 Chitty, 573; 2 Russell, 704.
[2] Hawkins, &c. ut sup.
[3] *Rex* v. *Cilia*, 5 Oct. 1831.
[4] 1 Phillips, 165; 2 Russ. 703.
[5] 2 Russell, 704.
[6] Speech, 15 Feb. 1830, s. 81.

who establish a fact, but also of those

150.—The rules relative to the impeachment and confirmation of Witnesses, are too numerous for me here to speak of them in detail. One observation however I have to make, and it is this:—"A party cannot bring evidence to confirm "the character of a Witness before the credit of that Wit- "ness has been impeached either upon cross-examination, "or by the testimony of other Witnesses."[1] Such is the English rule of practice; and it has been followed by this Court.[2]

151.—In the examination and cross-examination of Witnesses, there are some questions which on grounds of legal principle are forbidden to be put to witnesses. The regularity or irregularity of the demand, and of all similar circumstances in the conduct of examination of the witnesses is always a question of law, and consequently it's determination falls within the functions of the Court.

152.—And so it is with regard to the *effect* of evidence, as *admissible* or *inadmissible:* this point must always be determined by the Court. Our law on this head is chiefly contained in the two Proclamations of 1825 and 1827, to which I have before alluded. It excludes for defect of knowledge all persons of unsound mind, and all children or others too young or too ignorant to understand that it is wicked to swear falsely. It excludes for defect of conscientiousness all those who do not believe in the existence of God, and that he will punish the wicked. It does not indeed exclude persons accused or condemned for any crime, but leaves their credibility to the Jurors before whom they are examined. Neither does it exclude any Witness on account of his friendship or connection with the Prisoner by any other bond than that of marriage. It also admits in criminal cases the evidence of a party interested, or injured.

153.—Conformably to the spirit of the Law, therefore, this Court admitted as a competent witness a Boy of only eleven years of age, it appearing to us on examination that he was capable of believing in the existence of God, and of a punishment for perjury in another world.[3] In like manner we admitted the evidence of a Boy of fourteen years of age, who said he knew the nature of an Oath, and that he had heard that God punish perjury with Leprosy.[4] We have

[1] 2 Russell, 635. [2] *Rex* v. *Spiteri* & others, 30 Dec. 1830.
[3] *Rex* v. *Sant & Spiteri*, 13 Oct. 1831.
[4] *Rex* v. *Spiteri* & others, 29 Dec. 1831.

never yet had an instance (even among children) of a person produced as a Witness, who was found totally destitute of religious opinion.

154.—With respect to the evidence of Husband and Wife against each other reciprocally, inasmuch as the Law allows it in cases of personal violence between them, we admitted a Wife as a Witness against her Husband, on an Indictment charging him with attempt to murder her, of which, principally by her evidence, he was convicted.[1] But in case of Theft with personal violence against a third person, we would not allow what the Prisoner's wife had said in his absence to be given in evidence against him; for if her Testimony on oath to that effect in open Court could not be received, much less could her loose conversation out of Court, and without oath, be admitted on hearsay.[2]

155.—After the Evidence on both sides has been closed, and not before, our Regulations allow an argument upon the effect of the whole to be addressed to the Court and Jury, first on the part of the Prosecutor, and then on the part of the Prisoner.[3] After which the Court proceeds to that important part of it's functions, which FILANGIERI thus describes:—"Inasmuch as the Judges of Fact, in "the course of those conflicts of argument which take "place between the Accuser and the Accused, might easily "lose that connection of ideas, which is necessary to per-"ceive all the relations of facts and of reasoning adduced "on the one side and on the other, it becomes necessary "that Judges of Law, more accustomed to similar alter-"cations, should *sum up* in the presence of the parties all "that has been said, should reduce the statement of the "question to it's proper terms, and facilitate to the Judges "of Fact, the discovery of the Truth. This duty should be "allotted to one of the three presiding Judges, but without "prohibiting his Colleagues from supplying any observa-"that he might have omitted or overlooked."[4] It would seem that the philosophic Neapolitan had contemplated the constitution of this very Court. The greater part of the laborious duty which he describes is here imposed on the Chief Justice; but I have felt great satisfaction in having always had my humble exertions supported, my involuntary omissions supplied, and my errors corrected by the valuable assistance of my learned Colleagues.

