

# THE COUNTRY JUSTICE;

Containing the Practice of the

# Justices of the Peace

As well in as out of their

# SESSIONS:

Gathered for the better help of such *Justices*  
of *Peace* as have not been much conversant in the Study  
of the **L A W S** of this **R E A L M**.

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By **MICHAEL DALTON** of *Lincolns-Inne, Esquire,*  
*and One of the Masters of the Chancery.*

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Now again Enlarged with many Precedents  
and Resolutions of the *Quares* contained in the former Im-  
pressions: and the Statutes of King **C H A R L E S I.** and His  
Majesty King **C H A R L E S II.** added under their several Titles.

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By *T. M.* one of the same Society,

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*Justice is the Staff of Peace, and the maintenance of Honour. Cic.*

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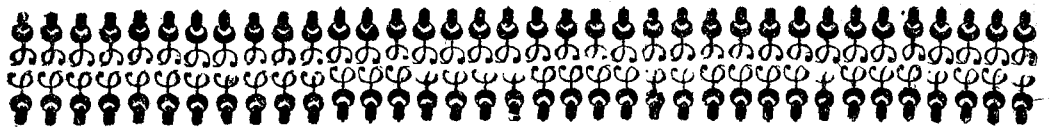
**L O N D O N,**

Printed by *John Streater, James Flesher, and Henry Twysford, Assigns of*  
*Richard Atkyns, and Edward Atkyns, Esquires. Anno Dom. 1666.*

**Cum Gratia & Privilegio Regiæ Majestatis.**







To the Right Honourable,  
S<sup>r</sup>. *HENRY MOUNTAGUE*, Knight,  
Lord Chief Justice of the Pleas holden before  
the **KINGS MAJESTY**.

*My Honourable good Lord,*



After I had spent many years in the Study of the Laws of this Realm, and was called to the Ministration of *Justice* in my Country, I thought it not sufficient to apply my self onely to the Precepts and Directions of former times, but withall to observe such new accidents as daily happened within mine own experience, whereby the better to perform the Duties of my Place. Whilest I thus endeavoured my self, I observed that *Justices* of Peace in their places grew in neglect, and many times were over-swayed by Superiour solicitations, yea, and sometimes disgraced, in such sort, as I could have been content rather to have sate down in private quiet, then with care, study and pains to incur such hazzards and discontentments. But again, whilest I stood thus doubtful, it pleased the Fountain of Justice (I mean, His *Royal Majesty*) so to countenance and grace, yea, to shew his Majesties high esteem of, his authority of *Justices* of Peace, not only (in his Majesties late Speech in the *Star-Chamber*,) prizing and valuing them with the nearest imployed about him, but (to the great honour of this Realm and of the Government thereof) sithence also establishing this Country Government by Justices of Peace in his Majesties native Country of *Scotland*; so as methought I saw the current of Justice to run clear and comfortably through the Land, and my self to receive new vigour and encouragement: whereupon I began to recollect my confused Notes and Obser-

## *The Epistle Dedicatory.*

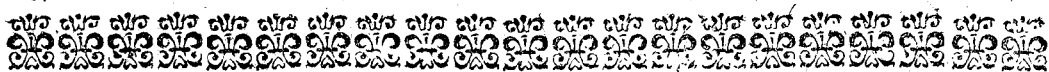
ventions, willing, for my private help and better readines, to digest them into some order and method, such as my understanding could best contrive. Thus prepared, I yet made question with my self, whether it were better to adventure the publishing of these my Labours, or to keep them by me onely for my own private use. In this unsettled consultation, being brought unto your Lordship by my good friend, (who also discovered to your Lordship this my Labour) and finding your Lordship favourably to respect me and it, I took heart and encouragement to put the same in Print, after that I had obtained (according to my humble Suit) your Lordships favour for Allowance and Patronage thereof.

Now it remaineth farther, to crave of your Lordship, not onely for my self, but for all that shall uprightly labour in this Justiciary course, that we may receive from your Lordship such encouragement and countenance, as that we may courageously and constantly undergoe the charge imposed upon us, without fear of oppositions, or other uncomfortable disturbances. So by your Lordships favour and means shall Justice be the more duly administred, and his Majesties Peace be the more firmly maintained, to the Honour and Safety of the Kings Majesty, and the good and peaceable Government of all his Subjects. And so his Majesty will no doubt proceed (as he hath begun) yet still to increase your Honour, for your care in honouring him, and his Royal Throne thereby; and the people, who shall feel the goodness and benefit of your zeal of Justice, will heartily and joyfully pray for your happiness; and God, beholding how you make Justice and Peace to go together, will, according to his abundant Mercies and infallible Truth, give you the everlasting reward of Justice and Peace: For all which I will continually pray, and besides, rest

*Your Lordships in all Humility*

*and Duty, ever to be commanded,*

MICHAEL DALTON.



To the Right Worshipful,  
Sir *JAMES LEE*, Knight,  
The King's Majesties Attorney of his Court  
of *Wards and Liveries*; and to the Right Worshipful, and  
my very good Uncle, *THOMAS SPENCER*, Esquire,  
and to the residue of my Masters of *Lincolns-Inne*.

**I** *T* may peradventure seem strange, that after so many Learned Writers in this kind, I (a man of so weak parts) should presume to offer to the View of the World a Work of this nature: Yet my Reasons being considered with indifferent favour, I hope to be excused not onely with you, but with all others that be lovers of their Countrey, and seek the Peace thereof. I confess my self a long, yet an unprofitable Member of your Honourable Society; but seeing that my Calling is to a Countrey life, and considering that he which is of the meanest condition, and that hath the smallest Talent, may not (without just reprehension) retire himself so to his private pleasure or profit, as that he should neglect to shew some fruit and token of his love to his Countrey, (lest therein the Heathen Philosopher might justly condemn him, who said, *Non solum nobis nati sumus, sed partim Patriæ, &c.*) I have been the bolder, according to my place, small power and capacity, to offer this my small mite into the Treasury of my Countrey, this Work (whatsoever it be) being written first as private Notes for my particular helps in this business, wherewith my self and many others are daily employed and set on work, without yielding any pleasure or profit at all to us, otherwise then for the publick good.

The sweet of like labours you, my great Masters, (which I do most gladly behold) do from time to time reap more fully, rising daily to great Honour and Wealth, through your wisdoms, deserts, and great pains. That which remaineth to us Countrey-Justices (for the most part) is the wearying of our selves, the spending of our time, wits and estates, ut alii inde pace fruuntur, being requited many times

## The Epistle.

*not onely with much evil will from or by the means of such as we have in Justice to deal withall, but oftentimes also rather disgraced then countenanced or encouraged by some in higher Place.*

*I speak not this without acknowledging it to be both just and meet, that the actions and proceedings of the Justices of Peace should be well and duly looked into, and themselves worthy to be punished, when through malice, or other corruption, they shall doe unjustly: But if through unwilling ignorance they happen to erre and doe amiss, they are rather to be better informed then ill intreated. Nemo nascitur sapiens, & humanum est errare.*

*I am bold to write unto you, my worthy Masters and Worshipful Friends, and the rest of this Honourable Fellowship, knowing that there be many amongst you daily rising to great places, whose Honour it will be to maintain the life of the Law and Justice of the Realm, with the excellency thereof, in causing due execution thereof to be had and done; redressing the abuses and defects thereof, and encouraging such as shall carry themselves juste, fideliter, & sincere: Again, that there be many among you of great Learning and Judgment, by whom this my unperfect Work may, yea and I hope shall be more polished and perfected. And seeing some others amongst you, whose Fortunes prove (as mine doth) to withdraw themselves into their Countries, I would gladly encourage them to imploy their better talents to the common good.*

*I acknowledg there be divers other Books in this kind more Learned and Methodical; but withall I observe the business of the Justices of Peace to consist partly in things to be done by them out of their Sessions, (and sometimes privately, and peradventure upon the sudden, without the advice or association of any other) and partly at their Sessions of the Peace. Of things of this last kind I purpose not in this Treatise to meddle, for that at such publick Meetings and Assemblies they are far more able to direct themselves: but for the private and sudden help of such Justices of Peace, who peradventure have not read over the former Writers, and if they have, yet the multiplicity of Statutes (whereupon the Office and private practice of Justices of Peace doth principally consist) is such, and at every Parliament so altered, by expiration, discontinuance, and otherwise, as that it is a Work very hard and laborious for Gentlemen not conversant in the study of the Laws (al-*  
*though*

## The Epistle.

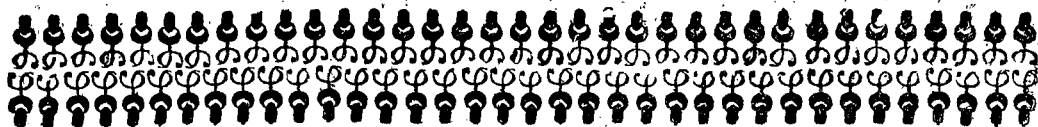
Co. 13.  
117.

*though otherwise very industrious) to proceed as by the Commission they ought and are prescribed, sc. secundum Leges & Statuta Regni; upon these considerations, and for their ease principally, I have published this Work; knowing that there be divers, both Honourable and Worthy Persons in the Countrey, some of whom for want of knowledg of the many particular Statutes in force, and tediousness of the study of them, do seek to be exempt out of the Commission of the Peace; others being in, do forbear to meddle, or meddling do not that good service therein which they are desirous to do. I have herein endeavoured to set down things so plainly and briefly as I could, with reference to the Statutes abridged, whereby the Reader may the better resolve and satisfie himself what he ought to do in every particular almost that should come before him, or them, out of their General Sessions of the Peace. And yet for that in cases of ambiguity, Satius est fontes petere quam sectari rivulos, I could wish all Justices of the Peace to have ready by them the Statutes at large, as well as the Abridgments, and to use this Book, or the Abridgments of the Statutes, as Tables and brief Memorials, but to trust and ground themselves upon the Books at large.*

*It resteth now only to intreat your favours: and although I might rest confident by the honourable Patronage I have obtained of him whose high place and Presidency for matters of Justice and judicious understanding, drew me to covet the same, (and not a little besides induced, yea obliged thereto, in regard of the near alliance by Marriage into the Honourable House of the Spencers;) yet withall I could not out of that duty and love which I owe to this honourable Society, (my first breeder in the studies of the Law) and hope of your tender respect, to uphold the Credit of an affectionate Member of your Society, but be bold also to crave your farther countenance in these my labours; and that you would be pleased to accept this loving remembrance as a thankful gratuity to you, to whom I must ever acknowledge my self deeply obliged, and ever to rest at all your Commands,*

MICHAEL DALTON.





## *The PRINTER to the READER.*

**T**HE many Editions of this Book have given that ample testimony of its usefulness and acceptance among understanding men, that it were needless to make either Preface or Apologie, which had been spared, if some other matters, fitting to acquaint the Reader withall, had not occurred in this Impression: namely,

1. That this Book, upon perusal by the Author himself, is in many places enlarged since the first Impression.

2. That now, to make the Work more perfect, are added and inserted under their proper Places and Titles the Resolutions of such *Queres* as were in many Editions unresolved, and such Authorities cited as have been found upon diligent perusal of all the Books of the Sessions of the Peace and Gaol-delivery of *London* and *Middlesex*, where the Reverend Judges of the Benches at *Westminster*, or some of them, usually assist.

And lastly, An Addition of such Acts of the Parliaments of King **CHARLES** the I. and his now Majesty, as are now to be put in Execution by the Justices within their several Jurisdictions. All the Additions being marked thus, “



For



For the better use of this Book, and finding  
out of the Authors herein alledged, you must observe  
these short Directions hereunder following.

F. or Fitz. Fitzherbert. *He was sometimes one of the Judges of  
the Common Pleas.*

Br. Brook, *sometimes Lord Chief Justice of the Common Pleas.*

Dyer, *late also Lord Chief Justice of the Court of Common Pleas.*

Dir. *Certain Directions or Resolutions of all the Judges of Assises,  
Anno 1643. and imprinted for William Coke, Ann. 1636.*

Co. Sir Edw. Coke, *Knight, late Lord Chief Justice of the Kings  
Bench, sc. his Books of Reports.*

Co. L. i. Sir Edw. Cokes *First Part of Institutes, &c. upon Lit-  
tleton.*

Fi. M. Henry Finch, *Apprentice del Ley.*

Plow. *Master Plowdens Commentaries.*

Rast. *Rastals Abridgment of the Statutes, imprinted Anno Dom.  
1583. He was sometimes one of the Judges of the Common Pleas.*

Lib. Intr. *The Book of Entries, impress. 1596.*

Lbt. or Lambt. *Master Lamberts Justice of Peace, impr. 1599.*

Crompt. *Master Crompton's Justice of Peace, imprinted 1606.*

P. *Master Poultons Abridgment of the Stat. imprinted 1606.*

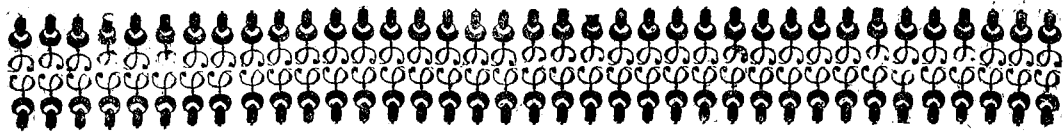
P. R. *Master Poulton de Pace Regis.*

Ba. Sir Francis Bacon, *His Elements of the Common Law.*

Ba. V. *His Use of the Law.*

“ *Resolutions of the Judges of Assises Anno 1633. to certain Qua-  
re's.*





## CHAP. I.

*Of the Common Law, and of such as had, and still have, the Conservation of the Peace by the Common Law.*

<sup>a</sup> The Law of God is the Law of the Land :  
 34 H. 6. 40  
 Prif. Doct. & St. lib. 1  
 cap. 6.  
 Fi. 3.  
<sup>b</sup> Common Law is common Reason.  
 Vide Plo. 36. a. 67. a.  
 107. b.  
 & 465. a.  
 Co. 3. 8. & 9. Parts, Preface, Fortescue. c. 17.  
 Lit. 209.

**T**HE Common Laws of this Realm of *England*, receiving principally their Grounds from the Laws of <sup>a</sup> God and Nature, (which Law of Nature, as it pertaineth to man, is also called the Law of <sup>b</sup> Reason) and being, for their Antiquity, those whereby this Realm was governed many hundred years before the Conquest; the Equity and Excellency whereof is such, as that there is no humane Law within the circuit of the whole World, by infinite degrees, so apt and profitable for the honourable, peaceable, and prosperous Government of this Kingdom, and so necessary for all Estates, and for all Causes, concerning Life, Lands or Goods, as these Laws be : These Laws, (I say) even from their beginning, have continued a special care for the Conservation of the Peace of this Land. And, to that purpose, at the Common Law (long before Justices of the Peace were made) there were sundry persons to whose charge the maintenance of this Peace was recommended, and who, with their other Offices, had (and yet still have) the Conservation of the Peace annexed to their Charges, as a thing incident to and unseparable from their said Offices. And yet nevertheless they were and are called by the names of their Offices onely, the Conservation of the Peace being included therein.

First, The King's Majesty (by his Dignity Royal) is the principal Conservator of the Peace within His Dominions, (and is *Capitalis Justiciarius Angliæ*) in whose hands alone, at the beginning, the Administration of all Justice and all Jurisdiction in all Causes first was; and afterwards by and from him only was this Authority derived and given to others.

And yet so, as that whatsoever Power is by him committed over unto other men, the same nevertheless remaineth still in himself; insomuch that he may himself in person sit in Judgment, as in ancient times other Kings here have done, and may take knowledg of all Cases and Causes, unless they concern himself; for in such Cases wherein the King is a party, the King cannot properly sit in Judgment, but must perform that by his Justices, Commissioners, or the like, as in Cases of Treason, Felonies, or such other. The King also, as he is the principal Conservator of the Peace himself, so he may command all others to keep the Peace, and may award Process against them to conserve the Peace; but he cannot take a Recognizance for the Peace, because the Recognizance is made to himself, &c.

The Lord Chancellor, (or Lord keeper of the Great Seal) the Lord High Steward of *England*, the Lord Marshal, and High Constable of *England*, the Lord Treasurer of *England*, and every Justice of the King's Bench, as also the Master of the Rolls, have inclosed in their said Offices the Conservation of the Peace over all the Realm; and every of these may award Precepts, and take Recognizances for the Peace, by virtue of their Places, and as incident to their Offices; yea, every one of these, upon praier of Surety of the Peace made to them, or any of them, against another, hath authority to award or grant their Precept or warrant to the Sheriff, Constables, or other the King's Officers, for the arresting of the party, &c. and when he is come before them, may take Recognizance of him for the Peace. And if the party shall refuse to find such Surety, they may commit him to prison. And yet for the Master of the Rolls, it is held that he maketh Process and taketh Recognizance, not as incident to his Office, (as all the other may) but the Master of the Rolls his authority herein is said to be onely by Prescription, that he hath used to make such Process, &c.

Lamb. 12.

But at this day these Conservators of the Peace are held to be out of use; and that their Authority for the keeping of the Peace is now onely by virtue of the King's Commission of the Peace, ordaining them to be Justices of Peace. Sir *Fr. Bacon* his *Use of the Law*, pag. 12.

There be others who (by virtue of their Offices) have the Conservation of the Peace, but yet onely within the precinct of their several Courts; as namely, the Justices of the Court of King's Bench and Common Pleas, the Barons of the Exchequer, and the Justices of Assise and Gaol-delivery. And any person may pray and crave the Surety of the Peace before any of these in their Courts: and if the party be present, or within the place or precinct of their Court, or within their view, they may send the Warden of the Fleet, or other Officers attending their Court, to bring the party before them, and they may take Surety of him; and if he shall refuse to finde such Surety, they may commit him to prison. See Sir *F. Bacon*, pag. 12.

Lamb. 1. 3.  
2 H. 7. 1.  
Br. Peace  
12.

Also the Justices of Assise, if the Peace happen to be broken in their presence and Precinct of the Court, may command the Offender to the Gaol or Prison. And if complaint be made to them that *A.* is minded to break the Peace, or else if they do perceive the same in their presence; they may command the parties upon a certain pain to keep the Peace, and that Weapons be taken from the Jurors or witnesses that appear before them. But as they be meerey Justices of Assise, they may not award any Process or Warrant for the Peace, neither may they take Sureties of the Peace.

Lamb. 13.

Also the Steward of the Sheriffs Turn, the Steward of a Leet, and the Steward of a Court of Pipowder, every of these are Conservators of the Peace within their several Courts; for every of them may commit him to ward that shall make an Affray in their presence whilst they be in Execution of their Offices; for that these be Courts of Record: and so in all other Courts of Record. But none of these may grant any Warrant for the Peace.

Lamb. 14.  
Br. Leet  
34.

And the Steward of the Sheriffs Turn, as also the Steward of a Leet, (during their Courts) may by Recognizance bind him to the Peace that shall

Cromp. 7.  
Br. Leet 39  
F.N.B. 82.

13 H. 4. 12. shall make an Affray in their presence, sitting the Court; and may commit him to ward until he hath found Surety for the Peace; and may also take the Examination of Felons, and commit them to the Gaol; and may also take the Presentment of any Felony at the Common Law, committed within their Precinct, or of any other Offence against the Peace, except the Death of a man. See *Br. Leet* 1, 2, 14, 18, 22, 26.

And so if any other Contempt or Disturbance to the Court shall be committed in any (of the said Courts, or in any other) Court of Record, the Judge (or Steward) there may impose upon such Offenders a reasonable Fine. See *Br. Leet* 14, 36. and after *chap.* 75.

F.N.B. 81  
d. & 82.  
Br. Peace  
13. The Sheriff, by the Common Law, is a principal Conservator of the Peace in every place within his County. And (upon request to him made) he may command another to find Surety of the Peace, and may take the same Surety by Recognizance, and that *ex Officio*, and without any Writ of *Supplicavit* to him directed: and this seems to be by virtue of his Commission, which saith, *Commisimus vobis custodiam Comitatus, &c.* Vid. *Br. Judges* 11. & *Recogn.* 5. 14. 16. & 18.

Stamf. 48. Coroners also (by the Common Law) are Conservators of the Peace within the County where they be Coroners: but they (as also all other the Conservators of the Peace by the Common Law) have power for the keeping of the Peace onely as the Constables have at this day; to wit, they may take Surety for the Peace by Obligation. *Vide hic infra.* 3 E. 4. 9. &

3 E. 4. 9. 10 E. 4. & *tit. Forcible Entry, & Crompt.* 6.

10. E. 4. The High Constables of Hundreds are Conservators of the Peace within their several Hundreds and Limits by the Common Law. *Crompt.* 6. & 222. 12 H. 7. fol. 18.

And therefore these High Constables, at their petty Sessions, for any Affray made in disturbance of their Court, may imprison the Offenders. *Co.*

11. 43. 44.

Br. Peace  
13.  
Fi. 127. Every petty Constable within the limits of their several Towns are Conservators of the Peace (at the Common Law) by virtue of their Office. *Vide tit. Affray and Forcible Entry.*

And these petty Constables may doe what they can to keep the Peace; but they cannot take Surety of the Peace at the request of any man. And "*ex Officio* they may cause such as in their presence are about to make an Affray, to find Sureties to keep the Peace; and that as well before the Affray, as after. See *Crompt.* 6. & 222. & 12 H. 7. fol. 18. a. & *hic. postea.*

There be other Officers of much like Authority to our Constables: As the Borsholders in *Kent*; the Thirdborough in *Warwickshire*; and the Tithing-man, and Borowhead, or Headborough, or Chief pledge in other places. But yet the Office of a Constable is distinct, and (as it seemeth) is of more and greater Authority and respect then these other; as you may see by *M. Lambert* of the Duty of Constables, pag. 51. &c. where he seemeth to hold that these Borsholders, Thirdboroughs, Tithing-men, Headboroughs, and other such, being in any Town or Parish where a Constable is, those other cannot meddle, because Constables be (in comparison of them) head-Officers; and that the Tithing-men, &c. are but as Assistants to the Constable in all Services of his Office when the Constable is present, and in his absence, then these other to attend the Service; and that there are

many other things which the Constables may doe, and wherewith the Borsholders and the rest cannot meddle at all. And yet in Towns where there be no Constables, and that the Borsholders, Thirdboroughs, Tithing-men, Headboroughs, or such other, be there the only Officers for the Peace; as also in such cases where the Power or Authority of the Borsholders, &c. is declared to be equal with the Power of the Constable; in all such cases and things their Office and Authority are in a manner all one. See the Stat. 1 Jac. cap. 7. & Lambert Office del' Const. 4, 6, 9.

There be also divers Statutes which do appoint Offenders to be punished by the Constable or other inferiour Officer. See his cap. 57. Now who be these inferiour Officers, if not the Tithing-men? &c.

And now, for that these petty Constables be much absent from their houses or homes, partly by reason of their employments in their Office, and partly by reason of their own private occasions, (especially in our and other like parts of the Land, where these Officers are for the most part Husbandmen, and so most part of the day in the fields;) it would prove very serviceable, if, by a Law to be made in Parliament, every Town and Village were to have a Tithing-man, or such other Officer, (or the like) to attend this service of the Constable, in his absence at the least, for that for want of such assistance, Rogues, Vagabonds, and the like, knowing their times, now travel up and down far more boldly.

And yet Mr. Crompton, fol. 222. saith, That a Constable may make a Deputy to execute his Office in his absence, for that he may be sick, &c. "But it hath been resolved, That he may make a Deputy, because it is but a Ministerial Office, Mich. 13 Jac. B.R. Phillips and winscome's Case. But some have held, That the making a Deputy is rather by Toleration then by Law. Resol. 29.

If any man shall make an Affray or Assault upon another in presence of the Constable or Borsholder, or if any man in the presence of the Constable shall threaten to kill, beat, or hurt another, or shall be in a fury ready to break the Peace; in every of these cases the Constable or Borsholder may commit the Offenders to the Stocks, or to some other safe custody for the present, (as his or their quality requireth) and after may carry them before some Justice of Peace, or to the Gaol) untill they shall find Surety for the Peace; which Surety the Constable himself may also take by Obligation, to be sealed and delivered to the King's use: and if the party will not find such Surety to the Constable, he may imprison the party untill he shall do it. 3 H. 4. 9, 10.

I have seen the Report of Skarret's Case, Term. Trin. An. 35 Eliz. Rot. 1458. where Skarret brought his Action of False Imprisonment against one Hammer, for arresting the Plaintiff and imprisoning him, &c. The Defendant, to the Imprisonment, pleaded, That he was High-Constable of the Hundred of E. in the County of S. and that the Plaintiff made an Affray within the said Hundred upon one H. W. who presently came to him and told him thereof, and swore upon a Book that he was in fear of his life by the other; whereupon the Defendant came to the Plaintiff, and arrested and imprisoned him untill he had found sufficient Sureties for the Peace; upon which the Plaintiff demurred. And it was adjudged, That the Plea of the Defendant was insufficient; first, for that he was not present at the Assault and

10 E. 4.

and Affray ; secondly, for that he was the High Constable of the Hundred, and not Constable of the Town. In the Argument of which Case, *Anderson*, Chief Justice, held Constables to be Conservators of the Peace at the Common Law, and still so to be, and that they ought to preserve the Peace as much as in them lieth ; but that (said he) was by parting of men which he should see breaking of the Peace, and carrying them before a Justice of Peace, to find Sureties for the keeping thereof : but to take Sureties himself, the Constable cannot. And those which hold that he may take Surety, cannot tell what Surety that should be : for he cannot take a Recognizance nor Bail, for he is no Officer of Record ; and if he shall take an Obligation, how the same shall be certified, and into what Court, he said he knew not ; and that it should be very inconvenient to give such Authority to every Constable. But by three other Judges, namely, *Walmesley*, *Owen*, and *Beaumont*, Although a Constable cannot take Surety for the Peace by Recognizance nor Bail, yet he may take an Obligation, according to the Book of 10 E. 4. And if the Affray be in their presence, they are Conservators of the Peace, and therefore may use such means for keeping of the Peace, by taking Surety by Obligation. And that before Justices of Peace were, the Peace was preserved, and that by the Constables. And that the *Statute* which ordained Justices of Peace, did not take away the Authority of the Constable. But the Constable hath no authority to take an Oath of the party, that he is in fear, &c. Whereunto *Anderson*, Chief Justice, replied, saying, I doubt not but that at the Common Law the Peace was kept, but that was to be done in such manner as the Law appointed, and that is, by Writ out of the Chancery or Kings Bench.

Bacon,  
V.5.

Sir *Fr. Bacon* Lord *Verulam*, in his Book intituled ; *The use of the Law*, writeth to this effect : By the Common Law the Constable's Office was, to arrest the parties that had broken the Peace, or were in a fury ready to break the Peace ; *sc.* if either he had seen it himself, or were truly informed thereof by others, or upon the Confession of the party who had freshly broken the Peace : And that all such Offenders the Constable might imprison in the Stocks, or in his own House, as the quality of the party required, untill they had been bound by Obligation, with Sureties to the King, to keep the Peace from henceforth ; which Obligation was to be sealed and delivered to the Constable to the use of the King ; and the Constable was to send it into the Exchequer, or Chancery, from whence Process should be awarded to levy the Debt, if the Peace be broken. *Quod nota. Vide etiam Finch, fol. 127.* agreeing herewith, for such as the Constable findeth breaking the Peace.

Every of these Conservators of the Peace are (by the ancient Common Law) to employ their own valour, and may also command the meet help, aid and force of others, to arrest and pacifie all such who in their presence and within their jurisdiction and limits, by word or deed, shall go about to break the Peace.

Now these Conservators of the Peace are only to meddle with Affrays, Assaults, and Batteries, or Threatnings to break the Peace, done in their presence ; but not with Riots, or Forcible Entries, or Detainers.

And if a Conservator of the Peace, being required to see the Peace kept, shall be negligent therein, he may be indicted and fined for the same. *Vide Cap. 8.*

Also every of these Conservators of the Peace, if they have committed or bound over any such Offenders, they are then to send to, or to be present at, and attend the next Sessions of the Peace or Gaol-delivery, there to object against such Offenders.

But for the High Constables and Petty Constables, although they have (by the Common Law) the Charge of the Peace, as incident to their Office; yet it seemeth to some, that their Offices and Authority began not long before the time that Justices of the Peace were ordained: (See here *titulo* Constable.) Whereas the Sheriffs, Coroners, Stewards of the Sheriffs Turn, of the Leet, and of the Court of Pipowders, and the Justices of all higher Courts, were long time before the Conquest. See *Co. 9. Part*, the Preface.

There were sundry other persons who (by the ancient Common Law) had the ordinary keeping of the Peace, and were named *Custodes Pacis*; whereof some were by Election (in full County,) and some by Tenure, as you may see in *M. Lambert* 16, 17. There were others which were called to this Office by the King's Writ, to continue for the term of their lives, or at the King's pleasure; but these are now all ceased.

### The first Ordaining of Justices of the Peace. CHAP. II.

**K**ING Edward the First (according to the first Article of the Sacred Oath received by him, and since by other Kings and Queens of this Realm at their several Coronations, the which is in these words, *Servabis Ecclesie Dei, Clero, & Populo, Pacem ex integro, & Concordiam in Deo secundum vires tuas. Quibus Rex respondit, Servabo*) in his first Parliament holden *An. 3.* of his Reign, *cap. 1.* hath established and commanded, that the Peace of holy Church and of the Land shall be well kept and maintained in all points: The which Peace of the Church is (and alwayes hath been by the ancient Laws of this Land) protected and conserved by the King, the Archbishopps and Bishops of this Realm; and the Peace of the Land is, and alwayes hath been, defended and maintained by the same King, and his temporal Justices or Officers lawfully appointed for the same, &c. which temporal Justices, at the first, were the Conservators of the Peace, as aforesaid. But more especially in those times there also were in every County continually Justices of Oyer and Terminer, and also there were Justices Itinerants, which had power not only to determine all manner of Quarrels, (as well real as personal) but also all Offences against the Peace, &c. as may appear in our Law-Books, and especially in *M. Fitz. tit. Corone*, amongst the *Iter' North' & Cant'*.

For although by Chronicle Law, in our Annals, it is reported that *Wil. Hollinsh. 8.* *liam* the Conquerour ordained Justices of the Peace about *An. Dom. 1070.* *An. quarto* of his Reign; yet Justices of Peace had not their being almost three hundred years after, *viz.* untill *An. Dom. 1327.* At which time Justices or Commissioners of the Peace were first created and ordained by the *Stat. 1 Ed. 3. cap. 16.* By which Statute it was ordained, That in every Shire of the Realm certain persons should be assigned (*sc.* by the King's Commission) to keep the Peace. And their Authority was after enlarged by the Statutes

See this  
Oath at  
large, Brac.  
lib. 3. and  
Dr. Cowel,  
235.

Their begin-  
ing.

rules 4 *Ed. 3. cap. 2.* 18 *Ed. 3. cap. 2.* & 34 *Ed. 3. cap. 1.* and by many other Statutes made since in every King's Reign, and many Ordinances since. And by the said Statute of 34 *E. 3. 1.* were they first (generally) enabled to hear and determine (at the King's Suit) all manner of Felonies and Trespasses: And each County had now its proper Commissioners for the Peace, whereas before (it seemeth) the Commissions to the Justices of Peace were not always made severally into each Shire, but sometime joyntly to sundry persons over sundry Shires.

“ And by the *Stat. 2 H. 5. cap. 1. Stat. 2.* Justices of Peace shall be made of the most sufficient persons dwelling in the same Counties, by the advice of the Chancellor and King's Council.

But the *Statute of 36 E. 3. cap. 12.* is the first *Statute* that nameth them Ju-<sup>Their</sup>stices of the Peace: For the *Statutes of 2 E. 3. cap. 6.* and 25 *Ed. 3. cap. 6, 7,*<sup>Name.</sup> 8. speaking of Justices; seem not be of our Justices of Peace; but that of 2 *Ed. 3.* as also the *Statute of Winchester; cap. 6.* therein mentioned, to be meant of Justices Itinerants, or Justices in Eyre; and the other of 25 *Ed. 3.* to be meant of Justices or Commissioners specially assigned for Servants and Labourers: See for this last, *Lamb. 24. & 577, 578.* and the *Statutes of Labourers made 25 E. 3. cap. 6, 7, 8. & 42 Ed. 3. cap. 6. Rastal; fol. 233. a. b. d.*

They be called Justices [of the Peace] because they be Judges of Record and withall to put them in mind (by their name) that they are to do Justice (which is, to yield to every man his own by even portions, and according to the Laws, Customs, and Statutes of this Realm,) without respect of persons. See 2 *Chr. 19. 6, 7.*

They are named also Commissioners [of the Peace,] because they have their Authority by the Kings Commission.

And here it shall not be amiss shortly to put our Justices of Peace in mind, how that Justice may be perverted many ways, (if they shall not arm themselves with the Fear of God, the Love of Truth and Justice, and with the Authority and Knowledg of the Laws and Statutes of this Realm.) As namely,

1. By Fear; when fearing the power or countenance of another, they do not Justice. *Deut. 1. 17. Thou shalt not fear the face of man; for the Judgement is God's; who is Capitalis Justiciarius totius Mundi, Chief Justice of Heaven and Earth, and you are his Lieutenants.*

2. Favour; when they seek to please their friend, neighbour, or others. *Deuter. ibid. Thou shalt have no respect of persons in Judgement. Thou shalt not favour the person of the poor, nor honour the person of the mighty, but shalt judge justly. Levit. 19. 15.*

3. Hatred or Malice against the party, or some of his. *Lev. 19. 18. Thou shalt not avenge, nor be mindful of wrong.*

4. Covetousness; when they receive or expect Fee, Gift or Reward: for, as the Wise Man saith, *Rewards and gifts do blind the eyes of the wise, and make them dumb, that they cannot reprove faults.*

5. Perturbation of Mind; as Anger or such like passion. *Jam. 1. 20. The wrath of man doth not accomplish the righteousness of God.*

6. Ignorance, or want of true Understanding what is to be done: *Ignorantia mater Erroris.*



7. Presumption; when without Law (or other sufficient rule or warrant) they (presuming of their own wits) proceed according to their own wills and affections. *There is more hope of a fool, then of him that is wise in his own conceit,* Prov. 26. 12.

8. Delay; which in effect is a denying of Justice. *Negligentia semper habet comitem infortunium, & mora trahit periculum.*

9. Precipitation, or too much Rashness; when they proceed hastily, without due examination and consideration of the fact, and of all material circumstances, or without hearing both parties: for the Law judgeth no man before it hear him, John 7. 51. And the Philosopher could say, *Qui aliquid statuerit, parte inaudita altera, Aequum licet statuerit, haud aequus est;* He that shall judge or determine of a matter, the one party being unheard, although he shall give just Judgment, yet he is not a just Judge. And again, *Omnia non properanti clara certaque sunt, Festinatio autem semper improvida caeca est;* All things are plain and certain to him that is not rash nor heady, but Hast is always improvident and blind. See Deut. 17. 4. & Ecclesiasticus 11. 7, 8. & Prov. 18. 13.

His Majesty's Speech  
in the Star-Chamber,  
Oct. 1616.

All these King James his Majesty, of happy memory, hath shortly, yet fully, observed in his Charge lately given to the Judges; *sc.* charging them, *That they doe Justice uprightly and indifferently, without delay, partiality, fear, or bribery, with stout and upright hearts, with clean and uncorrupt hands; and yet not to utter their own conceits, but the true meaning of the Law; not making Laws, but interpreting the Law, (and that according to the true sense thereof, and after deliberate consultation,) remembering that their Office is Jus dicere, and not Jus dare.*

According to this last also is the Rule given in the Book of Judges, *sc.* Jud. 19. 3.

*In all causes doubtfull, first to consider of the matter, to consult, and then to give*

*Sentence: Which Sentence must be agreeable to the merits of the Cause*

*and Crime, else it is not equal.*

Yea, God himself hath given us Precedents of such deliberate pro- Gen. 3. 8,

ceedings: as you may see in Genesis, chap. 3. vers. 8: &c. & chap. 18. 9, 11.

vers. 21.

These are worthy Directions for all Justices of Peace and other Magi-

strates, that they carry themselves in their places uprightly and indifferent-

ly, not uttering their own conceits, nor upon the sudden to over-rule

things; but after deliberate consideration and consultation, then to pro-

ceed to execute the Authority committed to them.

Now there be four essential Properties required in Magistrates and Justices. *Viz.*

1. They must be men of Ability of Body and Estate, and of Courage for the Truth, and in the Truth.

2. They must be men fearing God; not seeking the place for Honour or Commodity, nor respecting Persons, but the Cause.

3. They must be men dealing truly, searching out all the Truth, and hating Covetousness.

4. They must judge the people at all seasons, using all diligence in hearing and ending Causes; and not to neglect the publick, for private

employments; or ease. See Exodus 18. 21, 22. & Job 29. 12, ad 17. For they bear not the sword in vain, Rom. 13. 4.

Justices



Justices of Peace are Judges of Record, appointed by the King to be Justices within certain Limits for the Conservation of the Peace, and for the execution of divers things comprehended within their Commission, and within divers Statutes committed to their charge. *Their Description or Definition.*

*9 E. 4. 3. 14 H. 8. 16.* Now, first, that the Justices of Peace are Judges of Record, (yea, that every Justice of Peace by himself is a Judge of Record, and one upon whose sole report and testimony the Law reposeth it self very much) appeareth more plainly, if you observe these things following:

1. He is made under the Great Seal of *England*, which is a matter of Record.

2. Every Justice of Peace hath power given unto him by the Commission, *sc.* in the first *Assignavimus*.

3. Also by some Statutes they have Judicial power given them: for they make a Record of a Force by them viewed, and may thereupon fine and imprison the Offenders; yea, one Justice of Peace in some cases, may also hear and determine Offences, and punish an Offender as convict upon his own View, or upon the Confession of the Offender, or upon Examination and Proof of Witnesses. See *Chap. 22, 26, 46, 66, 67, 68, 69, & 75.*

*La. 67. 94. 14 H. 8. 18. Co. 10. 76.* 4. His Warrant (though it be beyond his Authority) is not disputable by the Constable, or other inferior Minister, but must be obeyed and executed by them. But this must be understood when the Justice of Peace hath Jurisdiction of the Cause for or concerning which he hath granted his Warrant; for otherwise the Constable, or other Officer executing their Warrant, seemeth to be punishable, notwithstanding the Justices Warrant. *Vid. tit. Warrants, cap. 117.*

*Lam. 67.* 5. He may take a Recognizance (for the Peace, &c.) which is a matter of Record, and which none can do but a Judge of Record. See *Br. Recog. 8. & 14.*

6. His Record (or Testimony) in some cases is of as great force as Indictment upon the Oath of twelve men, and in some other cases of greater force than an Indictment. See hereof *tit. Force, High-ways, Peace, and Riot.*

7. He also may make out Process upon Indictments, or Information against Offenders, &c. yea, and that out of their Sessions, (in some cases) as you may see hereafter, *tit. Process, cap. 132.*

Great cause therefore have the Justices of Peace to take heed that they abuse not this their credit and authority, either to the oppressing of the Subject, by making untrue Records, or defrauding of the King, by suppressing the true Record.

By the Statute of 12 R. 2. cap. 10. there should be but Six Justices of Peace (in every Commission of the Peace) with the Justices of Assize. *The Number.*

After, by the Statute 14 R. 2. cap. 11. it was Ordained, That there should be Eight Justices of Peace assigned, besides the Lords.

And two Lawyers (at least) shall be assigned in every County, to hear and determine Felonies and Trespases done against the Peace, 18 E. 3. cap. 2. 34 E. 3. cap. 1. & 17 R. 2. cap. 10.

Also Justices of Peace ought to be resident and dwelling within the same County, (except Lords and Judges, &c.) 2 H. 5. cap. 4. & 2 H. 5. Stat. 2. cap. 1.

## Peace. CHAP. III.

**P**EACE, in effect, (saith M. Fitzh.) is the Amity, Confidence, and Quiet Fitz. Just. of P. 12. that is between men; and he that breaketh this Amity or Quiet, breaketh the Peace.

Yet Peace (in our Law) most commonly is taken for an abstinence from actual and injurious Force, and offer of Violence; and so is rather a restraining of hands, then an uniting of minds. And for the maintenance of this Peace chiefly were the Justices of Peace first made.

The Breach of this Peace seemeth to be any injurious Force or Violence moved against the Person of another, his Goods, Lands, or other Possessions, whether it be by threatening words, or by furious gesture, or force of the body, or any other force used *in terrorem*.

