A verdict, *vere dictum,* is either privy or public. A privy verdict is when the judge hath left or adjourned the court ; and the jury, being agreed, in order to be delivered from their confinement, obtain leave to give their verdict pri­vily to the judge out of court : which privy verdict is of no force, unleſs afterwards affirmed by a public verdict given openly in court ; wherein the jury may, if they pleaſe, vary from their privy verdict. So that the privy verdict is indeed a mere nullity ; and yet it is a dangerous practice, allowing time *for* the parties to tamper with the jury, and therefore very ſeldom indulged. But the only effectual and legal ver­dict is the public verdict; in which they openly declare to ltave found the iſſue for the plaintiff, or for the defendant ; and if for the plaintiff, they aſſeſs the damages alſo ſustained by the plaintiff, in conſequence of the injury upon which the action is brought.

When the jury have delivered in their verdict, and it is recorded in court, they are then diſcharged ; and ſo ends the trial by jury: a trial which ever has been, and it is ho­ped ever will be, looked upon as the glory of the Engliſh law. It is certainly the moſt tranſcendant privilege which any ſubject can enjoy or wiſh for, that he cannot be affected either in his property, his liberty, or his perſon, but by the unanimous conſent of 12 of his neighbours and equals. A conſtitution that we may venture to affirm has, under provi­dence, ſecured the juſt liberties of this nation for a long ſucceſſion of ages. And therefore a celebrated French writer@@\*, who concludes, that becauſe Rome, Sparta, and Carthage, have loſt their liberties, therefore thoſe of England in time muſt periſh, ſhould have recollected, that Rome, Sparta, and Carthage, at the time when their liberties were loſt, were strangers to the trial by jury.

Great as this eulogium may ſeem, it is no more than this admirable conſtitution, when traced to its principles, will be found in ſober reaſon to deserve.

The impartial adminiſtration of juſtice, which ſecures both our perſons and our properties, is the great end of civil ſociety. But if that be entirely entruſted to the magiſtracy, a ſelect body of men, and thoſe generally ſelected by the prince or ſuch as enjoy the higheſt offices in the ſtate, their deciſions, in ſpite of their own natural integrity, will have frequently an involuntary bias towards thoſe of their own rank and dignity : it is not to be expected from human na­ture, that the few ſhould be always attentive to the intereſts and good of the many. On the other hand, if the power of judicature were placed at random in the hands of the multitude, their deciſions would be wild and capricious, and a new rule of action would be every day eſtabliſhed in our courts. It is wisely therefore ordered, that the principles and axioms of law, which are general propositions flowing from abſtracted reaſon, and not accommodated to times or to men, ſhould be deposited in the breasts of the judges, to be occaſionally applied to ſuch facts as come properly ascer­tained before them. For here partiality can have little ſcope; the law is well known, and is the ſame for all ranks and de­grees : it follows as a regular conclusion from the premiſſes of fact pre-eſtabliſhed. But in settling and adjuſting a question οf fact, when intruſted to any single magiſtrate, parti­ality and injuſtice have an ample field to range in, either by boldly aſſerting that to be proved which is not ſo, or more artfully by ſuppreſſing ſome circumſtances, ſtretching and warping others, and diſtinguiſhing away the remainder. Here therefore a competent number of ſenſible and upright jurymen, choſen by lot from among thoſe of the middle rank, will be found the beſt inveſtigators of truth, and the ſureſt guardians or public juſtice. For the moſt powerful individual in the ſtate will be cautions of committing any flagrant invaſion of another’s right, when he knows that the fact of his oppreſſion muſt be examined and recorded by 12 indifferent men not appointed till the hour of trial ; and that when once the fact is aſcertained, the law muſt of courſe redreſs it. This therefore preſerves in the hands of the people that ſhare which they ought to have in the adminiſtration of public juſtice, and prevents the encroachments of the more powerful and wealthy citizens.

*Criminal Trials.* The regular and ordinary method of pro­ceeding in the courts of criminal juriſdiction may be diſtributed under 12 general heads, following each other in a progreſſive order: viz. 1 Arreſt; 2. Commitment and bail; 3. Proſecution; 4. Proceſs ; 5. Arraignment, and its incidents ; 6. Plea, and iſſue ; 7. Trial, and conviction ; 8. Clergy; 9. Judgment, and its conſequences ; 10. Reverſal of judgment; 11. Re­prieve, or pardon; 12. Execution. See Arrest, Com­mitment, Presentment, Indictment, Information, Appeal, *PROCESS upon an Indictment,* Arraignment, and Plea ; in which articles all the forms which precede the trial are deſcribed, and are here enumerated in the proper order.

The ſeveral methods of trial and conviction of offenders, eſtabliſhed by the laws of England, were formerly more nu­merous than at preſent, through the ſuperſtition of our Sa­xon anceſtors ; who, like other northern nations, were ex­tremely addicted to divination ; a character which Tacitus obſerves of the ancient Germans. They therefore invented a conſiderable number of methods of purgation or trial, to preſerve innocence from the danger of false witnesses, and in conſequence of a notion that God would always interpoſe miraculously to vindicate the guiltless ; as, 1. By Ordeal ;

2. By Corsned ; 3. By Battel. See theſe articles.

4. A fourth method is that by the *peers of Great Britain,* in the *Court of Parliament ;* or the *Court of the Lord High Steward,* when a peer is capitally indicted ; for in caſe of an appeal, a peer ſhall be tried by jury. This differs little from the trial *per potriam,* or by jury ; except that the peers need not all agree in their verdict ; and except alſo, that no ſpecial verdict can be given in the trial of a peer ; becauſe the lords of parliament, or the lord high ſteward (if the trial be had in his court), are judges ſufficiently compe­tent of the law that may ariſe from the fact ; but the greater number, conſiſting of 12 at the leaſt, will conclude, and bind the minority.

The trial by jury, or the country, *per patriam,* is alſo that trial by the peers of every Briton, which, as the great bul­wark of his liberties, is ſecured to him by the great charter : *nullus liber homo capitatur, vel imprisonetur, aut exulet, aut aliquo alio modo destruatur, nisi per legale judicium pαrium suorum, vel per legem terrae.*

When therefore a priſoner on his Arraignment has pleaded not guilty, and for his trial hath put himſelf upon the country, which country the jury are, the ſheriff of the county muſt return a panel of jurors, *liberos et legales homines, de viceneto ;* that is, freeholders without juſt exception, and of the *visne* or neighbourhood ; which is interpreted to be of the county where the fact is committed. It the pro­ceedings are before the court of king’s bench, there is time allowed between the arraignment and the trial, for a jury to be impanelled by writ of *venire facias* to the sheriff, as in ci­vil cauſes ; and the trial in caſe of a miſdemeanor is had at nisi *prius,* unleſs it be of ſuch conſequence as to merit a trial at bar ; which is always invariably had when the priſoner is tried for any capital offence. But, before commiſſioners of oyer and terminer and gaol-delivery, the ſheriff, by virtue of a general precept directed to him beforehand, returns to the court a panel of 48 jurors, to try all felons that may be called upon their trial at that ſeſſion ; and therefore it is there uſual to try all felons immediately or ſoon after their

@@@[m]\* Montesquieu, Spir. L. xi. 6.