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[1] *Rex* v. *Cilia*, 4 Oct. 1831.
[2] *Rex* v. *Agius* & others, 16 Feb. 1830.
[3] Reg. Obs. 4. (Oct. 1831.)
[4] Sci. Legis. L. 3, c. 19, art. 12.

156.—The law prescribes no particular mode of summing up, nor describes any limits to which it shall extend, nor any particular language in which it shall be pronounced. All this is left to the discretion of the Court, considering this part of it's functions as merely intended to facilitate the Deliberation of the Jurors on their intended Verdict; so that where their minds are quite made up to the satisfaction of the Court, little or no summing up may be necessary: and on the other hand, where there has been a great quantity of evidence, much conflicting testimony, or many ingenious arguments on either side, the Court may take several hours to sum up a cause, as has been done in many important cases by eminent Judges in England, and was done here in a recent Trial. On such occasions, the Judge has to keep in view two main objects, the one is a clear arrangement of the points in the case, and the other a careful estimate of the Evidence applying to each point, so as to lead to a fair conclusion that it is proved or not proved.

157.—Now this Estimate turns generally on the relative *Credibility* of the Evidence: and although the degrees of credibility are infinite, and the attempt to reduce them to rule would only serve to introduce greater confusion; yet I may venture to make one or two observations which it may be useful for Jurors in general to keep in mind. The Law by declaring a Witness competent, does often at the same time mark him out as one whose credibility is not of the highest order, and whose evidence therefore requires to be received with proportionate circumspection. This consideration operates, both where the reasoning faculties of the Witness are weak, and where his passions are powerful or perverted. The evidence therefore of Parents and Children reciprocally for or against each other, although admissible, must be received with caution. And though the Wife may depose against the Husband who attempts to kill her, such evidence should be scrupulously examined, and those parts rejected which may be exaggerated by hatred or vengeance. The Gentlemen of the Jury seem to have exercised this caution very properly in the case of attempted Uxoricide, which I mentioned before.

158.—So where a Witness appears to be really infamous, and even to have committed Perjury, or to have induced others to commit such a crime, although our Law does not exclude him, he is to be heard with great suspicion. Under this head falls the Testimony of *Accomplices*. The general rule is, (says PHILLIPS) "that a person who confesses

" himself guilty of a crime is nevertheless a competent " witness against his companions in such guilt." --- " And " it necessarily follows, that if their evidence is believed by " the Jury, a Prisoner may be legally convicted upon it, " though it be unconfirmed by any other evidence as to his " identity. But their testimony alone is seldom of sufficient " weight with a Jury to induce them to give a verdict " against the Prisoner; the temptation to commit perjury " being so great, where the witness by accusing another " may escape himself. The practice, therefore, is, to advise " the Jury to regard the evidence of an accomplice, only so " far as he may be confirmed, in some material part of his " narrative, by unimpeachable testimony. It is not neces- " sary that he should be confirmed in every circumstance " which he details in evidence, for there would be no occa- " sion to use him at all as a witness, if his narrative could " be completely proved by other evidence free from all " suspicion."---" But if the Jury are satisfied, that he speaks " truth in some material parts of his testimony, in which " they see unimpeachable evidence brought to confirm him, " that is a ground for them to believe, that he also speaks " truly in other parts, and with regard to other prisoners, " as to whom there may be no confirmation." --- " The prin- " ciple, upon which Courts and Juries are disposed to give " credit to an accomplice, however base his conduct, when " he is confirmed by clear and unimpeachable evidence, is " well warranted on this consideration, that witnesses, who " agree in the main facts of a case, without concert and " without contrivance, acquire a credit, entirely independent " of character, from the mere agreement and consistency of " their narrative." [1] The Court made use of similar arguments on an occasion where the Foreman of the Jury requested it to express it's opinion upon the testimony of Accomplices.[2]

159.—Of the Trial on the merits, I have considered the two first parts, namely, the Contestation and the Discussion; I now come to the third, which is the proper consequence of the two former, namely, the *Verdict.*