The Office of the Justice of Peace is principally to be exercised in the keeping of the Peace, and suppressing and bringing to punishment persons using such injurious and unlawful Force or Violence. And yet (the Commission of the Peace being *pro bono Pacis, ac pro conservatione ejusdem, & pro quieto regimine & gubernatione populi*.) I see not why the Justices of Peace should be restrained from preventing and repressing such other Offences, Misbehaviours and Deceits, as may break the Amity, Quiet and good Government of the People, and whereof Discords, and so Breaches of the Peace, do often arise, (though there appear neither Force nor Violence in the Offence it self:) as Libellings, Cozenages, and such other Offences. *Vide tit. Good Behaviour, postea.*

But it is no part of the Office of the Justice of Peace to forbid lawful Suits; albeit they shall do well to be Mediators of Peace in such Suits and Controversies as shall arise among their Neighbours. Neither shall any man be punished for suing any Writ in the King's Courts, *soit ceo de Droit ou de Tort. Co. L. 61:*

The Conservation of this Peace (and therein the Care of the Justice of Peace) consisteth in three things. *viz.*

1. In preventing the Breach of the Peace, (wisely foreseeing and repressing the beginnings thereof) by taking Surety for the keeping of it, or for the good behaviour of the Offenders, as the case shall require.

2. In pacifying such as are in breaking of the Peace, see *postea, titulo Affray.*

3. In punishing (according to Law) such as have broken the Peace.

But of the three, the first, the preventing Justice, is most worthy to be commended to the care of the Justices of Peace.

*Three sorts.* Justices of Peace (at this day) are of three sorts, and are appointed or created by three means.

1. First, by Act of Parliament; as the Bishop of *Ely* and his Successors, 27 H. 8. 24 and their temporal Stewards of the Isle of *Ely* (for the time being) shall be P. Just. 2. Justices of Peace within the said Isle, and shall use and have within the said Isle all such power as doth belong to any Justice of Peace within any County.

And

And so of the ArchBishop of *York*, and the Bishop of *Durham*, and their Successors, and their temporal Chancellors, &c. *Ibidem*.

Lamb. 26. 2. Secondly, by Grant made by the King by his Letters Patents under the Great Seal, (and by his Bill assigned;) as Mayors, and the chief Officers in divers Corporate Towns: and such the King cannot discharge again at his pleasure, but they shall continue and enjoy their Jurisdiction according as their Letters Patents do enable them; and therefore if the King granteth to a Mayor, or other head-Officer of a City or Corporate Town, and to their Successors, to be Justices of Peace in their City or Town, and after maketh out Commission of the Peace to others there; yet the Authority and Jurisdiction of the Mayor, &c. remaineth good, for that it was granted to them and their Successors, and is not revocable at the King's pleasure, as a Commission of the Peace is.

Br. Crom.  
miss. 5,

And such Justices of Peace by Grant or Patent have thereby the same power as the Conservators of the Peace had by the Common Law; and, it seemeth, such power also as is given to the Justices of Peace (or to any one Justice of Peace (by express words in any Statute: But none of them have thereby the whole power which is ordinarily given to the Commissioners of the Peace by their Commissions. And so it seemeth of the first sort of Justices of Peace by Act of Parliament, *sc.* the Archbishop of *York*, and the Bishops of *Durham* and *Ely*, and their temporal Chancellors and Stewards.

Also concerning such Justices of Peace by Grant or Patent, if the Grant be made to such as be not learned in the Law, yet if the Grant be, *Ad Pacem conservandam &c.* or *Ad inquirendum tantum*, this is a good Grant: But if the Grant be made, *Ad audiendum & terminandum*, this is a voyd Grant, (*ut dicitur*) unless some one man learned in the Laws of this Realm be also joyned with the other in the Commission; and then such a Commission made *Ad audiendum & terminandum* is good in Law. For in all cases where the Commission or Grant is, *Ad audiendum & terminandum*, it is meet that some, or one of them at the least, should be learned in the Laws of this Realm. See the Statutes 18 E. 3. cap. 2. & 13. R. 2. cap. 7. & 17 R. 2. cap. 10.

18 H. 6.  
cap. 11.

3. The third sort of Justices of Peace are by Commission (made of common course under the Great Seal of *England*;) and these are appointed by the discretion of the Lord Chancellor, or Lord-Keeper of the Great Seal. And yet the Justices of Peace within the County Palatine of *Lancaster* are to be made by Commission under the Seal of the same Duchy, by the Statute 27 H. 8. cap. 24.

Raft. 184.  
d.

But these Commissioners of the Peace their Authority doth determine by divers means, yet more usually by three meanes.

First, by the Death of the King, or by his Resignation of his Crown: For by the Commission he maketh them *Justiciarios nostros*, so that he being once dead, or having given over his Crown, they are no more his Justices; and the Justices of the next Prince they cannot be, unless it shall please him afterwards so to make them. Lamb. 71. Dyer 65.

5 E. 4. 32.  
Br. Com.  
18.

2. At the King's Pleasure, and that in two sorts.

12 Aff. 21.  
Br. Com.  
13.

1. Either by the King's Pleasure expressed, (as the King in express words may discharge them by his Writ under the Great Seal) or by *Superseas*

*Sedeas* : but the *Supersedeas* doth but suspend their Authority, which may be revived by a *Procedendo*.

2. Or by Implication ; (as by making other Commissioners of the same kind, and within the same limits, leaving out the ancient Commissioners names.) 10 E. 4. 7. & 3. Mar. 1. Br. Com. 20. 24.

But here the ancient Commissioners must have knowledge of such new Commission : for this determination of the old Commission groweth not immediately by making the new Commission, but either by giving special notice of the new Commission unto the old Commissioners ; or else by and after the reading (or proclaiming) of the new Commission at the Assizes, Sessions of the Peace, or at the full County ; or else by holding of some open Sessions by vertue of the new Commission, (in which two last cases the old Commissioners must take notice of the new Commission.) And in all these cases, if the ancient Commissioners do sit by vertue of their ancient Commission, and after such notice or publishing of the new Commission, all, whatsoever such ancient Commissioners shall so doe, is void : And contrariwise, until such notice or publishing of the new Commission, whatsoever mean acts such ancient Commissioners shall doe, by vertue of their ancient Commission, are good in Law. See 34 Aff. 8. B. Co. 14. Br. Com. 26. 18.

Also in all places where any ancient Commission of the Peace is determined by a new, yet no Process or Suit depending before the old Commissioners shall be discontinued thereby ; neither shall any other thing done by the Justices of the Peace by force of their ancient Commission be made or become void thereby, 11 H. 6. c. 6. P. Disc. 6.

3. By the accession of another Office : as when a Justice of Peace is chosen to be Sheriff of the same County, his Authority of a Justice of Peace there is suspended during his Sheriffwick ; but after that another is chosen and sworn Sheriff of the same County, then this Authority as a Justice of Peace remaineth as it was before, without any renewing of the Commission, and without any of the Oaths newly to be taken by him ; except his name be then put out or left out of the Commission, as sometimes hath been used to be done, and perhaps onely to get new Fees. 1 Ed. 6. 7. 1 M. 8. P. Disc. 4.

The reason why his Authority of a Justice of Peace is suspended during his Sheriffwick seemeth to be, for that the Sheriff is a Minister, and a Justice of Peace is a Judge ; and the one is as necessary as the other. And besides, the Office of a Judge being to command, and of a Minister to execute the Commandment ; if one man shall be both Judge and Minister, thereof it would follow, that the Sheriff ought to command himself, or that he should, as an Officer, serve his own Precept made as Justice or Judge, the which cannot be.

Also if a Justice of Peace be made a Coroner of the County, this by some opinions is a Discharge of his Authority of Justiceship of Peace : otherwise, say they, where he shall be made an Escheator, Under-sheriff, Bailiff, or the like. *Lamb. 72. quare.*

But if a Justice of Peace be made a Knight, or Serjeant at Law, or hath any greater name or Office of honour or dignity given him, this taketh not away his Authority of a Justice of Peace. *Br. Commiss. 4. & 22.* See also the Statute of 1 E. 6. cap. 7. 1 E. 6. c. 7. P. Disc. 4.

Note also, that although by the Death of the King, or by his Resignation, Br. Com. 12. 21. Office the 19.

the Authority of all Justices of Peace which are by Commission (yea and of all Judges, Commissioners of *Oyer and Terminer*, Commissioners of Gaol-delivery, Sheriffs, Escheators, and other Officers that are by Commission) doth cease; yet Mayors, and chief Officers in Cities and Corporate Towns, (which have the Authority of Justices of Peace, or of the Conservation of the Peace, by Grant under the King's Letters Patents to them and their Successors) their Authority still remaineth, notwithstanding the Kings Death or Resignation.

Dyer 165.  
Co. 7. 30.  
B. Com. 5.

So also the Office and Authority of the High Constables and petty Constables seemeth to remain, notwithstanding the Death of the King, &c. for that their Authority is by the Common Law, and to their said Office the Conservation of the Peace remaineth, as a thing incident and unseparable from the same.

Coroners also do remain Conservators of the Peace (within the County where they are Coroners) notwithstanding the Kings Death, &c. for they are made by the Kings Writ, and not by Commission; and their Office and Authority doth remain untill they be removed by the Kings Writ; and their Office remaining, the Conservation of the Peace remaineth as incident thereto

4 E. 4. 44.  
B. Off. 25.  
Dyer 165.

#### CHAP. IV.

**E**VERY Justice of Peace (before he shall take upon him to exercise the Office of a Justice of Peace) shall take two corporal Oaths; the one concerning the Office of a Justice of Peace, the other concerning the Kings Supremacy. *Their Oath*

B. Just. 4.  
1 E. 1.

The Oath concerning this Office seemeth to be by force of the Statute made 13 R. 2. c. 7. And yet see the Oath of the Justices made An. 18. E. 3. much to the like effect that now it is: in which year also M. Marrow taketh it that Justices of Peace were first made, they having then first power given them to hear and determine Felonies and Trespasses against the Peace, as appeareth by the Statute of 18 E. 3. c. 2.

*The form of the Oath is at this day as followeth.*

**Y**E shall swear, that as Justice of the Peace in the County of *Camb.* in all Articles in the Kings Commission to you directed, you shall do equal right to the Poor and to the Rich, after your cunning, wit and power, and after the Laws and Customes of the Realm, and Statutes thereof made: And ye shall not be of Council of any quarrel hanging before you: And that ye hold your Sessions after the form of the Statutes thereof made: And the Issues, Fines, and Amercements that shall happen to be made, and all Forfeitures which shall fall before you, ye shall cause to be entered without any concealment (or imbezilling,) and truly send them to the Kings Exchequer; ye shall not let for gift, or other cause, but well and truly you shall do your Office of Justice of the Peace in that behalf: And that you take nothing for your Office of Justice of the Peace to be done, but of the King, and Fees accustomed, and costs limited by the Statute: And ye shall not direct, nor cause to be directed, any Warrant (by you to be made) to the parties, but ye shall direct them to the Bailiffs of

the said County, or other the Kings Officers (or Ministers,) or other indifferent persons, to do execution thereof. *So help you God, &c.*

The parts of this Oath are shortly Six.

1. That they shall doe equal Right to rich and poor, and according to the Laws and Statutes of the Realm.

2. That they shall not be of Counsell with any person in any matter depending before them.

3. That they shall keep their Sessions according to the Statutes, which (as it seemeth by the prescript of the *Statute 2 H. 5. cap. 4.*) ought to be in the first Week after the Feast of S. Michael, after the Epiphany, after the clause or Feast of Easter, and after the Translation of S. Thomas the Martyr, being the third day of July. And accordingly the Quarter-Sessions of the Peace ought so still to be holden throughout the Realm. See *Lam. 579, 580*: And yet by the *Statute of 14 H. 6. c. 4.* the Justices of Peace of *Middlesex* are to keep their Sessions but twice in the year. *2 H. 5. 4. P. Just. 5.*

4. That all Issues, Fines, Amercements, and Forfeitures which happen before them, be by them truly entred, and sent into the Exchequer.

5. That they take nothing for doing of their Office, but of the King, and the accustomed Fees appointed by the Statutes.

6. That they shall not direct any their Warrants to the parties, but to the Bailiffs of the County, or to other of the Kings Officers, as to the Sheriff, High-Constable, Petty Constable, &c. or other indifferent persons.

Now farther concerning the times of the Quarter-Sessions, it seemeth to be the intent or meaning of the afore-cited *Stat. 2 H. 5. c. 4.* that the weeks wherein the aforesaid Feasts of S. Michael, the Epiphany, and S. Thomas fall, must be first ended, before the Sessions can begin. So that if any of these three Feast-days shall fall upon the Sunday, Monday, Tuesday, or Wednesday, then shall the Sessions (in our County of Cambridge) be upon Thursday seven-night after; but if any of those Feasts shall fall upon Thursday, Friday, or Saturday, then shall our Sessions be upon the next Thursday after; and for our Easter Sessions, upon the Thursday seven-night after Easter-day.

The other Oath, concerning the Kings Supremacy, is by force of the *Statute P. Crown* made *primo Eliz. c. 1.* The form of which Oath also followeth.

**I** Michael Dalton do utterly testifie and declare in my conscience, That the King's Highness is the only Supream Governour of this Realm, and of all other his Highness Dominions and Countries, as well in all Spirituall and Ecclesiastical things (or causes) as temporal; and that no forein Prince, Person, Prelate, State, or Potentate, hath, or ought to have, any Jurisdiction, Power, Superiority, Pre-eminence, or Authority, Ecclesiastical or Spiritual, within this Realm: And therefore I do utterly renounce and forsake all forein Jurisdiction, Powers, Superiorities, and Authorities, and do promise, That from henceforth I shall bear Faith and true Allegiance to the Kings Highness, his Heirs and lawful Successors, and (to my power) shall assise and defend all Jurisdiction, priviledg, pre-eminence, and authority granted or belonging to the Kings Highness, his Heirs and Successors, and united and annexed to the Imperial Crown of the Realm. *So help me God, &c.*

The

Crom. 11. P. Crown 5. vide. The Justices of the Peace ought to take this Oath for the Supremacy in the open Court of Sessions where they shall serve, by the Statute 5 *Eliz.* 1. (as *M. Crompton* holdeth :) and it were very fitting so to be ; or else to be taken at the Assises by the Judges, lest (by indirect practice) it be neglected.

See 1 El. Yet it is most usual that both these Oaths are taken by a special Commission, (*viz.* by a Writ of *Dedimus Potestatem*, directed out of the Chancery to some ancient Justice of Peace, to take the same Oaths) which by them is to be certified into the same Court, at such day as the Writ commandeth. *The form of which Certificate, see hic postea, cap. 130.*

The Justice of Peace (or other person) to whom a *Dedimus potestatem* shall be directed, to take the Oaths of a new Justice of Peace, if he shall return the Commission, and the Oaths to be taken, when they were not taken, he is fineable.

So if the new Justice of Peace shall exercise this Office before he hath taken both these Oaths, he is likewise fineable.

Crompt. 11 Co. 11. 98 Also if a Justice of Peace shall not perform his Oath (concerning his Office,) it seemeth he is fineable, &c. Yet see *Co. 11. 98. a.* That a man shall not be charged in any Court Judicial for the breach of a general Oath, which he taketh when he is made an Officer or Minister, &c.

There is a third Oath tending to the Declaration of such duty as every well-affected Subject by bond of Allegiance, and by the Law of God, ought to bear his Sovereign ; which Oath is by force of the Statute 3 *Jac. c. 4.* And is to be taken also by all Justices of Peace (among others) by the Statute 7 *Jac. c. 6.* Which Oath is usually taken before the Judges of the Assize of the same County where the parties (to be sworn) reside. The Oath of Allegiance.

*The form of this Oath is thus :*

**I** *Michael Dalton* do truly and sincerely acknowledg, profess, testify and declare in my conscience before God and the World, that our Sovereign Lord *K. Charles* is lawful and rightful King of this Realm, and of all other his Majesties Dominions and Countries : And that the Pope, neither of himself, nor by any Authority of the Church or See of *Rome*, or by any other means, with any other, hath any Power or Authority to depose the King, or to dispose any of his Majesties Kingdoms or Dominions, or to authorize any Forein Prince to invade or annoy him or his Countries, or to discharge any of his Subjects of their Allegiance and Obedience to his Majesty, or to give licence or leave to any of them to bear Arms, raise Tumults, or to offer any violence or hurt to his Majesties Royal Person, State, Government, or to any of his Majesties Subjects, within his Majesties Dominions. Also I do swear from my heart, That notwithstanding any Declaration, or Sentence of Excommunication, or Deprivation, made or granted, or to be made or granted, by the Pope or his Successors, or by any Authority derived, or pretended to be derived, from him or his See, against the said King, his Heirs and Successors, or any Absolution of the said Subjects from their Obedience, I will bear Faith and true Allegiance to his Majesty ; his Heirs and Successors, and him and them will defend to the

uttermost of my power, against all Conspiracies and attempts whatsoever, which shall be made against his or their Persons, their Crown and Dignity, by reason or colour of any such Sentence or Declaration, or otherwise; and will do my best endeavour to disclose and make known unto his Majesty, his Heirs and Successors, all Treasons and Traitorous Conspiracies, which I shall know or hear of to be made against him or any of them. And I do farther swear, That I do from my heart abhor, detest, and abjure, as impious and heretical, this damnable Doctrine and Position, That Princes which be Excommunicated or deprived by the Pope, may be deposed or murdered of their Subjects, or any other whatsoever. And I do believe, and in conscience am resolved, That neither the Pope, nor any other person whatsoever, hath power to absolve me of this Oath, or any part thereof, which I acknowledg by good and full Authority to be lawfully administred unto me, and do renounce all Pardons and Dispensations to the contrary. And these things I do plainly and sincerely acknowledg and swear, according to these express words by me spoken, and according to the plain and common sense and understanding of the same words, without any equivocation, or mental evasion, or secret reservation whatsoever. And I do make this Recognition and Acknowledgment heartily, willingly, and truly, upon the true Faith of a Christian.

*So help me God.*

*Nota quod Juramentum debet habere comites, Veritatem, Judicium, & Justitiam, Jer. 4. 2. Et si ista defuerint, non Juramentum, sed Perjurium erit. Nemo se seducat; qui enim per lapidem false jurat, perjurus est. Quacunque arte verborum, vel mentis reservatione juret aliquis, Deus ita accipit sicut ille cui juratur intelligit: Et minus malum est per Deum falsum jurare veraciter, quam per Deum verum jurare fallaciter.*

Now for that all the Authority and power of the Commissioners or Justices of the Peace ariseth partly out of their Commission, and partly out of the Statutes; I will first set down the form of the Commission it self, shortly considering the parts thereof.

### The Form of the Commission of the Peace. CHAP. V.

**C**AROLUS, &c. *Prædilecto & fideli Thomæ Domino Coventry de Allesburrrough, Domino Custod, Mag. Sigilli Angliæ, Richard Welton. Comiti Portland, Thesaurario Angliæ, &c. Salutem.*

I.  
Ad pacem  
conservan-  
dum.

*Sciatis, quod assignavimus vos, conjunctim & divisim, & quemlibet vestrum, Justiciarios nostros, ad Pacem nostram in Comitatu nostro Cantabrigiæ conservandam; ac ad omnia Ordinationes & Statuta pro bono Pacis nostræ, ac pro conservatione ejusdem, & pro quieto regimine & gubernatione populi nostri edita, in omnibus & singulis suis Articulis, in dicto Comitatu nostro (tam infra Libertates quam extra) juxta vim, formam, & effectum eorundem custodiendum, & custodiri faciendum; Et ad omnes contra formam Ordinationum vel Statutorum illorum, aut eorum alicujus, in Com' præd' delinquentes, castigandum & puniendum, prout secundam formam Ordinationum & Statutorum illorum fuerit faciendum; Et ad omnes illos qui alicui, vel aliquibus de populo nostro de corporibus suis, vel de incendio domorum suarum, minas fecerint, ad sufficientem securitatem de Pace vel bono gestu suo erga nos & populum nostrum inveniendam coram vobis, seu aliquo vestrum,*



strum, venire faciendum; & si hujusmodi securitatem invenire recusaverint, tunc eos in prisionis nostris (quousque hujusmodi securitatem invenerint) salvo custodiri faciendum.

Affignavimus etiam vos, & quoscunque duos vel plures vestrum, (quorum aliquem vestrum, A, B, C, D, E, F, & c. unum esse volumus) Justiciarios nostros, ad inquirendum per Sacramentum proborum & legalium hominum de Comitatu prædicto, (per quos rei veritas melius sciri poterit) de omnibus & omnimodis Feloniis, Veneficiis, Incantationibus, Sortilegiis, Arte magica, Transgressionibus, Forstallariis, Regratoriis, Ingrossariis, & Extortionibus quibuscunque; ac de omnibus & singulis aliis malefactis & offensis (de quibus Justiciarii Pacis nostra legitime inquirere possunt, aut debent) per quoscunque & qualitercunque in Comitatu prædicto factis sive perpetratis, vel quæ in posterum ibidem fieri vel attemptari contigerit: Ac etiam de omnibus illis qui in Comitatu prædicto in Conventiculis contra Pacem nostram, in perturbationem populi nostri, seu vi armata ierint vel equitaverint, seu in posterum ire vel equitare præsumpserint; ac etiam de omnibus his qui ibidem ad gentem nostram machinandum vel interficiendum in insidiis jacuerunt, vel in posterum jacere præsumpserint: Ac etiam de Hostelariis, & aliis omnibus & singulis personis qui in abusu Ponderum vel Mensurarum, sive in venditione Victualium, contra formam Ordinationum & Statutorum, vel eorum alicujus, inde pro communi utilitate Regni nostri Angliæ & populi nostri ejusdem editorum, deliquerunt, vel attemptaverunt, seu in posterum delinquere vel attemptare præsumpserint in Com' præd': Ac etiam de quibuscunque Vicecomitibus, Ballivis, Seneschallis, Constabulariis, Custodibus Gaolarum, & aliis Officiariis, qui in executione Officiorum suorum (circa præmissa seu eorum aliqua) indebite se habuerunt, aut in posterum indebite se habere præsumpserint, tepidi, remissi vel negligentes fuerunt, aut in posterum fore contigerint, in Comitatu prædicto: Et de omnibus & singulis articulis & circumstantiis, & aliis rebus quibuscunque per quoscunque & qualitercunque in Com' præd' factis sive perpetratis, vel quæ in posterum ibidem fieri vel attemptari contigerit, qualitercunque præmissorum vel eorum alicujus concernentibus plenius veritatem: Et ad Indictamenta quacunque sic coram vobis seu aliquibus vestrum capta, sive capienda, aut coram aliis nuper Justiciariis Pacis in Com' præd' facta sive capta (& nondum terminata) inspiciendum: Ac ad Processus inde versus omnes & singulos sic indictatos, vel quos coram vobis in posterum indictari contigerit, (quousque capiantur, reddant se, vel utlagentur) faciendum & continuandum: Et ad omnia & singula Felonias, Veneficia, Incantationes, Sortilegia, Artes magicas, Transgressiones, Forstallarias, Regratorias, Ingrossarias, Extortiones, Conventicula, Indictamenta prædicta, cæteraque omnia & singula præmissa, secundum Leges & Statuta Regni nostri Angliæ, (prout in hujusmodi casu fieri consuevit aut debuit) Audiendum & Terminandum; & ad eosdem Delinquentes, & quemlibet eorum, pro delictis suis, per Fines, Redemptiones, Amerciamenta, Forisfacturas, ac alio modo (prout secundum Legem & Consuetudinem Regni nostri Angliæ, aut formam Ordinationum vel Statutorum prædictorum, fieri consuevit aut debuit) castigandum & puniendum.

Provisio semper, quod si Casus difficultatis super determinatione aliquorum præmissorum coram vobis, vel aliquibus duobus, vel pluribus vestrum evenire contigerit; tunc ad Judicium inde reddendum, nisi præsentia unius Justiciariorum nostrorum de uno vel de altero Banco, aut Justiciariorum nostrorum ad Assisas in Com' præd' Exceptio.

*præd' capiendas assignatorum, coram vobis, vel aliquibus duobus, vel pluribus vestrum, minime procedatur.*

Charge to  
the Justices.

*Et ideo vobis & cuilibet vestrum mandamus, quod circa custodiam Pacis, Ordinationum, Statutorum, & omnium & singulorum ceterorum præmissorum, diligenter intendatis. Et ad certos dies & loca, quæ vos vel aliqui hujusmodi, duo vel plures vestrum (ut prædictum est) ad hac provideritis, super præmissis faciatis Inquisitiones, & præmissa omnia & singula audiat & terminetis, ac ea faciatis & expleatis in forma prædicta, facturi inde quod ad Justitiam pertinet, secundum Legem & consuetudinem regni nostri Angliæ: Salvis nobis Amerciamentis, & aliis ad nos inde spectantibus.*

To the  
Sheriff.

*Mandamus etiam tenore præsentium Vicecomiti nostro Cantabrigiæ, quod ad certos dies & loca (quæ vos vel aliqui hujusmodi duo vel plures vestrum, ut prædictum est, ei, ut prædictum est, sciri feceritis) venire faciat coram vobis, vel hujusmodi duobus vel pluribus vestrum (ut dictum est) tot & tales probos & legales homines de Balliva sua, (tam infra Libertates quàm extra) per quos rei veritas in præmissis melius sciri poterit & inquiri.*

To the  
Custos  
Rotulor.

*Assignavimus denique te præfatum Johannem Cuts, Militem, Cust. Rot. Pacis nostræ in dicto Comitatu nostro. Ac propterea tu, ad dies & loca prædicta, Brevia, Præcepta, Processus, & Indictamenta prædicta, coram te & dictis sociis tuis venire facias, ut ea inspiciantur, & debito fine, terminentur, sicut prædictum est. In cujus rei testimonium, &c. Datum, &c.*

*The same in English.*

“ **C**HARLES, &c. To Our Well-beloved and Faithful Thomas L.  
“ Corventry, of Allesburreough, Lord Keeper of the Great Seal of Eng-  
“ land; and Richard Weston Earl of Portland, Treasurer of England, &c. Greet-  
“ ing. Know ye that We have assigned you, and every one of you, joyntly  
“ and severally, Justices to keep the Peace in the County of Middlesex; And  
“ to keep and cause to be kept all Ordinances and Statutes made for the  
“ good of the Peace, and for Conservation of the same, and for the quiet  
“ rule and Government of the people in all and every the Articles thereof,  
“ in the said County, (as well within the Liberties as without) according to  
the force, form, and effect of the same; and to chastise and punish all per-  
sons offending against the form of those Ordinances, or Statutes, or any of  
them, in the County aforesaid, as according to the form of those Ordinances  
and Statutes shall be fit to be done; And to cause to come before you,  
or any of you, all those persons who shall threaten any of the people in their  
persons, or in burning their Houses, to find sufficient Security for the Peace,  
or for the Good Behaviour towards Us and the People; and if they shall  
refuse to find such Security, then to cause them to be kept safe in Prison un-  
till they find such Security. We have also assigned you, and every two or  
more of you (whereof any of you the said A, B, C, shall be one) Justices to  
enquire by the Oath of good and lawful men of the County aforesaid, by  
whom the truth may be better known, of all and all manner of Felonies,  
Witchcrafts, Inchantments, Sorceries, Magick Art, Trespasses, Forestal-  
lings, Reagrtings, Ingrossings, and Extortions whatsoever; And of all and  
singular other misdeeds and offences, of which Justices of Peace may or  
ought

ought lawfully to enquire, by whomsoever and howsoever done or perpetrated, or which hereafter shall happen howsoever to be done or attempted in the County aforesaid; And of all those who in the County aforesaid have either gone or ridden, or hereafter shall presume to go or ride in Companies with armed force against the Peace, to the disturbance of the People; And also of all those who in like manner have layn in wait, or hereafter shall presume to lie in wait, to maim or kill the people; And also of Innholders, and of all and singular other persons who have offended or attempted, or hereafter shall presume to offend or attempt in the abuse of Weights or Measures, or in the sale of Victuals, against the form of the Ordinances or Statutes, or any of them, in that behalf made for the common good of *England*, and the people thereof in the County aforesaid; And also of all Sheriffs, Bailiffs, Stewards, Constables, Gaolers, and other Officers whatsoever, who in the execution of their Offices about the premises, or any of them, have unlawfully demeaned themselves, or hereafter shall presume unlawfully to demean themselves, or have been or hereafter shall be careless, remiss, or negligent in the County aforesaid: And of all and singular Articles and Circumstances, and all other things whatsoever, \* by whomsoever and howsoever done or perpetrated in the County aforesaid, or which hereafter shall happen howsoever, to be done or attempted in any wise more fully concerning the truth of the premises, or any of them: And to inspect all Indictments whatsoever so before you or any of you taken or to be taken, or made or taken before others, late Justices of the Peace in the County aforesaid, and not as yet determined; and to make and continue the Process thereupon against all and singular persons so Indicted, or which hereafter shall happen to be Indicted before you, untill they be apprehended, render themselves, or be outlawed: And to hear and determine all and singular the Felonies, Witchcrafts, Inchantments, Sorceries, Magick Arts, Trespasses, Forestallings, Regratings, Ingrossings, Extortions, Unlawful Assemblies, Indictments aforesaid, and all and singular other the premises, according to the Laws and Statutes of *England*, as in like case hath been used or ought to be done: And to chastise and punish the said persons offending and every of them for their offences, by Fines, Ransoms, Amercements, Forfeitures, or otherwise, as ought and hath been used to be done, according to the Laws and Customs of *England*, or the form of the Ordinances and Statutes aforesaid:

\* Note,  
Here is need  
ther perfor  
time, nor  
place ex-  
cepted.

Provided always, That if a case of difficulty upon the determination of any of the premises shall happen to arise before you, or any two of you, or more of you; then you, nor any two or more of you do proceed to give Judgment therein, except it be in the presence of one of the Justices of the one or other Bench, or one of the Justices of Assise in the County aforesaid.

And therefore We command you, That you diligently intend the keeping of the Peace, Ordinances, Statutes, and all and singular other the premises; And at certain days and places which you, or any such two, or more of you, as is aforesaid, shall in that behalf appoint, ye make Inquiries upon the premises, and hear and determine all and singular the premises, and perform and fulfill the same in form aforesaid, doing therein that which to Justice appertaineth,

pertaineth, according to the Law and Custome of *England*: Saving to us the Amercements, and other things to us thereof belonging.

And we command by virtue of these presents the Sheriff of the said County of *Middl.* that at certain days and places which you, or any such two or more of you, as aforesaid, shall make known to him, as aforesaid, he cause to come before you, or such two or more of you, as aforesaid, such and as many good and lawful men of your Bailiwick (as well within Liberties as without) by whom the truth in the premisses may be the better known and inquired of.

Lastly, we have assigned you the said *S. W. Roberts*, Keeper of the Rolls of the Peace in the said County. And therefore you shall cause to be brought before your self and your said Fellows, at the said days and places, the Writs, Precepts, Processess, and Indictments aforesaid, that the same may be inspected, and by a due course determined, as aforesaid. In witness whereof, &c.

“ Note, by this last Clause the Keeper of the Rolls shall have the custody of Indictments, Presentments, Bills, Recognizances, and such like Records of Sessions; but not the Custody of Records of Riots, Precepts of Peace, or other special Records, or other Records not pertaining to the general Sessions.

This Commission hath two parts, containing the Power of the Justices of Peace.

The first *Asignavimus* (or first part) of the Commission doth give power to any one Justice of Peace (more, or all) to keep, and cause to be kept, the Peace, and all Ordinances and Statutes made for the conservation of the Peace, and for the quiet Government of the people: As namely the Statutes made for Hue and Cry after Felons; and the Statutes made against Murthers, Robbers, Felons, Night-walkers, and Affrayers, Armor worn *in terracrem*, Riots, Forcible Entries, and all other force and violence; all which be directly against the Peace. The particulars whereof you shall find more fully hereafter, and most of them under their proper Titles.

Stat. Win.  
13 E. 1.  
2 E. 5. 6.  
2 E. 3. 3.

By this first Clause in the Commission, the Justices of Peace have as well all the ancient power touching the Peace which the Conservators of the Peace had by the Common Law, as also that whole authority which the Statutes have since added thereto.

Lamb. 46.

The means which the Justices of Peace must use for the keeping of the Peace, and for the execution of these Statutes, are as followeth.

For to prevent the breach of the Peace, the Justice of Peace may send his Warrant for the party, and may take sufficient Sureties of him (by Recognizance) for keeping the Peace, or for the Good Behaviour, (as the case shall require:) and may send the party to the Gaol for not finding such Sureties.

But for these Statutes made for the Peace, they are to be executed according to such prescript and order as themselves do deliver; wherein if no power at all be expressly given to any one Justice of Peace alone, then can he not otherwise compel the observation thereof (as it seemeth) then by Admonition only: In which behalf if he shall not be obeyed, he may prefer the

Lamb. 47.

the Cause at the Sessions, and work it to a Presentment upon the *Statute*, and so (by the help of his fellow-Justices) to hear and determine thereof as Law requireth.

And here note, That whereas before the making of the *Statute* 1 Ed. 3 cap. 16. there were no Justices of Peace within this Realm, (but only Conservators of the Peace, as is before shewed:) and whereas by the Commission of the Peace, presently after, and to this day, the Justices of Peace had, and still have, the *Statute* of *Winchester* given them in charge, to execute the same; which *Statute* of *Winchester* (being made 13 E. 1.) was long before there were any Justices of Peace: By this it may appear, that the King by his Commission may commit the execution of the Statutes and Laws to whom he shall please. And so also a Justice of Peace, by virtue of the Commission, may execute any *Statute* whereunto he shall be enabled by the said Commission, although there shall be no such express power given to him so to do by the words or letter of the same *Statute*.

The second *Assignavimus* in the Commission doth give authority to any two Justices of the Peace (or more, the one being of the *Quorum*) in these five things following:

1. To enquire (by a Jury) of all Offences mentioned within the Commission.
2. To take and view all Indictments or Presentments of the Jury.
3. To grant out Procefs against the Offenders, thereby to cause them to come and answer.
4. To hear and try all such Offences (upon any former or future Indictments taken before themselves, or before any other Justices of the Peace) after the Offenders be come in.
5. To determine thereof, by giving Judgment, and inflicting Punishment upon the Offenders according to the Laws and Statutes; to wit, by Fine, Imprisonment, or otherwise, according to Law: But not to award any Remittance to the party wronged, otherwise then by perswasion.

But all the business included within the second *Assignavimus* belongeth to the Sessions of the Peace; and therefore I leave here to write any farther thereof.

Note also, That there are divers *Statutes* which be not specified within the Commission, and yet are committed to the charge and care of the Justices of Peace; but all such *Statutes* which do give expressly any power or authority to the Justices of Peace, are to them a sufficient Warrant and Commission of themselves, although they be not recited in the Commission; and all such *Statutes* are also to be executed by them, according as the same *Statutes* themselves do severally prescribe and set down.

And for that most of the business and practice of the Justices of Peace doth consist and lie in the Execution of such Statutes as are committed to their charge, (whether they be specified in the Commission, or not specified there) the numbers of which Statutes are exceedingly increased of late years, to the over-burthening of all the Justices of Peace; and (the rather) to give some little help to such Justices of Peace who (being destitute of the assistance of such as are learned in the Laws) are daily to administer Justice, and to execute their Office at home, and out of their Sessions; I have

have, for their better ease herein, endeavoured (in this Treatise) to set down more orderly and particularly the several parts and branches of every such Statute by it self, under their proper Titles, with farther referments to the Statutes themselves at large, or to the Abridgments.

## CHAP. VI.

Their  
Power.

THE Power and Authority of the Justices of Peace (as well given them by the said Commission as by the Statutes) is in some cases ministeriall or regular, and limited as a Minister only; and in some other cases judiciall or absolute, and as a Judge.

Ministerial, when he is thereunto commanded by an higher Authority.

As upon { A *Supplicavit*, out of the Chancery or Kings Bench, for the taking of Surety for the Peace, or Good Behaviour. See hereof, *tit. Surety for the Peace, cap. 73.*  
A Writ upon the Statute of *Northampton*, upon a Forcible Entry. See hereof *tit. Forcible Entry, cap. 22.*

In the Execution of which two Writs, the Justice of Peace may proceed no farther, or otherwise, then he is authoris'd by such Writ; and is also to return the Writ, and to certifie his doings therein, into the Court whence the Writ came.

“ So upon a *Certiorari* out of any of the higher Courts at *Westminster*, directed to the Justices of Peace (or to any of them) to certifie any Recognizance, Indictment, or other Record, taken before him, or them, or any of them; or in his or their hands. Of which see more, *cap. 134.*

But in all other cases within their authority, the power of the Justices of Peace seemeth to be absolute, (in some manner) so as they, and every of them, may of their own power proceed *ex Officio*, and as a Judge: yet in this also their power is limited; for they may neither hang a man for a Trespass, nor fine him for a Felony, but must proceed in all things according as they are prescribed by the Commission, and by the said several Statutes.

Discretion.

And yet for that all considerable circumstances can neither be comprehended in the Commission, nor foreseen at the time of the making of the Statutes, therefore oftentimes some things are referred to the consideration of the Justices of Peace, and left to be supplied by them in their Discretion.

The Commission of the Peace (in it self) doth leave little or nothing to the Discretion of the Justices of Peace, but doth limit them to proceed *secundum Leges, Consuetudines, Ordinationes & Statuta*: And indeed to leave too much to Discretion, were to open a gap to corruption.

But by some late Statutes some things are (therein by speciall words) referred to the Discretion of the Justices of Peace; some out of Sessions, and some at their Sessions.

I will here only set down some particulars of such things as are referred to their Discretions out of their Sessions.

*Some things referred to the discretion of one Justice of Peace out of the Sessions, which you may more fully see hereafter in this Book, in the severall Titles here under-written.*

**F**lesh killed in Lent, one Justice of Peace may give to the Poor at his *Fish-days* discretion.

One Justice may compell any person meet (in his discretion) to be bound an Apprentice.

One Justice of Peace may cause all such persons as be meet, to labour, (by *Labourers* his discretion) to work in Harvest and Hay-time. *Vide cap. 31.*

Malts that be deceitful may be sold, &c. at such reasonable prices as one *Malt* Justice of Peace (in his discretion) shall think expedient. *Chap. 33.*

One Justice of Peace (as seemeth) may (by his discretion) give directions *Plague* to the Searchers, Watchmen, and Keepers, &c. of persons infected with the Plague. *Vide Cromp. 122. b. cap. 39.*

Trespassers in Corn, Orchards, Hedges, or Woods, which (in the *Trespass* discretion of the Justice) are not thought able to give satisfaction, shall be whipped. *Chap. 57.*

It seems that one Justice of Peace may hear and determine by exami- *Tiles* nation, or otherwise, by his discretion, the Offences committed in Tile-making. *Chap. 59.*

*Some things referred to the discretion of two Justices of Peace out of the Sessions.*

**T**wo Justices may allow and discharge Ale-house-keepers, as they shall *Ale-house-keepers* think meet. But they ought to allow none but such as be capable and needful for the place. *Vide cap. 7.*

Two Justices may take Recognizance of Ale-house-keepers for keeping good Orders, &c. according to their discretions. *Chap. 14.*

Two Justices may appoint Overseers of Woollen Cloth by the year, or *Cloth* for shorter time, by their discretion.

Clothiers, their Work-folks imbezilling any part shall be punished, &c. by the discretion of two Justices. *Ibid.*

Two Justices may grant their Warrant to call before them any person or persons which in their discretions shall be thought fit to discover any offence in the making of deceiveable Woollen cloth, &c. *21 Jac. chap. 18.*

Servants, &c. assaulting their Master, may be imprisoned for one year, or *Labourers* less, at the discretion of two Justices, *Chap. 31.*

Two Justices may (by their discretion) compell Women to serve, and for such wages, and in such sort, as they think meet.

Two Justices may tax others of the County (by their discretions) towards *Plague* the relief of places infected, &c. *Chap. 39.*

Two Justices may tax any in the Hundred (by their discretions) towards *Poor* the relief of the Poor of any Town that is over-charged. *Chap. 40.*

Two Justices may dispose of all Forfeitures to grow upon the Statutes of *Rogues* Rogues, at their discretions, &c. *Chap. 47.*

Robbery.

Two Justices may assess (according to their discretions) proportionably all the Parishes within the Hundred, towards a Contribution for the parties charged upon a Robbery, &c. *chap. 48.*

Souldiers.

