mouth. Written proofs, or evidence, are, 1. Records ; and

2. Ancient deeds of 30 years ſtanding, which prove them­ſelves ; but, 3. Modern deeds ; and, 4. Other writings, must be atteſted and verified by parol evidence of witnesses. With regard to parol evidence or witnesses ; it must firſt be remembered, that there is a proceſs to bring them in by writ of *ſubpoena ad testificandum ;* which commands them, lay­ing aſide all pretences and excuſes, to appear at the trial on pain of 100l. to be forfeited to the king ; to which the statute 5. Eliz. c. 9. has added a penalty of 10l. to the party aggrieved, and damages equivalent to the loſs ſustained by want of his evidence. But no witneſs, unleſs his reaſonable expences be tendered him, is bound to appear at all ; nor, if he appears, is he bound to give evidence till ſuch charges are actually paid him ; except he reſides within the bills oſ mortality, and is ſummoned to give evidence within the same. This compulsory proceſs, to bring, in unwilling witnesses, and the additional terrors of an attachment in case of diſobedience, are of excellent uſe in the thorough inveſtigation of truth: and, upon the ſame principle, in the Athe­nian courts, the witnesses who were ſummoned to attend the trial had their choice of three things : either to ſwear to the truth or the fact in question, to deny or abjure it, or else to pay a fine of 1000 drachmas.

All witnesses, of whatever religion or country, that have the use of their reaſon, are to be received and examined, ex­cept ſuch as are infamous, or ſuch as are intereſted in the event of the cauſe. All others are competent witnesses ; though the jury from other circumſtances will judge of their credibility. Infamous perſons are ſuch as may be challen­ged as jurors, *propter deditum :* and therefore never ſhall be admitted to give evidence to inform that jury, with whom they were too ſcandalous to associate. Intereſted witnesses may be examined upon a *voir dire,* if ſuſpected to be ſecretly concerned in the event ; or their intereſt may be proved in court. Which laſt is the only method of ſupporting an objection to the former claſs ; for no man is to be examined to prove his own infamy. And no counſel, attorney, or other perſon, intruſted with the ſecrets of the cauſe by the party himſelf , ſhall be compelled, or perhaps allowed, to give evidence of such converſation or matters of privacy as came to his knowledge by virtue of ſuch truſt and confi­dence : but he may be examined as to mere matters of fact, as the execution of a deed or the like, which might have come to his knowledge without being intruſted in the cauſe.

One witneſs (if credible) is ſufficient evidence to a jury of any ſingle fact : though undoubtedly the concurrence of two or more corroborates the proof. Yet our law considers that there are many tranſactions to which only one perſon is privy ; and therefore does not always demand the testimony of two. Poſitive proof is always required, where, from the nature of the case, it appears it might poſſibly have been had. But, next to poſitive proof, circumſtantial evi­dence, or the doctrine of preſumptions, must take place : for when the fact itſelf cannot be demonſtratively evinced, that which comes nearest to the proof of the fact is the proof of such circumſtances which either necessarily or uſually attend ſuch facts ; and theſe are called *preſumptions,* which are only to be relied upon till the contrary be actually proved.

The oath adminiſtered to the witneſs is not only that what he depoſes ſhall be true, but that he ſhall also depoſe the whole truth : ſo that he is not to conceal any part of what he knows, whether interrogated particularly to that point or not. And all this evidence is to be given in open court, in the presence of the parties, their attorneys, the counſel, and all bystanders ; and before the judge and jury : each party having liberty to except to its competency, which exceptions are publicly ſtated, and by the judge are openly and publicly allowed or disallowed, in the face of the country : which must curb any ſecret bias or partiality that might ariſe in his own breaſt.

When the evidence is gone through on both ſides, the judge, in the preſence of the parties, the counſel, and all others, ſums up the whole to the jury ; omitting all superfluous circumſtances, obſerving wherein the main question and principal iſſue lies, stating what evidence has been given to ſupport it, with ſuch remarks as he thinks neceſſary for their direction, and giving them his opinion in matters of law ariſing upon that evidence.

The jury, after the proofs are ſummed up, unleſs the caſe be very clear, withdraw from the bar to conſider of their verdict ; and in order to avoid intemperance and cauſeleſs delay, are to be kept without meat, drink, fire, or candle, unleſs by permiſſion oſ the judge, till they are unanimouſly agreed. A method of accelerating unanimity not wholly unknown in other constitutions of Europe, and in matters of greater concern. For by the golden bull of the em­pire, if, after the congreſs is opened, the electors delay the election of a king of the Romans for 30 days, they ſhall be fed only with bread and water till the ſame is accompliſhed. But if our juries eat or drink at all, or have any eatables about them, without conſent of the court, and before ver­dict, it is fineable ; and it they do so at his charge for whom they afterwards find, it wall ſet aſide the verdict. Alſo, if they speak with either of the parties or their agents after they are gone from the bar, or if they receive any freſh evi­dence in private, or if, to prevent disputes, they cast lots for whom they ſhall find, any of theſe circumſtances will en­tirely vitiate the verdict. And it has been held, that if the jurors do not agree in their verdict before the judges are about to leave the town, though they are not to be threat­ened or impriſoned, the judges are not bound to wait for them, but may carry them round the circuit from town to town in a cart. This neceſſity of a total unanimity ſeems to be peculiar to our own constitution ; or at leaſt, in the n*embda* or jury of the ancient Goths, there was required (even in criminal cases) only the conſent of the major part; and in caſe of an equality, the defendant was held to be ac­quitted.

When they are all unanimouſly agreed, the jury return back to the bar ; and before they deliver their verdict, the plaintiff is bound to appear in court, by himſelf, attorney, or counſel, in order to anſwer the amercement to which by the old law he is liable, in caſe he falls in his suit, as a pu­niſhment for his falſe claim. To be amerced, or *a mercie,* is to be at the king’s mercy with regard to the fine to be impoſed ; *in miſericordia domini regis pro falso clamore ſuo.* The amercement is diſuſed, but the form ſtill continues; and if the plaintiff does not appear, no verdict can be given ; but the plaintiff is ſaid to be nonsuit, *non sequitur clamorem ſuum.* Therefore it is uſual for a plaintiff, when he or his counſel perceives that he has not given evidence ſufficient to maintain his iſſue, to be voluntarily noniuited, or with­draw himſelf; whereupon the crier is ordered to call the plaintiff; and if neither he, nor any body for him, appears, he is nonſuited, the jurors are diſcharged, the action is at an end, and the defendant ſhall recover his coaſts. The reaſon of this practice is, that a no ſuit is more eligible for the plaintiff than a verdict againſt him ; for after a nonsuit, which is only a default, he may commence the ſame suit again for the ſame cauſe of action ; but after a verdict had, and judgment conſequent thereupon, he is for ever barred from attacking the defendant upon the ſame ground of com­plaint. But in caſe the plaintiff appears, the jury by their foreman deliver in their verdict.