160.—In respect to this, are to be considered the *Deliberation,* the *drawing up,* and the *Delivering.*

161.—The Jurors in Malta have always paid the most serious and patient attention to the Discussion in all it's stages. It has sometimes occurred, however, that they have

[1] 1 Phillips, 38, 39, 40. [2] *Rex* v. *Spiteri* & others, 31 Dec. 1831.

required but a few minutes to deliberate on their verdict, and to draw it up: at other times, they have deliberated for longer periods. The Law has directed the sort of assistance to be given by the Foreman to the other Jurors in the deliberation;[1] and the Court, for their further guidance, has ordered that the same Instruction should be hung up in their deliberation-room, (with a very slight alteration) which is used in France.[2]

162.—In order to facilitate the drawing up of the Verdict, the Registrar furnishes the Foreman with a Formula accurately distinguishing every article in the allegation of Fact, and every Prisoner comprehended in each article, and [redacted] room to add to every article the words Proved or Not proved, with such exception or limitation as the Jurors may think necessary; and also to subjoin at the end such facts as they may think proved by the Prisoner in his defence. This formula reduces the whole case, however intricate, to such simplicity, that hitherto not the slightest difficulty has been found in drawing up the Verdicts, nor has any error been discovered in them when recorded.

163.—Finally, the Verdict is *read* in open Court by the Foreman, in presence of all the other Jurors, who are at liberty to declare their dissent from it, if they think fit; nor can a Verdict be recorded until the majority tacitly or expressly assent to it in open Court.

164.—And here we have, after all, the true Criterion of the excellence of this Procedure. Have the Cases in this Court been well tried, in fact? Or, have they not? I have no hesitation in saying, they have been admirably well tried. I have no hesitation in saying, that the Verdicts have been as satisfactory to the Commissioners and to the Public, as any equal number of Verdicts taken indiscriminately in any Court in England, ever were to English Judges or to the English Public. And be it observed, I speak of a new experiment, by new men, in a new Country, and in a new Court. A succession of failures under such circumstances would not have surprised any one; but a succession of cases, for two years, without a single failure, is highly to the credit of the Maltese Jurors, and speaks volumes in praise of the system which they have administered.

165.—The Verdict with us is a simple alternative—"Proved," or "Not Proved." The old Roman system

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[1] Procl. 15 Oct. 1829, s. 27. [2] Code d'Inst. Crim. n. 342.

contained three forms, "Absolved," "Condemned," and "Not clear." Such also, in substance, is the system of the Scottish Law; and a similar distinction is recommended by FILANGIERI, SONNENFELS, and several other great writers. Nevertheless, I am fully satisfied that our method is better, both in principle and practice. SIR THOMAS MAITLAND has well observed, that the Law of England "does not "adopt subtle and futile distinctions between complete and "partial proof," but "has wisely considered that the terms "of the question are distinctly alternative; that the Party "accused must be (deemed) either guilty or innocent; and "that as in the former case the interests of the Public "require a judgment of conviction, so in the latter those "of the Prisoner as imperiously demand an absolute ac-"quittal."[1]

166.—The Scottish Verdict of "Not Proven," and the Formula of "Non liquet," recommended by many able Writers, implies a suspicion of the Prisoner's guilt, and leaves a stain on his character, which in some cases indeed may be well deserved, but in others may be a cruel injustice. The English system is far better in practice. The Verdict of "Not Guilty" is given in the same sort of cases, and with the very same effect, as our Verdict of "Not proved;" and the same principle which declares it better for ten guilty men to escape than for one innocent man to suffer, sanctions the restoring ten men of doubtful guilt to society unstigmatised, rather than the branding of one honorable man with infamy.

167.—Some persons perhaps may have thought, that by dividing the Indictment into two Allegations, and subdividing the Allegations of Fact into several Articles, each applicable in various degrees to several Prisoners, such confusion would be created in the decision, that the Jurors, after long debates in the chamber of deliberation, would be obliged to confess their inability to decide the cause in the manner required by Law. But what has been the case? Every Jury has given in its Verdict, drawn up in the clearest and most intelligible terms, touching upon all the points in question, and not only pronouncing separately upon each article in its separate application to the individuals accused, but even, in some cases, subjoining specific reasons for recommending some of them to the merciful consideration of the Court and the Government.