Two Justices shall take order (by their discretion) to set poor Souldiers, &c. to work that cannot get work; and, for want of work, may tax the Hundred (by their discretions) for the relief of such Souldiers, &c. *chap. 52.*

Weights.

Two Justices may fine (by their discretions) the head-Officers in Boroughs and Market-Towns that do not view, &c. all weights and Measures, or do not break and burn the defective. *Chap. 65.*

Two Justices may fine (by their discretions) all Buiers and Sellers with unlawfull Weights and Measures.

There be some other Statutes, and some other Cases, wherein the discretion of the Justices of Peace (out of their Sessions) is tolerated: but the counsel of *Cicero* herein is to be observed; *Sapientis est Judicis cogitare tantum sibi esse permissum, quantum sit commissum ac creditum.*

Also the sayings of the Right Honourable, and late Keverend Judge and Sage of the Law, (in his Fifth part, in *Rook's Case*, and in his Tenth part, in *Knightly's Case*) are worthy observation: *sc.* That Discretion is a knowledge or understanding to discern between truth and falshood, between right and wrong, between shadows and substance, between equity and colourable glosses and pretences, and not to doe according to our wills and private affections, for *talīs discretio discretionem confundit.* And therefore in both the recited Cases it was holden, that though the words in the Commission of Sewers do give authority to those Commissioners to doe according to their discretions, that yet their Discretion ought to be limited and bounded with the rules of Reason, Law, and Justice, and their Proceeding must be *secundum Legem & Consuetudinem Angliæ*; and so of other like Commissioners. Again, Discretion, saith he, is *scire vel discernere per Legem quid sit justum*; *viz.* to discern by the right line of Law, and not by private opinion. *Co. L. 227.* And therefore every Judge, Justice (or Commissioner) ought to have *duos Sales*, *viz.* *Salem Sapientiæ, ne sit insipidus*; & *Salem Conscientiæ, ne sit diabolus.*

Co. 5. 101.  
& 10. 140.

And (as *M. Lambert* well said) no way better shall the Discretion of a Justice of Peace appear, then if he (remembering that he is *Lex loquens*) shall contain himself within the lists of Law, and shall not use his discretion, but only where both the Law permitteth, and the present case requireth.

In all cases therefore where the Statutes do refer the Trial of Offenders (or hearing, and determining of Offences) to the discretion of the Justice or Justices of Peace, out of Sessions, it is very requisite, that upon such Trial or hearing, the said Justices take due examination (of the Offenders themselves, and also of credible Witnesses) as well concerning the Fact itself as the Circumstances thereof; and upon Confession, or other due Proof of the Offence, then to proceed according to the Law and Justice See *chap. 2. 7. and 66.*

But not to denounce or give Sentence before the party be cited, and heard to answer for himself: For this Defence is allowed by God's Law. *Gen. 3. 9.* Adam, *where art thou?* and *Gen. 4. 9.* *where is thy brother Abel?* And in the case of the five Cities, *I will goe down and see,* *Gen. 18. 21:*

Note,



Note, That in all Cases where the Statute referreth the Trial, &c. to the discretion of the Justices, the said Statutes themselves seem also to enable the said Justices of Peace to take the Examination of Witnesses, and that upon an Oath. See *chap. 66.*

Note farther, That the Justices of Peace, out of their Sessions, are now armed with far more ample Authority and Power then the ancient Conservators of the Peace were: For the Justices of Peace have double Power given them; the one of Jurisdiction, to convene the Offenders before them (by their Warrant,) and (in divers cases out of their Sessions) to examine, hear and determine the Cause; the other of Coercion, (*sc.* after the Cause heard) to constrain them to the obedience and observance of their Order and Decree (which notwithstanding must be according to the Rules of Law and Justice, as is aforesaid:) whereas the ancient Conservators of the Peace had no Jurisdiction or Authority at all, either to convene the Offender before them, or to examine, hear or determine the Cause; but had only Coercion, Prehension, (or Punishment of an Offender) in some few cases, as you may see before, *chap. 1.*

*Pl. 37.* And here I must farther put the Justices of Peace in mind, that their Authority and Power is limited, to be by them exercised only within the County or Counties where they be in Commission; and yet in that or those County or Counties, the Justices of Peace of the County must not intermeddle in any City there, which is a County of it self, nor in any City or Corporate Town there (though it be no County of it self, but within the County) which have their proper Justices of Peace within themselves by the King's Charter or Commission, (especially if in such Charter there be any special words of Prohibition, that the Justices of the Shire *non se intro-mittant, &c.*) except such Country Justices shall also be in Commission in such City or Town Corporate.

*Lamb. 48.* But in other Corporate Towns which have not their proper Justices of Peace, as also in all Liberties and Franchises (within the County) which have the return of the Writs, but have not their proper Justices, there the Justices of the Peace of the County ought to execute their Authority, and that by the words of their Commission.

*20 H. 7. 6.* Again, if a Parish shall extend into two or more Counties, or if part thereof shall lie within the Liberties of any City or Town Corporate (which have their proper Justices) and part without; then as well the Justices of Peace of every County, as also the Justices (or Officers) of such City or Town Corporate, shall intermeddle only within their own proper and distinct limits and bounds, (*sc.* within so much of the said Parish, &c. as lieth within their several liberties and limits) and not invade or deal in other Jurisdictions: for it shall be against Law and Reason, where Offices and Jurisdictions are several, that the one should intermeddle within the Jurisdictions of the other.

*See hic tit. Poor.* Neither shall any Justice of Peace deal in, or punish any Trespass, or other like Offence, committed in any other County against any penal Statute, though such Offender shall be brought before him, (see the Commission the first *Affig. & postea, tit. Guns, Labourers, and Partridges;*) except the Statutes, shall especially enable them thereto, as the Statutes *1 Jac. 1 & 7 Jac.* which do enable the Justice of the County where the Offence shall

shall be committed, or the Offender apprehended, (See *tit. Partridges*) and the like ; or that it be for matters of the Peace, or in cases of Felony, (See *tit. Affrays, and Felony.*)

Neither shall any Justice of Peace for the time that he shall make his abode or be out of the County (where he is in Commission) intermeddle to take any Recognizance, or any Examination, or otherwise to exercise his Authority in any matter that shall happen within the County, where he is in Commission ; neither can he cause one to be brought before him out of the County where he is in Commission, into the other County ; for, being out of the County where he is in Commission, he is but as a private man. *Vide hic tit. Affray, Imprisonment, Robbery, & Warrants, & Plo. 37. & 13 E. 4. 8.*

And yet a Sheriff being out of his County may make a Pannel, or may make Return of any Writ, *9 H. 4. 1.*

Now my purpose is to set down more particularly what things the Justices of Peace, out of their Sessions of the Peace, may do in the Execution of their Commission, or of the Statutes wherewith they are charged. And herein you must observe that some things are permitted to be executed by any one, two, or more Justices ; and some other things are more specially appointed and appropriated (by some Statutes) to some one certain Justice of Peace, or two, or more Justices ; either in regard that such Justice or Justices is or are next the place, or are of the *Quorum*, or the like.

And here note, that whatsoever any one Justice of Peace alone may do, (either for the Keeping of the Peace, or in other Execution of the Commission or Statutes) the same also may lawfully be done and performed by any two or more Justices.

But where the Law giveth authority to two, there one alone cannot execute this : For *Una persona non potest supplere vicem duarum ; & plus vident oculi quam oculus.* See *Co. 5. 94. & Plo. 393. a. b. Co. L. 181.* Co. 4. 46.

And yet where a Statute appointeth a thing to be done by two Justices of Peace (or more,) if the Offence be any misdemeanour or matter against the Peace, there, upon complaint made (of the Offence) to any one of those Justices of Peace, it seemeth that one of those Justices may grant out his Warrant to attach the Offender, and to bring him before the same Justice and the other Justice so appointed, (at some convenient place) and then they joyn to hear and determine the same : Also upon Complaint thereof made to any other Justice, he may give Warrant to bring the Offender before himself or any other Justice, to find Sureties for his appearance at the next General Sessions, there to make answer to such his Offence ; or else he may bind the Offender to the Good Behaviour, and so to appear at the next Sessions, if the said Justice shall see any just cause so to doe. But one Justice of Peace alone may not in any wise meddle to hear and determine the same.

Also when things by Statute are appropriated to some one certain Justice or more, there such Justice or Justices are to pursue such their Authority accordingly : and yet if such Justice or Justices shall therein joyn with any other Justice of the same County, it may seem no less lawful and warrantable ; *tamen quare, & vi. C. 11. 92.* Where an Authority is given to four, or to one of them ; if two of them shall execute this, it seems they have not pursued their Authority. So if an Authority be given to three *conjunctim & divisim,* Co. 11. 92.

*divisim*, if two of them do it in the absence of the third, it is void, *Dyer* 62. for that the Authority is not pursued. But *Co. L. 181.b.* taketh a difference where the thing is *pro bono publico*, and where *pro privato*; as if a Sheriff upon a *Capias* maketh his Warrant to 4 or 3 joyntly or severally to arrest the Defendant, two of them may arrest him, for that it is for the Execution of Justice, which is *pro bono publico*, and therefore shall be more favourably expounded then when it is onely for private.

*Plo. 26.b.* But to come to the former Cases of our Justices of Peace, there seemeth a general Rule to be put in *Stradling's Case* (in *M. Plo.*) That when a thing is appointed by any Statute to be done by or before one person certain, that such thing cannot be done by or before any other, but that it ought to be done as the Statute hath appointed; and by such expresse designation of one  
*See Co. 11 59, & 64.* (or power given to one) certain person, all others are excluded.

*18 El. 3.* And yet whereas by the Statute of *18 Eliz.* the order to be taken for a Bastard-Child is appropriated to two Justices of Peace (one being of the *Quorum*) in or next unto the Parish where such Child shall be born; if two such Justices cannot agree upon the reputed Father (or in making such Order as the Statute requireth, or in other Execution of that Statute) *Quare* what is to be done, & *vide hic cap. 11.* I have known the Case lately moved to the Judges of Assise, who thought it fit, that such difference between the two Justices of Peace should be referred to the hearing of the whole Bench, and the matter to be re-examined by them; and what order should be therein set down by the Bench, the same to stand geod.

But in such things appropriate to some one or more Justices of the Peace, if, without such Justice or Justices, all (or any of) the residue of the Justices of that County shall intermeddle therein, such their doings seem no waies warrantable, but such their proceeding to be *Coram non Judice*, and that there is no necessity to obey them therein, as being no lawful Judges of the Cause.

*What things one Justice of Peace alone may doe out of the Sessions; and where the aid or assistance of two Justices of Peace (or more) is required.*

*Ale-houses, &c.* CHAP. VII.

THE true and principal use of Inns, Ale-houses, and Victualling-houses, is two-fold; *sc.* either for the Receipt, Relief, and Lodging of wayfaring people travelling from place to place about their necessary business, or for the necessary supply of the wants of such poor persons as are not able by greater quantities to make their provision of Victuals: and is not meant for entertainment and harbouring of leud or idle people, to spend or consume their money or time there, (as appeareth by the Preamble of the Statute made *1 Jac. Reg. c. 9.*) And therefore to prevent the mischiefs and great disorders happening daily by the abuses of such houses, his said Majesty of late famous Memory, and our now gracious Sovereign Lord King Charles, have graciously been pleased that divers good and profitable Laws should be made for the redress thereof, as followeth.

*1 Ja. 9. p. 6.* Every keeper of Tavern, (keeping also an Inn or Victualling in his house)  
*21 Ja. 7. 28* and every Ale-house-keeper, Inn-keeper, and Victualler, which shall suffer  
*1 Carol. 4.*

any Townsman, or any Handicraftsman, or Labourer, working in the same City or Town, to remain and continue drinking in their said house, (except such as shall be invited thither by a Traveller, and during his necessary abode there; and except Handicraftsmen, Labourers and Workmen, upon the working-day, for one hour at dinner, or sojourning or lodging there; or except they be allowed by two Justices of Peace) the said Offence being seen by any Justice of Peace within his Limits, or being confessed by the Offender before the Justice of Peace, or being proved before any Justice of Peace by one Witness upon Oath; every such Taverner, Ale-house-keeper, &c. shall forfeit for every such Offence 10 s.

If any Taverner (keeping also an Inn, or Victualling in his house,) or any Inn-keeper, Ale-house-keeper, or Victualler, shall at any time utter or sell within his house, or without, less than one full Ale-quart of the best Beer or Ale for 1 d. and of the small two quarts for 1 d. (the said Offence being proved before any Justice of Peace by one Witness upon Oath) then every such Taverner, Inn-keeper, &c. shall forfeit for every such Offence twenty shillings.

And yet note, That wheresoever any Conviction shall be before the Justice of Peace, by or upon the Oath or Testimony of any other person than the Delinquent himself, there the Justice of Peace must first send for or convene the Delinquent before him, to make answer, &c. and to hear and examine him of the Offence, &c. for it may be, that he can make sufficient defence or excuse of the Fact. And this was the direction of Sir *Nicholas Hide*, Lord Chief Justice of the Kings-Bench, and well agreeth with the Rule here before, *chap. 2. Qui aliquid statuerit, parte in-audita aliter, æquum licet statuerit, haud æquus est.*

Every person that shall continue drinking in any Inn or Ale-house, &c. in the Town where he then dwelleth, (contrary to the former Statute made *4 Jac. 5. primo Jac.*) the said Offence being seen by any Justice of Peace, or being proved before any Justice of Peace, as aforesaid, such persons shall forfeit for every such Offence three shillings four pence. 21 Jac. 7.

If any other person (wheresoever his or their habitation or abiding be) shall be found (by view of any Justice of Peace, or by his own Confession, or proof of one Witness) to be tippling in any Inn, Ale-house or Victualling-house, every such person shall be adjudged to be within the said Statutes of *1 Jac. cap. 9. & 4 Jac. cap. 5.* as if he inhabited and dwelt in the City, Town Corporate, or other Town or Village, where the said Inn, Ale-house, or Victualling-house is or shall be, where he shall be so found tippling, and shall incur the like Penalty; and the same to be in such sort levied and disposed as in the said Act is expressed concerning such as there inhabit. And the voluntary Confession of such an Offender shall suffice to convince himself; and, after his Oath, shall be a sufficient proof against any other offending at that time. *21 Jac. cap. 7.*

Now these Statutes seem to prohibit, not onely the continuing drinking in those Inns and Ale-houses, &c. for longer time then for the necessary abode; but also all Tippling there, *viz.* the vain use of quaffing and drinking of Healths there, &c. For these houses were not ordained, neither are they to be suffered, for any such uses; but only for the necessary harbouring and relief of Travellers, and to supply the wants of the Poor, as aforesaid.

Every

*1 Caroli 4.* Every Taverner (keeping also an Inn or Victualling in his house,) and every Inn-keeper, Ale-house-keeper, and other Victuallers, which shall suffer any person (wheresoever his dwelling or abiding be) to tipple in the said house contrary to the true intent of any of the said former Statutes, shall be adjudged within the Stat, *1 Jac. cap. 9.*

So that now by these Statutes, no person may come to tipple in any such Tavern, or in any Inn, Ale-house, or Victualling-house, in the same Town where he dwelleth, nor within two miles thereof, except he be a Traveller: And so Sir *Francis Harvey*, Knight, delivered it in his Charge at *Cambridg* Summer Assizes, *An. 1629.* But the Stat, *21 Jac. & 1 Caroli* seem to forbid all Tippling in such houses, wheresoever they be dwelling or abiding, and by whomsoever it be.

And note, that the voluntary Confession (before the Justice of Peace, or other person authorized to minister the Oath) of any Offender against either of the Statutes of *1 Jac. cap. 9.* or *4 Jac. cap. 5.* shall suffice to convince the person so offending; and after such Confession, the Oath of the party so confessing shall be taken, and be a sufficient Proof against any other offending at the same time. *21 Jac. Reg. cap. 7.*

Any Justice of Peace in any County (and any Justice of Peace or other head Officer in any City or Town Corporate, within their limits) shall have power (upon his own view, Confession of the party, or proof of one Witness upon Oath) to convince any person of Drunkenness, whereby such persons so convicted shall incur the Forfeiture of five shillings for every such Offence, to be paid within one week next after such Conviction into the hands of the Church wardens of the Parish where the Offence shall be committed, &c. And if the Offender be not able to pay the said sum of five shillings, then he shall be committed to the Stocks for every such Offence, there to remain by the space of six hours. *4 Jac. 5. 21 Jac. 7.*

*4 Ja. 5.* And for the second Offence of Drunkenness, every person convicted thereof, as aforesaid, shall be bound with two Sureties in the sum of ten pounds, with Condition for the Good Behavior, by any one Justice of Peace, or other head-Officer aforesaid, (as it seemeth) *21 Jac. cap. 7.* and for want of such Sureties to be sent to the Gaol.

Now, for to know a drunken man the better, the Scripture describeth them to stagger and reel to and fro, *Job 12. 25. Esa. 24. 20.* And so where the same legs which carry a man into the house cannot bring him out again, it is a sufficient sign of Drunkenness.

*1 Ja. 9. P. 6.* Every Justice of Peace (within his limits) hath Authority to minister the said Oath to such witnesses. *21 Jac. cap. 7.*

*1 & 4 Ja. 1 & 4 Ja. P. 7, 8.* All and every the Forfeitures aforesaid shall be to the use of the Poor of the Parish where such Offence shall be committed; and the said Forfeitures are to be levied by Distress and Detainer of the Offenders goods, (and after six days by Sale thereof; &c. (by the Constables or Church-wardens of the same Parish, upon a Warrant from any one or more Justices of Peace, under his or their Hand and Seal. *1 Jac. cap. 9. 21 Jac. cap. 7.*

The said Forfeitures of the Taverner, Ale-house-keeper, Inn-keepers & Victuallers, being distrained for as aforesaid, if within six days next ensuing they shall not pay the said Forfeiture, then may the Constables or Church-wardens, by virtue of the said Warrant, presently apprise and sell the said

Distress; but they must deliver the surplussage to the party of whom the Distress was taken. 1 Jac. 9. P. 7.

For every Offence aforesaid, the Ale-house-keeper, Inn-keeper, and other Victualler, for want of sufficient Distress to be taken for such Forfeitures, shall (by any one Justice of Peace) be committed to the common Gaol, there to remain untill the said Penalty be paid. 1 Jac. 9. p. 7.

Every Townsman, or other person whatsoever, &c. that shall continue drinking, or be found tipling in any Inn, Ale-house, or other Victualling-house, contrary to the Statute, (for want of sufficient Distress, and not being able to pay the said Forfeiture of three shillings four pence) shall be set in the Stocks for every such Offence four hours, (upon Warrant or commandment from any one such Justice of Peace.) 2. 1 Jac. 7. 4 Jac. 5.

*Default or neglect of Officers.* If the Constable and Church-wardens shall neglect to levy, or shall not levy the said several Forfeitures of Ale-house-keepers, &c. suffering tipling in their houses, or for their Measure of Ale or Beer; or in default of Distress shall neglect by twenty days to certify the same defaults of Distress to the Justice of Peace; then every such Constable and Church-warden shall forfeit for every such default 40 s. to the use of the Poor, to be levied by Distress (of the Offenders goods,) by Warrant to any other indifferent person, from any one (or more) Justices of Peace under their Hand and seal: the said Distress to be taken and detained for the said Forfeiture for the space of six daies; within which time if payment be not made, then the same Goods to be presently appraised and sold, and the Surplussage to be delivered to the party, &c. And for want of sufficient Distress, such Constables and Church-wardens to be (by any such Justice of Peace) committed to the common Gaol; there to remain until they have paid the same Forfeiture. 1 Jac. 5. p. 8.

Also if any Constable, or other inferiour Officer of the Parish, shall neglect to execute the Justices Warrant for the due correction of, or for the levying of the Penalties of Offenders in Drunkenness; such Constable, &c. shall forfeit 10 s. to the use of the Poor, &c. to be levied as aforesaid. 4 Jac. 5.

*Refusing to lodge.* If a common Inn-holder or Ale-house-keeper will not lodge a Traveller, any Constable (or Justice of Peace) may compell him thereto; but how the Officer shall compell him *Quere*: it seemeth that all the Officer can doe, is, either to cause such Ale-house-keeper to be suppressed; or else to present or prefer such Offence of an Inn-keeper, or Ale-house-keeper, at the Assizes, or Sessions of the Peace, that so such Offender may be thereupon indicted. See the Commission. Br. Acc. Sur. 92. & 76. 5 E. 4. 3.

And at a Lent Assizes, Anno Domini 1622. Sir James Ley (Knight and Baronet, Lord Chief Justice of the King's Bench) delivered it in his Charge, that an Inn-keeper, or Ale-house-keeper, offending herein, might be indicted, fined and imprisoned for the same; or else, that the party grieved might have his Action *sur le Case* against the Inn-keeper or Ale-house-keeper refusing to lodge him. *Vide* Cro. 50. & 4 H 7, 22.

But no Inn-holder, Ale-house-keeper, or other Victualler, shall be compelled to sell, or let any Traveller or other to have any Victuals or Lodging, except the party shall first tender and pay ready money for the same, if it be required. 10 H. 7. 8. 5. E. 4. 3. Co. 9. 87. b.

Any

5 Ed. 6. 25.  
P. 2. Any two Justices of Peace (the one being of the *Quorum*) may allow the keeping of any common Ale-house, or Tipling-house, and shall (from time to time) take Bond with Surety by Recognizance of such Ale-house-keepers, as well against the using of unlawful Games, as also for the keeping of good rule and order in their Houses, according to the discretions of the same Justices. Two Justices.

And yet note that the words of the Statute do not warrant the Justices of Peace to allow Ale-house-keepers at their pleasure; but the words of the Statute are thus, None shall be admitted to keep a common Ale-house, &c. but such as shall be allowed in open Sessions, or by two Justices, the one of the *Quorum*, &c. And therefore if two such Justices out of the Sessions shall allow more then are needful, or such as are disabled, or such as have been suppressed; the Justices may be punished, the rather for that the number of unnecessary Ale-houses are causes of much disorder, poor labouring men and servants resorting thither, and there mis-spending both their money and time.

There shall be paid for such Recognizance but xij. d. and the said Justices shall certifie the same Recognizance at their next Quarter-Sessions (upon pain of five Marks.) *Ibidem*.

5 E. 6. 25.  
P. 1. Any two Justices of Peace (the one being of the *Quorum*) may remove, discharge, and put down any Ale-house where they shall think meet.

The Ale-house-keeper put down and discharged by any two such Justices of Peace cannot be allowed again by any other two or more Justices of Peace, except it be in open Sessions, (as Sir Peter Warburton delivered in his Charge at Cambridge Assizes, Anno Dom. 1613.

5 E. 6. c.  
25. P. 4. Any two Justices of the Peace (the one being of the *Quorum*) may commit to Prison in the common Gaol (for three dayes without Bail) those that keep common Ale-houses, or that use common selling of Ale or Beer, obstinately of their own authority, without allowance by two such Justices, or contrary to the commandment of two such Justices. And the said two such Justices (before the delivery of such Offenders) shall take Recognizance of them with two Sureties, that he or they shall keep no more a common Ale-house, or use commonly selling of Ale or Beer, according to the Discretion of the same Justices; and shall certifie such Recognizance, Discharge, and Offence, at their next Quarter-Sessions: which Certificate shall be a sufficient Conviction in Law of the same Offence, without any farther trial thereof to be had: and for such Offence the Fine of xx s. shall be assessed in open Sessions.

But for that this former Law made 5 Ed. 6. hath not wrought such reformation as was intended, it is farther enacted by another Statute made 3 *Caroli Regis*, cap. 3. That if any person shall upon his own authority (not being thereunto lawfully licensed) take upon him, or her, to keep a common Ale-house, or Tipling-house, or shall commonly use selling of Ale, Beer, Cider, or Perry, that every such person for every such offence shall forfeit twenty shillings to the use of the poor of the Parish where such Offence shall be committed; the same Offence being viewed by any Justice of Peace, Mayor, or other head-Officer of any City or Town Corporate, within their limits, or confessed by the Offender, or proved by the Oath of two Witnesses. One Justice.

Every



Every such Justice of Peace (or other head-Officer aforesaid) have power to minister an Oath to such Witnesses, 3 *Car.* 3.

Also every such Justice (and other head-Officer aforesaid) within their several limits, may make their Warrant to the Constables or Church-wardens of the Parish where the said Offence shall be committed, to levy the same twenty shillings by Distresse of the Offenders Goods; and for default of Satisfaction, within three dates next ensuing, the said Distresse to be appraised and sold, and the overplus to be delivered to the Offender: and this to be only for the first Offence. *Ibidem.*

1 Offen. If such Offender shall not have sufficient Goods whereby to levy the said twenty shillings by Distresse, or shall not pay the said twenty shillings within six dayes after such Conviction, then the said Justice (and other head-Officer aforesaid) shall commit the said Offender to the Constable where the Offence shall be committed, or the Party apprehended, to be openly whipped. *Ibidem.*

If the Constable, &c. shall neglect to execute the said Warrant, or do refuse, or do not execute upon the Offender the said punishment of Whipping, the said Justice (or Officer) may commit the Constable, &c. to the common Gaol without Bail, untill the said Offender shall be by him punished as aforesaid, or untill the said Constable, &c. shall pay forty shillings to the use of the poor of the Parish. *Ibidem.*

2 Offen. The unlicensed Ale-house-keeper, for such his second Offence, shall be committed to the House of Correction for one moneth. *Ibidem.*

3 Offen. And for every such Offence after, he shall be committed to the House of Correction, there to remain untill he be delivered by order from the General Sessions. *Ibidem.*

Provided that such Offenders shall not be punished twice for the same Offence, *sc.* shall not be punished both by the Statute made, *An.* 5 *Ed.* 6. and by this Statute of 3 *Caroli Regis.*

If a Feme Covert, against the will of her Husband, shall keep an Ale-house, or shall use common selling of Ale or Beer without License, &c. the Husband is punishable therefore, and the Wife also (by the discretion of the Justices of Peace) may be imprisoned for such her personal and wilful Offence, untill she shall find Sureties for her Good Behaviour, and that she shall no more use the same.

Also it seemeth (by the Letter of the Statute) that the Ale-house-keeper 5 *E.* 6. put down or discharged by two such Justices, if (contrary to their command- *P.* 1. 4. ment) he shall use common selling of Beer or Ale again, though allowed by two other Justices of Peace out of the general Sessions, yet the two Justices that first discharged him may put him down again, and may commit him to the Gaol, for selling contrary to their commandment.

Brewers uttering or delivering any Beer or Ale to any unlicensed Ale-house-keeper, shall forfeit for every Barrell vi. s. viij. d. 4 *Fac.* c. 4.

And yet the Statute alloweth common Victualling, and selling of Ale or 5 *E.* 6. *P.* 5. Beer in Fairs, though unlicensed, &c. 3 *Caroli* 3.

If any Ale-house-keeper which is not licensed, shall suffer Townsmen or any other persons to tipple in his house, or shall break the Assise, &c. he is punishable for the same by the Statute made *primo Fac. Re.* c. 9. and besides he may also be punished by force of the Statute made 5 *Ed.* 6. c. 25. or

3 *Caroli*



3 *Caroli* 3 for selling Beer, &c. without License. Also if any Townsman, or other person, shall be found to be tippling in any unlicensed Ale-house, such persons (as it seemeth) are also punishable by the same Statute, made *primo Jacobi Regis cap. 9.*

P. 6. Any two Justices of Peace may give allowance to Labourers, &c. for  
1 Jac. 9. urgent and necessary occasions to remain in an Inn, Ale-house, or Victual-  
ling-house.

Co. 8. 32. Common Inns are appointed for Travellers and wayfaring men, Co. 8. Inn-keepers  
32. and therefore if any Inn-keeper shall suffer persons inhabiting in the that suffer  
same Town or any other persons (contrary to the Statutes) to be usually Tippling.  
tippling in his house, such an Inn-keeper may be accounted as well an Ale-  
house-keeper as an Inn-keeper; and such Inn-keepers may be bound by Re-  
cognizance with Sureties for keeping of good Order, and observing Assize,  
as Ale-house-keepers are: and so Judge Warburton delivered it in his  
Charge at *Cambr. Assizes An. Dom. 1613.* And therewith also agreed  
Sir James Ley and Sir John Dodderige, in their several Charges at *Camb.*  
*Assises, An. Dom. 1621.* for that such Inn-keepers (said they) do pervert  
the end, for which they were first appointed. Or else it seemeth they may  
be dealt withall, *sc.* punished, or committed, as Ale-house-keepers without  
License, (by two Justices of Peace, as aforesaid :) Or they may be indicted  
therefore at the Assises or Sessions of Peace, by the Commission of the  
Peace.

“ *Jo. Brakeyde, &c.* Inn-holder, &c. convicted for letting his Beer to farm  
“ to his Tapster for fourteen shillings the Barrel, he paying but eight shil-  
lings to the Brewer. *Ord. 2. Sept. 9 Jac. Sef. Pa. Mid.*

“ It was the Opinion of the Court in the Case of one *T. Jennings*, That the  
“ keeping of an Inn gave no warrant to sell Beer without other License.  
“ *Ord. 6. Jan. 1 Car. lib. Sef. Pa. Mid.*

Crom. 77. Also it hath been agreed for Law, That such Inns as have been erected  
since the Statute of 5 *Ed. 6. cap. 25.* and were not Inns before, ought to  
have License; and that such Inn-keepers are to be bound by Recogni-  
zance, with Sureties, for keeping of good Orders, as Ale-house-keepers  
are.

And yet at *Lent Assizes, Anno Dom. 1621.* Sir James Ley delivered in his  
Charge, That Inns were Hosteries by the Common Law, and that every man  
might erect and keep an Inn or an Hostery, so as they were *probi homines*, men  
of good conversation, fame and report, and dwelling in meet places: but  
yet that they were not worthy of any allowance or License under the Kings  
Great Seal, &c.

And he delivered farther in his said Charge, That if such Inns or Hosteries  
be used *ad nocumentum populi Domini Regis, &c. sc.* do keep any disorderly  
house contrary to the Law, or be more in number then are needful, and to  
the hindrance of other ancient and well-governed Inns; that then they may  
be thereof indicted at the Assises, or Sessions of the Peace, and there may be  
either fined or suppressed. And Sir James Ley told me after at his Lodging  
in *Trinity Colledg*, That this was the Opinion of all the other Judges, upon  
late Conference had among themselves.

But such Inns or Hosteries, if they shall be inconvenient or disordered,  
in respect either of the Inn-keeper, or of the resort thither, or that the  
place

place be unmeet, they are to be suppressed, upon an Indictment found at the Assises or Sessions.

And if they shall suffer Townsmen or other persons (usually) to tipple there, they are to be punished as Ale-house-keepers without License: for these Inns or Hosteries are to be allowed onely for Travellers. An. 1616.

What persons are fit to be allowed.

His Majesty, in his late speech in the Star-Chamber, hath justly excepted against the abundance of Ale-houses, and more specially against the infamous and blind Ale-houses, as being haunts and receits for Robbers, thieves, Rogues, Vagabonds, and other idle, loose and sturdy fellows, who loyter and enquire in these places where they may have a Booty, or doe a mischief to the neighbouring Inhabitants: And therefore here I thought good to put the Justice of Peace in mind, that in allowing of Ale-houses they have regard as well to the person, as the place; for all persons, especially infamous or defamed, are not fit to be allowed for Ale-house-keepers, neither are all places meet for an Ale-house.

Places fit for Ale-houses.

“And therefore Ale-houses to be allowed are meetest to be about the midit of the Town; but not to be in any blind or by-Corners (much lesse in woods or places remote from Towns) where Thieves and Rogues may be harboured: nor in places out of or distant from the Town; except upon the River side and where there is great need, and the persons well known. *Resol.* 36.

The Person

As if the party be in a Livery, or a retainer to any man, Bailiff of a Hundred or Liberty, Constable, &c. or be one that is not of good fame, conversation or government; such persons are not fit to be allowed to be Ale-house-keepers. See *Fitz. N. B.* 172. That no Victualler ought to sell Victual so long as he is in Office, &c. *Stat.* 12. *Ed.* 2. *c.* 6.

Again *dicitur*, that no person, using any Trade, ought to be allowed to keep an Ale-house, for that were to take away the means, and so the life of another. *Tamen quare inde*, for that by the Common Law no man is prohibited to use divers Trades. *Vide hic tit. Labourers.*

“*T. Byworth* suppressed from keeping an Ale-house, for that it appeared to the Court that he is a Steel-forgers, which is a good Trade, sufficient for him to live by. *Ord. Sess. Pac. Mid.* 26. *Jul.* 8 *Car.* which see to resolve the *quer.* aforesaid.

Also there are some persons that by Law are disabled to keep an Ale-house (at least for a certain time;) as,

1 The Ale-house-keeper convicted (according to the Statute *vicefimo primo Jac.* 7.) for suffering Townsmen, &c. (or any other person, as it seemeth) to continue drinking in his house, contrary to the said Statute, (which see here before) such Ale-house-keeper is disabled to keep an Ale-house for three years after such Conviction. *21 Jac. cap.* 7. 7 Ja. 10.  
21 Ja. 7.

2 So the Ale-house-keeper convicted (as aforesaid) for not selling one full quart of the best Beer or Ale for *j. d.* and of the small two quarts for *j. d.* (which see in this Title a little before) such Ale-house-keeper also is disabled (for three years after) to keep an Ale-house. *21 Jac. cap.* 7. 7 Ja. 10.

3 The Ale-house-keeper that shall continue drinking in another Ale-house or Inn in the same Town where he dwelleth, (the said Offence being seen by any Justice of Peace within his limits, or being proved before any Justice of Peace by two Witnesses upon Oath) every such Ale-house-keeper 4. Ja. 5.  
7 Ja. 10.  
21 Ja. 7.

keeper also is disabled for three years after such Conviction to keep any Ale-house.

4 Ja. 5.  
7 Ja. 10.  
21 Ja. 7.

So the Ale-house-keeper that shall be drunken, and thereof lawfully convicted, (by Indictment at the Assises, Sessions, of Peace, or in a Leet, or otherwise before the Justice of Peace) is disabled for three years to keep an Ale-house.

An Ale-house-keeper convicted and suppressed for any of the former Offences, if he shall be licensed or allowed again by two or more Justices of Peace within three years, such License is void, and he is to be punished as one victualling without License. And so it was delivered by Sir *Nic. Hyde*, at *Cambr. Assises*, *An. 3 Caroli Regis*. And so it seemeth, if he were convicted, though he were not suppressed, if he be after licensed again within three years after such Conviction, such License is void, &c.

5. The Ale-house-keeper that is discharged or put down by any two Justices of Peace, the one being of the *Quorum*, &c. is also disabled, so as he cannot be allowed again, except in open Sessions. See *hic antea*.

Also in Towns which are no thorough-fare, the Justices shall do well to be sparing in allowing of any Ale-house, except it be at the Suit of the chief Inhabitants there, and to supply the necessary wants of their Poor :) and then Kanikers (onely to sell to the Poor, and out of their doors) would suffice, if they were enabled by a Law.

### Affray. CHAP. VIII.

**A**ffray is in our Law a Skirmish or Fighting between two or more : and is derived of the French word *Effrayer*, which signifieth to terrifie, or bring fear ; and which the Law understandeth to be a common wrong. And therefore I will shew you what every man may do in such cases.

Every private man being present before, or in and during the time of an Affray, ought to stay the Affrayors, and to part them, and to put them asunder, but may not hurt them if they resist him ; neither may he imprison them, for that he is but a private man. *Every private man.*

An Affray being in the street, if any other shall come with harness or weapon to joyn with either Party, every person present, or that seeth it, may stay them till the Affray be over.

Also every private man (being present) may stay the Affrayors untill their heat be over, and then may deliver them to the Constables, to imprison them till they find Surety for the Peace : And upon their information, it seemeth the Constable may imprison the Parties, though the Affray were not in the Constable's presence. *Hic, cap. 1.*

3 H. 7. c. 1.  
Br. Coron.  
225.  
10 H. 7. 20

If any person be dangerously hurt in an Affray, (or otherwise) every person may arrest the Offender, and carry him to the Gaol, or to a Justice of Peace, (who is either to bail him untill the next Gaol-delivery, or to commit him to the Gaol, untill it be known whether the Party hurt will live or die thereon.) *Br. Faux impris. 35.44.*

The Constable in such Cases is armed with a more large Authority within his Jurisdiction ; for he may and ought in the King's name to command the Affrayors, or such as are about to make an Affray, to avoid or surcease, *The Constable.*

surcease, and to depart (upon pain of imprisonment :) and if the Constable (being present at an Affray) doth not his best endeavour to part them, it being presented by Enquest at the Sessions of the Peace, such Constable shall be deeply fined for it. *See more chap. 1.*

But where the Affray is made out of the presence or sight of the Constable, and one cometh to the Constable and telleth him of it, and wisheth him to go and see the Peace kept, and the Constable doth nothing, but neglecteth his duty therein, it seemeth he shall not be fined by the Justices at their Sessions, upon Presentment thereof by the great Enquest, *Cro. 146. Quere tamen, & vide hic, cap. 1, & 5. the Commission, & 121. the Form of the Constables Oath.*

If the Affrayors will not depart, but shall draw Weapon, or give any Blow, the Constable may command assistance of others for the pacifying of the Affray, and may justify the hurting of them, if they make resistance. 3 H. 7. 10.  
Lam. 135.

The Constable may in the King's name make proclamation (if the Affray be great or dangerous) that the Affrayors shall keep the King's Peace and depart; &c. Lamb. 135

Also if the Affray be great and dangerous, then the Constables may command the Affrayors to prison for a small time, till their heat be over; yea, they may imprison the Affrayors till they find Sureties for the Peace. And if any of the Parties hath received any dangerous hurt in the Affray, the Constable ought to arrest and carry the Offenders to the Gaol, (or to a Justice of Peace) to the end they may find Sureties to appear at the next Gaol-delivery; and the Constable may justify the beating, &c. of such an Offender, if he will not obey the Arrest, but make resistance, or flieth. Lam. 136.  
38 E. 3. 8,  
& 11.  
Br. Faux  
imp. 6.

Note, that it is properly no Affray unless there be some Weapons drawn, or some Stroke given, or offered to be given, or other attempt to such purpose; for if men shall contend only in hot words, this is no Affray: neither may the Constable for words only lay hands upon them, unless they shall threaten to kill, beat, or hurt one another; and then may the Constable arrest such persons (to go before some Justice of Peace, to find Sureties for the keeping of the Peace;) and yet such threatening is no Affray. Hic cap. 1,

If the Affray be in an house, and the doors shut, the Constable may break into the house, to see the Peace kept, though none of the Parties have taken any hurt.

If the Affrayors flie into another mans house, the Constable (in fresh suit) may break into the house, and apprehend the Affrayors, *7 E. 3. 19.*

If the Affrayors flie into another County, the Constable (or Justice of Peace) seeing this, may in fresh suit pursue, or cause them to be pursued, and to be taken there; but they can then meddle no farther but (as every private person may do) to carry them before some Justice of Peace of the County where they are taken, to cause them to find Surety for the Peace. Plo. 37. 2.  
Crompton  
146. b. &  
172. b.

But if the Affrayors flie into a Franchise within the same County, the Constable (or Justice of Peace) seeing this, may in fresh suit pursue and take them out of such Franchise. Crompton  
146.

After the Affray (it seemeth) the Constable, without a Warrant, cannot arrest the Affrayors, except some person be in peril of Death by some hurt there received. 38 H 8. Br.  
F. imp. 6.

Every

Every Justice of Peace may do that which every Constable or private <sup>the Justice</sup> man may do by the Common Law herein.

9 Ed. 4. 3.  
Cromp.  
195, 196.

Besides, every Justice of Peace (within his limits) may presently after the Affray commit the Offenders, untill they have found Surety for the Peace, if the Affray were in his presence. And if the Affray were not in his presence, yet upon complaint, or upon his own discretion, he may after make his Warrant to take or commit such Offenders, untill they have found Surety for the Peace. *Vide tit. Peace, & Surety for the Peace.*

Br. Faux  
imp. 12, &  
33.

