

It is not customary nor agreeable to the general course of proceedings, (unless by consent of parties, or where the defendant is actually in gaol,) to try persons indicted for misdemeanors, at the same Court in which they have pleaded *Not Guilty*, or traversed the indictment. But they usually give security to the Court to appear at the next Assises or Sessions, and then and there to try the traverse, giving notice to the Prosecutor of the same. 4 *Comm. c. 27. p. 351.*

Every defendant indicted for a misdemeanor, should give full eight days' notice of Trial to the prosecutor, before the Assises, if the Trial is to be there; if at the Sessions, it is usual to give two or three days' notice: Or the Justices at Sessions fix, as a general rule, what time they think a reasonable notice in such cases. *Cro. Circ. Comp. 17. 48.*

When the Jury is sworn, if it be a cause of any consequence, the indictment is usually opened, and the evidence marshalled, examined, and enforced by the Counsel for the Crown or Prosecution. But it is a settled rule at Common Law, that no Counsel shall be allowed a prisoner upon his Trial, upon the General Issue in any capital crime, unless some point of Law shall arise proper to be debated.— This has been considered as so great a hardship, and so very inconsistent with the general principles of the *English Laws*, that the Judges never scruple to allow a prisoner Counsel, to instruct him what questions to ask, or even to ask questions for him, with respect to matters of fact: But the Counsel are not allowed to address the Jury; except in cases of *Treason*, under *stat. 7 W. 3. c. 3.* See title *Treason V.* But in matters of Law; or in the Trial of Issues, or collateral facts, prisoners are entitled to the full assistance of Counsel. See 4 *Comm. c. 27: Post. 232. 242.*

If the Jury find the prisoner *Not Guilty*, he is then for ever quit and discharged of the accusation, except he be *appealed* of Felony, within the time limited by Law. See title *Appeal.* And upon such his acquittal or discharge, for want of prosecution, he shall be immediately set at large, without payment of any fee to the gaoler. *Stat. 14 Geo. 3. c. 20.* But if the offender is convicted, two collateral circumstances immediately arise. 1. On a conviction, (or even upon an acquittal where there was a reasonable ground to prosecute, and in fact a *bona fide* prosecution,) for any Grand or Petit Larceny, or other Felony, the reasonable expences of prosecution, and also, if the prosecutor be poor, a compensation for his trouble and loss of time, are by *stat. 25 Geo. 2. c. 36: 18 Geo. 3. c. 19.* to be allowed him out of the County stock, if he petitions the Judge for that purpose; and by *stat. 27 Geo. 2. c. 3.* explained by the same statute 18 *Geo. 3. c. 19.* all persons appearing upon recognizance or *subpoena* to give evidence, whether any indictment be preferred or not, and as well without conviction as with it, are entitled to be paid their charges with a farther allowance (if poor) for their trouble and loss of time. 2. On a conviction of Larceny, in particular, the prosecutor shall have restitution of his goods; as to which, see this Dictionary, title *Restitution.*

III. CAUSES of suspending the judgment, by granting A NEW TRIAL, are at present wholly *extrinsic*; that is, arising from matters foreign to, or dehors the record.—Of this sort are want of Notice of Trial; or any flagrant misbehaviour of the party prevailing towards the Jury; which may have influenced their verdict; or any gross misbehaviour of the Jury among themselves; also, if it appears by the