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[1] Charge to the Petty Jury, 20 Nov. 1815.

168.—I hold in my hand a *List of Questions of Fact*, decided by the Jurors in this Court during its six Sessions, distinguishing the Sessions, the Indictments, the Number of Questions, that of the Questions declared to be proved in whole, and of those declared to be proved in part, and of those declared to be not proved, and finally the time occupied in deliberation in each case.[1] In this List are not included the cases decided upon preliminary Questions, or abandoned by a *Nolle Prosequi*, or where the Verdict was merely formal, no proof having been given, but only the cases decided upon proof, and after discussion of one, two, and even as many as four days. Some of these Indictments had two articles, some four, one five, and one seven. Every Indictment presented as many questions as there were Prisoners accused in it, multiplied by the number of articles.

169.—Thus, for instance, the first Indictment comprehended four Articles, each applicable to six Prisoners, and in consequence presented twenty-four questions for the decision of the Jury; and these twenty-four questions were answered by the Jury, after a deliberation of two hours, in such a manner that the Commissioners unanimously declared it to deserve the greatest admiration for the judicious distinction which it made not only between the proofs of the different Allegations of Fact, but between the different degrees of criminality of the Prisoners. The six following causes concerned each one Prisoner only, but with a various number of Articles; and in some of them there was a very great contradiction of evidence, especially in that of the English Soldier for the alleged murder of his Wife, upon which, though it contained only two Articles, the deliberation of the Jury lasted more than two hours; whilst in the cause of Sant and Spiteri, there were eight questions decided with much accuracy in an hour and a half.

170.—But the most remarkable decision, in the point of view in which I am now considering it, was that recently given. I do not mean to speak of its justice, on which it does not become me at present to pronounce an opinion, since it is possible that a motion may yet be made in Arrest of Judgment; but I merely speak of the number of questions decided, which amounted to fifty-one on the Indictment, there being Seven Articles, each including Seven Prisoners, and two articles against another Prisoner. All

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[1] See Appendix.

these questions not only were decided and drawn up in writing in four hours, but further, the Jury added to six of the cases a reason for recommending the Prisoner to mercy; to one case they added two such reasons, and to another three; so that, in substance, they decided and registered their opinion upon *Sixty points of Fact*; and this not by a hasty unanimity, but with a division of six against one on ten separate points. And there is another circumstance which I ought not to omit mentioning, namely, that neither in this cause nor in any other has the Jury ever had occasion to consult the opinion of the Court upon a single point during the deliberation.

171.—Now let us make a comparison between the cause just mentioned, and that which I cited in my Speech last year, and which occurred in the Piracy Court, where I myself had the honor of presiding with Admiral Codrington and Commissioners. In that cause, also, were tried eight Prisoners; but the Indictment contained only a single Article applicable to each Prisoner, so that the Jury had to decide only eight questions; and upon these questions they remained in deliberation *Ninety-two hours!!* In this interval, they came many times into Court to ask advice of the Commissioners; but all in vain; because there was in that, as in the recent case, one person opposed to the opinion of all the others; and finally, the *Eleven yielded their opinion to his!*

172.—Here, then, is the difference between the two procedures! By the one, Sixty questions of Fact were decided in four hours, without difficulty, and agreeably to the opinion of the majority; by the other, eight questions of Fact were decided in ninety-two hours, with the greatest inconvenience and trouble, and in opposition to a majority of eleven to one. And how is this difference to be explained? By the simple observation, that in the Piracy Court a *unanimity* is required, which in Malta it would often be difficult to obtain, whilst in this Court every thing is decided by the opinion of the majority. And let it be observed, that the unanimity, which is professedly indispensable on the former system, is more effectually obtained by the latter. On reckoning the whole number of the questions of Fact decided in this Court upon evidence, I find they amount to one hundred and eleven, of which ninety-five were decided unanimously, and sixteen by a majority.