If an Affray be made in the presence of a Justice of Peace, he may lay hands upon and arrest the Offenders to find Sureties for the Peace, and may take away their Weapons, 21 H. 7. 22. b. *Moor.*

And yet by some Opinions, the Justice of Peace in cases of an Affray, to some purposes, hath no farther authority then every private man hath: for though the Justices of Peace (sitting in their Sessions, or out of their Sessions) may command a man to be attached, who shall make an Affray in their presence, (and of such things done in their presence they make a Record, and certify the same, which shall be a Conviction of the Offender) and the Justice of Peace may presently upon the Fact, command or send such Offenders to the Gaol; yet the Justices cannot themselves attach or arrest any man (say they) for any Affray, or other thing done in their presence, (no more then a stranger or private person may do;) but after the Affray they may make or grant out their Warrant to attach or arrest the Offenders, and may then commit them to the Gaol, except they shall find Sureties for the Peace. See c. 67.

Every Justice of Peace (in his own discretion, and *ex officio*) may bind all such to the Peace as in his presence shall strike another, or shall threaten to hurt another, or shall contend only in hot words. *Vide tit. Sureties for the Peace, hic cap. 67.*

P. Just.  
173.  
10 H. 7. 20  
Cromp.  
154.

If any person be dangerously hurt in any Affray (or otherwise,) every Ju- <sup>Dangerous</sup>stice of Peace, within the year and day after such hurt, may commit to the <sup>hurt.</sup> Gaol such Offenders, there to remain untill the day and year be expired, or that the said Offenders shall find Sureties to appear at the next General Gaol-delivery, to answer to the Felony, if the party hurt, happen to die within the year after the hurt. *Vide Stat. 3 H. 7. cap. 1. And by God's Law, Exodus 21. 18, 19. If the party happen to recover, the Offender shall pay to the party hurt for losing his time, and also for his healing.*

But where the hurt shall be dangerous, or wound mortal, although the Justice may bail the Offender, living the party so hurt; yet it shall be better discretion for the Justice to commit the Offender to the Gaol, there to remain, untill there shall appear some good hope of recovery in the other: And so Sir Nicholas Hyde advised at Cambridge, Lent Assizes, Anno 5 Car. Regis.

And by the Stat. *de officio Coronatoris* 3 or 4 E. 1. upon Appeal of Wounds, and such like, especially if the Wounds be mortal, the parties appealed shall be taken immediately, and kept till it be known perfectly whether the party hurt shall recover or not; and if he die, the Offender shall be kept; and if he recover, he shall be attached by four or six Pledges, as the Wound is great or small: and if it be for a Maim, the Offender shall find no less then four Pledges; if it be for a small wound or maim, two Pledges shall suffice. *Ibid.*

If an Affray or Assault shall be made upon a Justice of Peace or a Constable, they may not only defend themselves, but may also apprehend and commit the Offenders, untill they have found Sureties for the Peace: the Justice of Peace may presently cause them to be arrested, and carried before another Justice, who may send them to the Gaol: and the Constable must commit them to the Stocks for the present, and after carry them before a Justice of Peace, or to the Gaol. *Vide hic postea, c. 97, & 120.* 5 H. 7. 6.  
Br. Faux  
imp. 41.

Armour. CHAP. IX.

**I**F any person shall ride or go armed offensively before the Kings Justices, 2 E. 3. c. 3.  
P. 1.  
7 R. 2. 13.  
20 R. 2. c. 1. or any other the King's Officers or Ministers doing their Office, or in Fairs, Markets, or elsewhere, (by night or by day) in Affray of the King's people, (the Sheriff, and other the King's Officers) every Justice of Peace (upon his own view, or upon complaint thereof) may cause them to be staid and arrested, and may bind all such to the Peace or Good Behaviour, (or, for want of Sureties, may commit them to the Gaol: ) and the said Justice of Peace (as also every Constable) may seize and take away their Armour and other Weapons, and shall cause them to be apprised, and answered to the King as forfeited. And this the Justice of Peace may do by the first *Assignavimus* in the Commission. See hereof *antea*. One Just.

So of such as shall carry any Guns, Daggs, or Pistols that be charged, or that shall go apparelled with privy Coats or Doublets, the Justice may cause them to find Sureties for the Peace, and may take away such Weapons, &c. *Vide tit. Surety for the Peace.* Lam. offic.  
of a Const.  
13.

And yet the King's Servants in his presence, and Sheriffs, and their Officers, and other the King's Ministers, and such as be in their company assisting them in executing the King's Process, or otherwise in executing of their Office, and all others in pursuing Hue and Cry, where any Felony or other Offences against the Peace be done, may lawfully bear Armour or Weapons. 2 E. 3. c. 3.  
Co. 5. 72.

Also it seemeth that any Justice of Peace may command that Weapons be taken from such Prisoners as at any time shall be brought before him.

Also if any Servant to Husbandry, or to any Artificer, or Victualler, or any Labourer, shall bear any Buckler, Sword, or Dagger, (except they be travelling with their Master, or in their Master's message) it seemeth every Justice of Peace may imprison them till they have found Sureties for the Peace, and may seize and take away their said Weapons, (or may cause the Constable to seize the same as forfeit) and present the said Weapons at the next Sessions of the Peace. But this Statute seemeth now to be repealed by the Statute made 21 Jac. 28.

And yet, by the first *Assignavimus* in the Commission, the Justice of Peace may do it, especially if he suspect any Breach of the Peace to be intended by them. 12 R. 2. 6.  
P. 2.

## Barrator. CHAP. X.

**B**arrator cometh from the French *Barrat*, *id est astutia*, and in that Tongue betokeneth a Deceiver. In our Law a Barrator is a common Wrangler that setteth men at odds, and is himself never quiet, but at braul with one or other. Dr. *Com. & Minsh*,

2 E. 4. 5 Every Justice of Peace (upon his discretion) may bind to the Peace, or  
Lamb. 79. Good Behaviour, such as are common Barrators.

Co. 8. 36. Also a common Barrator is he who is either a common Mover and Stirrer up (or maintainer) of Suits in Law in any Court, or else of Quarrels or parties in the Country. *Co. L. 368*.

As if in any Court of Record, County-Court, Hundred, or other inferior Courts; any persons by fraud or malice, under colour of Law, shall themselves maintain (or stir up others unto) multiplicity of unjust and feigned Suits or Informations (upon penal Laws,) or shall maliciously purchase a special *Supplicavit* of the Peace, to force the other party to yield him Composition; all such are Barrators. *In Courts*

In the County; and these are of three sorts. *In the Country*

1. Disturbers of the Peace, *viz.* such as are either common Quarrellers or Fighters in their own cause; or common Movers or maintainers of Quarrels and affrays between others.

2. Common Takers or Detainers (by force or subtilty) of the possessions of houses, lands, or goods, which have been in question or controversie.

Co. 8. 36. 3. Inventers and Sowers of false Reports, whereby discord ariseth, or may arise, between neighbours. All these are Barrators.

Yea, if one be *Communis Seminator litium*, he is a Barrator. *West Indict. 75. 76*.

Or if any man of himself be *Communis Oppressor vicinorum*, (a common Oppressor of, or Wrangler with, his neighbours or others) either by unjust or wrangling Suits, or other oppressions or deceits, he is a Barrator.

Or if one be *Communis Pacis Perturbator, Calumniator, & Malefactor*, he is a Barrator. *Crompt. 257*.

Co. 8. 37. But all such persons must be common Barrators, *sc.* not in one or two, but in many causes.

## Bastardy. CHAP. XI.

“**B**astardus est qui nascitur ante matrimonium, Co. L. 243. It cometh  
“Of the French word *Bastard*, i. e. *Nothus*; and yet *Bastardus est tri-*  
“*lex*; *Manser*, *incestuose natus*, Co. L. 244. *Nothus, natus ex patre no-*  
“*bili, & matre ignobili*, *sc.* *Concubina*; *Spurius, natus ex matre nobili, &*  
“*patre ignobili*. A Bastard is *Terræ filius*, though his Mother be known.

“*Cui pater est populus, pater est sibi nullus & Omnis.*

“*Cui pater est populus, non habet ille patrem.*

“Much more of Foundlings, where neither Father nor Mother are known.”

Lamb. 122 Every Justice of Peace (upon his discretion) may bind to the Good beha-  
Crom. 196 viour him that is charged or suspected to have begotten a Bastard-child, to the end that he may be forth-coming when the Child shall be born; otherwise there will be no putative Father, when the two Justices (after the

birth of the Child) shall come to take order according to the Statute of 18 El. c. 3. The like may be done after the birth of the Child, and before such order taken.

Also if the putative Father of any such Child, either before the birth of the Child or after, shall, by any perswasion, procurement or other practice, be conveyed or sent away, or shall run away, so as the Justice of Peace cannot come by him, or so as the Order of the Justices, by means thereof, shall not be performed; it seemeth every Justice of Peace, upon his discretion, may bind to the Good behaviour, and so over to the next general Gaol-delivery, (before the Judges of Assize) or to the next Quarter Sessions, such as shall have any hand in such practice, &c. And such Offenders may, by the discretion of the Justices, (at their General Sessions) be ordered to contribute towards the maintenance of the said Bastard-child. And so of Constables which, having received a Warrant from the Justice to apprehend the reputative Father, shall willingly or negligently suffer him to escape; or fine them. So of such as by practice, &c. shall cause the Mother of the Child to be conveyed or sent away, or to run away, whereby she leaveth her Child to the charge of the Town, &c. *Vide. hic cap. 108.*

Two Justices.

Two Justices of Peace (one being of the *Quorum*) in or next to the limits where the Parish Church is, in which Parish any Bastard-child (be gotten and born out of lawfull Matrimony) shall be born, upon Examination of the cause and circumstances, shall and may take order by their discretion as well for the relief of the Parish (in part, or in all) and keeping of the Child, (by charging the Mother or reputed Father with the payment of money weekly, or other relief,) as also for the punishment of the Mother and reputed Father. 21 Jac. c. 28. & 3 Caroli. 5. 18 El. c. 3. P. 2.

But such a Bastard-child must be one that is left to be kept at the charge of the Parish, or one likely to be (or which may be) chargeable to the Parish. See the Stat. of 18 Eliz. and the Stat. 7 Jac. cap. 4.

The reputed Father, by the Law of God, was to give unto the Maid's Father fifty *Shekels of Silver*, and he also was to take her to his wife; *Exod. 22. 16. and Deut. 22. 28. 29.* wherewith agreeth the Canon 67. *Apostol. Quam quis violaverit virginem, ducat in uxorem.*

If the two Justices cannot agree upon their Order, what is then to be done, see *hic. antea, c. 6.* But by some opinions the words of this Statute being (disjunctive) two Justices of Peace in or next to the limits, &c. if the two Justices of Peace in that division or limits cannot agree, then the two Justices of Peace next to that division or limits (being in the same County, and one of them of the *Quorum*) have power to take order therein: *Quare inde.* 7 Jac. 5.

Also it seemeth the Mother may be examined upon Oath concerning the reputed Father, and of the time, and other circumstances; for that in this case the matter and the trial thereof dependeth chiefly upon the Examination and Testimony of the Mother. *Vide hic cap. 66. & Lamb. 517.*

By the Stat. 7 Jac. it appeareth that the Justice of Peace shall now commit such leud Woman to the House of Correction, there to be punished, &c. And therefore it seemeth that the Justices of Peace may not punish (by corporal punishment) the Mother by force of this Statute of 18 Eliz. 3. and then send them to the House of Correction: for the Rule of Law is, *Nemo debet bis puniri pro uno delicto*; and the Divine saith, *Deus non agit bis in idipsum.* Co. 4. 43. & 8. 118. But



But such corporal punishment or Commitment to the House of Correction, is not to be untill after that the Woman is delivered of her child, neither are the Justices of Peace to meddle with the Woman untill that the child be born, (and the strong again) lest the Woman being weak, the child where-with she is, happen to miscarry : For you shall find, that about 31 *Eliz.* a Woman great with child, and suspected for incontinency, was commanded (by the Masters of *Bridewell* in *London*) to be whipped there, by reason where-of she travelled, and was delivered of her child before her time, &c. And for this the said Masters of *Bridewell* were in the Star-Chamber fined to the *Queen* at a great Sum, and were farther ordered to pay a sum of money to the said Woman.

And as for the reputed Father, the two Justices shall do well, (as I conceive) if he be of ability, to charge him the more deeply ; which if he refuse, then with punishment according to the *Stat.* of 18 *Eliz.* See for this purpose an Order in such case here, *chap.* 121. And if the reputed Father be of small ability, and shall not find friends to yield some reasonable allowance, then to undergo the more punishment.

18 *Eliz.* 3.  
P. 1.

After such Order by two such Justices subscribed under their hands, if the said Mother or reputed Father, upon notice thereof, shall not perform the said Order, then such person so making default shall be committed to the Gaol, there to remain without Bail or Mainprise ; except such parties shall put in sufficient Sureties to perform the same Order, or else personally to appear at the next General Sessions of the Peace in that County, and to abide such Order as the Justices of Peace, or the more part of them, then and there shall take in that behalf, (if they shall take any) or in default thereof, then to abide and perform the Order before made.

*Nota que Enfant nee per 11. dies post ultimum tempus legitimum mulieribus constitutum, (sc. post 40. Semains apres mort son Pere,) ne sera adjudge legitimum puerum, &c. Co. L. 123. 2 Esd. 4. 40, 41. Et issint semble de Enfant nee apres 40. Semains del temps que Feme charger Home d'aver carnal Conusance de luy, tiel Enfant ne sera adjudge ne repute estre le issue de tiel Home.*

7 *Jac.* 4.

Every leud Woman which shall have a Bastard which may be chargeable to the Parish, the Justices of Peace shall commit such Woman unto the House of Correction, there to be punished daily, for therefore she is sent thither, (as I conceive) and set on work for one year, and to live of her own labour ; and if she shall estoons offend again, then to be committed to the House of Correction, as aforesaid, and there to remain untill she can put in good Sureties for her Good Behaviour not to offend so again. See c. 118.

Now it seemeth that such Commitment to the House of Correction ought to be by two Justices at the least, (by the words of this Statute,) and then by the conference of these two Statutes (of 18 *Eliz.* and 7 *Jac.*) it seemeth fit, rest for the two next Justices authorised by 18 *Eliz.*

It seemeth also (by the words of this Statute 7 *Jacobi*) that such a Woman shall not be sent to the House of Correction untill after the child be born, and that it be living ; for it must be such a child as may be chargeable to the Parish.

Also it seemeth that such a Bastard-child is not to be sent with the Mother to the House of Correction, but rather that the child should remain in the Town where it was born, (or settled with the Mother) and there to be

relieved by the work of the Mother, or by relief from the reputed Father. <sup>18 El. 3.</sup> See to this purpose the Resolution of the Judges, *Resol.* 6. in the Title *Rogues*. And yet the common opinion and practice is otherwise, *sc.* to send the Child, with the Mother, to the House of Correction: and this may also seem reasonable where the Child sucketh on the Mother. *Vide plus cap. 6. fine, & cap. 40. Resol. 7. & Quere.*

A Maid-servant gotten with child, where she shall be settled; *See chap. 40. & Resol. 12, & 21.*

“Putative Fathers of Bastard children leaving their children upon the <sup>14 Car. 2. cap. 12.</sup> Parish, the Church-wardens and Overseers for the Poor of the Parish, where the child was born, may seize and take so much of the Goods and Chattels, and of the Rents and Profits of the Lands of such reputed Fathers or Mothers, as shall be ordered by two Justices of the Peace, for and towards discharge of the Parish, for providing for such Bastard; and by order of the Sessions may sell the said Goods, or so much thereof as the Court shall think fit, and so much also of the Rents and Profits of the Lands, for the said purposes.

## Bailment. CHAP. XII.

**B**y the Common Law, the Sheriff and every Constable (being Conservators of the Peace) might have bailed a suspect of Felony: but this Authority seemeth to be taken from them; and given to the Justices of Peace, by the Statute following.

First, by the Statute *1 R. 3. cap. 3.* every Justice of Peace had Authority (by his discretion) to let to Bail, persons imprisoned for suspicion of Felony, &c.

But forasmuch as after the making of that Statute, divers not being bailable were notwithstanding let to Bail, and so, many notable Felons escaped; therefore this Statute was repealed by the Statute of *3 H. 7.* and thereby any two Justices of Peace (the one being of the *Quorum*) were enabled to let any prisoners (mainpernable by the Law) to Bail, to the next General Sessions of the Peace or Gaol-delivery, as the case should require. After, for that one Justice of Peace, in the name of himself and of one other of his fellow-Justices, (not making the other Justice privy unto the cause, whereof the Prisoner should be bailed) did oftentimes by sinister means set at large great and notable Offenders, such as were not bailable, and yet, to hide their affection therein, did signifie the cause of their apprehension to be but onely for suspicion of Felony, whereby the said Offenders have escaped unpunished; for reformation thereof, by the Statute *1 & 2 P. & M.* it was enacted, That if it be for Man-slaughter, or Felony, or suspicion of Man-slaughter or Felony, (being bailable by Law) then the same Justices must be present together at the time of the said Bailment; and that they must certifie (in writing subscribed with their own hands) the said Bailment at the next General Gaol-delivery, to be holden within the County where the person shall be arrested or suspected, upon pain to be fined by the Justices of Gaol-delivery.

Now

Two Ju-  
stices.

<sup>3 H. 7. c. 3.  
Fitz. N.B.  
251. f.</sup>

<sup>1 & 2 P. &  
M. cap. 3.  
P. Just. 107</sup>

Now by the Preamble of both the last recited Statutes, the mischief seemeth to be the escape of Felons ; and therefore if it be not in case of Felony, it seemeth any one Justice of Peace alone may bail a Prisoner ; (see the Titles, *Affray*, *Dying* and *Surety for the Peace* : except where some particular Statute shall otherwise prescribe, as in *titulo Counterfeiters*. See more of *Bailment hic postea*, cap. 114. One Jus-  
tice.

## Bridges. CHAP. XIII.

22 H. 8. 5.  
P. 2 7. **W**Here a decayed Bridge is, and that it cannot be proved who nor what lands be chargeable to the repairing thereof, four Justices of Peace (whereof one to be of the *Quorum*) within the shire or Riding wherein such decayed Bridge is, (out of Cities and Towns Corporate ; and if it be within a City or Town Corporate, then four such Justices of Peace there) may within the limits of their several Commissions call before them the Constables, or two of the most honest Inhabitants of every Town and Parish within the shire, Riding, City or Town Corporate, wherein such Bridge or any parcel thereof shall happen to be ; and the said Justices (upon the appearance of such Constables or other Inhabitants, and with their assent) may tax every Inhabitant in any such City, Town, or Parish (within their limits) to such reasonable sum of money as by their discretions they shall think convenient, as well for the repairing of such Bridge, as also for the making and repairing of any High-ways lying next adjoining to the end of any such Bridge within this Realm, distant from either of the ends of the Bridge by the space of three hundred foot. Four Jus-  
tices.

After such Taxation made, the said Justices of Peace shall cause the names and summs of every particular person, so by them taxed, to be written in a Roll indented.

P. 3. Also the said Justices shall make two Collectors of every Hundred, for the collecting of all such summs of money, by the said Justices set and taxed ; which Collectors receiving the one part of the said Roll indented under the Seals of the said Justices, shall have power thereby to collect all the particular summs of money therein contained, and to distrain such as shall refuse to pay the same, and to sell such Distress, delivering to the owner the *over-plus* of the money, if there be any.

P. 4. Also the said Justices shall appoint two Surveyors, which shall see such decayed Bridges and ways repaired and amended from time to time, as often as need shall require ; to whose hands the said Collectors shall pay the said summs of money by them received.

Ibid. The said Collectors and Surveyors, and their Executors and Administrators, and every of them, shall from time to time make a true Account to the said Justices of Peace of the receipts, payments and expences of the said summs of money ; and if any of them refuse so to doe, then the said Justices of Peace from time to time ( by their discretions ) may make out Process against the said Collectors and Surveyors, their Executors and Administrators, by Attachments, Precept, or Warrant, under their Seals, returnable at their General Sessions of the Peace.

Also

Also the said four Justices of Peace may allow such reasonable costs and charges to the said Surveyors and Collectors, as by their discretions they shall think convenient. *Ibid.*

*who shall be charged.* If any such Bridge shall lie wholly in a City or other Corporate Town, *P. 1.* the Inhabitants of the Shire or Riding shall not be charged therewith, but such Bridge shall be made and repaired by the Inhabitants of such City or Town Corporate.

If any such Bridge be without a City or Town Corporate, the same shall *P. 4.* be made and repaired by the Inhabitants of the Shire or Riding within which the same Bridge shall be.

If part of any such Bridge be in one Shire, Riding, City or Corporate *Ibid.* Town, and part in another, then every of them shall be charged to make and repair such parts as shall lie and be within their limits, &c.

But otherwise no Village or Free-men shall be compelled to make any Bridge but such as of old time and by right they had wont to make, and where they and their Ancestors have used time out of mind to make the same, or that they hold certain Lands to make the same: for though a man of his own accord hath made or amended a Bridge, yet shall he not be there- *Magna Charta 15. P. ti. Wears 1. F. Grants. 94. 41 E. 3. 31. 21 E. 4. 46* to constrained at another time; and yet if a man and his Ancestors, or a Corporation, &c. have time out of mind used to do such things, although they did it of their own free mind and accord, and not of right, nor have any Land by reason whereof they may be tied, yet such continuance shall conclude them and their Heirs or Successors. And so of Highways, *21 Ed. 4. 46.*

“Also there is a Writ in the Register directed to the Sheriff, willing him “to cause such to whom it belongeth, to repair a Bridge, or repair High- “ways, &c. *Reg. Orig. fol. 153, 154.*

Where a man and his Ancestors or Predecessors have used time out of mind to repair a Bridge, the King cannot acquit or discharge thereof. *Fitz. Gri. 94.*

Where it is presented that *I. S. ratione tenuræ suæ* hath used to repair such a Bridge, this implieth a Prescription. *21 E. 4. 38. Crom. 186.*

But a Presentment that *I. S.* and his Ancestors have used to repair such a Bridge, this is no good Prescription to charge the Heir (by the act of his Ancestor) without some profit to be taken therefore. *27 Aff. 8. Cromp. 187.* See the next Case but one.

Otherwise it is of a Corporation Spiritual or temporal: they by reason of usage time out of mind, &c. may be charged at this day to repair a Bridge, although they have no Land by reason whereof to be charged, for that such a Body never dieth. *Ibid.*

Also where a man hath once repaired a Bridge, and that afterwards the same was not repaired within the memory of man, by some Opinions, he, or they which have his Estate in Land, shall be bound to repair the Bridge; for that it shall be supposed to have been done at the first by reason or cause of his Tenancy, except some other particular cause of the doing thereof shall be proved: but where the cause shall appear, there, *cessante causâ, cessabit effectus.*

He that hath his Land adjoyning to such a Bridge, is not chargeable to *B. Bridges* make or repair the Bridge, except where they have made it by Prescription. *1. 8 H. 7. fol. 5. b.* By

Cro. 186. b. & 187. b. \* 37 Aff. pl. 10. per Green. 811  
By common right Bridges shall be amended by the whole County, for that it is for their common good and ease; and yet if any have Fishings or other profit in that River, they in Reason and \* Law (as it seemeth) are chargeable; and therefore the Justice of Peace in good discretion may tax such proportionably to their profit.

Where men are charged by their Tenure or Lands, every owner or occupier of such Lands are to be charged proportionably to their said Lands. *Vide tit. Sewers, & Fitz. 235. b.*

Co. 11. 32. Such as are chargeable to repair a Bridge, may enter upon any other mans Lands or Soil adjoining, and may lay their Stone, Lime, Timber, or other things necessary for the repairing and amending thereof, and the Owner of the Lands shall have no action therefore, for it is for the common profit, &c.

43 Aff. 37. *Fitz. Affise, 353.*

Yea, where one is chargeable to repair a Bridge, he must also maintain the way at each end thereof, (though the Soil be to another;) and if the ends be broken by the Water-course, he must follow the Water-course, and repair the Way, &c. *Crompt. 186. b.*

Cro. 187. If a man maketh a Bridge for easement to his Mill, and that decayeth, the party nor any other shall be charged to repair this, for it is no common passage. *Fitz. Barr 276.*

#### Butter. CHAP. XIV.

14 Car. 2. cap. 26. " OFFENCES in Weighing, Packing, and Marking of Butter and the Fir-  
" kins or Casks, are inquirable and to be heard and determined in the  
" Sessions of the Peace for the County, or in the Court of Record of the  
" City, Borough, Town Corporate, or Liberty where the Offence shall be  
" committed; and the Penalties to be recovered thereby Debt, Indictment,  
" or Information; one half of the Forfeitures to the use of the Poor inha-  
" biting in the Parish where the offence is committed, the other half (be-  
" sides his double costs,) to him who shall sue for the same, so as such Suit  
" be commenced within four months after the Sale of such Butter:

#### Carriages. CHAP. XV.

13 Car. 2. cap. 8. " THE care and ordering of Carriages for the King and Queens ser-  
" vice in their Progress or removal, are referred much to the power  
" and appointment of two Justices of the Peace, and the setting prices upon  
" Provisions for his Majesties servants upon that occasion.  
14 Car. 2. cap. 20. " And the Carriages of Timber, Ordnance, or other necessities for the  
" Navy, and the directing and ordering the same, which see in the said Acts,  
" being to continue in force untill the end of the First Session of the next  
" Parliament, and no longer.

## Cloth. CHAP. XVI.

One Justice.

**E** Very Justice of Peace may enter in and upon any Houses, Lands, or Grounds, and make search for any Tenters, Wrinches, or other Engines whatsoever, whereby any deceit may be used in or about the stretching of any Woollen Cloth; and may utterly deface the same Tenters, &c. and for the second Offence may sell them away to the best value thereof. But the disposing of such Money shall be by two Justices. See *hic postea*. And if upon Information made to any Justice of Peace, of any such Tenters, &c. he shall not make search and execute this Law within seven days, he shall forfeit for every such default five pounds.

Also one or two of the Justices of Peace of the Shire next adjoining to any City, Borough, or Town Corporate within *England*, may joyn with them of such City, Borough, or Town Corporate, in appointing the yearly Overseers for such Clothes, &c. *Ibid.*

Two Justices.

Any two Justices of Peace within their limits may once every year appoint Overseers or Searchers for that whole year following, or for a shorter time (at their discretions) of any Woollen Cloth, to be made or sold in any Town not being Corporate, and may charge them upon their Oaths, and bind them in Recognizance of 40 l. apiece, to do their best endeavours by all lawfull ways and means, for their time, to see the Statutes of 3 E. 6. c. 2. and of 39 El. c. 20. in all points truly observed and kept within their limits, (*sc.* within the Town or Parish where the said Overseers shall be dwelling.) The Particulars seem to be these.

1. That the Weights, Lengths and Breadths of all Woollen Clothes be according to the Statute 39 Eliz. See the Statutes 4 Jac. c. 2. & 21 Jac. cap. 18.

2. That every such Cloth have a Seal of Lead, containing the just Length and Weight, 39 El.

3. That such be not Stretched or strained, 39 El.

4. Where there be any Tenters, Wrinches, or other such Engine for the stretching of Cloth. 34 El.

5. That no Iron Cards or Pickards be occupied in any Woollen Clothes. 3 Ed. 6. c. 2.

6. That Clothes or Wools be not falsly Dyed or Coloured. 3 E. 6:

7. That no Hair, Flocks, Thrums, Yarn made of Lambs-wooll, Chalk, Flower, or Starch, or other deceiveable thing be put in or upon any Woollen Cloth. See 3 Ed. 6. & 43 El. c. 10. & 4 Jac. c. 2. & 21 Jac. Regis, c. 18.

8. That no Clothes be in any deceiveable manner pressed, to be put to Sale. 3 Ed. 6. See also the Statutes of 5 Ed. 6. c. 6. & 21 Jac. c. 18.

Any two (or more) Justices of Peace within the County, City, Borough, or Town Corporate, where deceiveable Cloth shall be made, or suspected to be made, (upon Complaint or Information of any Overseer, Searcher, or any other, of any such Offence) may grant their Warrant to call before them any person or persons that in their discretion shall be thought fit to discover any such Offence, and may examine upon Oath any such persons for the triall and better finding out of the said Offence. And if upon such Examination it shall be found by Testimony of two Witnesses (or more) or by

by the Confession of the Offender, that any such Offence hath been committed, the same shall be a sufficient Conviction of the Offence; and then the said Justices shall or may certifie such Offence unto the Church-wardens and Overseers (for the time being) of the Poor of the Parish where such deceivable Cloth shall be made, under the Hands and Seals of the said Justices: and upon such Certificate, and a Warrant made by the said Justices to the said Overseers and Church-wardens for the levying of the Forfeiture, the said Overseers and Church-wardens, or any of them, or their, or any of their Successors, immediately from and after such Certificate and Warrant delivered to them, or any of them, may levy the sum or sums of money, which by the said Certificate and Warrant shall appear to be forfeited, by way of Distresse and Sale of the Offenders goods, rendring to the Offender the overplus. &c. and in defect of such Distresse, the said two Justices may commit the Offender to the common Gaol, there to remain without Bail, untill payment shall be made of the sums so forfeited, to the said Overseers and Church-wardens, or some, or one of them, &c. 21 Jac. 18.

These Overseers, or two of them, shall (or may) from time to time, or once every moneth at least, go into all or any houses, shops, or other rooms of any Clothier, Draper, Cloth-worker, or other person where such Cloth shall be, or shall be suspected to be, and there make due search and trial, &c. Stat. 39 Eliz. c. 20. & 21 Jac. Regis. cap. 18. The Overseers duty.

39 Eliz. Also the same Overseer shall fix unto every Cloth (by them viewed) a Seal of Lead, containing the Length and the Weight of every such Cloth, together with this word *Searched*, or *Faulty*, if there be cause, 21 Jacobi, 18.

P. 15. Also every Overseers of Cloth, appointed by any former Law (now in force) to fix unto any kind of Cloth a Seal of Lead, shall engrave or set upon every their Seals of Lead (which they shall fix unto any Cloth by them to be sealed) his Christian and Sirname: And no Cloth to be sealed with any Seal of Lead which shall want such Ingraving or Print, shall be allowed to be sufficiently sealed, 21 Jac. Regis, c. 18.

Also the said Overseers shall seize and carry away as forfeit all such Cloth, as upon their search they shall find not to be sealed with a Seal containing the just Length and Weight, and shall present the same Cloth to the Justices of Peace at the next Quarter-Sessions of the Peace, 39 Eliz. 20.

And if the said Overseers shall find any false Seal set upon any Cloth, or any Cloth to be stretched or strained, they shall present such Defaults at the said next Sessions, together with the names of the Owners of such Clothes. *Ibidem.*

But Cloth once lawfully searched, viewed, weighed, and sealed by the Overseers and Searchers of the Parish, Town or place where the said Cloths be made, shall not afterwards be viewed, searched, or weighed by any other person or Officer whatsoever, 4 Jac. & 21 Jac. cap. 18.

39 Eliz. And if the said Overseers shall find any such Tenters, Wrinches, or Engines (for the Stretching of Cloth,) they shall deface the same; and for the second Offence therein, they shall take away the said Tenters, &c. and shall sell the same to the best value thereof, and by the consent of two Justices of Peace shall dispose the Money thereof to the Poor of that Parish, Vide 21 Jac. cap. 18.

If any person, commanded by two Justices of Peace to appear to be made an Overseer according to this Statute, do (without reasonable excuse) refuse to come and take upon him that Office, he shall forfeit for every such refusal five pounds, the one half to the King, and the other half to those two Justices; and shall remain in Ward to the Sheriff, untill he hath paid the same Forfeiture, or put in Sureties for the same, 39 *Eliz. cap. 20.*

The money that shall be made upon the sale of any Tenters, Wrinches, and other such Engines, shall be disposed (to the Poor of the Parish where the said Tenters, &c. shall be found) by the consent of any two Justices of Peace within the same County. P. Drap. 118.

But by the Statute 7 *Jacobi*, certain Clothes made within the County of *Cumberland, Westmerland, and Lancaster*, shall not be subject to Search, &c. 7 Jac. 16. Also by the Statute 3 *Jac. cap. 1. 7.* Welsh Cottons shall not be searched, nor tried, neither need they have any Seal containing their Length or Weight.

*The Forfeitures.* All penalties and Forfeitures for want of Length, Breadth, and Weight of Cloth, limited by any Statute now in force, shall be distributed into three parts equally; whereof one third part shall be unto the Searchers, finding and certifying the same, &c. and the other two parts shall be unto the Poor of the Parish where the said Cloth shall be made: the said two parts to be levied by way of Distresse, and sale of the Offenders goods, &c. upon a Warrant from two Justices of Peace, &c. 21 *Jac. 18.*

If any person (which shall retail any of the Clothes, Kersies, Frizes, Rugs, or Cottons, of the several makings specified in the Statute 5 *Ed. 6. ca. 6.*) do present any such Woollen Cloth which is defective or faulty unto the two Justices of Peace next adjoining, (out of a City, Borough, or Town Corporate) where such Cloth shall be found faulty; the same Justices shall cause the same Cloth to be cut into three equall pieces, whereof the King shall have one, the Presenter another, and the third the said Justices shall retain to themselves. 5 Ed. 6. 6. P. Just. 83.

*Spinsters, &c. imbezilling.* Any two Justices of Peace may take order between the Clothier and his Spinsters, Carders, Kembers, Sorters, and Weavers, which shall unjustly or deceitfully convey away, imbezill, sell, or detain any part of the Wool or Yarn delivered to them: and as well every such Spinster, &c. so offending, as also the Buyers and Receivers, (knowing the same to be imbezilled) being thereof convicted by the Confession of the party, or by one sufficient Witness upon Oath, before two such Justices, shall give such recompence to the party grieved, for such their loss and damage, as by the said Justices shall be ordered; and if such Offender shall not be thought (in the discretion of the said Justices) able, or do not make recompence according to such order, then such Offender is to be whipped, or set in the Stocks (in or near the place where the Offence was committed) at the discretion of the said Justices. And such two Justices have full power to minister the Oath to such Witnesses, and finally to hear, end, and determine the said Offences. 7 Jac. 7.

*Wages.* Clothiers and other Masters that shall refuse to pay such Wages (to their Spinsters, Weavers, or other Work-men whatsoever) as shall be assessed at the Sessions by the Justices of Peace, and shall be thereof convicted before any two Justices of the Peace, (one being of the *Quorum*) upon their own 1 Jac. 6. P. Just. 66. 118.



own Confession, or upon proof by two sufficient witnesses, shall forfeit for every such Offence 10. s. to the party grieved, the same to be levied by Distress and Sale of the Offenders Goods, by Warrant from the same Justices.

1 Eliz. 12. Two Justices of the Peace (one being of the *Quorum*) may take the in-  
 Rast. 249. formation of Stretching, or other deceitful using of Linen Cloth, (by him that hath seized it) and of his Seizure thereof; and may bind the said Seisor to give in evidence, and to pursue the same matter with effect (at the next Sessions, &c.) and also to pay the moiety of all that he shall recover, to the use of the King's Majesty, &c. Linen cloth.

### Corn. CHAP. XVII.

5 E. 6. 14. THE Certificate of one Justice of Peace (joyned with the Customer of  
 13 El. 25. the place) of the unlading and selling of Corn or Cattel, carried by  
 R. Forestal 6. water from one place to another of this Realm, unto the Customer and Controller of the place where the same was imbarked, is sufficient upon the Stat. of *Forestalling*. See more of Corn, *tit. Transportation*.

### Constables. CHAP. XVIII.

Constable, this word is derived or deduced of two old Saxon words, *Cuning*, or *Kinning*, which signifieth *King* and *Stable*, stability; shewing that these ancient Officers were reputed to be as the stability or stay of the King and Kingdom. *Lamb. 5. Dodder. 73.*

Every Justice of Peace may cause two Constables to be chosen in each Hundred, *Lamb. 190.* and this seemeth to be meant of the High Constables of Hundreds, and to include and imply of congruence the swearing of them; and seemeth to be by virtue and force of the Statute of *Winchester*, made 13 E. 1. and of the Commission, the first *Assignavitimus* or Clause. High Constables.

And by the Statute of 34 H. 8. cap. 26. two Justices of Peace, the one being of the *Quorum*, may appoint the High Constables in *Wales*.

And yet the usual manner is, that these High Constables of Hundreds be chosen either at the Quarter Sessions of the Peace; or if out of the Sessions, then by the greater number of the Justices of Peace of that Division where they dwell: and likewise that they be sworn either at the Sessions, or by Warrant from the Sessions; which course hath also been often allowed and commended unto us by the Judges of Assize.

Also in such manner as they are to be chosen, in the same manner, and by the like Authority are they to be removed; for, *eadem modo quo quid constituitur, dissolvitur*: so if there shall be cause to remove and put an High Constable from his place, it hath not been thought fit that any one or two Justices of Peace should doe it upon their discretion, but that it should be done by the greater part of the Justices of that Division, and that for some just cause; or else that it be done at and in the General Sessions of the

Peace : and so was the direction of Sir John Dodderidge at Summer Assizes at Cambridge, *Anna Dom.* 1620.

By the opinion of Master Lambert and others, these Constables of Hundreds were first ordained to be chosen by the said Statute of Winchester, *tempore Ed.* 1. And they were appointed for the keeping of the Peace, and to make view of Armour, twice every year, and to present before Justices assigned, defaults of Armour, of watches, of High-waies, and of Hue and Cry ; and also all such as lodged Strangers for whom they would not answer. See *Rastal*, 379. c. d. *Lamb.* *Duty of Const.* 5. *Minsh.* *verbo Const.*

Petty  
Consta-  
bles.

Petty Constables (in Towns and Parishes) were after devised (for the aid of the Constables of the Hundred,) viz. about the beginning of the reign of King *Ed.* 3. as it appeareth by M. Lambert in his Book of *The Duties of Constables*, pag. 9. See Stat. 4 E. 3. cap. 3. & 10.

But it appeareth by *Fineux* 12 H. 7. fol. 18. a. that whereas the Sheriffs of the Counties, at the first, had the Government of their Counties committed to them, afterwards, by reason of the multitude of people, and for that it was too great a thing for one person (*sc.* the Sheriff) to undertake, therefore Hundreds were deduced and derived out of the Counties, and in every Hundred there was ordained a Conservator of the Peace, who was called the [High] Constable ; and after, Boroughs or Towns were made, and within every of them also was ordained a Conservator of the Peace, who is called the petty Constable, (and in some places the Borough-head :) and this was long before the times that Master Lambert speaketh of, *sc.* long before King *Ed.* 1. or King *Ed.* 3. which also may appear by the derivation of the word Constable *hic supra*, and that they were in the time of the Saxons : so that it may seem, that as well the High Constable as the petty Constables, and their Authorities, were by the common Law ; and that the old Statutes concerning them are but a recital of the ancient Common Laws.

one Just.

The Authority which High Constables and petty Constables have by the Common Law for keeping the Peace, see *chap.* 1. And the Constables power to make a Deputy, *Ibid.*

The chusing and swearing of these petty Constables is reputed properly to belong to the Court-Leet : yet we find it usual and warranted by common experience, that every Justice of Peace doth also swear them, and upon Just cause doth and may also remove them. See the title *Warrants*, cap. 121.

But in ancient time both the High Constable of Hundreds, as also the petty Constables of every Town, were yearly appointed by the Sheriff in his Tourn, and were there sworn, or received their Oath ; and they may still be chosen or appointed, and sworn in the Sheriffs Tourn, as well as in the Leet. Ba. u. 5, 6.

Constables lawfully chosen, if they shall refuse to be sworn, the Justice of Peace may bind them over to the Assizes or Sessions of the Peace. And for such his contempt, he is there to be indicted, and thereupon fined and imprisoned. *Dir.* 29.

Consta-  
bles  
their A-  
bility.

And here, for the better chusing of these Constables, you shall understand, that the Law requireth that every Constable be *Idoneus homo*, that is apt and fit for the execution of the said Office ; and he is said in Law to be *Idoneus* who hath these three things, Honesty, Knowledge, and Ability, Honesty, Co. 8. 41.

Honesty, to execute his Office truly, without malice, affection, or partiality.

Knowledge, to understand what he ought to do.

Ability, as well in substance or estate, as in body, that so he may attend and execute his Office diligently, and not through impotency of body, or want, to neglect the place.

For Constables chosen out of the meaner sort, they are either ignorant what to do, or dare not do that they should, or are not able to spare the time to execute this Office: they are therefore to be able men, and to be chosen of the abler sort of Parishioners; and are not to be chosen either by the house, or other Custome.

And if any shall be chosen Constable who is not thus inabled and qualified, he may by Law be discharged of his said Office, and another fit man appointed in his place.

