

Provably be attainted, which words are as forcible, as upon direct and manifest Proof. Note, The word is not [Probably] for then Commune Argumentum might have served; but the word is [Provably] be attainted. Secondly, This word [Attaint] necessarily implieth that he be proceeded with, and attainted according to the due Course and Proceedings of Law, and not by Absolute Power, or by other means, as in former times had been used. And therefore if a Man doth adhere to the Enemies of the King, or be slain in open War against the King, or otherwise die before the Attainder of Treason, he forfeiteth nothing, because (as that Act saith) he is not attainted: Wherein this Act hath altered that, which before this Act, in Case of Treason, was taken for Law. And the Statute of 34 Edward III. cap. 12. saves nothing to the King, but that which was in esse, and pertaining to the King at the making of that Act. And this appeareth by a Judgment in Parliament, in Ann. 29. H. 6. cap. 1. That Jack Cade being slain in open Rebellion, could no way be punished, or forfeit any thing, and therefore was attainted by that Act of High Treason. Thirdly, Of open Deed, per *Aperum Factum*, these words strengthen the former Exposition of [Provablement], an Overt-Act must be alledged in every Indictment upon this Act, and proved. Compassing by bare words is not an Overt-Act, as appears by many Temporary Statutes against it. But there must be some open Act, which must be manifestly proved. As if divers do conspire the Death of the King, and the manner how, and thereupon provide Weapons, Powder, Poison, Harness, and the like, for the Execution of the Conspiracy. If a Man be Arraigned upon an Indictment of High Treason, and stand Mute, [that is, refuse to plead] he is not to be pressed to Death, but shall have the same Judgment