173.—I am well aware, that in the conducting of the

deliberation and in the drawing up and delivering the Verdict, very much depends on the Foreman. In this particular, we have hitherto been highly fortunate. The first name drawn was that of the Baron GIUSEPPE MARIA DE PIRO, at which the Commissioners present on that occasion unanimously expressed their satisfaction. They viewed it as a happy augury that the first lot should have fallen on a Maltese of noble birth, high character, and known ability, more especially as he is well versed in the English language. In the course of the subsequent Sessions, we have had seven other Maltese Foremen, every one of whom has merited the approbation of the Court. I last year mentioned Messrs. METROVICH, FARRUGIA, BUTIGIEG and CAMILLERI, and to these I have now great pleasure in adding the names of another noble Maltese, DON CAMILLO SCIBERRAS, and of Messrs. SAVERIO [redacted], and AGOSTINO PORTELLI, the last of whom so ably conducted the business of the recent arduous and protracted trial. All these gentlemen evinced not only a capacity for their important functions, but a zeal in discharging their duty; and I have great pleasure in thus publicly recognising the service they have rendered to their Country in contributing to the secure establishment of an Institution equally admirable for its political and legal effect.

174.—The hearing upon the *merits of the case*, in point of fact, being concluded, the only remaining branch of the Trial is the hearing (if necessary) of such *incidental questions* as may arise out of the previous circumstances of the case.

175.—In this stage of the cause, our system affords to every class of cases a remedy against error, either in fact or in law; as to the former by motion for a *new Trial*, and as to the latter by motion to *arrest the judgment*, or *mitigate the penalty*.

176.—Filangieri appears to have supposed, that new Trials might be granted in England in all criminal cases; and he applauds the lenity of the measure in these terms:—
" When the Jurors have once acquitted the Prisoner, al-
" though their judgment should be evidently erroneous, he
" has nothing more to fear; but if they have pronounced
" him guilty, and it can be made manifest that they have
" judged amiss, there is still a protection for innocence; the
" Court of King's Bench causes new Judges of Fact to be

" named, in order to examine the affair as if it had never " been tried."[1] This however is an error on his part. In case of Felony or Treason, it seems to be completely settled in England that no new Trial can in any case be granted where the proceedings have been regular. The Judge's power of suspending the execution, and recommending the Prisoner for pardon, appears to be considered as a sufficient safeguard of Innocence; while motions for New Trial, if permitted, would be made, it is thought, in every case of condemnation. Our Law nevertheless adopts Filangieri's humane principle in its full extent: nor have we yet found any inconvenience from it. The Prisoner cannot avail himself of his privilege so as to create unreasonable delay; because the Court has the power of hearing the motion as soon after the verdict as it thinks fit, and may overrule it if unfounded, and proceed to sentence forthwith, unless cause be shown for arresting the Judgment.

177.—There are only two grounds for granting a New Trial by our Law, namely, an opinion on the part of the Court that a material fact has been found against the Prisoner contrary to the reasonable weight of the evidence, and a knowledge or suspicion entertained by the Court that such a fact has been found on false evidence. In both these cases it is highly just that the Judges of Law should exercise a power of examining into proof of the fact; but that power is merely provisional, and for purposes of Humanity. We have had only one such motion made, and that, was on a suggestion that the Verdict was contrary to the weight of evidence; but the Court unanimously overruled it, and thus gave the sanction of Ten unanimous votes to the sentence of Death which was subsequently passed on the Prisoner.

178.—After a Motion for a New Trial has been made and rejected, a Motion may still be made to arrest the Judgment;[2] but the contrary course cannot be taken.[3] The causes on which this latter motion may be grounded are confined to objections which arise upon the face of the record itself, and which make the proceedings apparently erroneous.[4] Many such motions have been made, but hitherto on no grounds which the Court has deemed valid. Together with a motion to arrest Judgment, it is usual to

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[1] Sci. Leg. l. 3, c. 16.
[2] 1 Chitty, 663.
[3] 4 Bar. & Cres. 160.
[4] 1 Chitty, 661.

address to the Court such observations as may tend, on failure of the principal demand, to induce a mitigation of punishment.