Co. 8. 42.

Leets chusing unable, or unfit petty-Constables, is cause of forfeiture of the Leet, and such Choice is void. And two Justices of Peace may remove such a Constable; or rather the Lord of the Leet would be dealt withall to chuse fitter Constables; and upon his default, complaint is to be made at the Assizes or Sessions of the Peace, from thence a Warrant to be granted to the Justices of Peace to chuse and swear others more fit. And so was the Direction of the Judge of Assize at Cambridge, Anno 8 Caroli Regis.

“ 1: December, 4 Car. William Stockdale elected Constable was discharged, for that his dwelling was not convenient for the well execution of the said Office. *Ex libr. Sess. Middlef.*

“ 1. If a Constable die, or remove out of the Parish, his place is to be supplied at the Leet, if that time fall near; otherwise by the Sessions: but if that be too far off, then by the next Justices. *Dir. 30.*

“ 2. If a poor weak man be chosen Constable, the Justices of the Peace must help this. *Dir. 31.*

“ 3. A man for his quality otherwise fit to be a Constable, &c. procuring himself to be the King's Servant extraordinary, may notwithstanding be chosen a Constable, and may well perform his ordinary service in the Country. *Dir. 38.*

“ 4. Petty Constables conveying Rogues from Parish to Parish, for their Charges, see *hic, cap. 47.*

For the Duty of a Constable, see their Oath, *hic cap. 121.*

14 Car. 2.  
cap. 12.

“ Two Justices of the Peace may appoint and swear new Constables, Head-boroughs, &c. in case of death or removal of such Officers out of the Parish. And if, in default of holding Court-Leets, they continue above the year, they may be discharged at the Sessions, and others put in.

“ And by the same Statute, Constables, Headboroughs, and Tithing-men out of purse, with the Church-wardens and Overseers of the Poor, and other Inhabitants of the Parish, may make Rates upon all Occupiers of Lands, and Inhabitants, and all others chargeable by the Statute 42 El. to the Poor; which being confirmed under the Hands and Seals of two Justices of the Peace, may be levied by their Warrants, by Distress and Sale of the Refusers Goods.

## Conventicles. CHAP. XIX.

“ The Stat. 35 Eliz. cap. 1. declared to be in force, and farther remedies <sup>16 Car. 2. c. 4.</sup>  
 “ against the dangerous practices of seditious Sectaries and other Meer-  
 “ ings in Conventicles, under colour of Exercise of Religion. See the Act  
 “ at large, being upon continuance for three years after the end of the said  
 “ Parliament, and to the end of the next Session of Parliament after the said  
 “ three years, and no longer.

“ The Stat. 17 Car. 2. cap. 1. *apud Oxon.* It is Enacted, That all Parsons,  
 “ Vicars, Curates, Lecturers, and other persons in, or pretending to be in  
 “ holy Orders, and all Stipendaries and other persons who have been pos-  
 “ sessed of any Ecclesiastical or Spiritual Promotion, and who have not de-  
 “ clared their assent, and subscribed the Declaration mentioned in the Act  
 “ of 14 Car. 2. for Uniformity of Publick Prayers, &c. and shall not take and  
 “ subscribe the Oath following;

“ I *A. B.* do swear, That it is not lawful upon any pretence whatsoever,  
 “ to take Arms against the King: And that I do abhor that Traiterous Po-  
 “ sition of taking Arms by his Authority against his Person, or against those  
 “ that are Commissionated by him, in pursuance of such Commissions: And  
 “ that I will not at any time endeavour any Alteration of Government ei-  
 “ ther in Church or State;

“ And all such persons who shall take upon them to preach in any unlaw-  
 “ ful Assembly, Conventicle or Meeting, under colour or pretence of any  
 “ Exercise of Religion, contrary to the Laws and Statutes of this Kingdom;  
 “ shall not at any time after the 24. of March, 1665. unless in passing upon  
 “ the Road, come or be within five miles of any City or Town Corporate,  
 “ or Borough that sends Burgeses to the Parliament, within *England*,  
 “ *wales*, or Town of *Barwick upon Tweed*, or within five miles of any  
 “ Parish, Town or Place wherein he or they have, since the Act of Obliv-  
 “ ion, been Parson, Vicar, Curate, Stipendary or Lecturer, or taken upon  
 “ them to preach in any unlawful Assembly, Conventicle or Meeting, under  
 “ colour or pretence of any Exercise of Religion, contrary to the Laws and  
 “ Statutes of this Kingdom, before he or they have taken and subscribed  
 “ the said Oath before the Justices of the Peace at their Quarter-Sessions,  
 “ to be holden at the Division next to the Corporation, City or Borough,  
 “ Parish, Place, or Town, in open Court (which the said Justices are im-  
 “ powered to administer) upon forfeiture for every such offence of the sum  
 “ of 40 l. one third part thereof to his Majesty and his Successors, the other  
 “ third part to the Poor of the Parish where the offence is committed, the  
 “ other third part to the person that will sue for the same by Action of  
 “ Debt, Plaint, Bill, or Information, in any Court of Record at *Westminster*,  
 “ or before any Justices of Assize, Oyer and Terminer, or Gaol-delivery,  
 “ Justices of the Counties Palatine of *Chester*, *Lancaster*, or *Durham*, great  
 “ Sessions in *wales*, or Justices of the Peace in their Quarter-Sessions; no  
 “ Effoin

“ Effoin, Protection, or Wager of Law herein to be allowed.

“ It shall not be lawfull for any person or persons restrained from coming  
 “ to any City or Town Corporate, Borough, Parish, Town or Place, as  
 “ aforefaid, or for any other person or persons who shall not first take and  
 “ subscribe the said Oath, and shall not frequent Divine Service established  
 “ by the Law of this Kingdom, and carry him or her self reverently there,  
 “ to teach any publick or private School, or take any Boarders or Tablers  
 “ to be taught or instructed by him or her self, or any other, upon pain of  
 “ forfeiture of 40 l. for every offence, to be recovered and distributed as  
 “ aforefaid.

“ And any two Justices of the Peace in their respective County, upon  
 “ Oath to them of any offence against this Act, (which Oath they are im-  
 “ powered to administer) may commit the Offender for six moneths without  
 “ Bail; unless before such Commitment he shall before the said Justices of  
 “ the Peace swear and subscribe the said Oath and Declaration.

“ Provided, That appearance to any Subpoena, Warrant, or Process,  
 “ whereby personal Appearance is required, shall not be construed an Of-  
 “ fence within this Act.

Counterfeiters. CHAP. XX.

33 H.8.1.  
P.Just. 54.

**T**WO Justices of Peace, the one being of the *Quorum*, may convene by *Two Justices*  
 Process, or by their Warrant, (*sc.* may grant their Warrant to attach *ces.*  
 and bind over) to the next General Sessions of the Peace or Assizes, any  
 person that is suspected of any deceitful getting into his hands any money,  
 goods, or other thing of any other persons, by means or colour of any false  
 Tokens or counterfeit Letter made in any other mans name, there to be ex-  
 amined and ordered: “ *Henry Jones* for a counterfeit Pass was adjudg’d to  
 “ the Pillory, and fined: *Lib. Delib. Gaol. Newgate, 5 Dec. 8 Car.* The  
 “ like for counterfeiting a Butchers Licence, *30 March, 7 Car. eod.lib.* Al-  
 so it seemeth the said Justices may call or convene before themselves the Of-  
 fenders, and after due Examination, &c. may imprison such Offenders, or  
 bail them untill the next General Sessions or Gaol-Delivery. And in  
 this case the said Justices of Peace shall do well to take Examination of  
 the Offence, and to certifie the same to the said Sessions or Gaol-delivery;  
 and withall to bind over the Informers and Witnesses to give Evidence  
 therein.

Also it seemeth that any one Justice of the Peace may bind such Offen-  
 ders (as Cheaters) to their Good Behaviour, and so to the next Assizes or  
 Sessions of the Peace, there to be examined and ordered: or else (by force  
 of the *Statute 7 Jac. cap. 4.*) may send such Offenders (as idle and disorder-  
 ly persons) to the House of Correction, there to be continued untill the next  
 Assizes or Sessions, and then and there to be forth-coming, &c. Yet *quare*  
 of sending them to the House of Correction: and it seemeth more war-  
 rantable if they be sent to the House of Correction by Order of the Sessi-  
 ons. “ *Richardus Freed* had Judgment to be set in the Pillory with a paper  
 “ written, *A Common Cheater and Cousener*, and thence to be had to *Bride-*  
*well,*

“ well, and kept at work till he paid Twenty Nobles for a Fine, and put in  
 “ Sureties for his Good Behaviour. *Lib. Delib. Gaol. Newgate*, 10. July,  
 7. Jac. fol. 77.

*Challenges. See Duels.*

### Dying. CHAP. XXI.

*One Just.* **U**Pon Information given to any Justice of Peace against any person suspected to offend this *Statute* concerning the using of Logwood, <sup>29 Eliz. 12 P. 2.</sup> *alias* Blockwood, in Dying, such Justice may by his Warrant, or other Commandment, cause to come before him, and may examine by Oath, or otherwise, the Servants or Workmen of such suspected Offenders, and other persons able to disclose the Offence : And upon finding the same, (*sc.* that any person hath used, or caused to be used, in the Dying or Colouring of any Cloth, Wooll, Yarn, Grogram, Buffins, or Silk, or any thing made of Woollen, Yarn, or Silk, any Logwood) the said Justice shall bind with Sureties (to the next Gaol-delivery or Quarter-Sessions of that County) as well such suspected Offenders, there to make answer for the said Offence, as the Examines which do discover the Offence ; and shall also certifie thither the said Examinations : And if such suspected Offender shall refuse to be bound, then may such Justice send such Suspect to the next Gaol, there to remain till he or she shall become so bound with Sureties.

*Two Justices.* Any two Justices of the Peace of the County where any Logwood shall <sup>13 Eliz. 9. P. 1.</sup> be found (in whose hands soever it shall be) may cause the same to be burned.

*Duels. See in the Appendix.*

### Egyptian. CHAP. XXII.

*One Just.* **E**Very Justice of Peace, Sheriff, and Escheator, may seize all Goods of any Outlandish persons, calling themselves *Egyptians*, that shall come into this Realm, within one moneth after their arrival, and may also keep the one moiety thereof to his own use, making account to the King in the Exchequer for the other moiety. And every person that can prove by two credible Witnesses (before the said Justice or other Officer that so seizeth the said Goods) that any of those Goods were craftily or feloniously taken from him, shall incontinently be restored thereto (by the party that so seizeth them) upon pain of the double value thereof to be forfeited by such Seizer to such Prover.

But note, That after the moneth the Offence is made Felony by the *Statute* of 1 & 2 Ph. & Mar. cap. 4. & 5 Eliz. cap. 20. P. 2. And then it seemeth the King is to have the Goods wholly. And *Quære* whether the *Statute* of 22 H. 8. be still in force, or be altered by the said *Statute* of 1 & 2 Ph. & Mar. c. 4. & 5 Eliz. cap. 20. <sup>5 Eliz. 20.</sup>

Also

“ Also note, That by the Statute of 1 & 2 Ph. & Ma. & 5 Eliz. the  
 “ word *Egyptians*, is now extended to such counterfeit Rogues and Vaga-  
 “ bonds, as being English or Welsh people, do call themselves Egyptians,  
 “ or do accompany themselves together, disguising themselves by their  
 “ Apparel, Speech, Countenance, or other Behaviour, like unto *Egypt-*  
 “ *tians*, or like unto such Vagabonds as call themselves, or are commonly  
 “ called *Egyptians*: And so they are all Felons, or at least they are all  
 “ incorrigible Rogues; and therefore the Justice must send all such to the  
 “ Gaol.

## Excise. CHAP. XXIII.

12 Car. 2.  
c. 15.

“ **A**LL Forfeitures and Offences committed against the said Act with-  
 “ in the immediate limits of the Excise-Office in *London*, shall be  
 “ adjudged and determined by the Commissioners there: And other Of-  
 “ fences done within all other Counties, Cities and Towns, shall be heard  
 “ and determined by any two or more Justices of the Peace residing near  
 “ the place where the Forfeitures or Offences shall be made. See the Act  
 “ at large touching matters incident to the Proceedings of the said Justices  
 “ therein.

“ And 15 Car. 2. cap. 9. & 10. & 17 Car. 2. cap. 4.

## Felony. CHAP. XXIV.

**E**very Justice of Peace (by force of the Commission, the first *Assignavi-*  
*mus*) may cause fresh suit, Hue and Cry, and search to be made by the  
 Sheriff, Bayliffs, Constables and others, upon any Robbery or Theft: And  
 also may cause the Constables to arrest and to imprison all such as shall be  
 suspected to be Thieves, Murtherers, or Felons. *Lamb. 190.*

2 & 3 Ph.  
& Ma. 10.

Also every Justice of Peace may and must take the Examination of all such  
 Felons or persons suspected for Felony as shall be brought before him. See  
*hic, cap. 3.*

2. And must take Information against them (of those that bring them,) *sc.* of the Fact, and Circumstances of the Felony and Fact.

3. And must put in writing such Examinations and Informations, or so much thereof as shall be material to prove the Felony, and must certify the same to the next General Gaol-delivery.

1 & 2 Ph.  
& Mar.  
c. 13.

4. And after such Examination and Information taken, then the Justice must commit such Felons to the Gaol, or may bail them if they be bailable; but then there must be two Justices together, and the one of them of the *Quorum*. See *postea, tit. Bailment, cap. 114.*

5. And must bind over (by Recognizance) the Informers (and all such as do declare any thing material to prove the Felony) to appear, and to give evidence against the Felon at the next General Gaol-delivery to be holden within the County, City, or Town-Corporate, where the Trial of the said Felony shall be. 2 Ph. & Ma. cap. 10. See *hic, cap. 3.*

If

If such Informer be unable to travel, &c. then the Justice of Peace may take his Information upon Oath, and may certify the same, *ut supra*, &c. and may forbear to bind such Informer to appear personally before the Justices at the Gaol-delivery, &c.

Note, That in cases of Treason or Felony, the party accused may require reasonable time to answer any Interrogatories, and having answered, ought to have Copies of his Examination, if he desire it. *Co. Inst. 2. Part, pa. 51.* the Cases of *Just. Richil*, 1 H. 4. and the Lord *Carew* 16 Jac.

If the Justice of Peace shall not certify such Examinations and Informations to the next Gaol-delivery, or if the Justices of Peace shall not certify their Bailment, or shall not bind over the Informers to appear, and to give Evidence against the Felon at the next General Gaol-delivery, as aforesaid; the said Justice of Peace shall be fined (for every such default or offence) at the discretion of the Justices of Gaol-delivery. 1 & 2 & 3 Ph. & Ma. 5 & 6 E. 6. 25. 3 H. 7.

But yet if it be for Petty-larceny, or other small Felonies determinable at the Sessions, the Justice of Peace may bind over the Informers, and may certify the Examinations and Informations to the next Quarter-Sessions of the Peace: and this was the advice and direction of Sir *David Williams* Knight, (late one of the Justices of the Kings Bench) at the Assizes at *Cambridg.* For, said he, it was not meet to keep poor prisoners in the Gaol for small matters of Felony from one Assizes till another; and therefore he gave order, that the Justices of Peace (at their General Sessions of the Peace) should try and deliver Offenders for small Felonies.

Besides, the Justices of Peace of every County, as well by virtue of their Commission, as also by force of the Statutes of 18 Ed. 3. 2. 34 Ed. 3. 17. & 17 R. 2. 10. have Authority to proceed to the delivery of Felons, and to hear and determine, and to give Judgment upon all Felonies, whereof any person shall be indicted before them, and are not restrained by the Statutes Ph. & Ma. but that they may proceed therein before the coming of the Justices of Assize and Gaol-delivery. The words of the Commission to that purpose are, *Assignavimus vos Justiciarios nostros ad Pacem, &c. Ac etiam ad inquirend. de omnibus & omnimodis Feloniis, &c. Et ad omnes & singulas Felonias, &c. audiendum & terminandum; & ad delinquentes castigandum & puniendum. Vi. Plo. 485. b.* P. Just. 1. 18. Stamf. 58. Li. Int. 385 Co. 9. 118.

And for that purpose also the aforesaid Statutes of 18 E. 3. 34 Ed. 3. & 17 R. 2. have ordained, That some learned in the Laws shall be put into the Commission of the Peace in every County within this Realm.

Also there be divers Statutes which by special words did ordain, That the Justices of Peace should have Authority at their General Quarter-Sessions to inquire of, hear and determine certain Felonies: as the Statutes,

18 H. 6. 19. & 3 H. 8. 5. Souldiers departing without Licence.

1 Ed. 4. 2. Felonies presented before Sheriffs in their Turns or Law-days. P. Just. 14. P. Sher. 13.

22 H. 8. 11. Cutting down of Powdick. P. Just. 11.

25 H. 8. 6. Against Ruggery. P. Just. 32.

8 Eliz. 3. Transporting of Sheep. P. Just. 15.

39 Eliz. 4. & 1 Jac. 7. Incurrible Rogues. P. Just. 74.

39 Eliz. 17. Wandring Souldiers and Mariners. P. Mariners, 6.

43 Eliz.



P. Robbe-  
77.

43 *Eliz.* 13. Carrying men forcibly out of *Cumberland*, &c.

So that the Justices of Peace at their Sessions may safely proceed to try all Petty-larcenies and small Felonies, and such other Felonies whereto they are authorized by these last recited *Statutes*: And in such cases also the Justices of Peace that shall take the Examination of such Felonies, may safely bind over the Informers, and certify the Examinations and Informations to their next General Sessions of the Peace.

“ And for Petty-larcenies, and other petty-Felonies, after an Indictment preferred at the Quarter-Sessions, if an *Ignoramus* be found by the great Enquest, here the said Sessions in good discretion may deliver the Gaol of such petty Felons; otherwise for all Homicides, Robbery, or other Felonies. *Dir.* 28<sup>c</sup>

“ For in Cases of Murther, or other Homicide (by misfortune, or in his own Defence, or other manner,) the offenders by the *Statute of Gloucester* (made 6 *E. 1. c. 9.*) are to abide in Prison untill the Justices of Gaol-delivery shall come into the Countrey to deliver the Gaol: And by the *Statute of 4 E. 3. c. 2.* two Wardens or Keepers of the Peace, or Justice of Peace might take Indictments, &c. but the persons so indicted were to be delivered by the Justices of Gaol-delivery.

But after the *Statute of 18 E. 3. c. 2.* before mentioned, Justices of Peace were assigned to hear and determine Felonies (generally) and Trespasses against the Peace, and to inflict punishment according to Law, and the manner of the deed. And by the *Statute of 34 E. 3. c. 1.* Justices of Peace had power given them to hear and determine, at the Kings Suit, all manner of Felonies done in the same County, according to Law, &c. And by the *Stat. of 17 R. 2. c. 10.* in every Commission of the Peace, two men of Law (amongst others) are to this purpose to be assigned, *sc.* to go and proceed to the deliverance of Felons as often as they shall think it expedient.

Lamb. 529  
Crom. 56.

And yet there are some Felonies which the Justices of Peace cannot hear or try at all, neither can they inquire thereof, nor otherwise deal therewith, (as it seemeth :) as namely,

*Felonies not to be dealt with by Justices of Peace.*

1. First, If any man being the Kings sworn servant, (and his name in the Check-roll of his Household) under the degree of a Lord, shall conspire with another to destroy the \* Kings Majesty, or any Lord of this Realm, or any other sworn to the Kings Council, or the Steward, Treasurer, or Comptroller of the Kings House: every of these Offences are made Felony by the *Statute made 3 H. 7.* But such Offences are by the same *Statute* appointed to be tried by a Jury of the Check-roll of the same Household, and before the Steward, Treasurer or Comptroller of the Kings said House.

\* This is  
High Treason. See  
postea.  
3 H. 7. c. 14

2. All Murthers or Men-slaughters committed or done within any the Kings Palaces or Houses, or within the limits or bounds thereof, or within any other house where his Majesty shall happen to be then abiding in his Royal Person, shall be enquired of, tried, heard, and determined before the Lord Great Major, or Lord Steward for the time being of the Kings Household, and in their absence before the Treasurer and Comptroller of the same Household, and the Steward of the Marshalsea, or two of them, &c. and such Triall to be by the Inquisition and Verdict of his Majesties Household-servants in the Check-roll. 33 *H. 8. c. 12.*

3. Embezilling of any Record, Writ, Return, Panel, Process, or Warrant

rant of Attorney, in the Chancery, Exchequer, the one Bench or the other, or in the Treasury, whereby any Judgment shall be reversed; every such Offence is made Felony in such Imbezillor, Stealer, or Taker away, and in their Procurers, Counsellors, and Abettors, by the Statute of 8 H. 6. But <sup>8 H. 6, c. 12</sup> such Offences are by the same Statute appointed to be tried by a Jury of <sup>Co. 11. 34.</sup> twelve men, whereof the one half to be of the men (*sc.* of the Officers and Attorneys) of the same \* Courts, who shall be sworn before the Judge. <sup>\* P. Fel. 18</sup> es of the said Courts, *sc.* of the one Bench or of the other, to enquire of that Offence: and if they shall indict the Imbezillors of such Record, &c. they shall be arraigned thereupon before the same Judges, as in cases of other Felonies.

4. Raising of any such Record is also Felony, within the said Stat. of 8 H. 6. and to be tried as aforesaid. *Br. Cora. 174.*

“Note, the entring of a false Will Nuncupative is not properly Forgery, “but it must be of a Will in writing. *Miller's Case 2 Jacob. C. B.*

5. Forging of any Deed or writing sealed, or of any Court-Roll, Will, <sup>2 R. 3. f. 10.</sup> or Acquittance, or to cause or assent to be made any such forged Writing, or to publish or shew forth in Evidence any such Forged Writing, knowing the same to be Forged; if any person being once lawfully convicted of any of the said Offences, shall afterward commit any the said Offences again, every such second Offence is made Felony by the Statute of 5. *Eliz.* But by the same Statute such Offences are to be enquired of, heard and determined, by and before Justices of Oyer and Terminer, and Justices of Assize. <sup>5 Eliz. c. 14</sup>

And therefore whereas one *R. Smith* was indicted at the Sessions of the Peace in the County of *Oxford*, upon the said Statute of 5 *Eliz.* for forging of a false Deed, it was adjudged by the whole Court in the Kings Bench, *Anno 30 Eliz.* that the same Indictment was not well taken: For although the Justices of Peace by their Commission have power (of Oyer and Terminer) to hear and determine Felonies and Trespasses, &c. and have in their said Commission an expresse clause *ad audiendum & terminandum*, and <sup>Co. 9. 118.</sup> so are Justices of Oyer and Terminer; yet it was resolved by the Court, <sup>Cro. 120.</sup> That forasmuch as there is a Commission of Oyer and Terminer known distinctly by that name, and the Commission of the Peace is known distinctly by another name, the said Indictment taken before the Justices of the Peace at their Sessions was not well taken, therefore it was quashed.

The reason of this last case and Judgment seemeth to hold in the former cases, and in all other like cases, where any Statute doth specially give Authority to any other distinct Court, or to other Justices or Commissioners, (leaving out the Justices of Peace) to inquire of, hear and determine, or to try Felons, &c. there the Justices of the Peace (at their Sessions) cannot inquire thereof, &c.

6. Servants imbezilling or taking away the goods of their deceased Master, the Executors of the party deceased may have a writ directed to the Sheriffs, to make open Proclamation two Market-days, that such Offenders shall appear in the Kings Bench at a certain day: And if such Writ be returned, that Proclamation is thereupon made accordingly, then, if the said persons, which should appear by reason of the said Proclamation, do  
make

33 H. 6. make default, and do not appear in the King's Bench at the day specified in the said Writ, they shall be attainted of Felony, by the Statute of 33 H. 6. c. 1. So that such Offence of servants imbezilling their said Masters goods. Rast. pl. fo. 592. beginneth first to be Felony upon their default of appearance in the Kings Bench after Proclamation; of which default the Justices of Peace cannot take notice, for that they have not before them the Record of such default, or not appearing, and therefore the Justices of Peace cannot inquire of such Felony, &c. *Crompt. 56. Lamb. 529.*

But in the former cases, if any such Offender shall be brought before any Justice of Peace, and charged with any such Felony, *quære* how farre the Justice of Peace is to deal, or what he is to doe therein, considering the Justices of Peace are no Judges of such Felonies, neither have they any Jurisdiction given them by the Statutes in such Cases: and yet for that they are by their Commission authorized to deal with all Felonies, as also with all Offences against the Peace of the King and Realm, of which sort all these last recited Offences are; *quære* if the Justice of Peace shall not doe well to examine the Offence, and then to certifie his Examination to such persons as by the Statute are made Judges of the Cause; and also to commit such an Offender to Prison, to bind over the Informers, and to take their Information upon Oath.

Again, If a man had been feloniously stricken in one County, and after died thereof in another County, (by the Common Law) no Indictment could be taken in either of the said two Counties, for that the Jurors of the County where such party died (of such stroke) could not take knowledge of the said stroke, (being in a forein County,) nor the Jurors of the County, where the stroke was given, could not take knowledge of the death in another County. But now by the Statute of 2 & 3 Ed. 6. an Indictment thereof found by Jurors of the County where the death shall happen (whether it shall be found before the Coroner, or before Justices of Peace, or other Justices, &c.) shall be good and effectual in Law: And that the Justices of Gaol-delivery and Oyer and Terminer in the same County, where such Indictment shall be taken, shall and may proceed upon the same, as if such stroke and death had been all in one and the same County.

Also where Felons had robbed or stolen goods in one County, and after conveyed their spoil, or goods so stolen, into an other County to their adherents there, who, knowing of such Felony, received the same goods; in this case, although the Principal were after attainted, the Accessary notwithstanding escaped, by reason that he was Accessary in another County, and that the Jurors of the said other County (by the Common Law) could take no knowledge of the principal Felony in the first County: but now by the said Statute of 2 & 3 Ed. 6. it is enacted, That where any Murder or Felony shall be committed and done in one County, and other persons shall be accessary (in any manner) to any such Murder or Felony in any other County, that an Indictment thereof found or taken against such Accessary before the Justice of Peace, or other Justices, &c. in the County where such offence of accessary shall be committed, shall be good and effectual in Law; and that the Justices of Gaol-delivery, or Oyer and Terminer, of or in such County where the Offence of any such Accessary shall be committed,

mitted, shall write to the *Custos Rotulorum* where such Principal shall be attainted or convict, to certify them whether such Principal be attainted, convicted, or otherwise discharged of such Felony; and thereupon the *Custos Rotulorum* shall make Certificate in writing under his Seal to the said Justices accordingly; and then the Justices of Gaol-Delivery, or Oyer and Terminer, shall proceed upon every such Accessary in the County where such Accessary became Accessary, as if both the principal Offender and Accessary had been committed and done in the said County where the Offence of Accessary was committed.

So as by the Letter of this last recited Statute, the jurisdiction over these last recited Felons, and over such Accessaries, is not committed to the Justices of Peace, to proceed to the Trial of them: But this Authority is remitted to the Justices of Gaol-delivery, or of Oyer and Terminer. Yet the Justices of Peace may examine these Offences, and take Information against the Offenders, and certify the same to the next General Gaol-delivery, and may bind over the Informers, and commit the Offenders: Also the Justices of Peace may inquire thereof, and take Indictments against them, as in other Cases of Felony.

8. Lastly, the Justices of Peace (at their Sessions) cannot make Trial of such as be indicted of Felony before Coroners, or before the Justices of Gaol-delivery, or of Oyer and Terminer, unless the same persons (*sc.* the said Coroner, Justices of Gaol-delivery, or of Oyer and Terminer) were also Justices of the Peace in the same County, so as the Indictment may be understood to be taken by them, as before Justices of the Peace. For the Commission of the Peace, and the Authority of Justices of the Peace, extendeth only to try such as stand indicted before themselves, or before former Justices of the Peace, or before the Sheriff in his Tourn, or the Steward in a Leet. See *Lamb.* 486. & *Stat.* 1 Ed. 4. cap. 2. & *Stamf.* 87. for Indictments taken in the Sheriffs Tourn: and for Indictments taken in Leets, see *Br. tit. Leet* 1. And yet by the Book 8 H. 4. fol. 18. it seemeth, that Indictments or Presentments of Felony taken in the Leet shall be delivered over to the Justices of Gaol-delivery. *Br. Frank.* 5.

Also in some cases of Treason and misprision of Treason, the Justices of Peace may inquire, and take Indictments, but cannot proceed to Trial, or to hear and determine the same.

As of maintainers of the Authority of the Bishop or See of Rome, and of their procurers and maintainers, &c. the Justices of Peace in their Quarter-Sessions may inquire of such offences; but they must certify every Presentment thereof made before them into the Kings Bench (within forty days, upon forfeiture of an hundred pounds by every Justice of Peace there present, not making Certificate accordingly). 5 Eliz. cap. 1.

2. So of such as shall obtain from Rome, &c. any Bulls, or Absolution; or shall publish or put in ure any such Bull; or shall give or take Absolution by colour of any such Bull. 13 El. 2. 23 El. 1.

And their procurers and maintainers, &c.

And the concealers of such Bull or Absolution offered to them.

3. So of such as shall withdraw any subject from the Religion now used, to the Romish Religion; or from their Obedience to the Kings Majesty; or to the Obedience of the Pope, &c.

And

And of such as shall be so withdrawn.

And of their Procurers and Maintainers, &c.

And of the Concealers of such Offences.

13 Eliz. 2. 4. So of such as shall bring into this Realm any *Agnus Dei*, or other super-  
23 Eliz. 1. stitious Pictures, or Beads; or shall deliver, or offer any such to any Sub-  
ject.

And of the Receivers of such superstitious things.

For all these last recited Offences against the Stat. 5 Eliz. 1. 13 Eliz. 2.  
& 23 Eliz. 1. see more fully *postea*, tit. *High Treason*.

And if any such Offender against any of these last mentioned Statutes shall be brought before any Justice of Peace, and charged with any such Offence, it shall be the Justice's part, to take the Examination of such Offenders, and to bind over the Accusers and (material) Informers to appear (and to prefer a Bill of Indictment, and thereupon to give in Evidence to the Inquirors against such Offenders) at the next Quarter-Sessions, (as it seemeth) or rather at the next Assizes, or General Gaol-delivery, or else in the Kings Bench, whensoever (upon reasonable warning) they shall be thither called; and then to commit the Offender to the Gaol; and after to certify the said Examinations, Informations, and Recognizances (by him taken) to the said Sessions, or Gaol-delivery, or into the Kings Bench, &c.

In other cases of High Treason, or Misprision of Treason; what the Justices of Peace out of their Sessions shall do with such Offenders brought before them, see *postea*, tit. *Misprision*.

But now to return to the business of the Justices of Peace out of their Sessions.

If one shall bring a man suspected of Felony before any Justice of Peace, but refuseth to be bound to give Evidence against the Prisoner (either at the General Gaol-delivery, or Quarter-Sessions, as the case shall require;) if such bringer hath given Evidence before the said Justice against the Prisoner, or can declare any thing material to prove the Felony; and will not be bound to give Evidence upon his Trial, the Justice of Peace (upon his discretion) may commit to Prison such person so refusing, or may bind him to his Good Behaviour, and to appear at the next Gaol-delivery or Quarter-Sessions. But if the bringer of a person suspected of Felony cannot declare any thing material to prove the Felony, nor any other person then present, it seemeth the Justice ought not to commit the Prisoner: And so was the Direction of Sir David Williams at the Assizes of Cambridge aforelaid. Yet the Justices shall do well to examine the Prisoner, and if he shall confess the Felony, then to commit him: or if upon his Examination there shall appear any just cause of suspicion, or if the Prisoner be a man of evil fame, and that there be a Felony committed; in these cases, the Justice shall do well not to let him go, but at least to bind him over to the next Gaol-delivery, and in the mean time to take farther information against him. See the other title *Felony*, *postea*.

Crompt.  
101. b.

Fish.

## Fish. CHAP. XXV.

**E**very Justice of Peace is a Conservator of Rivers, and of the Statutes <sup>West. 2. 47</sup> made in that behalf, (*sc.* of the Statutes of 13 *Ed.* 1. *cap.* 47. 13 *R.* 2. <sup>13 R. 2. 19</sup> *cap.* 19. & 17 *R.* 2. *cap.* 9.) within his County where he is a Justice, and <sup>P. Fish. 14</sup> may appoint and swear Under-Conservators; and (when he may attend it) ought to survey all the Weirs in the Rivers, that they be of a reasonable wideness, and all other defaults done against the aforesaid Statutes. <sup>P. Just. 14.</sup>

Every Justice of Peace may burn the Nets and other Engines put or cast into Waters, wherewith the Fry or Breed of any Fish may be taken or destroyed; and this shall be for the first Offence: and for the second Offence the said Justice of Peace may (as it seemeth) imprison such Offenders for a quarter of a year; and for the third Offence, one whole year: and as the Trespas or Offence increaseth, so may the Justice of Peace increase the Punishment of such Offenders. See the Statutes 13 *E.* 1. 47. 13 *R.* 2. 19: & 17 *R.* 2. 9.

By Warrant of any one or more Justices of Peace, the Constables and <sup>3 Jac. 12</sup> Church-wardens (where any Offence is committed in destroying the Spawn and Brood of Sea-fish, against the Statute made 3 *Jac.* *Regis*) may levy the Forfeitures of the Offenders by Distress and Sale of the Offenders Goods, rendering to the Offenders the surpluse.

The Particulars of the said Statute 3 *Jac.* *Regis* are as followeth:

1. No person in any Haven, Harbour, or Creek, or within five miles of the mouth of any Haven, Harbour, or Creek of the Sea, shall fish with any Draw-net or Drag-net under three inches meash, (*viz.* one inch and an half from knot to knot) except for taking of Smoulds in *Norfolk* onely; and except for taking of Herring, Pilchards and Spicots.

2. No person in any Haven, Harbour, or Creek, or within five miles of the mouth of any Haven, &c. shall fish with any Net with Canvas, or other Engine or device, whereby the Spawn, Fry or Brood of any Sea-fish may be destroyed.

And for every such Offence the Offenders shall forfeit their Nets, and ten <sup>3 Jac. 12</sup> shillings in money; the one half thereof to be to the use of the Poor of the Town or Parish where the Offence shall be committed, and the other half to him that will sue for the same; and to be levied by the Mayor or other head-Officer of every City, Borough, or Town-Corporate, or by Warrant from one or more Justices of Peace. *ut supra.*

“ Touching the fishing for Pilchards, &c. in *Cornwall* and *Devon*, see the <sup>14 Car. 2</sup> said Act. And for general Fishing, the Act of 15 *Car.* 2. *cap.* 14. <sup>cap. 31.</sup>

## Fish-days. CHAP. XXVI.

**E**very Justice of Peace, in the Lent time, may enter into and search <sup>1 Jac. 29.</sup> <sup>P. 7.</sup> all Victualling-houses, and finding there any Beef, Mutton, Veal, or Hogs killed or dressed, (except Flesh to be killed three daies next before *Easter*) may take and seize the same as forfeit, and shall give the same to Prisoners, and other poor folks, by their discretion.

## Forcible Entry. CHAP. XXVII.

**W**hat is Forcible Entry, and what is a Forcible Holding or Detainer; <sup>15 R. 2. 3.</sup> <sup>8 H. 6. 9.</sup> <sup>P. 2.</sup> see the other title, *Forcible Entry, hic postea*

<sup>Dyer 210.</sup> Every Justice of Peace, upon complaint to him made, or upon other <sup>One Just.</sup> notice to him given, of any Forcible Entry into, or Forcible Holding or Detainer of possession of any Lands, Tenements, or other Possessions (or of any Benefices or Offices of the Church) contrary to these Statutes, without any examining, questioning, or standing upon the Right or Title of either party, ought in convenient time (at the costs of the party grieved) to doe Execution of these Statutes in manner and form hereunder following. See *Lamb. 150.*

<sup>15 R. 2. 2.</sup> <sup>Lamb. 152</sup> 1. First, he ought to goe to the place where such Force shall be. And he may take with him sufficient power of the County, or Town, by his discretion, and the Sheriff also, if need be, to aid him, for the better Execution of this business; *sc.* as well for the arresting of such Offenders, as also for the removing of the Force, and for the conveying of them to the next Gaol. And whosoever (of that County) shall refuse to attend and assist the Justice of Peace herein, shall be imprisoned, and make Fine to the King.

<sup>15 R. 2. cap. 2.</sup>

2. He ought to arrest and remove all such Offenders as at his coming he shall see or find continuing the Force; and may take away their Weapons, Harness, and Armour, and presently cause them to be prized, and after to be answered to the King as forfeited, or the value thereof. *Vide Libr. Intrat. tit. Faux. imprisonment, di. 7.* <sup>Arrest.</sup>

If the doors be shut, and they within the house shall deny the Justice to enter, it seems he may break open the house to remove the Force.

But if such Offenders, being in the house at the coming of the Justice, shall make no resistance, nor make shew of any Force, then the Justice cannot arrest or remove them, except, upon the Enquiry after, a Force be found. See *Crompt. 73.* and the other title, *Forcible Entry.*

<sup>Crompt. 71</sup> Also if the House or Land which is holden with Force shall extend into two Counties, and the Offenders remove their Force into that part of the House or Land which is in the other County, when the Justices do come, they cannot then remove the Force.

And if the Justice at his coming shall see or find a Force, and shall remove the Offenders, yet he may not upon this his own view restore the party ousted to his Possession again, without Inquiry first made of the Force by a Jury, as appeareth hereafter.



Record.

3. Also the Justice ought to make a Record of such Force by him viewed; which Record shall be a sufficient Conviction of the Offenders, and the parties shall not be allowed to traverse it. 14 H. 7. 8. Co. 8. 121.

And this Record (being made out of the Sessions by a particular Justice) the said Justice may keep by him; or he may make it indented, and certify the one part into the King's Bench, to leave it with the Clerk of the Peace, and the other part he may keep himself. Lamb. 15 163. & 375.

The Form of the Record; see the other title, *Forcible Entry*, among the Precedents, cap. 129.

imprison.

4. Also he ought to commit (immediatly) to the next Gaol all such persons as he shall find and see continuing the Force at his coming to the place; the said Offenders there to remain convict by his own Eye, Testimony and Record, untill they have paid a Fine to the King, (or given Security for the payment thereof:) for this Sight and View of the Force by the Justice (being a Judge of Record) maketh his Record thereof (in the Judgment of the Law) as strong and effectual, as if the Offenders had confessed the Force before him; and (touching the restraining of Traverse) more effectual, then if the Force had been found by a Jury upon the Evidence of others. 21 H. 6. 5. Br. Peace 4. Co. 8. 120. P. 2.

And yet the words of the Statute seem more large; *sc.* And if he do find any that made any such Forcible Entry, or that hold the place with Force, &c. he shall commit the Offenders to the Gaol, &c. But such Force must be in the presence or view of the Justice of Peace, or else he can neither record it, nor yet commit the Offenders. 13 H. 7. Crook. 41. P. 2. Cromp. 195. b.

The form of the *Mittimus*; see the other title, *Forcible Entry*, cap. 129.

Fine.

5. Also the same Justice of Peace, or some of them that shall see the Force, (as having best knowledge of the matter, and of the quality of the Offence, and having the custody of this Record (are the proper Judges of this Offence; and therefore may assess the Fine upon every such Offender: but the Fine must be imposed upon every Offender severally and not upon them jointly: and the Justice ought to estreat the same Fine, & to send the estreat into the Exchequer, that from thence the Sheriff may be commanded to levy the said Fine for his Majesty's use. But upon the same Fine so assessed and estreated, it seemeth the Justice is to deliver the Offenders. Co. 8. 41. a. Lam. 193. 597. Co. 11. 43.

Also upon payment of the said Fine to the Justice, or upon Sureties found (by Recognizance) for the payment thereof, the said Justice may deliver the Offenders out of Prison again at his pleasure, by some opinions: But *quare* whether the Justice of Peace shall meddle with receiving the Fine, for that the Sheriff is accomptant for all Fines. Lamb. 554. Lam. 162. 555. Br. Imp. 10.

Or the Justices of Peace (by some opinions) may Record such Force, and commit the Offenders, and after certify the Record to the Justice of Assises and Gaol-delivery, (as it was done at *Stafford Assises*, Anno 26 Eliz. by the report of Mr. *Crompton*;) or else to certify it to the General Sessions of the Peace, (as it seemeth to Mr. *Crompton*) and there the Offenders may be fined; for, saith he, the Statute doth not say, that the Fine shall be assessed by them that Record the Force, more then by other Justices. Crompt. 161. Lam. edit. 1582.

Or rather the Justice of Peace may certify or deliver the Record by him made (and refer the Fine and farther proceedings therein) to the King's Bench (in regard of their supreme Authority in such cases.) And this Mr. *Lamb.* thinketh to be the safest course.

6. Also



6. Also the Justice of Peace, notwithstanding his own view of the Force, may and ought in some good Town or place, near where the Force was (at the costs of the party grieved) to enquire by sufficient Jury of the same County, to be returned by the Sheriff, as well of those which made such Forcible Entry, as of those which made such Forcible Deteiner. See the Stat. 8 H. 6. cap. 9. & Plo. 86. a. Enquiry.

And here note, that any one Justice of Peace alone out of the Sessions may make an Enquiry (being so appointed by the Statute;) whereas otherwise there must be two Justices at the least, to make an Enquiry, or to hold a Sessions, and one of them of the *Quorum*. *Br. Peace* 14.

Br. Forcib.  
27.

And this Enquiry ought to be made, whether the Offenders be present or gone, at the coming of the Justice of Peace; yea, this Enquiry the Justice must make, though he go not to see the place where the Force is; for without this Enquiry there can be no Restitution. see more concerning this Enquiry in the other Title, *Forcible Entry*, cap. 80, &c.

Also by the words of the Statute of 8 H. 6. cap. 9. (*maintenant mesme les Justices doivent enquerir*, &c.) the Justices are to make this Enquiry immediately after the Force committed, and complaint made to them by the party grieved; and yet if they do make this Enquiry at any convenient time after, it sufficeth. *Crompt.* 124.

If the Sheriff shall not duly execute the Justices Precept directed to him for returning a Jury, he shall forfeit 20 l. And the Justice of Peace may proceed to hear and Determine such default of the Sheriff. See 8 H. 6. cap. 9. *hic. postea*.

The form of a Precept to the Sheriff to return a Jury, *vide hic cap. 129*.

The form of the Enquiry, Presentment or Verdict, see *hic cap. 129*.

7. And if upon such Enquiry such Forcible Entry (or Forcible holding or Deteiner) shall be found by the Oaths of the Enquirers, then the said Justice of Peace shall reseize the Lands and Tenements so entred upon or holden, and thereof put the party in possession again, who in such sort was put out or holden out. See the other Title of *Forcible Entry*, cap. 81. 82. 83. 84.

But the putting out, as also the holding out, must of necessity be found, and that by express words in the Indictment. see as before.

And so note, that the Justice or Justices of Peace, recording onely the Force by his or their view, may not put the party outed into his possession again, but the Justice must first make Enquiry thereof by twelve men of the County at a special Sessions by the said Justices to be holden; and then the Force being found by the said Jury, the said Justice or Justices may put the party so put out into his former possession,

And this Restitution the Justice of Peace may make himself; or he may make his Warrant to the Sheriff to doe it: or else he may certifie such Presentment or Indictment, taken before him, into the Kings Bench, and so leave the Restitution to be awarded out of that Court. See as before, cap. 82.

But the Justices of Assize and Gaol-delivery, nor the Justices of Peace at their General Sessions, cannot (as it seemeth) make or award Restitution, except the Indictment were found before them; but the Justices of Peace onely, or some of them, that were present at the Enquiry, and when the

Indictment was found, they onely have power to make Restitution ; except notwithstanding the Justices of the Kings-Bench, who have a supream Authority in all Cases of the Crown. Co.9.118.  
Co.11.65.  
7 E.4.18.

And therefore if the Record, *sc.* the Presentment of such Force, shall be delivered by the Justices of Peace into the Kings Bench, or that the same Presentment or Indictment shall be removed and certified thither by *certiorari*, there the Justices of the Kings Bench may award a Writ of Restitution to the Sheriff of the same County, to restore possession to the party so expelled.

After it is found by such Enquiry, that such Forcible Entry or Deteiner is made, the Justice of Peace may break open the house by force, to re-seize the same, and to put the party, so put out, in possession again. And so may the Sheriff do, having the Justices Warrant. P.R.41.b.

The form of such Warrant from the Justice of Peace to the Sheriff to make Restitution, see in the other Title, *Forcible Entry*, cap. 120.

But the Justice of Peace may not (in any case) make Restitution without such Enquiry first had, and such Force thereby found : and if the Justice shall make Restitution without Enquiry, it seemeth to be punishable.

Also this Restitution ought to be made to none but to him only that was put out ; so that if the Father be put out by force, and dieth (after Enquiry, and before Restitution,) his Heir shall not have Restitution.

To whom Restitution shall be made, see the other Title, *Forcible Entry*, cap. 83.

Also such Restitution must be made onely, where a man is put out, or holden out, &c. of House or Land, and is not to be understood of a Rent, Common, Advowson, or such like. See the other Title, *Forcible Entry*, cap. 81.

Also the Justice may make Restitution, notwithstanding any offer of Traverse ; but yet upon Traverse tendered, the safest way (for the Justice of Peace) seemeth to be for him to deliver or certify the Presentment into the Kings-Bench, and so to refer the farther proceedings therein to them. See the other Title, *Forcible Entry*, cap. 84.

Default of  
the Justices

And although these *Statutes* do inflict no penalty upon the Justices of Peace, if they shall not execute these *Statutes* ; yet if upon complaint (or other notice given of such Force) they shall not at least remove the Force, record it, and commit the Offenders, they are punishable.

In the Case of *Drayton Bassett* (in the County of *Stafford*) about *Anno 22 Eliz.* certain Justices of Peace of that County, (although they dwelt not near to the place) where a great Riot was committed by a Forcible Deteiner, were for their default fined in the *Star-Chamber*, upon the *Statute* of 17 R.2. c.8. (as *M. Crompton* reporteth) which *Statute* is, That the Sheriff, and all other the Kings Officers, shall suppress Rioters which shall assemble themselves in outrageous or great numbers. See *Crompt. Author. des Courts*, fol. 32.

Although the Justice of Peace ought to commit to the Gaol, and may fine, all such as he shall see continuing their Force at his coming to the place ; yet upon Force found by the Enquiry only, and not viewed and seen by the Justice, (although this Presentment of the Jury be a Conviction of the Offenders, yet) it seemeth the Justice of Peace may neither fine nor send

to the Gaol the said Offenders, by the Statute of 8 H. 6. which appointeth the Enquiry : for the Justice hath power by the said Statute to make Restitution onely, as saith M. *Lambert* 162. yet M. *Crompton* holdeth the contrary, *sc.* that the party indicted shall be fined for the Force found, although the Statute of 8 H. 6. speaketh not of the Fine.

Crompt.  
161. b.  
162. a.

But howsoever the Justice of Peace (upon Force found by the Enquiry) is to remove the Offenders that be present, that so he may restore the other, and may bind the Offenders to their Good Behaviour ; and if the Offenders be gone, yet the Justice may make his Warrant to take the Offenders, and may after send them to the Gaol, until they have found Sureties for their Good Behaviour.

Note, that if such Forcible Entry or Deteiner shall be made by three persons or more, then it is also a Riot ; and then (if there be no former Enquiry thereof made) it seemeth the two next Justices of Peace (upon notice thereof) ought to enquire thereof (as a Riot) by a Jury, within one moneth, upon pain to either of them making default to forfeit 100 li.

Cro. 68. b.

8 H. 6. 9.

P. Just. 8. 9.

Raft. 174. c.

Also one Justice of Peace may (as it seemeth) hear and determine the defaults of Sheriffs and Bailiffs, in not returning sufficient Jurors (whereof every one shall have Lands, &c. to the value of forty shillings by the year at the least) before him, to enquire of such Forcible Entry or Deteiner: and the said Justice of Peace may proceed therein as well by Bill, at the suit of the party grieved, for himself, as also by Indictment only for the King ; and the same Process shall be made against such persons indicted or sued by Bill in this behalf, as should be made against persons indicted or sued by Writ of Trespass with Force and Arms against the Kings Peace. What the Process in such case is, *vid. tit. Process, cap. 132.*

And though any one Justice of Peace may proceed in every of these former Cases of Forcible Entry or Deteiner, as aforesaid, yet if two or more Justices shall joyn therein together, it is the better ; for, *Plus vident oculi quam oculus ; & securius expediuntur negotia commissa pluribus.* Co. 4. 46.

Two Justices.

8 H. 6. 9.

Raft. 174. d.

Also the Mayor, Justice or Justices of Peace, and the Sheriffs and Bailiffs of Cities and Boroughs having Franchise, shall have in the said Citie, Towns and Boroughs, like Authority to remove such Entries, and to inquire of such Entries, or putting or holding out, and in other Articles aforesaid rising within the same, as the Justices of Peace and Sheriffs in Counties and shires have.

Corporate Towns.

2 Ed. 3. 3.

Also every Justice of Peace, to whom a Writ upon the Statute of Northampton concerning the removing of a Force shall be delivered, ought to execute the same Writ, *sc.* he ought to remove the Force, and to certifie his doings therein into the Chancery.

The Statute of Northampton.

And for that the Justice of Peace to whom this Writ shall be delivered is herein but a Minister, and is to certifie that which he shall doe therein, I will here set down the manner how he shall proceed to execute this Writ.

First, When the Justice of Peace shall come to the place where the Force is supposed, by this Writ, he may cause three Oyes for silence to be made, and then he may make Proclamation in the Kings name to this effect.

The

*The Kings Majesties Justice of Peace streightly chargeth, and in his Majesties Name commandeth, all and every person to keep silence, whilst his Majesties Writ, &c. be read, and Proclamation be thereupon made accordingly.* Lamb. 173

2. Then may he read, or cause to be read, the Writ, or may declare the effect thereof.

3. Then let three other O yes be made ; and thereupon make Proclamation again, as followeth :

*His Majesties said Justice doth in his Highness Name, and by virtue of his Majesties Writ, streightly charge and command, That no manner of person, of what estate, degree or condition soever, now being within the house of B. &c. (named in the said Writ) shall go armed, or keep force of Armour or Weapon, nor do any thing there, or elsewhere, in disturbance of his Majesties Peace, or in offence of the Statute made at Northampton in the second year of King Ed. 3. upon pain of losing his said Armour and Weapons, and of imprisoning his body at his Majesties pleasure.* Fitz. 249.

God Save the King.

4. Then the Justice of Peace may enter and search whether there be any force of Armour or Weapon worn or born, against this Proclamation: otherwise he may enquire thereof by a Jury, (for so the Writ it self doth warrant him.) And if after Proclamation any such Offenders be found, he ought to imprison the Offenders, and to seize to the Kings use, and prize (by the oaths of some present) the Armour and Weapons so found with them; and the Offenders so imprisoned are to remain in prison untill that some other Commandment be given concerning them from his Majesty, or his Justices. See the Writ, *Fitz. 249.* and the Title, *Bailment, postea.*

But if, upon the Proclamation made, they do depart in peaceable manner, then hath the Justice no Warrant by the Writ to commit them to prison, nor to take away their Armour.

But when the Justice hath removed the Force, (upon this Writ) he may not put the party that was put out, in possession again; for if he do, it seemeth both the Justice and the party also are punishable: for the Writ doth authorize the Justice only to remove the Force, and not to make Restitution. Crom. 74. 162.

The form of this Writ upon the Statute of *Northampton*, you may see in *Fitz. N. B. 249.*

The form of a Certificate, or Return into the *Chancery* of this Writ, see in the other Title, *Forcible Entry, cap. 29.*

Also every Justice of Peace (*ex Officio*, and without any Writ) may doe execution of this Statute of *Northampton*, and that as well by force of the Commission, as of the said Statute. 2 Ed. 3. 3. P. Armour 1

The manner to execute this Statute by the Justice of Peace (*ex Officio*) seemeth to be all one as before, where he hath a Writ delivered him; saving that when he doth this *ex Officio*, and without Writ, he needeth not to make any Proclamation, nor to send any Certificate into the *Chancery*: but the Justice may go to the place where the Force is, and (if it be in an house) he

without  
Writ.

he may enter, and search, if any force of Armour or Weapon be worn or born against this Statute; and if any such Offenders be found, he may commit them to prison, and may seize and prize the Armour and Weapon so found with them. And he ought to record all that which he shall doe in this behalf, and thereout to send some Eſtreat into the Exchequer, that the King may be answered of the Armour, or of the value thereof.

But here again the Justice must not make any Restitution of the possession to the party ousted, but must only remove the Force.

Cró. 160.  
Lam. 176.  
516.

And concerning the Offenders so found, and committed by the said Justice of Peace, it seemeth the Justice (at his discretion) may fine them, and upon payment thereof, or upon Sureties found for the same, that the said Justice may deliver the Offenders, even as in the former Statutes of 15. R. 2. & 8 H. 6. Or else the said Justice may record such Force, and commit the Offenders, and after certifye the Record into the Kings Bench, or to the Justices of Gaol-delivery, or to the General Sessions of the Peace, as here in this Title a little before.

#### Games unlawful. CHAP. XXVIII.

1 Caroli. 1.

**T**Here shall be no meeting of people out of their own Parishes on the Lords day (or Sunday) for any Sport or Pastimes whatsoever; nor any Bear-baiting, Bul-baiting, Enterludes, common Plays, or other unlawful Exercises or Pastimes, used by any within their own Parishes: upon pain that every person offending in any the premisses do forfeit for every Offence three shillings four pence, to be employed to the use of the Poor of the same Parish where the Offence shall be committed. And any one Justice of Peace of the County (or the chief Officer of any City, Borough, or Town Corporate) upon his or their view, or Confession of the party, or proof of any one Witnesse by Oath, shall give Warrant under his Hand and Seal to the Constables or Church-wardens of the Parish where the Offence shall be committed, to levy the said penalty by Distresse, and sale of the Offenders goods, (rendring them the Overplus:) and in default of Distresse, the Offenders to be set in the Stocks by the space of three hours: Provided that none be impeached by this Act, except he be called in question within one moneth next after the said Offence committed. 1 Caroli Regis, cap. 1. & 3 Caroli, cap. 4.

King James of happy memory Anno Domini 1618. publicly declared to his Subjects, these Recreations or Exercises hereunder mentioned to be lawful; that is to say, Dancing of men or women, Archery, Leaping, Vaulting, May-games, Whitson-Ales, Moris-dances, and setting up May-poles, and other Sports therewith used: And commanded that no such honest Mirth or Recreation should be forbidden to his Subjects upon the Sunday or Holy-dayes, after Divine Service (*ſc.* Evening Prayer) ended: Restraining and barring notwithstanding from this liberty all Recusants, and all such as absent themselves from Church upon those dayes: Commanding each Parish by it self to use these Recreations, and onely after Evening

Evening Prayer ended: And prohibiting all unlawful Games to be used upon Sunday, Bear-baiting, Bull-baiting, Enterludes, and Bowling by the meaner sort.

All which our late gracious Sovereign King *Charles* the First, by publick Declaration, *Anno Domini* 1633. hath confirmed; allowing farther the Feasts of the Dedication of Churches, commonly called wakes, and all man-like exercises to be there used with all freedome, yet so as none bring any weapons thither: Commanding all Justices of Peace to look that no disorders be at such Wakes, but to be prevented or punished, &c.

[Every Justice of Peace may from time to time (as well within Liberties, as without) enter into any common house or place where any playing at Dice, Tables, Cards, Bowls, Coyts, Cales, Logats, Shove-groat, Tennis, Casting the Stone \* Foot-ball, or other unlawfull Game, now invented, or hereafter to be invented, shall be suspected to be used; and may arrest the keepers of such places, and imprison them till they find Sureties by Recognizance no longer to occupy any such house, Play, Game, Alley, or place.

33 H. 8. c. 9.  
P. Just. 64.  
Plays 5.

\* 12 R. 2.  
c. 6.  
Lam. 196.

Also he may arrest and imprison (without Bail) the Players, till they be bound by themselves, or with Sureties, by Recognizance to the Kings use, no more to play at or to haunt any of the said places or Games. *Ibid.*

The said Statute of 33 H. 8. prohibited all manner of persons to play at any unlawful Game in any common house, alley, or place; except the keeper of such house or place have a Placard, containing what Games shall there be used, as also what persons shall play thereat: and then such persons may play there, &c.

33 H. 8. c. 9

Also the said Statute prohibited all Artificers, Husbandmen, Labourers, Mariners, Fishermen and Watermen, and all Apprentices and Servants whatsoever, to play at any unlawful Game, in any place or at any time, except in Christmas-time onely, and in their houses, or Servants in their Masters houses, and by their Masters licence; or Serving-men within the Precinct of their Masters house, Garden, or Orchard, and by their Masters licence. Also no manner of person shall at any time play at Bowls in any open places, out of his Garden or Orchard. *P. 4.*

And the said Statute seemeth to make all Games, almost, unlawful, save shooting in the long Bow, that being a great defence for the Realm, and a meet exercise for all manner of persons to use, and a means to prevent, or divert men from other unlawful, crafty and deceitful Games, and from the inordinate and common haunting of Ale-houses and Tippling.

Every Justice of Peace finding or knowing any person to exercise or use any of the afore named unlawful Games (contrary to this Statute of 23 H. 8. cap. 9.) may commit him to ward, there to remain without Bail, untill he become bound (in such sum of money as the said Justice shall think reasonable in his discretion) that he shall not from henceforth use such unlawful Games. *Ibid.*

Although these Games afore-named are by Statute prohibited as unlawful for some places, persons, and times; yet are they not unlawfull or evil of themselves, but are matters of Recreation and pleasure, (though some of them more vain and more idle then others:) and the King by his Prerogative

rive may tolerate and license the moderate use of all such Games, as it shall seem good to his Majesty. *Co. 11. 85. b.*

Note also, That playing at Cards, Dice, and the like, are not prohibited by the Common Laws of this Realm, (except that one be deceived by false Dice, or false Cards; and then he that is deceived may have his Action of the Case for such Deceit :) neither are they *malum in se*, or of their own natures, for then none might be tolerated or licensed to use them; whereas the Statute doth except and tolerate certain persons, places, and times.

“ And yet good \* Divines do hold divers of these Recreations to be altogether unlawful, as being actions wherein we neither bless God, nor look to receive a blessing from God; nay, such as we dare not pray to God for a blessing on them, nor on our selves in the use thereof: But especially on the Sabbath-day all such Recreations and Games are holden unlawful; for if lawful Works be forbidden on that day, much more unlawful Sports; (yea, such Sports and Games, which otherwise, and at other times, are lawful.) See *Esay 58. 13.*

## Guns. CHAP. XXIX.

**W**Hosoever shall shoot in, carry, keep, use, or have in his house, or elsewhere, any Guns, Cross-bows, (\* Dags, Pistols, or Stone-bows, contrary to the Statute of 33 *H. 8. 6.* every person seeing or knowing this, may arrest or attach the Offenders, and bring or convey them to the next Justice of Peace in the same County (where they were found offending;) which Justice, upon due examination and proof thereof before him had or made, by his discretion, may commit the Offenders to the Gaol, there to remain untill they have paid the Penalty of the Statute, *scil.* 10 li.

The effect and particulars of which Statute be as followeth:

**1.** No person may shoot in, or keep any Gun, Dag, Pistol, Cross-bow or Stone-bow, except he hath *per annum* 100 li. in Lands, Tenements, Fees, Annuities, or Offices.

**2.** No person may shoot in, carry, keep, use, or have any Hand-gun under one whole yard in length, nor any other Gun (\* Dag or Pistol) that shall be under three quarters of a yard in length.

Every person having in Land, &c. 100 li. *per annum*, may seize and take from the Offender every Gun (Dag and Pistol) shorter then is before limited, and every Cross-bow (or Stone-bow) from him that hath not 100 l. *per annum*, and may keep such Bow; but must break such Guns within Twenty days next after such Seizure.

But now by the Statute made 3 *Jacobi Regis, cap. 13.* if any person, not having Lands, &c. of the yearly value of Forty pounds, or not worth in Goods two hundred pounds, shall use any Gun, Bow, or Cross-bow, to kill any Deer or Coneys, or shall keep any Buck-stall or Engine, Hayes, Gate-nets, Purse-nets, Ferrets, or Coney-dogs, (except such persons shall have any ground inclosed, used for the keeping of Deer or Coneys, &c. or be Keepers, or Warreners) any person having in Lands an hundred pounds by the year

year in Fee, or for Life, may take from such Malefactors, and to his own use for ever keep, such Guns, Bows, Crofs-Bows, Buck-stalls, or Engines, Hayes, Gate-nets, Purf-nets, Ferrets, and Coney-dogs.

3. No person may carry in his journey any Gun (Dag, or Pistol) charged, <sup>P. 3.</sup> or Bow bent, (but only in time and service of War, or in going to or from <sup>Lamb. 462</sup> Musters) except he hath *per annum* 100 li. in Lands, &c.

4. No person may shoot in any Gun, &c. within any City, Borough, or <sup>P. 4.</sup> Market-Town, nor within one quarter of a mile of any City, Borough, or Market-Town, except for the defence of his person, or house, or at a Butt, or bank of earth, and in a place convenient.

5. The Master may not command his Servant to shoot in any Gun or <sup>P. 4.</sup> Crofs-bow, &c. except at a Butt, or bank of earth, or in time of War. <sup>P. 5.</sup>

Except, notwithstanding out of this Statute, Shooting at Butt or bank of <sup>P. 7, 8, 9.</sup> earth by Serving-men, whose Masters are enabled by *Statute*,) and by Inhabitants of Cities, Boroughs, and Market-Towns; except also, all Lords, Knights, Esquires, and Gentlemen, and the Inhabitants of every City, Borough, and Market-Town; as also all persons dwelling alone, or near the Sea, and Makers and Sellers of Guns, &c. these may keep Guns, &c. of the length aforesaid, in their houses (yet only to use and shoot therein at a Butt, or bank of earth:) and persons having lawful Placards, they may shoot according to such Placard or Licence. See other Exceptions there.

But forasmuch as in these former cases, the Justice of Peace hath the whole matter committed to himself, and that such Offenders remain convicted upon his Examination and proof of Witness made before him, therefore he ought to be circumspect in his Examination, as also in his *Mittimus*: and farther, to make a Record of the matter, (in writing under his hand) and also to send the Estreat of it into the Exchequer, whereby the King's duty may be levied.

The Form of such *Mittimus*, *vide hic postea*.

The Form of the Record, see there also.

All persons which shoot in Guns (whether they be authorized to shoot, or <sup>2 E. 6. 147</sup> otherwise) ought to present their names to the next Justice of Peace, and such <sup>P. 11.</sup> Justice shall cause the Clerk of the Peace to record or register their names: But *quare* if this be now in use. *Lambt. 226.*

Two Justices.

Any two Justices of Peace may commit to the Gaol for three months, &c. <sup>1 Jac. 273.</sup> every such person as shall shoot with any Gun, or Bow, at any Partridge, <sup>P. Feasants 6.</sup> Pheasant, House-Dove, Mallard, or such Fowl, or at any Hare. See more in the title *Partridges*.

But note, That the Sheriff, or any of his Officers, for the better executing of their Office, may carry with them Hand-guns, Dags, or other Weapons, (invasive or defensive) notwithstanding the Statute of 33 H. 8. cap. 6. Co. 5. fol. 72.



## Hawking. CHAP. XXX.

P. Pheasants, 6.  
P. Just. 38.

Every Justice of Peace may examine the Offences for Hawking or Hunting with Spaniels in eared or coddled Corn, and may bind the Offenders with good Sureties to appear at the next General Sessions of the Peace, to answer their said Offences, 23 Eliz. 10. It seemeth requisite also, that the Justice do bind over the Witnesses which shall discover the Offence.

Against Hawking at Pheasants or Partridges between the first day of July, and last of August, see 7 Jac. 11. *hic titulo Partridges.*

Hawks that be found shall be delivered to the Sheriff. *Vide titulo Felonies by Statute.*

Hawks, where the taking or concealing them is Felony : See there also.

## High-Wayes. CHAP. XXXI.

Co. L. 96.

**V**IA, a Way, is defined to be, *Transitus à loco in locum.*  
Note, That there are three kinds of Ways: *scil.*

1. A Foot-way, called *Iter, quod est jus eundi vel ambulandi hominis.*
2. A Foot-way and Horse-way, called *Actus, ab agendo;* and this vulgarly is called a Pack or Drift-way, and is both a Foot-way and Horse-way.
3. The third, a Cart-way, &c. called *Via* or *Aditus,* (and containeth the other two, and also a Cart-way,) for this is *Jus eundi, vehendi, & Vehiculum & Jumentum ducendi:* And this is two-fold :

*Via Regia,* the Kings High-way for all men : with this onely the Justices of Peace here are to meddle.  
*Viz.* *Communis Strata;* belonging to a City or Town, or between Neighbours.

“ *Minsh.* out of *Ulpian* maketh also three kinds of Ways, *Publicam, Privatam, & Vicinalem.*

“ *Via Publica, quam Latini Regiam appellant.*

“ *Vicinalis, quæ in vicis est, vel quæ in vicos ducit:* wayes between Street and Street, neighbour and neighbour, and house and house in Cities and Towns.

“ *Privata est, quam agrariam dicunt:* and these are of two sorts.

“ *Vel ea quæ ad agros ducit, per quam omnibus commeare licet.*

“ *Vel ea quæ est in agris, cui imposita est servitus, ita ut ad agrum alterius ducat.*

13 E. 1. 5.  
p. 18.  
See postea,  
rit. Robbery.

Every Justice of Peace may cause the High-ways to Markets where any *one Just.* Woods, Hedges or Ditches be, to be enlarged and cleansed of Bushes and Trees, (so that there be neither Bush, Ditch, Wood nor Tree within two hundred foot of either side of the Way : the Statute 13 E. 1. excepteth Ashes and great Trees ; but by the Statute 5 El. all Trees therein are to be cut down, &c. And this the Justice of Peace may do by force of the Commission, the first *Assignavimus,* (Lamb. 190.) But how the Justice shall compell the same to be done, I see not, otherwise then by admonition ; and if that be not obeyed, then to present it, or cause it to be presented at the

H

Quarter-

Quarter Sessions, &c. *Vide tit. Commission of the Peace See cap. 5.*

Also by the Articles of Inquisition upon the Statute of *Winchester*, (made about 24 E. 1.) it is appointed, that if these High-ways be not enlarged accordingly, enquiry shall be made where the ways be, who ought to enlarge them, and of such as do hinder such Enlargements, as well in Parks as in other Woods. *See Poulton Statutes at large, fol. 95.*

Every Justice of Peace (upon his own knowledge) may present in open General Sessions any High-way not sufficiently repaired and amended, within the County and limits of his Commission. 5 Eliz. 13.  
P. Just. 69  
Crom. 131

Every Justice of Peace (upon his own knowledge) may present in open General Sessions any other default or Offence committed (within the County and limits of his Commission) contrary to the Statutes of 2 & 3 P. & M. 8. & 5 Eliz. cap. 13. concerning the Amendment of High-waies; and every such Presentment shall be of the Force of a Presentment of twelve men, (sc. shall be a good Indictment against the Offenders.) So that upon such Presentment the Justices at the said Sessions may assess the Fine upon such Offenders, and that in the absence of the party, and without calling them to it by any Process (saving to every Offender their lawfull Traverse.) *Ibidem.* 5 Eliz. 13.  
Crom. 131

So that every Justice of Peace may present, as aforesaid, all and every these Defaults following, being all contrary to the said Statutes, &c. 2 & 3 P. & M. c. 8.  
5 Eliz. 13.  
29. Eliz. 5.  
P. 1.

1. IF the Constables and Church-wardens of every Parish yearly upon the Tuesday or Wednesday in Easter-week do not call together the Parishioners, and do not then also chuse Surveyors, for the amending of High-waies in their Parish leading to Market-Towns, according to the Statute, 2 P. & M. P. 1.

2. If six daies be not by the Constables and Church-wardens then also appointed for that purpose, and to be before Midsummer following. 2 P. & M. & 5 Eliz. P. 2. 4.  
Rast. 199.  
Lam. 459.  
2 P. & M.

3. If notice of the said daies be not given the Sunday after Easter openly in the Church, by the Constables and Church-wardens.

4. If every person having in his occupation a Plough-land in Tillage or Pasture in the same Parish, or keeping there a Plough, or a Draught, do not send at every day and place appointed, &c. for every Draught or Plough-land in Tillage or Pasture, one Cart furnished with necessary Tools, and two able men with the same; and that they doe such works as they shall be appointed (by the Surveyors) by the space of eight hours, every of the said six daies. P. 2. 4.  
Rast. 199.  
Lam. 459.  
2 P. & M.

But by the Statute 18 Eliz. 9. he that shall occupy a Plough-land in Tillage or Pasture, lying in several Parishes, shall be chargeable onely in the Parish where he dwelleth; and he that occupieth several Plough-lands, as aforesaid, in several Parishes, shall be charged in each Town or Parish where such Land lieth, *scil.* to find in each Town or Parish one Cart furnished, as aforesaid.

5. If any of the Carriages shall not be thought needful by the Surveyors upon any the said daies, if then every such person shall not send two able men for every Cart of theirs so spared. 2 P. & M. P. 13. 14.  
P. 3.

6. If every other Householder, Cottager or Labourer, (able to labour, and being P. 41

being no hired servant by the year) do not by himself, or one sufficient Labourer, work every of the said six days by the space of eight hours, as they shall be appointed by the Surveyors. 2 P. & M.

A Cottage one describeth to be, *Casa rustica ex leviore materia excitata, arundine aut ulva palustri tecta.* Minsh.

And he is a Cottager that dwelleth in such Cottage or house, without Land belonging to it. 4 E. 1. Stat. 1.

P. 12. 7. Note that all persons being chargeable but as Cottagers, yet if they be in the Subsidie 5. li. in Goods, or 40. s. in Lands, or above; they shall find two able men to work every of the said six daies by the Stat. 18 EL. cap. 9. But it seemeth the Justice cannot present such Default upon his own knowledge.

P. 7. 8. If all Fences, Hedges, and Ditches next adjoyning on either side any High-way, be not from time to time diked, scoured, repaired and kept low by the owners of the ground. 5 EL. & 18 EL. 9.

9. If all Trees and Bushes growing in the High-waies be not cut down by the owners. 5 EL.

“And now it seemeth that if (according to these last mentioned Statutes of 5 EL. & 13 & 18 EL. cap. 9.) all the Hedges and Fences be kept low, the Trees and Bushes cut down, and the Ditches scoured and repaired, it sufficeth, though the Waies be not 200 foot wide on each side

Note, that the King's High-way (or *Regia via*) leading either to the Market, or from Town to Town, the Free-hold and Soil thereof, and the interest of all the Trees, and other such Profits thereupon growing, do belong to the Lord of the Soil, or the Lord of the Mannor. 17 E. 3. fol. 43. & 8 E. 4. fol. 9. Br. *Chemin* 10, 11. & 27 H. 6. fol. 9. Br. *Lect* 3. And therefore such Lords are chargeable to cut down the Trees & Bushes growing in such High-waies: and yet by the opinion of *Keeble*, 8 H. 7. fol. 5. the Free-hold of the High-way, and the Trees thereupon growing, are belonging to him (*sc.* to any Free-holder) that hath the Land next adjoyning, Br *Nusance* 28. but it seemeth this must be understood of common Field-waies, or other private waies, and not of the King's High-way. See 2 Ed. 4. fo. 9. Britton, fol. 111.

Note also, that he who hath Land adjoyning next to the King's High-way, by the Common Law (before these Statutes) was and is chargeable, and bound of common right, to cleanse and scour the Ditches adjoyning to the said way, *sc.* between his Land and the High-way.) 8 H. 7. fol. 5. d. Br. *Nusance* 28.

At Lent Affizes at Cambridge, Anno 1622. Sir Ja. Ley delivered it in his Charge, that if any person hath made, or shall make, any Inclosure next the King's High-way, that such person shall be charged to amend the High-way next adjoyning to his said Inclosure; especially where he hath enclosed on both sides the way, he shall be charged with mending the whole way between his Inclosures. And if one man hath enclosed on the one side or part, and another man on the other side, they shall be both charged to amend the same way: and the Parish is to be discharged.

Otherwise, High-ways must be sufficiently amended at the charge of the whole Town; and it is not enough for the Inhabitants to doe their full six days work yearly, except their Ways be all well and sufficiently repaired.

For if all their said waies be not sufficiently amended, the whole Town may be indicted therefore.

Because every Town regularly is to maintain and amend the High-waies within their own Parish, except it can be proved to have been usually amended by any other person, or Town or by the Hundred, or County, &c. therefore if six daies work in the year will not serve to amend them, the Surveyors may, yea must, appoint more daies, &c.

Also concerning the Causey (near *Cambridge*) called Doctor *Harvey's* Causey, towards the repair whereof Doctor *Harvey* hath given eight pounds *per annum*, (paialbe by the Master and Fellows of *Trinity-Hall* in *Cambridge*.) Sir *James Ley* said, that if this 8. li. *per annum* were not sufficient to repair the said Causey, that then the Towns adjoyning, within which that Causey or way doth lie, ought to help to repair the same.

It is called the King's High-way, for that the King at all times hath therein passage for himself and all his people, and may punish all Nufances therein; though otherwise the Interest thereof be in the Lord, to take all the Trees, and such other Profits there growing, and to bring his Action for digging therein, or for any other like Trespas there done.

And the King (by the Common Law) may award his Commission for the amending of the High-waies and Bridges throughout his Realm, so as his people may have safe passage thereby. Fitz. N.B. 113. a.

Surveyors their Duty.

10. If any chosen to be Surveyor shall refuse the Office, or will not take upon him the execution thereof, 2 P. & M. every Justice of Peace may present this, as aforesaid. P. 1.

11. So if the Surveyors shall not within one month after any of the former Offences committed present every such Offence to the next Justice of Peace. 5 El. P. 8.

12. Also if the Bailiff or High Constable (who hath received an Estreat for the levying of any Forfeiture upon these Statutes) shall not levy the same, or shall not (between the first day of *March* and last of *April* yearly) make a true account and payment of all such summs as he hath levied to the Constables and Church-wardens of every Parish wherein the Offence was committed; or if the Constables and Church-wardens have not employed the same upon their High-waies: it seemeth every Justice of Peace may (upon their own knowledge) present every of these Defaults, as aforesaid. P. 10. Raft. 199. c. 2 P. & M.

And if the Surveyors shall present any of the former Offences (by them to be presented) to the next Justice of Peace within one month next after the Offence committed; the same Justice ought to certifie such Presentment at the next General Sessions, *sub poena* 5 li. But if the Surveyors do not make their Presentment to the Justice till after the month, and the Justice certifieth it, this seemeth not good against the Offenders. P. 3.

The Surveyors Authority.

Every such Surveyor (for the better amendment of the waies within the Parish) may by their discretion take and carry away the rubbish or smallest broken stones of any Quarry within their Parish, *sc.* such rubbish as they shall find there ready digged by the owners of the said Quarry, or otherwise by their licence. 5 Eliz. 13. P. 5.

Every such Surveyor may also (for the use aforesaid) dig for and take,

**Ibid.** or cause to be digged for and taken, (in the severall grounds of any person within the Parish near adjoyning to the way to be amended) any Gravel or Sand; so as they digg in no mans Garden, Orchard or Meadow, and but one only Pit, and not above ten yards over at the most, and the same within one moneth to be filled up again with Earth at the charge of the Parish.

**Ibid.** Every such Surveyor may likewise cause Stones to be gathered upon any mans ground within the Parish, and the same to be carried away for the use aforesaid.

**P. 6.** Every such Surveyor may cause any Water-course or Spring of Water (being in the High-way within their Parish) to be turned into another mans severall Ditch (or Ground) next adjoyning to the said way, in such manner as by the discretion of the said Surveyor shall be thought meet.

**P. 11.** Also any two Justices of Peace, (the one being of the *Quorum*) upon Two Justices.  
**2 P. & M.** complaint to them made by the Church-wardens of any Parish, may convene before them the Bailiff and High Constables, (to whom the Clerk of the Peace or Steward of any Leet hath delivered any Estreats for the Collecting of the Fines, Forfeitures, or Amercements for the Defaults aforesaid) and may take their Accounts; and may compel them to pay all such Arrerages, as they shall adjudge, to the Constables and Church-wardens of the Parish where the Offence was committed, or may imprison them until they have paid such Arrerages.

**P. 12.** Every Bailiff and High Constable upon their said Accounts shall have allowed for every pound he shall collect and pay, 8 d. for his own pains, and 12. d. for the Fee for the Estreat delivered him.

Also it seemeth any two such Justices of Peace, upon complaint to them made by the succeeding Church-wardens, or Constables, may convene before them the precedent Constables and Church-wardens, and may take their Accounts, and may compel them (as aforesaid) to pay all Arrerages in  
**2 P. & M.** their hands. **2 P. & M. 8.**

Note, that all such Fines or Forfeitures arising in the Sessions shall be levied by Estreats indented, made by the Clerk of the Peace, who shall Seal and Sign such Estreats, and shall deliver the one part thereof so sealed and signed to the Bailiff or High Constable of the same Hundred, and the other part thereof to the Constables or Church-wardens of the Parish where such Default was made; and to be delivered by the Clerk of the Peace within six weeks after *Michaelmas* yearly; the which Estreats shall be a sufficient Warrant to the said Bailiff or High Constable, to levy such Fines and Forfeitures by Distress: and all such Fines and Forfeitures shall be bestowed by the Church-wardens on the High-ways in the same Parish.

**E. 18.** Also two Justices of Peace (by the Statute 18 *EL.*) may take the Account of the Surveyors of the Ways, and of the petty Constables and Church-wardens, for all such Forfeitures (within the Statute) as they have levied. 18 *EL. cap. 10.*

Here I thought good to move some doubts that have arose upon the former Statutes; and desire that some resolution may hereafter be given, for  
**Co. 9. 124** better satisfaction, for that they be so ordinarily questioned.

What, and how much a Plough-land is, Sir *Ed. Coke* in his ninth part, in  
**H 3** A Plough  
Low's land.

*Lowe's Case*, and upon *Littleton*, telleth us, and saith, That a Carue or Hide of Land, or a Plough-land, which is all one, is not of any certain content, but so much as one Plough may plough in one year; and so in some Countrey it is more, and in some other it is less (according to the heaviness of their soil :) and herewith agreeth Mr. *Lambert*, *verbo Hide*.

Differences arising upon several Presentments, what should be conceived a Plough-land, an Order of Explanation was made, that one hundred Acres should be ten esteemed, and 1 d. an Acre for all more, 1. *October*, 16 *Jac*.

And afterwards upon the same difference 80 Acres was to be accounted a 35 H. 6. Plough-land, and so proportionably to be charged for mending the High-ways, *Ord. 28. Apr. 12 Car. lib. Sef. Pac. Mid.*

And of the same Opinion was Judge *Prifot*, 35 H. 6. 29. where he saith, That a Carue of Land is greater in one Countrey then in another, for that a Plough may plough more Land in the year in one Countrey then in another.

And yet some others do make a difference between an Hide of Land, and a Carue or Plough-land: for they say that an Hide of Land doth contain four Plough-lands, *sc.* 480 Acres; whereas a Carue or Plough-land containeth but sixscore Acres: and every Plough-land or Carue is four Yard-land, (in Latine called *Quatrona terra*) every Yard Land containing 30 Acres. But a Plough-land, or Carue of Land, is called in Latine, *Carrucata terra*, that is, *quantum aratrum arare potest in aestivo tempore*: for which see *M. Skene*, *Minsh.* and the *Surveyors Dialogue* made by *John Norden*, page 59. And so this definition or description of *Carrucata terra* sheweth that it is not of any certain content.

Also a Carue of Land (or a Plough-land) may contain House, Meadow, Co. 4. 37. b Pasture and Wood. Co. L. 69. & 9. 124.

1. Now a man with one Plough and five or six Horses will occupy, plough and dress seven or eightscore Acres of arable Land yearly, (as many doe with us in the East parts of *Cambridge-shire*) and will in Summer go usually with two Draughts or Carts; yet such person is usually charged to the amending of the High-ways but with one Cart furnished. And another man dwelling in the same Town, occupieth but 40 or 50 Acres, or not so much, and keepeth but three Horses, and one Draught or Cart, and he likewise is usually charged, as the former, with one Cart furnished. Whether should their two charges for Carriages for the High-ways be alike? For mine own Opinion, I think it both reasonable, and warranted by the words of the *Statute*, that he that for his own private business shall usually make and set up two Draughts or Carts, shall also for the King and Countries Services be chargeable with two Draughts or Carts, though he occupy all his Land but with one Plough.