179.—The Third Head, under which I proposed to arrange the proceedings, was the *Sentence*. This of course belongs wholly to the Judges of Law. "We have con- "sidered those functions of the Judges of Law (says "FILANGIERI) which precede the decision on the Fact: "but the most important are those which follow it. When "the Examiners of the Fact have decided on the Accusa- "tion brought before them, it belongs to the Judges of "Law to pronounce sentence according to the tenor of the "laws"—"and this in case of condemnation must be to "the punishment allotted by Law to the quality and degree "of the offence found by the Judges of fact to have been "committed by the Prisoner."[1]

180.—Within these confines are our functions limited. To us the Verdict is conclusive of the Facts, and the Law is conclusive of the Penalty. The Verdict is conclusive, but with these considerations, first, that we must take it as an entire document, drawn up in one Deliberation by one body of men, so that one part of it must be construed by another, and that the whole if possible must be rendered uniform and consistent, with reference to the Indictment which serves as its basis; and secondly, that if any word or expression is left doubtful, which can be rendered plain by recurring to the Evidence, it is our duty to consult our notes taken at the trial for that very purpose. The Law is no less conclusive on us, whether it fix a specific punishment, or leave to us a discretion; for even that discretion has its legal limits which cannot be over passed, and its equitable principles which must not be forgotten, and among which is a careful consideration of the recommendations to mercy which may be made by the Jury.

181.—The Proclamation of 1829 provides for the case of an equal division of opinion among the Commissioners; the case of a majority provides for itself. Hitherto the first of these cases could not arise, for an equal number of Commissioners has not sate on any trial, and the second case has not occurred; for I am happy to say, that not only in respect to the Sentence, but to every other part of the proceedings, the Commissioners have always been unanimous.

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[1] Sci. Leg. L. 3, c. 19, art. 12.

182.—When the Sentence is passed, the case is at an end, as to its judicial character, and passes into the hands of the executive power; but there is one precious privilege, which even in this stage remains to us, that of reporting to His Excellency the Lieutenant Governor the recommendations to mercy which may be made by the Jury, and of making a similar appeal to mercy on behalf of the Prisoner ourselves.

183.—Gentlemen, my duty, on this part as on former occasions, has been that so well expressed by an exalted personage, whose Friendship I have had the honor of enjoying for thirty years, namely, " to satisfy the minds " of the People with respect to the Institutions under which " they live."[1] I have heretofore shown you the provident and watchful care of His Majesty's Government in digesting that great law which was to impart to you one of the most admirable of the British Institutions. I have shown you how zealously our liberal and enlightened Lieutenant Governor co-operated in introducing that Institution into the Legislation of Malta, so modified as to suit your particular feelings and circumstances, and to make it become to you a practical blessing. My present task has been to exhibit to you *Trial by Jury*, as established and in operation here for two years, and forming a complete *System of Judicial Procedure.*

184.—Without the explanations, which I have attempted to give, this system may have appeared to some of you embarrassed and intricate, and consequently difficult to be adopted in a country accustomed for ages to a very different administration of the law. But, open the pages of the philanthropic FILANGIERI, Gentlemen: reflect on the principle of the *division of the judicial functions:* apply it to the whole Procedure together, and to each successive step in the proceedings: and observe how clear and how connected they all become! See what accuracy of pleading is introduced into the Accusation! what simplicity is given to the law of Evidence. What facility to the means of just defence! How well the moral certainty is combined with the legal criterion in judging of the fact! How completely all illegal exercise of discretionary power is excluded in judging of the law!—In short, how happily private security is united with constitutional freedom, and the administration of Justice with the exercise of Mercy!

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[1] Lord Chancellor Brougham, 2 December 1830.