2. Again, what a Draught or Carriage shall be, *sc.* with how many Horses; and whether he that keepeth but two Horses and a Cart (as many with us do) be chargeable or no: I find that a Draught for the Kings Carriages heretofore hath been sometimes with two Horses, as it seemeth by the *Statute of Magna Charta*, cap. 21. (the words of the *Statute* be, *No Sheriff, &c.* shall take the Horses or Carts of any person for Carriage, except he pay for one Cart with two Horses x d. by the day, and for a Cart with three Horses

Horfes xiv. d. by the day :) and therefore I should think him that usually goeth to Cart (for his own business) with two Horfes, to be chargeable to find a Cart and two Horfes for the amending of the High-ways, and to carry such Loads as his two Horfes are well able to draw.

3. Again, if one occupieth a Plough-land in Pasture, viz. six or eight-score Acres or more of Pasture for feeding of Cattel, but keepeth neither Cart nor Plough, how shall he be charged to find a Cart or Draught that keepeth none? and yet the words of the Statute, 2 & 3 Ph. & Mar. & 18 Eliz. 9. do expressly charge him. See *hic antea*, the words of these two Statutes.

4. Again, he that shall keep a Draught for Carriage, or a Plough, though he occupy little or no Land or Pasture in his own hands, but only carteth or plougheth for other men, whether he is not chargeable to find a Cart for the amending of the High-ways. It seemeth he is: But *quare* whether he be chargeable to find two able men with his Cart, \* except he hath in his occupation a Plough-land: perhaps also he keepeth never a man.

13 & 14  
Car. 2.  
cap. 2.  
Stat. 2.

“ Every Justice of either Bench, Baron of the Exchequer, and Justice of the Peace of London and Westminster, have power, upon their own view, or proof by one Witness upon Oath, to convict persons offending against the said Act, and to dispose the Penalties towards mending and cleansing the Streets: if upon proof, half to the party informing; if upon conviction by view, then the whole towards repairing and cleansing the Streets, or ways; to be levied, by Warrant from any such Justice under his Hand and Seal directed to the Constable or other Officer of the same Parish, by Distress and sale of his Goods, and for default (if no Peer) imprisonment untill payment. See the Act at large.

14 Car. 2.  
cap. 6.

“ And by that Statute, Justices of Oyer and Terminer, and of the Peace, may enquire of, hear and determine matters of Charitable gifts for mending or enlarging High-ways, and all Offences in Surveyors and others concerning High-ways, and make Orders therein: But persons grieved may appeal to the High Court of Chancery, as upon Decrees upon the Statute of Charitable Uses.

“ And no Certiorari shall be allowed to remove any Information, Indictment or other Proceedings in the Quarter-Sessions touching any matter in this Act, unless the party prosecuted give Security to the Prosecutors to pay them their costs and charges. See the Act at large.

“ And for the Northern High-ways, as York, Lincoln, &c. see the Act 15 Car. 2. cap. 1. Stat. 3. and the Act of 16 & 17 Car. 2. cap. 2.

See post. Tit. London.

There be also certain particular Statutes concerning High-ways, as followeth.

32 Eliz. 19  
p. 19.

THE Occupier of any Iron-Works, for every three Loads of Coal or One Furnace, and also for every Tun of Iron that he shall cause to be carried in Winter-time by the space of one mile in the High-ways within the Wilds of Sussex, Surrey, or Kent, shall pay to the Justice of Peace dwelling near to the

the places in that County where the High-ways shall be most annoyed, or to his Assigns, 3 s. in money; the same in default of payment to be levied by Distress by such Justice, or his Assignee, of the goods of the party in the said County.

Also such Occupier, for every 30 loads of Coal and Mine, and for every <sup>P. 20.</sup> ten Tuns of Iron carried in the said High-ways, &c. shall lay one load of Cinder, Gravel, Stone or Chalk, in places to be appointed by such Justice, or else, within eight days after demand, shall pay 3 s. for every such load to the hand of such Justice, who, upon default of payment, shall levy the same by Distress, &c.

The said Justice of Peace shall bestow all such summs of money upon the <sup>P. 22.</sup> amending the same High-ways, at his discretion.

<sup>Two Justices.</sup> Two Justices of Peace, whereof one to be of the *Quorum*, which were <sup>29 Eliz. 19</sup> present at the Sessions wherein any person was convicted for any Offence <sup>P. 22.</sup> against the Statute of 39 *Eliz.* may make Warrant for levying the Forfeits thereof to any Constable or other Officer: and they may also appoint such ways and means as they shall think meet, to levy the double summs for not paying those Forfeits within 20 days next after lawful demand of the same by such Officer.

By the assent of two Justices of the Peace, and twelve discreet men of the <sup>14 H. 8. c. 6</sup> Hundred and Hundreds adjoyning, any person may make and lay out, in and <sup>26 H. 8. c. 7.</sup> over his own Land in Fee-simple, in the Wild of *Kent*, as also in the County of *Sussex*, a new High-way more commodious then the old; and instead thereof may retain the ground of the old Way in severalty to him and his Heirs: and the same Justices and twelve men shall within three months certify under their Seals such new Way into the Chancery, *sc.* the length and breadth of the same new way, and other things adjoyning or concerning the same, according to their discretion.

Upon Petition and difference, &c. Ordered that the whole Parish, and not the Hamlet adjoyning only, do joyn in the repairing the High-way about *Mile-end-Green* and *Stratford*. *Ord. 21. Apr. 7 Car. lib. Seß. Pac. Middlesex.* See more in *cap. London.*

See more of *High-ways*, *tit. Bridges*, and *Robbery*.

## Horse. CHAP. XXXII.

Every Justice of Peace (after sale made in open Fair or Market of any stolne Horse, &c.) at any time within six moneths next after the said \* Sale, (or rather next after the Felony done) may take and hear the claim \* <sup>Lamb.</sup> and proof of the right owner, (from whom the same was stolne, or of his <sup>105. See the Stat.</sup> Executors or Administrators, or other person by their appointment;) which proof must be by two sufficient Witnesses upon Oath, to be made within forty days next ensuing such claim. 31 *Eliz. cap. 12.*

Also the same Justice of Peace may minister an Oath to the party that <sup>P. Fairs 8.</sup> bought the said Horse, or that had the possession and interest of the same <sup>31 Eliz. 12</sup> Horse,



Horse, what money he paid for the same *bonâ fide*, so as the right owner, repaying the same, may have his said Horse again. *Ibid.*

Note that in every Fair or Market where any Horses, Geldings, Mares or Colts are to be sold, there ought yearly to be appointed out one certain and special open place where the said Horses, &c. shall be sold; and one sufficient person or more to take Toll, who shall continue in the said place from the hour of ten before Noon untill Sun-setting every day of the afore-said Fair, 2 & 3 P. & M. cap. 7.

2 & 3 P.  
& M. 7.

31 El. 12.  
P. 5. & 7.

Also note, every Sale, or other putting away, in any Fair or Market, of any stolne Horse, &c. not being according to the Statute in every point, (*sc.* in every of these particulars following, as it seemeth) is void, to alter or take away the property of the owner, from whom such Horse was stolne. *sc.*

1. If the Horse be not, in the time of the said Fair or Market, between ten of the Clock and Sun-setting, one hour together (at the least) in the open place of the Fair, &c. where Horses are commonly sold, 2 P. & M. the Sale is void, &c.

2. If all the parties to the bargain being in the Fair shall not come together with the Horse to the Book-keeper to the open place appointed, 2 P. & M. the Sale is void, &c.

31 Eliz.

3. If the Book-keeper, Toll-taker, Bailiff, or other chief Officer of the same Fair or Market shall not take perfect knowledge of the Seller, or of the Voucher, *sc.* of their true Christian name, Surname, mystery, and place of dwelling, or shall not enter all the same into his Book, the Sale is void, &c. And one Voucher is enough, if he be a sufficient and credible person.

31 Eliz.

4. But if the Voucher be not a sufficient and credible person, or if the Voucher shall not know the Seller indeed, or shall not truly declare to the Book-keeper, &c. the Christian name, Surname, Mystery, and place of dwelling, as well of himself as of the Seller, (as it seemeth) the Sale is void, &c.

5. If the Book-keeper, &c. shall not make entry into his Book of the true Price that the Horse is sold for, with the Colour, and one special Mark at the least of the same Horse, &c. 2 P. & M. & 31 Eliz. the Sale is void, &c.

31 Eliz.

6. So if a true and perfect note in writing, of the name of the Seller or Voucher, and of their dwelling, &c. and of the Price, be not given to the Buier by the Book-keeper, &c. and subscribed with his hand.

2 P. & M.

7. And lastly, if Toll be not paid where Toll is due, or the Book-keeper not paid for the Entry, &c. *Vide 12 E. 4. fol. 8. Crompt. 91, Fi. 45.*

If the Thief which stealeth an Horse shall sell the same Horse in Market overt or Fair by a false name, and it is so entered into the Toll-book, such misnaming of the Seller maketh the Sale void against the right owner of the Horse. And this was the Opinion of *Windham* and *Rhoads* Justices, (upon this Statute, 2 & 3 P. & M.) Anno 30 El. in a Case between *Gibbs* Plaintiff against *Bastel*; the Case being thus: One *Potter* did steal the Horse of the Plaintiff, and sold him to the Defendant in Market overt, by the name of *Lyster*, and so it was entered into the Toll-book, that *Lyster* sold the Horse, whereas his name was *Potter*; whereupon *Gibbs* the Plaintiff brought his Action of the Case *Sur trover* against the Defendant *Bastel*, &c.

Note also, that every Contract for any stolne Horse, &c. made out of  
open

open Fair is void, though they be after Booked. *Dyer* 99.

Also, a Sale in a Fair or Market overt shall not take away the Owners *Co.* 3. 78. property, where the Buyer doth know that the property was to another man, <sup>83.</sup> or where the Buyer knoweth that the Horse, or other goods, were stolen. <sup>7 H. 7. 12.</sup> See *postea*, *tit. Restitution*.

Also to alter the property of a Stranger having right, Horses and all other *Co.* 5. 83. goods are to be sold in such a place, or shop, as is commonly used for the selling of goods of the same kind or nature.

Also a Sale upon a Sunday, though in a Fair or Market overt, shall not be a good Sale to alter the property of the good, by *Brian*. 12 *E.* 4. fol. 1. b.

And indeed Fairs and Markets kept upon the Sabbath-day are prohibited by the *Statute* of 27 *H.* 6. cap. 5. And now by the *Statutes*, 1 *Eliz.* cap. 2. & 3 *Jac.* cap. 4. all persons resorting upon the Sabbath-day to any Fair or Market, and by the means thereof absenting themselves from the Church, or not abiding at the Church orderly during all the time of Prayer, Preaching, and other Divine Service, are to be punished by any one Justice of Peace, according to the form of the said *Statute*, 3 *Jac.* (which see *hic postea*, *tit. Recusants*) or by the Ordinary, or Bishop of the Diocese, by the *Statute* 1 *Eliz.* Or otherwise the Offender may be indicted (for such his absence from Church) at the Quarter-Sessions of the Peace, or General Gaol-delivery.

Also the Lord of such a Fair or Market kept upon the Sabbath-day, contrary to the *Statute*, may be therefore indicted for the King either at the Assizes and General Gaol-delivery, or at the Quarter-Sessions of the Peace within that County. *Plus hic postea*.

But yet for that by *non-user* of a Franchise, Fair or Market, they may be forfeited and seised; therefore Fairs anciently holden upon Sundays, or upon other principal Feast-daies, might be holden and kept within three dayes before, or after any of the said Feasts, after Proclamation first made what day the Fair shall be holden, though the Lord of the Fair hath otherways no power to keep his Fair but upon such day. *Stat.* 27 *H.* 6. cap. 5.

### Huy and Cry. CHAP. XXXIII.

**H**uy and Cry, signifieth a pursuit of one or more that have committed Felony, and fly therefore.

“ Every Justice of Peace may cause Huy and Cry, fresh suit and search to be made, upon any Murther, Robbery, Theft, or other Felony committed: and this he may do by force of the Commission, the first *Assignavimus*.  
“ *Stat. Winch.* 13 *E.* 1. cap. 1.

“ The party robbed, or some one of the company of one murdered or robbed, must speedily come to the Constable of the next Town, or to some other habitant dwelling near the place where the Felony was committed, and must give notice of the said Felony, and will him to raise Huy and Cry, or to make pursuit after the Felon: And the Constable must forth-  
“ with

“ with make search in his Town; and if the Felon be not there found, then  
 “ to give notice to the next Towns, &c.

1 E. 1. 1, 2.  
 27 Eliz.  
 31. p. 1. 9.

Note, That all Huy and Cries ought to be made immediately after notice given of the Felony done, from Town to Town, and from County to County, and by Horsemen and Footmen; otherwise it is no lawful pursuit. 28 Ed. 3. cap. 11.

Note also, When Huy and Cry is levied upon any Robbery or other Felony, the Officer of the Town where the Felony was done (as also the Officer whence Huy and Cry shall be after levied) ought to send to every other Town round about him, and not to one next Town only: and in such cases it is needful to give notice in writing (to the pursuers) of the things stolen, and of the colour and marks thereof; as also to describe the Person of the Felon, his Apparel and Horse, &c. and shew which way he is gone, if it may be.

Sir *Nicholas Hyde*, in his Charge at *Cambridge Assizes* in Lent, 1629. delivered, That Huy and Cry must be made or pursued with Horse-men and Foot-men; and that not only a private search is to be made in every Town, but that they must raise the Countrey as they go, and all still to follow the Huy and Cry, as against a common Enemy. *Plm hic postea.*

Also the Officers of every Town to which Huy and Cry shall come, ought to search in all suspected houses and places within their limits: and as well the Officers, as all other persons which shall pursue the Huy and Cry, may attach and stay all such persons as in their search, or pursuit, they shall find to be suspicious; and thereupon shall carry them before some Justice of Peace of the County where they are taken, to be examined where they were at the time when the Felony was committed, &c.

See more of Huy and Cry in the Title *Robbery*, and *Felony*.

### Hunting. CHAP. XXXIV.

**U**Pon Information given to any Justice of Peace of the County where any unlawful Hunting of Deer or Conies (by night, or with painted Faces, or other disguising) in any Forest, Park, or Warren shall be had, of any person suspected thereof; that Justice may make a Warrant to the Sheriff, Constable, Bailiff, or other Officers, to take the party, and to bring him before him, or before any other Justice of Peace of the same County, who may examine him of that Hunting, and of the doers thereof: and if he conceal that Hunting, or any Offender with him therein, then the said Concealment shall be \* Felony in such Concealer. But if he then confesses the truth of all that he shall be examined of, and knoweth in that behalf; then his Offence of Hunting shall be but Trespass, and fineable: the Fine to be assessed at the next General Sessions of the Peace, by the Justices there. See *postea tit. Felony by Stat.*

1 H. 7. c. 7.  
 p. Just. 16.  
 \* Quare, if  
 they kill  
 nothing.  
 Dy. fol. 50.  
 pl. 5.

Also to disobey such a Warrant, or to make *Rescous* thereupon, so that the execution of the same Warrant thereby be not had, is Felony. *Vide ut supra.*

The

The Justice of Peace that shall take the Examination of an Offender for unlawful Hunting in Parks, &c. as aforesaid, may after such Examination binde the Offender to his Good Behaviour, (as it seemeth) to the end he may be forth-coming, till the Offence and residue of the Offenders be fully examined: otherwise if it shall after appear, that the Offender hath concealed any thing whereby the Offence becometh Felony, then the Offender perhaps will not be found.

Also all such unlawful Hunting, if it be by three or more, will prove a Riot. 1 Jac. c. 27.  
P. Pheasant  
7.

Whosoever shall have or keep any Grey-hound or Setting-dog, (not having sufficient living according to this Statute;) or shall trace or course any Hare in the Snow, or otherwise destroy, kill, or take any Hare; the said Offences being proved, &c. before two Justices of Peace, the said Offenders shall be by them committed to the Gaol, &c. *Vide tit. Partridges*, more fully hereof.

And yet Hunting and Hawking, and such other pastimes, every man may use them upon his own Lands at his pleasure, so far as they be not restrained by Act of Parliament. But no man may make a Park or Warren within his own ground, without the Kings Grant or Licence; and therefore such Park or Warren (made without licence) seems not to be within the Statute of 1 H. 7. 7. See *Br. Warren* 1, 2. & *Co. L.* 233. Co. 11. 86.  
87.

What a Park is, and the difference between a Park, a Forrest, and a Chase, and what be Beasts or Fowls of Park, Chase, and Warren, *Vide Co. L.* 233.

There be divers other Statutes made against Hunting, &c, which be very penal, but not to be dealt withall by Justices of Peace, except at their General Sessions. See more of them *hic postea*, *tit. Bailment*, & *Stat. 3 Jac. Regis*, *hic antea*, *tit. Guns*.

“ If any person or persons shall unlawfully course, kill, hunt, or carry away any Red or Fallow-Deer, in any Forrest, Chase, Purlieu, Wood, Park, or other ground where Deer are, or usually have been kept, within England or Wales, without the consent of the Owners, or party chiefly trusted with the custody thereof, or be aiding or assisting therein, and shall be convicted thereof by confession of the party, or Oath of one or more Witneses, before one or more Justices of the Peace, being prosecuted within six months after the offence done; shall forfeit for every such Offence Twenty pounds to be levied by Distress upon the Goods and Chattels of such Offenders, one moiety to the Informer, the other to the owner of the Deer: And for want of Distress, the Offender to be committed to the House of Correction for six moneths, and there put to hard Labour, or to the common Gaol for one whole year, at the discretion of the Justices before whom the Conviction shall be, and not discharged from thence untill sufficient Sureties be given for the Good Behaviour. Provided, no Offender punished by this Act shall incur any penalty of any other Law for the same Offence. 13 Car. 2.  
cap. 10.

## Inrollment. CHAP. XXXV.

27 H. 8. 16.  
p. 1.

**A** Ny one Justice of Peace may joyn with the Clerk of the Peace, in taking the inrollment of any Indenture of bargain and sale of lands, &c. lying in that County where he is Justice, and it is good.

Now the said Justice of Peace, and the Clerk of the Peace, are to take for the inrolling of the same Deed indented in parchment, &c. theses Fees following, viz. where the Lands exceed not the yearly value of 40 s. they are to take 2 s. *sc.* 12 d. for the Justice, and 12 d. for the Clerk: And where the Lands exceed the yearly value of 40 s. there they are to take 5 s. *sc.* 2 s. 6 d. for the Justice, and 2 s. 6 d. for the Clerk, *Ibid.*

Co. 5. 10. b  
p. 1.  
Co. 5. 1. b.  
Dalison  
4 Eliz.  
Dyer 218.

But such Deed (and all other Deeds, to be inrolled according to this Statute) must be indented *revera*, and must be inrolled within six moneths after the date of the same Indenture: and if it have no date, then within six moneths after the delivery of the Deed; or if it be inrolled the very day of the date of the Deed, or the very last day of the six moneths, it is sufficient.

Note, herein you must account 28 days to every moneth, and not above, (*sc.* four weeks to the moneth)

Co. 6. 62.

Note also the difference when a Statute accounteth by the year, half year, or quarter, and when by the moneth; for a year, half a year, or a quarter of a year, shall be accounted according to the Kalender, and by the days in the Kalender, and not after 28 days to the moneth. And a year or a twelve-moneth (in the singular number) includes the whole year according to the Kalender. But twelve moneths (in the plural number) or eight moneths, or six \* moneths, &c. shall be accounted after 28 days to every moneth: for the moneth, by the Common Law of England, is but eight and twenty days; And so,

Co. 5. 135.  
\* Except  
in a *Quare*  
*Imp.* See  
Co. ib.

Whereas	{	three moneths,	{	84	} dayes.
	{	six moneths,	{	168	
	{	twelve moneths,	{	336	
The	{	quarter of a year,	{	91	} daies.
	{	half year,	{	182	
	{	year,	{	365	

Dier 345.

*Ter centum, ter viginti, cum quinque diebus,  
Sex horas, neque plus integer annus habet.*

And as to these six hours, the Law giveth no regard to them; and yet these six hours every fourth year do make a day, and so make the Leap-year, and this Leap-year containeth in it 366 daies.

Bible im-  
press. 1611

Note also for the year, That the *Julian* year (instituted by *Julius Caesar*) beginneth the first day of *January*, and so doth the Empire begin: the *Hebrews*, 1. *April*; the Church of *Rome* on their 25 of *December*; but in all matters Legal with us, the year beginneth not till the 25 day of *March*; and therefore when in an Indictment or other Writing, or Deed, it shall be set down, (or the Writing shall be dated *Anno Dom. 1617.*) it must be accounted according to the computation of the Church of England, which beginneth the year upon the 25 day of *March*, upon which day our Saviour

Christ Jesus arose from death as it is holden, Dr. *White's* Def. 151. and upon which day Christ was conceived in the Virgins Womb, (as some write) and so was born in *December*; and then the year of our Lord must be accounted rather from his Conception, and Incarnation, then his Nativity) and upon which day the World, *Adam* our first Father, was created, as it is holden by others: But I leave these things to such as have travelled in the searching out of Antiquities. See the History of *Venice*, pag. 4. & 5.

*Labourers.* CHAP. XXXVI.

*One Justice.* **E**Very Justice of Peace, upon request, may cause all such Artificers and other persons as be meet to labour, (by his discretion) to work by the day in Hay-time, and Harvest-time, for the saving of Corn and Hay, and may upon their refusal imprison them in the Stocks by the space of two days and one night. 5 Eliz. 6. 4. p. 13.

*Apprentice.* Any one Justice of Peace may give licence under his hand and seal, to such Labourers as pass in Hay-harvest, and Corn-harvest, from one County to another to work. p. 1. 1. 2

Any one Justice of Peace (upon complaint to him made) may compell any person meet, (in his discretion) to be bound as an Apprentice, with any one that shall require him to husbandry, or any other Art, &c. And upon their refusal may commit them to Ward, there to remain untill they will be bound to serve as an Apprentice should serve, according to the Statute. p. 24. 1. 5

“ Apprentice, signifieth one that is bound by Covenant in writing indented to serve another man of Trade, for certain years, and that his Master shall in the mean time endeavour to instruct him in his Art or Trade. The usual Covenants for Apprentices, see cap. 128. and note, that in such and all other Covenants; *Conventio legem vincit*.

If any Master shall misuse his Apprentice, or that the said Apprentice shall have just cause to complain, or if the Apprentice do not his duty to his Master, upon complaint thereof made by the Master, or Apprentice being grieved, to any one Justice of Peace of the County where such Master dwelleth, the said Justice (by his discretion) shall take order between the said Master and his Apprentice; and for want of conformity in the Master, the said Justice may bind him to appear at the next Sessions to be holden in the said County; where the Justices of Peace, or four of them, whereof one of them to be of the *Quorum*, if they shall think meet, may discharge the said Apprentice of his Apprentiship, and Indentures. But if there shall be default in the Apprentice; the said Justices (at their said Sessions) may cause due correction to be ministred to him, as they shall think meet. Also it seemeth, That if the first Justice of Peace, to whom complaint was made, shall find the default to be in the Apprentice, that then the said Justice of Peace may send him to the House of Correction, as an idle or disorderly person, by the Stat. 7 Jac. cap. 4. and needeth not to trouble the Sessions with him, *tamen quare*. But from the Sessions they may send him to the House of Correction. p. 25. 7 Jac. 6. 4.

If

If an Apprentice shall steal or purloin any thing not delivered him to keep, above the value of 12 d. from his Master, the Apprentice, together with those that inticed or perswaded him thereto, or shall receive any of the same goods, knowing they were purloined, after due examination and confession or proof thereof made before any Justice of Peace, He may send the Apprentice, as also the inticers, procurers, and receivers of those goods, to the common Gaol, &c. But if the goods be not above the value of xii d. it seemeth the Apprentice, together with the procurers and receivers, may be sent to the House of Correction by the Justice of Peace, or rather by the Justices at their general Sessions. *Vide hic cap. 101. & 102.*

“ No Master, Mistris, or Dame, shall put away any servant before the end of their term, unless it be for some reasonable cause, to be allowed by a Justice of Peace, &c. Nor shall put away any servant at the end of the term, without one Quarters warning given before two sufficient witnesses, &c. *Stat. 5 EL. 4.* And the proof of the sufficiency or insufficiency of the cause of putting away of a servant, shall be made at the Quarter-Sessions, &c. *ut postea.*

P. 5. 6. “ But any one Justice of Peace may allow of the cause of putting away of a servant, or of the departure of a servant within his term. *See cap. 40.*

P. 25. But otherwise it is of an Apprentice, for an Apprentice cannot be discharged but by four Justices of Peace at the least, and in open Sessions as aforesaid; or else by the agreement of the Master and the Apprentice, and under his Masters hand in writing. And yet one that is retained as an Apprentice, may be seised by his Lord as a Ward, by reason the Lords Title is more ancient.

P. 6. Any two Justices of Peace upon complaint to them made, that any servant (who is retained according to the Statute 5 EL.) hath departed before the end of his term, (unless it be for some sufficient cause to be allowed by one Justice of Peace at the least) or at the end of his term, without one Quarters warning given before two witnesses; or that any person compellable by the Statute to serve in Husbandry or in any other Sciences in the said Statute named, upon request made, hath refused to serve for the wages appointed (by Proclamation in that County, &c. according to this Statute;) or hath promised, or Covenanted to serve, and doth not according to the Tenour of the same; the said Justices may examine the matter; and if they shall find such servant or person faulty therein, they may commit him to Ward, there to remain without Bail untill he shall be bound to the party offended, to serve and continue with him for the wages limited according to this Statute, and then to be discharged without paying any fee to the Gaoler. *Two Just.*

And yet any one Justice of Peace (as it seemeth) may make his Warrant to attach his servant departed out of service, or refusing to serve, to be before the Justices at their Sessions, there to answer their defaults. *See post. tit. Warrants, cap. 121.*

Also it seemeth, that any one Justice of Peace may send such idle or disorderly servants to the House of Correction, and that by the *Stat. of 7 Jas. cap. 4.*

5 Eliz. 4. Now by the Statute of 5 EL. every person unmarried, and every other *who com-*  
P. 2. person (married) being under the age of thirty years, having been brought *pellable to*  
*up serve.*

up in any of the Arts, Sciences, or Trades in the Statute mentioned, is compellable to serve in any the said Trades, upon request made by any person using the same Trade, except such persons be lawfully retained with some other; or have 10 *l.* in Land, &c. or 10 *l.* in goods, and so allowed by two Justices of Peace, under their hands and seals; or have some Ferra in Tillage, whereupon to imploy themselves.

Also every person between the age of twelve years and threescore (not <sup>p. 3.</sup> being lawfully retained according to the Statute, nor being a Gentleman born, nor a Scholer; nor having means as aforesaid, nor parents living, having *x. l.* in lands, or *x. l.* in goods, and being their heir apparent) shall be compellable to serve in Husbandry by the year, upon request, &c. See more what persons be compellable to serve, *Hic postea.*

<sup>wages.</sup> As for servants wages generally, they are grown so excessive at this day <sup>p. Just. 66: & Lamb. 4.</sup> (in many Countreys) that the poor Farmers are thereby much disabled; for remedy wherein, the Justice of Peace shall do well to take it into better consideration, and give remedy.

Any two Justices of Peace may imprison without Bail the Master for ten days, and the servant, work-man, or labourer, for twenty one days, that shall give, or shall take or receive excessive wages; *sc.* any greater wages, or other commodity, contrary to the rates or wages assessed by the Justices of Peace at their *Easter* general Sessions; and Proclamation thereof made <sup>p. 4.</sup> in that County.

Now concerning the wages of servants, &c. The Justices of Peace (at every their *Easter* Quarter-Sessions) shall do well to call some grave and discreet persons of that County, and they together respecting the plenty, or scarcity of the time and other necessary circumstances, to assess the wages as well of servants, as of all Artificers, handicrafts-men, and labourers, &c. according to the Statute, at their discretions (and yet they to assess the wages in such manner, as that servants, &c. may reasonably maintain themselves therewith: And that their Masters should in no wise exceed or give above such wages, by way of contract: But yet Masters may reward a well-deserving servant, &c. (over and above his wages) according as he shall deserve; So that it be not by way of promise, or agreement, upon his retainer. See the Preamble of the Statute 5 *Eliz.* 4. that considering the advancement of prices of all things belonging to servants and labourers, if more reasonable wages and allowances be given them than is limited by former Statutes, it would be too great a grief and burden to the poor hired servants and labourers. See *plus hic postea.* S.

“ By the law of God, *Thou shalt not appress an hired servant, that is needy and poor; but thou shalt give him his hire speedily, for therewith he sustaineth his life,* Deut. 24. 14, 15.

“ *And the hire of the Labourer kept back, cryeth and entreth into the ears of the Lord.* Ja. 5. 4.

Note that every Retainer, promise or payment of wages or other thing <sup>Ibid.</sup> whatsoever, contrary to the true meaning of this Statute, and every writing or bond made for that purpose, shall be utterly void.

<sup>Retainer for one year.</sup> Note also, that by the Stat. 5 *Eliz.* no person shall hire or retain a servant <sup>p. 1.</sup> for less time then one whole year. But this seemeth to extend to Artificers or Tradesmen, and only to such Trades as are named in this Statute, and not to Husbandry. See *hic postea* R. The



The Arts and Trades mentioned in the Statute of 5 *Eliz.* are these following, *viz.* Arrow-head makers, Bakers, Brewers, Butchers, Bowyers, Cappers, Cloth-workers, Cooks, Cutlers, Curriers, Dyers, Ferrors, Felt-makers, Fletchers, Fullers, Glovers, Hat-makers, Holiers, Millers, Pewterers, Sadlers, Shear-men, Shoe-makers, Smiths, Spurriers, Taylors, Tanners, Tuckers, Turners, and Woollen-cloth-weavers.

And yet no retainer of any servant for less time than for one whole year is good, or according to Law : See *Fitz.* 168. h. *Co. L.* 42. b.

p. 12.

Any two Justices of Peace of the County where the offence hereunder mentioned shall be committed, may imprison by the space of one year or less, by their discretions, any such servant, workman, or labourer, as shall wilfully make any assault or affray upon his Master, or upon any other having the charge or oversight of him, or of his work, the said offence being proved before the said Justices by confession of the said servant, &c. or by the oath of two honest men.

*Assault his Master.*

And yet upon complaint thereof made to any one Justice of Peace, that Justice may binde the offender to his good behaviour, and so to the next Sessions, and there the offender may be convicted and punished according to the Statute.

p. 14.

Any two Justices of Peace may compel any woman (being of the age of twelve years, and under forty, and unmarried, and forth of service) whom they shall think meet to serve, to be retained in service, by the year, week or day, for such wages, and in such sort as they shall think it meet. And if such a woman shall refuse, they may commit her to ward, untill she shall be bound to serve as is aforesaid.

*women.*

Also by the Orders from the Kings Majesty imprinted *Anno* 1630. page 10. & 18. & Order 1. It appeareth, That for the better execution of the Lawes and Statutes in force, the Justices of Peace at their monethly meeting, shall (amongst other things) inquire of all such idle persons, who being able of body to work, do nevertheless refuse to labour : And there (*Direction* 9.) direction is given, That if in any Parish there be found any persons that live out of service, or that live idly, and will not work for reasonable wages, or live to spend that they have at the Ale-house, those persons to be brought by the High-Constables, and Petty-Constables to the Justices at their said monethly meeting, there to be ordered and punished: *Vide plus Stat.* 5 *Eliz.* *hic antea* & *Br.* 14. who are compellable to serve, &c. *hic postea* & *titulo* Poor.

Any two Justices of Peace may make a testimonial to a serving-man that is turned away from his Master, or whose Master is dead, 14 *Eliz.* cap. 5. *Quere*, If this be still in force, *Lamb.* 326.

1 Jac. 6.

For Clothiers which will not pay their Work-men such wages as shall be assessed by the Justices at their Sessions, See the Title of *Cloth.*

5 Eliz. 4.

p. 27.

The Certificate which is to be made to the Head-Officer of any City or Town Corporate, where a child is to be bound Apprentice, (*sc.* that the father of such child may spend 40 s. *per annum*) must be under the hands and seals of the three Justices of the Peace of the Shire where the land lieth.

*Three Justices.*

The reason of this Law seemeth to be, for that such as be to be bound Apprentices in Corporate Towns, &c. if their Parents be of a competent lively-

livelihood, then their Masters shall not only be the better secured, &c. but such Apprentices also in likelihood shall have the better means to set up their Trades after their time expired. And concerning such whose Parents have not forty shillings *per annum*, they are fitter to be bound Apprentices to Husbandry, &c. in the Country.

But concerning this certificate, it seemeth not much in use at this day; neither is this certificate so of the substance of the matter, or so materiall, that for want thereof, the Indentures for the binding of such an Apprentice shall be void, (for the Justices of Peace cannot be compelled to certifie, &c. but if the Parents have 40 s. *per annum*, it sufficeth: and so were the Opinions of Sir *Humphrey Winch*, and Sir *William Jones*, in the Court of Common Pleas, *Termo Pasch. anno 21 Jacobi Regis*. But Sir *Henry Hobart*, Lord Chief Justice of the Common Pleas, did not then deliver his Opinion therein directly; yet he seemed to me to hold, That the Parents of such an Apprentice ought to have 40 s. *per annum*, and also ought to procure such a certificate from the Justices of Peace.

Here I think it not amiss to set down certain Cases, some of them being by way of exposition of this Statute, 5 *Eliz. cap. 4*. And other some at the Common Law, or grounded upon former Statutes; yet such as may give light and help to our Justices of Peace in this business.

Trades,  
what law-  
ful.

First, by the Common Law, no man may be prohibited to work in any lawfull Trade, for the Law abhorreth idleness, as the mother of all evil. Co. II. 53.

A man cannot be restrained to use the Trade of making Dice, Cards, Bowls, or the like, (except it be by Parliament) for all Trades, which do avoid idleness, and exercise men in labour for the maintenance of them and their Families, and for to increase their substance, and to serve the King when need shall be, are profitable for the Commonwealth, and therefore the restraining of them is against the Law, &c. Co. II. 86.

Also by the Common Law no man is prohibited to use divers Mysteries or Trades at his pleasure; and although this was prohibited by the Stat. of 37 *Ed. 3. cap. 6*. yet presently at the next Parliament (that restraint of free Trade being found prejudicial to the Common-wealth) it was enacted again, That all persons should be as free as they were at any time before the said Statute, *Co. II. 54*. See the Statute of 38 *Ed. 3. cap. 2*.

For that without an Act of Parliament, no man may be restrained in any manner, either to work in any lawful Trade, or to use divers Mysteries, or Trades; therefore Ordinances made to restrain any person therein are against the Law: and yet Ordinances made for the good order and government of Tradesmen, &c. are good, *Co. ibid.*

Apprentices  
seven years.

None shall use any Art, Mystery, Craft, Trade, or Occupation, except he hath been brought up therein seven years, as apprentice, *Stat. 5 Eliz. 5*.

And yet it is lawful for any person to use privately any Trade (as of a Cook, Brewer, Baker, or Taylor, &c.) in his own house, or in the house of any other, for the private use of the family, although such person were never Apprentice to the Trade, *Co. ibid.* Ibid.

If a man use the Trade of Tallow-Chaundler, Baker, Brewer, or any other lawful Trade, or Manual Occupation, for his own use, or for the use

use of his family, without selling any for lucre and gain, he may lawfully do it, *Co. 8: 129, 130.*

But yet he which useth any Trade, or other manual Occupation, for the use of himself, or of his family only (without selling) he cannot retain any Apprentice within the Statute of 5 *Eliz. Co. 17. 129.* But he may hire one to be his servant, who is skilful in that Trade or Occupation.

One purchased a Mill, and hired a Miller to be his servant, who grownd the grists of his Neighbours, and the wife of the Owner of the Mill took mony of the Neighbours for their grists so grownd, and for this the husband (who was Owner of the Mill) was indicted at *Cambridge Summer Assizes, Anno Dom. 1619.* by reason that he was never himself Apprentice to the Trade: It was the case of *T. P. Yeoman.*

The intent of this Statute 5 *Eliz. cap. 4.* was, that no person should take upon them any Art, Mystery, or Trade, &c. but such wherein they had skill and knowledge, according to the rule, *Quod quisque norit, in hoc se exerceat, Co. 8. 130.*

And therefore none may keep a common Brew-house, Bake-house, Cooks-shop, &c. to sell to others, except they have been Apprentice thereto by the space of seven years, &c. *ibid.*

Note that these words, Mystery, Trade and Craft, do all bear one sense or signification. See *Plow. 537. b. Co. 11. 54.*

Note next, that this Statute, 5 *Eliz. cap. 4.* extended not to Serving-men, but to servants in Husbandry, and Handy-crafts: And yet where the words of any Statute be, Servant, in general, there it seemeth to extend to all.

An Apprentice must be retained by Indenture, and by the name of an Apprentice expressly; or else he is no Apprentice, though he be bound. *who be compellable to serve.*

Who are compellable to serve, See in this title before and after.

“Every Justice of Peace (as also the Constable) in the time of Hay, or Corn-harvest, upon request shall and may cause all such Artificers, and persons as be meet to labour, by their discretion, to serve by the day for the mowing, reaping, shearing, getting, or inning of Corn, and Hay, according to their skill and quality of the person; and may set the refusers in the stocks by the space of two dayes and one night.

Every Justice of Peace may command vagrant persons to prison, if they will not serve.

Every person who hath not sufficient Lands to occupy, or live upon, nor other Art, is compellable to serve. See *Br. 14.*

If an infant, man or woman, of twelve years of age, or a Gentleman, Chaplain, Carpenter, or other person which is not compellable to serve, yet if they shall make a Covenant to serve in Husbandry, they shall be bound by their covenant, and are punishable, if they then shall depart, &c.

Yet by the Common-Law such a Covenant or retainer of an infant under twelve years of age was void, they neither having ability of body, nor years to consent: for an infant (by the Common-Law) is not of age to bind it self by covenant, *ante annos nobiles*, which is twelve years in a woman, and fourteen years in a manchild, *Co. 7. 43. & 9. 72.* Neither before that age are they accounted, *potens in corpore*, which were the words used in the Statute made, 23 *E. 3.* though those words are now left out of the Stat.

5 *Eliz.*

5 *Eliz.* And thereupon *Markham*, in 21 *H. 6.* and *M. Br.* abridging that <sup>21 *H. 6.* 32.  
Br. 30.</sup> case, seem to hold fourteen years to be the age for retainer of an Infant, but there the case was of a man-child that was retained.

But now by the Stat. 5 *El. cap. 4.* any person above the age of ten years, <sup>P. 15. 35.</sup> by their own consent and agreement, may by Indenture be bound as an Apprentice to Husbandry, or any other Trade or Art.

Also some of twelve years of age by the same Statute is compellable by <sup>P. 3. 22, 23.</sup> the Justice to serve in Husbandry: so also it seemeth of other Trades, Arts, or Occupations.

Such Children, whose Parents are not able to maintain them, though they be under twelve, yea, if they be but above seven, yet may they be bound Apprentice by the Overseers of the Poor, with the assent of any two Justices of Peace, by the Stat. of 43 *El. cap. 2.* See *postea tit. Poor.*

If a child use Husbandry till the age of twelve years, and after be made <sup>12 *R. 2.* c. 5.  
P. 15.</sup> an Apprentice to any Mystery, his covenant shall be void: but this Statute of *R. 2.* seemeth to be repealed by the general words of 5 *El. 4.*

And now though such childe hath used Husbandry till his age of twelve years, yet if he be not bound as an Apprentice to Husbandry, (and that his Parents be not able to maintain him) then it seemeth that the Overseers for the Poor, by the assent of the Justices, may binde as an Apprentice such a child, according to the Statute, 43 *Eliz. cap. 2.* and that by force of the said Statute, *P. tit. Poor* 25. And any person to whom the Overseers shall so binde such an Apprentice, may take, and keep him as his Apprentice, &c. *1 Jac. 25. and 21 Jac. 28.*

If a Woman who is a Servant, shall marry, yet she must serve out her <sup>2 *H. 4.* f. 13  
B. 18.  
Fitz. 168. a</sup> time, and her Husband cannot take her out of her M. Service.