185.—I will not offend you, Gentlemen, by putting in balance against these inestimable benefits, the few trifling inconveniences which have hitherto accompanied them, *but of which no single Maltese has ever yet complained.* I will not speak of that "incarceration of Jurors in unwholesome chambers," which existed only in the disturbed imagination of a Gentleman, who had never served as a Juror at all. I will not speak of a trial lasting "four days," when in the Criminal Court, only two years ago, there was a proceeding which occupied twelve days, and when I have known one of that duration even in England. It is manifest, that both in the Maltese Criminal Court and in this Court, much time must be consumed in interpretation, when the Maltese, the Italian, and the English languages are all separately used in judicial proceeding, but this evil must diminish daily, as you pursue that study of the English language which His Majesty's Government has so often and so earnestly recommended to your attention. Least of all, Gentlemen, will I speak of that "diminution of respect for the Judges," which has been supposed to be a necessary consequence of introducing Jurors into the Trial, for I have already shown that so far from diminishing the veneration due to the Judges, it must highly augment their estimation in the eyes of their Country and of their King. For my own part, I am a very humble individual to be honored with the high charge intrusted to me; but I declare, that I consider no judicial station so eminent as that of a Judge presiding over a Trial by Jury; and to my learned Colleagues I must repeat, that they have all of them, on all occasions, evinced the greatest zeal and promptitude in carrying into effect the benevolent intentions of Government. Nor is there any amongst them who does not rejoice to see his countrymen admitted to share in the privileges of the British Constitution.

186.—Gentlemen, I am aware that a prejudice, to which I adverted on a former occasion, still prevails in the minds of a few persons, rendering them less favorable than they otherwise would be to the establishment of Trial by Jury in Malta. This prejudice is founded on an unjust appreciation of your national character. The Maltese (say the Objectors) are a people of slavish habits acquired under the absolute governments of their former Sovereigns—they are behindhand in civilization—and too unenlightened to be fit for so liberal an Institution as Trial by Jury!

187.—Gentlemen, I may almost venture to answer this objection as a Maltese myself, for it is now eight and twenty years since I first became an Inhabitant of this Island, where two of my children and three grandchildren have been born, and where I have passed near ten years of my life in the exercise of important functions by commission from my Sovereign. Speaking, then, as one of yourselves, I should say, how inconsistent is this objection! We are told that our old absolute Government produced on us a degrading effect, and therefore we are to be kept in the same state of degradation under a liberal Government! We are told that it is unfortunate to be uncivilized and unenlightened, and that therefore we must be refused the means of light and civilization! But the objection is unfounded in fact. It is not true that the Maltese people are so barbarous, so ignorant, or so slavish, as has been insinuated. There are indeed in this Country, as there are elsewhere, men so destitute of education, and so deficient in natural talent, that they can neither appreciate the value of Trial by Jury, nor are they fit to take part in it; but leaving these persons out of consideration, there is a number more than sufficient of men able to discharge the duty of Jurors to the satisfaction of the Public and of their own consciences: whilst the daily progress of civilization enlarges the circle of those who regard the Institution itself with admiration, and the Government which established it with gratitude.

188.—Gentlemen, there is one more class of Objectors, but I trust their number is small indeed, who have formed an erroneous idea of the relation in which we, the Inhabitants of these Islands, stand to our Sovereign. They suppose that the genius of his Government over us is despotic! Malta (say they) does not partake of British Freedom. She is subjected to a foreign yoke, and receives laws from an absolute Government now, as she did in the time of the Grand Masters. And hence they conclude that all the fine reasonings of Filangieri, of Montesquieu and De Lolme, in favour of Trial by Jury—reasonings founded on the liberal principles of the British Constitution—are wholly inapplicable to the state of Malta, and no less inapplicable (say they) is the practical example of Juries established among great and free nations, such as England, France, and the United States of North America.

189.—To this argument I feel myself bound as an

English Judge to give a full and positive contradiction; for, however intended, it is an implied libel on His Majesty's Crown, and tends to alienate from Him the hearts of his People. No, Gentlemen, it is not true, that the Government of our Most Gracious Sovereign, in any part of his vast dominions, is despotic: it is paternal, it is liberal, it is constitutional. There are, it is true, many parts of the Dominions of the Crown of Great Britain and Ireland, and Malta is one of them, in which the municipal laws of England are not of force and authority merely as the municipal laws of England. But all His Majesty's subjects have Rights founded in the Social Contract which His Majesty has sealed with an oath, and of which, with his Parliament, he is the Faithful Guardian.

190.—Gentlemen, He cannot be a despotic Monarch who on first meeting the States of his realm, said to them—"I "ascend this Throne with a profound sense of the sacred "duties which I have to perform, and with a firm reliance "on the affection of my *faithful Subjects*, humbly and "ardently beseeching Almighty God to prosper my anxious "desire to promote the happiness of a *free* and *loyal* "*People*." Such were the admirable words of WILLIAM THE FOURTH—words limited by no exception of any part of his extensive dominions, or of any class of people existing under his powerful sceptre. And, Gentlemen, the Maltese are faithful Subjects of the British Crown—that glorious Diadem in which every jewel is resplendent with liberty. The Maltese are among those on whose *affection* the King has firm reliance. They are a *loyal People*, and therefore they are a *free People*. They are sons, together with the English, of a common Father; Sons indeed as yet in minority, and who have attained only to a portion of that heritage which they will hereafter more fully share—but their King cherishes an anxious desire to promote their happiness, which cannot be more effectually done than by improving the laws and their administration. That such improvement should be made, was a Promise given, and in part executed by means of Sir THOMAS MAITLAND, and still more amply fulfilled in the Institution of Trial by Jury under the auspices of Sir FREDERICK PONSONBY.

191.—Finally, Gentlemen, I have to congratulate you on the entire success which has crowned His Excellency's exertions for your benefit. This fourth Commission shows that the Form of Judicature established in 1829, has taken

firm root among the Institutions of your Country. Malta is thereby honorably distinguished from the neighboring nations to whom Trial by Jury is still unknown: and in receiving a foretaste of British Liberty, she has at the same time obtained an increased security for the impartial administration of Justice.

APPENDIX. - - - -

QUESTIONS of FACT decided by JURIES in during the Six first

Sessions.	Indictments.	Articles.	PRISONERS.
1.	1.	4.	1. P. Agius - - - 2. G. Mifsud - - 3. F. Bonnici - - 4. P. Bonnici - - 5. G. Gatt - - - 6. G. M. Zammit - -
2.	2.	2.	G. Vella - - -
3.	3.	5.	A. Cutajar - -
	4.	2.	A. Borg - - -
	5.	4.	G. Cini - - -
4.	6.	2.	P. Moore - -
5.	7.	4.	O. Cilia - - -
	8.	4.	1. V. Sant - - - 2. A. Spiteri - -
6.	9.	7.	1. C. Spiteri - - 2. G. Dalli - - - 3. L. Gerada - - - 4. L. Ellub - - - 5. G. Ellub - - - 6. L. Dalli - - - 7. N. Sciberras - - 8. F. Abdilla - -

- - - - APPENDIX.

the COURT of SPECIAL COMMISSION, at *Malta*,
Sessions of that Court.

Questions.	Proved in Whole.	Proved in Part.	Not proved.	Time of Deliberation. h.	m.
24	–	–	4	2	0
	1*	1*	2		
	1*	1*	2		
	1*	1*	2		
	–	–	4		
	–	–	4		
2	2	–	–	0	10
5	–	–	5	0	5
2	2	–	–	0	20
4	–	–	4	0	15
2	–	–	2	2	15
4	2	–	2	0	30
8	–	–	4	1	15
	3	1	–		
51	4	1	2	4	0
	2*	1*	4		
	3*	1*	3		
	1*	1*	5		
	1*	1*	5		
	1*	1*	5		
	–	–	7		
	–	–	2		
102	24	10	68	10	50

Those marked (*) decided by 6 against 1 - 16
The others decided unanimously - - - - 86

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Questions.	Proved in		Not proved.	Time of Deliberation.	
	Whole.	Part.		*h.*	*m.*
24	–	–	4	2	0
	1*	1*	2		
	1*	1*	2		
	1*	1*	2		
	–	–	4		
	–	–	4		
2	2	–	–	0	10
5	–	–	5	0	5
2	2	–	–	0	20
4	–	–	4	0	15
2	–	–	2	2	15
4	2	–	2	0	30
8	–	–	4	1	15
	3	1	–		
51	4	1	2	4	0
	2*	1*	4		
	3*	1*	3		
	1*	1*	5		
	1*	1*	5		
	1*	1*	5		
	–	–	7		
	–	–	2		
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102