A married man and his wife do bind themselves to serve, they shall be compelled to serve according to their Covenant or Agreement, *Fitz. 168.*

“One under the age of 30 years, and brought up in Husbandry; or a  
“Maid-servant brought up in any of the Trades mentioned in the Stat. of  
“5 *Eliz. 4.* and not inabled to live (according to that Statute) at his or  
“her own hands, such persons living out of Service; and not having visible  
“means of their own to maintain themselves without their labour, and re-  
“fusing to serve as an hired Servant by the year, may be bound over to the  
“next Sessions, or Assizes, and to be of good behaviour in the mean time;  
or may be sent to the house of Correction, *Dir. 17.*

But a man that holdeth land of his Lord, to do certain days works yearly, shall not be compelled to serve. 40 *E. Crompt. 185.*

A servant may be compelled to serve in Summer in the place where he served in the winter before: But this seemeth to have been only by force of the Statute made *Anno 25 E. 3. cap. 4.* which Statute now standeth repealed by the Statute made 5 *Eliz. cap. 4.*

If a man who is not able nor sufficient to keep a Servant, shall retain a <sup>Fitz. 168. b</sup> servant, such retainer is void, 25.

<sup>what retai-  
ner is good.</sup> If a man retaineth a Labourer or servant, to serve him according to the Statute, though no Wages be spoken of upon the retainer, yet the retainer is good, and they shall have such Wages as are assessed and appointed by Proclamation, for that Wages are certain. See to this purpose the Book, 3 *H. 6. fol. 23. Br. 1.*

If a man retaineth another, except the retainer be according to the stat. it seemeth to be void; without it be by indenture, and then being by deed, he is bound by his Covenant, *See Fitz. N. B. 168.f.*

If a man retaineth upon condition, it seemeth to be a good Retainer. *See 11 H. 4. 42. Br. 23.*

A man retaineth a servant to serve him, generally, not expressing in what Office, or in what Business (as to say to serve him in husbandry, or in the Office of a Cook, Butler, or Horse-keeper, &c.) yet such retainer seemeth to be good, *21 H. 6. 9. Br. Labour. 29.*

A man is retained to serve during his life, it seemeth a good retainer, *Br. 44. 2 H. 4. fol. 16.* And so for three years or more, *Fitz. 168.*

A man is retained for one year, to serve at any time when he shall be thereto required; this is no good retainer. *See 23 H. 6. 30. Br. 31.*

*Fitz. 168. h. P. 1. Co. L. 42. b* Retainer of a servant generally, without expressing any certain term, shall be for one year (in construction of Law) for that retainer is according to Law.

*Fitz. 169. f* A. retaineth a servant for forty dayes, and after B. retaineth the same servant for one year; The first retainer by A. is defeated and become void, *Br. 61. See 11 H. 6. 1 Cr. 49.*

Yet the retainer of a servant for a week, or for so long as the Servant or Master shall like, is a good retainer, *Co. Inter. tit. Labourer.*

*Fitz. 168. b* If a servant, who is retained, shall depart out of his service, and wander, he may be compelled to serve another man; but yet the first Master may take him away again: *See Br. Notice, 2. 4.* And besides it is safe to get the consent of his first Master, for now by the Statute, *5 Eliz. c. 4.* the Master retaining a servant that is departed out of Service, without shewing before his Retainer, a testimonial, shall forfeit, *v li.*

*P. 8.*

A man that retaineth a servant; ought to take notice of every former retainer within the same County; otherwise it is of a retainer in another County, *17 E. 4. fol. 7. Br. Notice 20.*

*Fitz. 168. b. Br. 7. 29. 33 Dr. St. 149.* And yet Mr. *Fitzh.* opinion was, That if one retaineth another mans servant (generally) not knowing that he was another mans hired servant, he was not punishable therefore, except he should detain him after notice thereof, but now the Master may and must take notice whether he hath a testimonial or no (as it seemeth);

If one taketh an Infant, or other servant out of another mans Service, this is punishable, though the Infant or servant was not retained; but if an Infant being retained as an Apprentice or servant, fall to be a ward, the Lord may take him from his Master, for the Lords title is more ancient; yet here it seemeth the Lord ought first to give notice thereof to his Master, *50 E. 3. 22. Br. Labor. 17. See Br. Notice 24.*

*Fitz. 143. 1 Plo. 252.*

Note, that by the retainer, the servant is in service presently by Law, although he cometh not into his Masters service indeed, *41 E. 3. 20. 46 E. 3. 4. 47 E. 3. 14 Br. 9. 11.*

*Fitz. 168. p* If a servant shall depart from his Master, his Master may take him again, and retain and keep him whether he will or no. *See the title, Surety for the Peace.* And the Constable may take and bring such servant to his Master again, *Fitz. Labor. 56.*

The Master cannot discharge his servant, during his term, &c. without the

Putting a-  
way a ser-  
vant. vide  
antea the agreement of the servant ; And now by the Statute 5 *El.* 4. it must be for some reasonable cause to be allowed by one Justice of Peace at least, &c. *Vide P.* 5. otherwise the Master shall forfeit xl. s. *Tamen quere* : 19 *H.* 6. 30. Br. 27. for where the departure or putting away of the servant is by the joynt consent of the Master and of the servant, such putting away or departure, seemeth to be within the Statute of 5 *El.* neither is the allowance of the Justice of Peace requisite or needful therein.

The Master may discharge his servant by word, but an apprentice cannot be discharged by his Master, except it be by writing : for that an Apprentice cannot be but by writing. 6 *E.* 4. 2. 2 *E.* 6. 33. Br. 30. 38.

If a servant shall put be put away by his Master, yet he shall have his Wages for the time he served. And yet in this case, if the servant agree thereto, the servant shall have no action to recover any part of his Wages, but must crave the help of the Justice of Peace herein : but if such servant be within age, it seemeth such agreement shall not prejudice the servant. 2 *E.* 6. 33. Br. 30. 38. Br. 48. 10 *H.* 2. 3.

But if a servant of his own accord shall depart from his Master before his time expired, he shall loose all his Wages. 10 *Ed.* 4. 2. 49 *H.* 19. Br. 40.

If a servant be retained according to the Statute, and the Master dyeth, his Executors shall be chargeable to pay such servant his Wages. Otherwise it is where the Retainer was not according to the Statute, except it were by Indenture. See 2 *H.* 4. 15. Br. Labor. 44. and Fitz. Nat. Br. 168. f. Appore. 26.

An Infant of five years of age, or other person which is not *potens in corpore* ; yet if they shall be retained, and shall serve indeed, their Master must pay them their Wages. See 38 *H.* 4. 15. Br. Lab. 46. and Ley Gager. 67.

If a servant retained for a year, happen within the time of his service to fall sick, or to be hurt or lamed, or otherwise to become *non potens in corpore*, by the act of God, or in doing his Masters business ; yet it seemeth the Master must not therefore put such servant away, nor abate any part of his Wages for such time.

If a servant shall refuse to do his service, that is a departure in Law, although he stay still with his Master. 3 *H.* 6. 37.

If the Master shall detain from his servant his Wages, Meat, or Drink ; this is a good cause of departure : But yet this cause is now by the Statute of 5. *El.* to be allowed of by the Justice of Peace, before the servant may lawfully or safely depart. Fitz. 1. 68. Br. 51. P. 6.

So if the Master shall licence his servant to depart, or if the Master or wife of the Master shall beat the servant, these were good causes for the servant to depart, before the Statute 5 *El.* 4. but now the allowance of the Justice of Peace is requisite as aforesaid. And yet note, that the Master by law is allowed with moderation to chastise his servant or Apprentice, see 33 *H.* 8. 12. and in the title, *Surety for the Peace*. Fitz. 168. Br. 51. P. 9.

But now that by the Statute of 5 *Eliz.* the causes of putting away and departing of servants are referred to the consideration and allowance of the Justice of Peace ; it behoveth them to have good care, lest by their giving too much way therein, either to the Master or servant, many, which might by due ordering have proved good servants, turn Rogues and Vagabonds.

If any Servant, or Apprentice shall unlawfully depart, or fly into another Shire, the Justice, &c. may grant Writs of *Capias* to the Sheriff, or other Officer, whether the servant is gone, to take his body returnable before them, &c. who shall imprison the Offender, till he find sufficient surety to serve his Master again, 5 *Eliz.* 4.

No person (retained in Husbandry; or in any the Arts and Sciences mentioned in the *Statute* of 5 *Eliz. cap. 4.*) after his retainer expired, may depart out of one Limit, Town, or Parish, into another, without a testimonial, under the seal of the Officer of the Town where he last served, &c. Neither may any person take into his service any servant so departing, without shewing such testimonial, upon pain that every person retaining any such servant, without such testimonial, shall forfeit 5 *l.* being thereof convicted upon indictment taken in the Sessions of the Peace, &c. and upon pain that every servant so departing without such testimonial, shall be imprisoned untill he procure a testimonial, the which if he cannot do within the space of twenty one dayes, next after the first day of his imprisonment, then he is to be whipped and used as a Vagabond; and so if he be taken with any counterfeit or forged testimonial, 5 *Eliz. cap. 4. P. 7, 8.*

“Now for the better rating of servants Wages, and for the better placing, bestowing, setting and ordering, not only of servants, but also of all such idle People (men and women) as being fit and able to labour and serve, do nevertheless refuse to labour, or seek to get themselves services, or to get work (rather living idle at home with their Parents) or perhaps cannot get themselves any services, the *Stat. made* 5 *Eliz. cap. 4.* hath enabled the High-Constable of Hundreds in every Shire, to hold, keep, and continue their petit or Statute Sessions in all Shires wherein such Sessions have been used to be kept, and after the ancient manner: And as to these Sessions, both Housholders, Servants, and others fit for Service, do or ought to repair; so if one or two of the next Justices of Peace in every division, would take the pains to be there also to assist the High-Constables, it would both add force to their Proceedings, as well for the placing of Servants, and Idlers, as also for the assessing of the Wages; And also for the spying out and preventing of many other the abuses and disorders both in Masters and Servants.

London. CHAP. XXXVII.

The High-ways and Streets about *London* being much impaired by excessive carriages, the Court made several Orders for redress, which were fit to be put in execution, *viz.*

Ord. 15. Jan. 15 Jac. lib. Sep. pa. Mi. “Whereas since his Majesties late Proclamation against Carriages and Waggon, that bring great loads to the City of *London*, from many parts of this Kingdom with above five horses in a team, to the decay of his Majesties High-ways, many have notwithstanding by subtilty in stead of horses, drawn their said load with Oxen and Horses above the said number, thinking thereby to avoid the danger. It is now ordered

“ordered and so determined, that from henceforth three Oxen shall be  
 “taken in the case for two Horses, and four Oxen for three Horses, and  
 “so after the rate.

“And afterwards in the late King’s time it was ordered, That all Wag- Ord. 3. Sep  
 “gons and Waggoners be prohibited to travell to *London* with four 9 Car. in l.  
 “Wheels in their Waggon, and every Offender therein to be convented Ses. Pa. Mi.  
 “before the next Justice of Peace.

“No new Buildings shall be erected for habitation, within three miles of  
 “*London*, nor any Building shall be divided or converted to several habi-  
 “tations there, except such Houses shall be fit for the dwelling of such a  
 “person as heretofore hath been assessed to the Subsidy of 5 l. in Goods, 35 Eliz. 6.  
 “or 3 l. in Lands, at the assessment next before the said building or divisi- Lo. Hob. 1.  
 “on, or as shall be adjudged by the two next Justices of Peace (by writing P. 36. 1.  
 “under their Hands and Seals, to be presented at the next Quarter-Sessi-  
 “ons) to be fit and able to be assessed in the Subsidy, 35 Eliz. 6.

“The two next Justices of Peace have power to decide and determine  
 “of the sufficiency and conveniency of such Houses, and of the sufficiency  
 “of the Inhabitants therein. *ibid.*

“Several Orders were made for the stopping of Buildings began in *Lin-*  
 “*colns-Inn-fields*, 8. Sep. 11 Jac. and several other in that Book of the Ses-  
 “sions, *Mid.*

“An Order to prohibit any Work-men from erecting any new Build-  
 “dings in that part near *Clements-Inn*, and *New-Inn*, 28. August, 8 Car. *Lib.*  
 “*Sess. Pac. Mid.*

“An Order for stay of erecting of new Buildings, according to an Or-  
 “der of the Star-Ceamber, 20 October, 40 Eliz. Ord. 2. October, 10 Car.  
 “*Lib. Sess. Pac. Mid.*

### Mault. CHAP. XXXVIII.

one Just.

THE Constables or Bayliff of any Town, where any deceitful Maults 2 Ed. 6. 10.  
 shall be made or mingled, to be sold contrary to the *Statute*, 2 Ed. 6.  
 may from time to time view and search all such Mault, as shall be made 27 El. 14.  
 or put to sale within any of their Towns; and if thereupon they shall find 1 Jac. 25.  
 any Mault put to sale, being evil made, or mingled with evil Mault, con- P. 4.  
 trary to this *Statute*; then the said Constable or Bayliff, so finding any such  
 deceitful Mault, with the advice of any one Justice of Peace, may cause  
 the same to be sold to such persons, and at such reasonable prices, as to  
 the discretion of the same Justice shall seem expedient, 21 Jac. cap. 28. and  
3 Car. 4.

These deceitful Maults be of three sorts, *sc.* such as be not well made; or  
 not well dressed; or mixed: as:

1. First, if any Barley-Mault shall be made (in the moneths of June,  
 July, and August only excepted) if the same Mault shall not have in the  
 making thereof (*sc.* in the fat, floor, steeping, and drying thereof) three  
 weeks at the least: and in the moneths of June, July, and August, seven-  
 teen days at the least. For under such times the Mault cannot be well made,  
 nor wholesome for any mans body: and Maults not sufficiently dried, can-  
 not be kept long, but will be musty, and full of wevils. 2. Se-



2. Secondly, If any Malt shall be put to sale which be not well trodden, rubbed and well fanned.

3. Thirdly, If any Malts be mingled, *sc.* Malt not well made as aforesaid, or made of Mow-burnt or spired Barley, and mixed with good Malt, and so put to sale.

39 Eliz.  
16. p. 6.

Lam. 336.

The Justices of Peace at their Quarter-Sessions, (or the more part of *Two Just.* them) at all times may suppress and discharge, or restrain the number of Malsters; and also may restrain such persons as they shall think meet, for buying Barley to convert to Malt. And if any person shall refuse, disobey, or not perform such suppressing, discharge, or restraint, or any Order which the said Justices in their Session shall set down touching the same; then, and so often such person being thereof duly convicted before the Justices at their Quarter-Sessions, or before any two Justices of Peace out of their Sessions (by his own confession, or by two witnesses) shall be by the said Justices committed to the Common Gaol, there to remain without Bail for three days, and after that untill he shall become bound by Recognizance in forty pounds to the Kings use, before some one Justice of Peace, to perform and obey such order, suppressing, discharge, or restraint. So that any two Justices of Peace may convict such offenders (upon their confession, or by two witnesses) and then may commit them, as aforesaid: and after any one Justice of Peace may take such Recognizance, as aforesaid. *One Just.*

#### Marriages. CHAP. XXXIX.

12 Car. 2.  
cap. 33.

“ **A**ll Marriages made since 1642. before any Justice of the Peace, confirmed and made good; and issues upon Bastardies or otherwife touching the same, to be tryed by Juries.

#### Mariners. CHAP. XL.

5 Eliz. 5.  
p. 3.

**N**O Fisherman using the Sea shall be taken to serve as a Mariner by the Kings Commission, but by the choyce of two Justices of Peace next adjoyning to the place where he is taken.

See more for Mariners, *titul. Rogue and Souldier.*

“ An Act for preventing Injuries and Wrongs done to Merchants at Sea, in their Persons, Ships and Goods, and prohibiting Mariners from serving under forein Princes, or States, without Licence, 13 Apr. 1650. *lib. Act. fol. 799.* The like 9 Sept. 1652. *fol. 1729.*

“ The wages and proportions of prizes of Mariners and Sea-men in the service of the Commonwealth appointed by Votes of Parliament, 22 Decemb. 1652: *fol. 1907. &c.*

## Night-walkers. CHAP. XLI.

**E**Very Justice of Peace (*ex officio*, and by the Commission, the first *Assignavit*) may cause to be arrested all Night-walkers, be they strangers or other persons that be suspected, or that be of evil behaviour, or of evil fame : and more particularly all such suspected persons as shall sleep in the day time, and go abroad in the nights ; and all such as shall in the night-season haunt any house that is suspected for Bawdery : Or shall in the night-time use other suspicious company ; or shall commit any other outrages or misdemeanours ; and may force them to find surety for their good behaviour. See the Title, *Surety for the good Behaviour*, cap. 75.

For as one saith, Such Night-walkers (or Night-birds) are ominous, like the Whistler, &c. and such Night-walkings are unfit for honest men, and more fitting to the Thief (the right Whistler) and to Beasts of the prey, which come forth of their dens, when Man goes to his rest.

Lamb. 46.  
122.  
13 H. 7. 10.  
See tit.  
Watch.

Psal. 104.

## Oath. CHAP. XLII.

**A**Ny one Justice of Peace may compell such as are between the age of fifteen years and threescore, to be sworn to keep the peace. See the Statute of *Winchester*, 13 E. 1. cap. 6. And the Articles of Inquisition upon the said Statute of *Winchester*, made about Anno 34 E. 1.

Any two Justices of the Peace (the one being of the *Quorum*) may require any person at the age of 18 years or above (under the degree of a Baron or Barones) to take the Oath of Allegiance, and upon their refusal may commit them to the common Gaol, there to remain without Bail till the next Assizes, or Quarter-Sessions.

Two such Justices, &c. may take the Oaths of the Under-Sheriffs, and their Officers, &c. See the title *Sheriffs*.

Swearing profanely, see more, Cap. 55.

“ No person may maintain, That the taking of an Oath in any case whatsoever (though before a lawful Magistrate) is unlawful, and contrary to the Word of God ; nor may wilfully refuse to take an Oath, by the Laws of the Land being duly tendred, nor may perswade any other to forbear the taking the same so tendred ; nor go about by Printing, Writing, or otherwise, to maintain, That the taking of an Oath in any case whatsoever is unlawful : upon the Penalties in the said Act, as upon Quakers. For which, see *Quakers*.

13 & 14  
Car. 2.  
cap. 1.

## Partridges. CHAP. XLIII.

**E**Very Justice of Peace (by the Statute of 23 Eliz.) may examine all offences, for the destroying or taking of Partridges or Fesants in the night-time ; and for hawking or hunting with Spaniels, in any eared or codded corn : and may bind by recognizance the offenders with good Sureties to appear at the next general Sessions of the Peace to answer their said offences, &c.

23 Eliz. 10.  
P. Fesants. a  
P. Just. 38.

But

But now by the Statute made 1 Jac. 27. & 7 Jac. 11. the offences of destroying, &c. of Partridges and Fesants (generally) is referred to two Justices of Peace, to examine, hear, and determine out of Sessions. *Vide hic infra.*

23 Pl. 10.  
p. *ibid.*

Also after the conviction of any such offender (according to the Statute of 23 Eliz.) for taking or destroying any Partridges or Fesants in the night-time, any one Justice of Peace of that County, may bind such offenders with good sureties, that for the space of two years they shall not take or destroy any Partridges or Fesants contrary to that Statute.

1 Jac. 27.  
P. Fesants.  
6. 7.  
21 Jac. 28.  
3 Car. 4.

1. By the Statute made 1 Jac. every person which shall shoot at, kill or destroy (with any Gun or Bow) any Partridge, Fesant, House-Dove, Pigeon, Hearn, Mallard, Duck, Teal, or any such fowl, or any Hare.

2. Or shall take, kill, or destroy any Partridge, Fesant, House-Dove, or Pigeon, with setting-dogs and nets, or with any manner of nets, snare, engines, or instruments.

3. Or shall take out of their nests, or willingly destroy, or break in the nest, the eggs of any Fesant, Partridge or Swan.

4. Or shall trace or course a Hare in the Snow.

5. Or shall at any time take, or destroy any Hare with cords, or any such instruments.

6. Or shall have or keep any Greyhound for Deer, or Hare ; or setting Dog, or Net, to take Fesants or Partridges (except they have Land, &c. of inheritance of the clear yearly value of 5 l. or 30 l. *per annum* for life, or goods worth 200 l. or be the son of a Knight, or of some person of higher degree, or the Son and heir apparent of an Esquire.)

1 Jac. 27.

The said offences being proved by the confession of the party, or by the oath of two sufficient witnesses, before any two Justices of Peace, (of the County where the offence shall be committed, or the offender apprehended) every of the offenders shall by the said Justices (for every such offence) be committed to the Common Gaol for three moneths, without Bail, unless the said offender shall forthwith, upon the said conviction, pay to the use of the poor there, 20 s. for every, Hare, Fowl, and Egg, so taken or destroyed ; and forty Shillings for having such Greyhound, setting Dog, or Net ; Or after one moneth after his Commitment, become bound by Recognisance with two sufficient Sureties in 20 l. apiece, with condition not to offend thereafter, in any the particulars aforesaid. Which said Recognisance shall be taken by two Justices of Peace of the County where the offender is imprisoned, and by them shall be returned to their next Quarter-Sessions.

Also it may seem by the general words of the Statute, that any two Justices of Peace may in like manner proceed to examine and punish the offences of selling, or buying to sell again, any Deer, Hare, Partridge, or Fesant, contrary to this Statute ; for the words of the Statute be, That any two Justices of Peace, or more together, out of any Sessions, may examine, hear, and determine all offences against this Statute made 1 Jac. Regis, and may perform every other thing requisite for the due execution thereof.

7 Jac. 11.  
21 Jac. 28.

By the Statute made 7 Jac. Regis, every person which shall take, kill, or destroy any Fesant or Partridge, with setting-Doggs, and Nets, or with

any manner of Nets, Snares, or Engines, (it being proved by the confession of the party, or by the oath of one sufficient witness before any two Justices of Peace) shall by the said Justices be committed for three moneths without baile; unless the said offender shall forthwith pay to the use of the poor there, 20 s. for every such Feasant, and Partridge: And further, to become bound by Recognizance in the summe of 20. l. never to take, kill, or destroy any Feasant, or Partridge any more; which Recognizance shall be taken by any one Justice of Peace of the County where the offence shall be committed, and shall be returned to the next Quarter-Sessions.

Every person which shall hawk at, kill, or destroy any Feasant, or Partridge, with any kind of Hawk, or Dog, (by colour of hawking) between the first of *July*, and the last day of *August*, (the same being proved by the confession of the party, or by the oath of two sufficient witnesses, before any two Justices of Peace of the County where the offence was committed, or the offender apprehended) shall by the said Justices be committed to the Common Gaol, there to remain for one moneth without Bail; unless the said offender shall forthwith upon the said conviction, pay to the use of the poor there (where the offence shall be committed, or the party apprehended) 40 s. for every such hawking at Feasant or Partridge, and 20 s. for every Feasant or Partridge, which any, and every such offender by himself, his Hawk, or Dog, shall take, kill or destroy contrary to the intent of this Statute.

But no offender punished by vertue of this Law, shall be punished by vertue of any other Law, for the same offence. Also such offences must be complained of to the Justices of Peace, within six moneths after the offence.

Any two Justices of Peace may make their Warrant under their hands, to any Constable, to enter into, and search the houses of any person (other then of such as have free Warren, or are Lords of any Mannor, or have Freehold of 40 li. by the year, or more, of some estate of inheritance, or have fourscore pounds by the year for term of life, or be worth in Goods 400 li.) being suspected to have any setting-dogs, or any manner of Nets, for the taking of Feasants and Partridges: and wheresoever they shall find any such Dog or Nets, the same to take, carry away, detain, kill, destroy, and cut in pieces.

By the same Statute 7 Jac. cap. 11. every such person as hath free Warren, or is Lord of a Mannor, or hath other Estate aforesaid, is allowed (on their own free Warren, Mannor, or Freehold) to take Feasants and Partridges in the day time only, and between *Michaelmas* and *Christmas*.

#### Peace. CHAP. XLIV.

EVERY Justice of Peace hath authority and power given him (by the first *Assignavit*, or clause in the Commission) to keep and cause to be kept the Kings Majesties Peace; by force of which words they have as well the ancient power touching the keeping of the Peace, which the ancient Conservators of Peace had by the Common Law; as also

all

Lamb. 46. all authority which the Statutes since have added thereto : And so they may cause to be kept all the *Statutes* and *Laws* now in force, which have been made for the Peace or keeping thereof : and more especially they may arrest, or cause to be arrested and sent to the Gaol ; all murtherers, robbers, and felons, and all persons suspected of such things.

They may also suppress, and binde to the peace, or good behaviour, all Affrayors, and all persons unlawfully and riotously assembled, or unlawfully wearing armour, or any weapons, by night or by day, or otherwise putting the people in fear, and all unlawfull night-walkers, and the like: All which may be well said to be disturbances or breaches of the Peace. See more for these under their particular titles.

If any Affray, Forcible Entry, or other thing in disturbance of the Peace be made or committed in the presence, or within the view of a Justice of Peace, he hath power to record it, and to certify the same, and also to commit the parties to ward, presently upon the fact done: But if there be any mean, space, or time, then he cannot commit them to ward, but he may record the same, and may (at any time after) make his warrant to take them, and binde them with Sureties, to their good behaviour, and for want of Sureties may send them to the Goal. *Cro. 41. per Curiam.*

If the Justice of Peace shall certify unto the Kings Bench, that *I. S.* hath broken the Peace in his presence, upon this certificate *I. S.* shall be there fined, without allowing him any Traverse thereto, *Marr. Lect. 3. Cromp. 131.*

What breach of the Peace is, see more here *Cap. 3. 67. & 72.*

Plague. CHAP. XLV.

1 Jac. 31.  
P. 4.  
21 Jac. 28.

**I**F any person infected, or being, or dwelling in an house infected with the Plague, shall be by any Justice of Peace (or other Officer) commanded to keep his house, and notwithstanding shall wilfully go abroad, and converse in company, having any infectious sore upon him, it is felony : and if such person shall not have such sore about him, yet for his said offence he shall be punished as a Vagabond (by the appointment of any Justice of Peace as it seemeth) and further shall be bound to his good behaviour, for one whole year. *One Just.*

P. 5.

It shall be lawful for the Justices, or any one Justice of Peace (and other head Officers in Corporate Towns) within their several limits, to appoint Searchers, Watch-men, Examiners, Keepers, and Buriers, for the persons and places infected : and to minister unto them Oaths, for the performance of their said several Offices, and to give them other directions as to them shall seem good. See *Cromp. 122. b.*

If any person infected, or dwelling, or being in an house infected, shall contrary to the commandment or appointment of the Justice of Peace (or other Officer) wilfully attempt to go abroad, or to resist such their Keepers or Watch-men, then may such Watchmen with violence enforce them to keep their houses, and not be impeached for hunting them, *ibid.*

P. 11.

Any two Justices of Peace (or any two head Officers) of any City, Borough, Town Corporate, and place priviledged, may tax all and every in-

*Two Just.*

habitant, and all houses of habitation, Lands, Tenements, and Hereditaments, within the said City, or Borough, &c. or the Liberties thereof (at such reasonable Taxes as they shall think fit) for the reasonable relief of such persons as are infected, or inhabiting in houses that are infected in the same City, &c. And may levy the said Taxes (by distress and sale of the goods of every person refusing, or neglecting to pay the said Taxes) by Warrant under the hands and seals of two such Justices, or head-Officers, to be directed to any person or persons, for the execution thereof: and in default of such distress, and that refusal be made of payment, upon return thereof, the said Justice (or Officers by like Warrant) may commit such person to the Gaol, there to remain without Bail, untill he shall satisfy the same Taxation, and the arrearages.

If the Inhabitants of any such City, &c. are unable to relieve their infected persons, &c. upon certificate thereof by the head Officer, and other Justices of peace of such Citie, &c. or by any two of them, to any two Justices of peace of the County, by, or neer to the said City, &c. so infected, any two Justices of the said County, by, or neer the said City, may tax the inhabitants of the County within five miles of the said place infected, at such reasonable weekly rates as they shall think fit, to be levied by Warrant from any two such Justices of Peace, of or near the said City, by distress and sale of goods; and in default thereof, by imprisonment of the body of the party taxed as aforesaid. p. 3.  
1 Jac. c. 31.

If any such infection shall be in any Borough or Town Corporate, where there are no Justices of Peace, or within a Village within any County; then any two Justices of Peace of the same County wherein the said place infected shall be, may tax the Inhabitants of the said County, within five miles of the said place infected, at reasonable weekly rates, as they shall think fit, for the relief of the said place infected, to be levied by distress and sale of goods (upon Warrant from the said Justices of Peace of the same County) and in default thereof, by imprisonment, as aforesaid.

All such Taxes made by the Justices of the County, for the relief of such City, &c. shall be disposed by the said Justices of the said County, and as they shall think fit (where there are no Justices of Peace in such City, &c.) And where there are Justices of Peace, then in such sort as the head Officer and Justices of Peace there, or any two of them shall think fit. p. 3.

All such Taxes made either in City, &c. or County, shall by the said Justices that taxed them, (as it seemeth) be certified at their next Quarter-Sessions to be holden within such City, &c. or County, respectively, there to be continued, enlarged, extended to other parts of the County, or determined, as at the said Sessions shall be thought fit. Ibid.

But no Justice of Peace shall do or execute any thing before mentioned, within either of the Universities of *Cambridge* or *Oxford*, or within any Cathedral Church, or the Liberties thereof, or within the Colledges of *Eaton* or *Winchester*; but the Vice-Chancellor of the University, Bishop and Dean of such Church, and Provost or Warden of the said Colledges, shall do and execute all things above mentioned, within their several Precincts. p. 3.

## Poor. CHAP. XLVI.

“**P**oor, are here to be understood (not Vagabond Beggars, and Rogues, but those that labour to live, and such as are old and decrepit, unable to work, poor Widows, and fatherless Children, and Tenants driven to Poverty ; not by Ryot, expence or carelessness, but by mischance, &c.

P. 4. Any one of those Justices of Peace, who may appoint Overseers for the *One Just.*  
43 Eliz. 2. Poor, may also send to the house of Correction, or common Goal, such as will not imploy themselves in work, being thereunto appointed by the Overseers according to the *Statute 21 Jac. cap. 28.*

43 Eliz. Two (or more) Justices of Peace, whereof one to be of the *Quorum*, dwelling in or near the Parish or division, &c. shall yearly, within one month, after *Easter*, under their Hands and Seals, appoint four, three, or two substantial Housholders in every Parish, to be Overseers of the Poor within the same Parish, who shall joyn with the Church-wardens therein, *Two Just.*  
P. 2. 21 Jac. cap. 28.

The Justices of Peace, which have the appointing of these Overseers, must therein be careful to chuse such men as in every Town are fittest : *sc.* substantial persons, having competency of Wealth, Wisdom, and a good conscience. And indeed this name and office of Overseers, may beseeem the best, and not the meanest men (it being a name and office of great antiquity and excellency, as you may see, 1 Chr. 23. 4. Acts 20. 28. and Acts 6. 3, 5.) And though the persons are dignified according to the singularity of the subject ; yet this is not the least office to be called Overseers of the Poor : For as God himself hath a special respect to the miseries of the Poor ; so they be like God which provide for the necessities of the Poor.

These Overseers and Church-wardens (or the greater part of them) with the consent of two or more such Justices, shall take order from time to time for setting their Poor on work, putting out Apprentices, and relieving their impotent, as followeth. *The Overseers duty.*

P. 25. 1. First, for setting to work the Children of all such, whose Parents shall not by the greater part of the said Overseers be thought able to keep and maintain their Children, which Children they, or the greater part of them, by the assent of two such Justices, may also put out to be Apprentices, *sc.* the men Children till their age of 24, and the women Children till their age of 21 years, or the time of their marriage. *Apprentices*

And all poor Children of the age of 7 years, or above, so bound Apprentices, may be taken and kept as Apprentices by their Masters, any former statute to the contrary notwithstanding. See 1 Jac. cap. 25. and 21 Jac. 28. and 3 Car. 4. but such binding must be by Indenture. See *ant. tit. Labor. Cromp. 184. b.* And see the form of such an Indenture, *hic post. cap. 128.*

“Note, that the putting of poor Children Apprentice, is holden to be one of the best waies of providing for the Poor, *Resol. 1.*

“And one Justice of the Peace may compell any person meet to be bound as an Apprentice, *ch. 31.*

2. For setting to work all such persons (married or unmarried) as, having no means to maintain them, use no ordinary and daily Trade of life to get their living by. *Able pers. Such*

Such also as can get no work, are by the Overseers to be set on work. And any one Justice of Peace may send to the house of Correction, or common Gaol, such as shall not imploy themselves to work, being appointed thereto by the Church-wardens and Overseers of the Poor of the Parish, 43 *El. cap. 2.*

Now the placing of such Apprentices, and the setting and holding the Poor to work, is the more proper and true duty of Overseers, for otherwise their bare gathering or raising of a stock, is to little purpose.

And note, that the Church-wardens and Overseers of the Poor, may by and with the consent of two or more Justices of Peace (whereof one to be of the *Quorum*) &c. set up, use, and occupy any Trade, Mystery, or Occupation, only for the setting on work, and better relief of the Poor of the Parish, Town or place, where they are Overseers, &c. 3 *Car. cap. 4.*

“ Also such Poor as are not to be removed out of the Parish, or are there lawfully settled, may by the consent of the Parish, or by the Church-wardens and Overseers of the Poor, or the greater part of them, be placed as inmates for a time, *Ref. 34.*

“ Or by the leave of the Lord of any Waste, they are to have houses bought for them on the Waste, according to the *Statute*, 43 *Eliz. c. 2.*

43 *Eliz. c. 2.*

*Impotent:*

3. For relieving such Poor, amongst them as are poor and impotent, or not able to work.

But this relieving of poor, and impotent persons, must be convenient, and such as that they neither be forced to beg, or steal, nor so little, as that it may be a lingering death to them.

And to these purposes, the said Overseers are inabled to raise weekly, or otherwise by taxation of every Inhabitant, Parson, Vicar, and other; and of every Occupier of Lands, Houses, Tythes, Mines, or saleable underwoods (proportioning them to an annual benefit, &c.) in the same Parish, such competent sums of Money as they shall think fit, therewith to provide a convenient stock of some Ware or Stuffle, to set the Poor on work, and also competent sums of Money towards the necessary relief of their lame, impotent, old, blind, and other Poor not able to work: and for the putting out of such Children (as aforesaid) to be Apprentices.

The Parson presentative having the Tenth or Tythes of the Parish, it is equal that he should pay the tenth part of the rate to the Poor of the Parish: or shall bear to the taxation of the Poor according to the reasonable value of his Parsonage; having consideration to just deductions: and so of the Vicar presentative, *Resol. 33.*

“ And concerning Parsonages impropriate, the Tythes are to be considered in their several kinds: for Tythe-Corn is usually paid to the Parson: and small Tythes of all kind to the Vicar.

“ But for Pasture-grounds, Parks, Wood-grounds, Commons, and Heath-grounds, &c. these in many parts of this Realm do exceed the Corn, or Arable-ground, and may pay little or nothing either to the Parson or Vicar: So as in reason it seemeth such Parsonages presentative or impropriate, should be charged only for the tenths of such Profits as they receive, and not for the tenths of the whole Parish.

For other men how they shall be rated, see *cap. 50. & 53.*

The office then of these Overseers consisteth principally in two things.

I. In



1. In taxing Contributions of Money for the relief of the Poor.
2. In the disposing thereof according to Law and good discretion.

And in these taxations, there must consideration be had, first to equality, and then to Estates.

Equality, that men may be equally rated with their Neighbours, and according to an equal proportion.

Estates, that men be rated according to their estates of goods known, or according to their known yearly value of their Lands, Fermes, or Occupings, and not by estimation, supposition, or report. Also herein the charge of Family, Retinue, and Countenance is in some measure to be regarded: for if one valued at 500 li. in Goods, hath but himself and his wife, and another estimated at 1000 li. hath wife and many Children, &c. the first man by reason is to be rated as much as the other: and so of Lands, *Tamen quare*, what the Law is in such cases.

The causes of these } To set the Poor at work by a stock, &c.  
taxations are three: } To relieve the impotent, }  
                                  } To put forth Apprentices, } by Money,

And this last, *sc.* their putting forth and taking of Apprentices, may well be termed a special work, and Seminary of mercy.

But in putting forth of these Apprentices, there must be regard had to the Master, the Child, and the Parents.

The Master, *sc.* his ability, and honesty: otherwise by some device or hard intreaty, they may provoke their Apprentices to depart, or run away.

“Secondly, His Trade or Faculty, lest the Apprentice consume his time without learning any thing: for the word Apprentice cometh of the word *apprendre*, *id est*, *ad-discere*, or *discere*, and sheweth that they are to be bound to, and brought up in, taught, and instructed by the Master in some Art, Mystery or Trade.

“To these two, the Justices of Peace must have an eye.

“And withall, the Justices at their monthly Meetings should do well (once in three or four quarters) to cause the Officers of every Town to bring them a note in writing of all the Poor in the Town which are overburthened with Children, and of the names and ages of their Children; And also a note of the names of all those in their Parish that are fit to take Apprentices; and so from time to time to put out and place the Children.

The Child, *sc.* to put them out timely, and while they are young and tractable (so as they be above the age of seven years) otherwise by reason of their idle and base educations, they will hardly keep their Service, or employ themselves to work.

“And by the Statute 7 *Jac. cap.* 3. Children which be above the age of fifteen years, are not thought fit, or allowed to be first bound out as Apprentices; but are to be forced to work, or to go to service; and if they refuse, they are to be sent to the house of Correction, or bound over to their good behaviour, and so to the Assises or Sessions of the Peace.

“So all single persons under the age of thirty, being warned by two Justices of Peace, to put themselves into service by a day prescribed them, if they do not accordingly, but shall still continue living idly out of Service,

“vice, not having visible means of their own to maintain them, they are to  
 “be sent to the house of Correction, or bound over, &c. *ut supr.*

The Parents, *sc.* to take away such as are brought up to live idly and loosely, or else such as are a burden to their Parents, and whose Parents are least able to relieve them.

Again, concerning the Masters ; all persons of ability are compellable to take Apprentices according to this Statute ; yea, if they be of ability, though they have but a house, or sleeping place in the Town, they are chargeable.

“And the Statute of 43 *Eliz.* 2. which saith, that the Church-wardens  
 “and Overseers of the poor shall put out Children to be Apprentices,  
 “doth necessarily imply, that such as are fit, must necessarily receive such  
 “Apprentices, *Resol.* 1.

“Yea, every man who by his calling, and profession, or manner of living, entertaineth, and must have use of other servants of the like quality, must entertain such an Apprentice : wherein notwithstanding discretion must be the guide upon consideration of circumstances, *Ref.* 3.

“And every able or wealthy person that liveth privately, though he hath no use of a Servant, yet he must contribute, and may be taxed towards the putting forth of Apprentices, as to other Charges for the provision of the poor, *Ref.* 4.

And Clergy men are not herein exempted, but may have Apprentices put to them ; and this was the opinion of all the Judges, upon two several references to them lately made from the Kings Majesty (as I have been credibly informed.) Or at least they are chargeable to contribute to the putting out of Apprentices : See the words of the Statute of 43 *Eliz.* c. 2. *hic antea.*

Note also, that as the Statute enableth the Church-wardens and Overseers (with the consent of two Justices of Peace) to put out Apprentices, so it doth enable them to place those Apprentices with Masters ; for without Masters, there can be no Apprentices. And the said Justices may compel all such as be of ability, to take such Apprentices (according to their discretion) and if any such Master shall refuse to take such Apprentice so to him appointed, the said Justices may bind such Master over to the next general Gaol-delivery, there to answer such default ; And this was the direction of Sir Henry Montague Knight, Chief Justice of the Kings Bench, at Cambridge Assises, *Anno Dom.* 1618. “wherewithall agreed, Sir Nicholas Hide, and Sir Francis Harvey, Judges of Assise at Cambridge Summer Assises, *Anno* 1627. And if he refuse to take such Apprentices, or to give Bail to appear at the next general Gaol-delivery (or Quarter-Sessions) he may be sent to the Gaol, there to remain, untill he will give such bond, *Resol.* 6.

Also the Statute of 43 *El.* c. 2. seemeth to warrant as much, as the words of which Statute to this purpose, are thus ; Be it further enacted, That it shall be lawful for the Church-wardens, and Overseers, or the greater part of them (by the assent of two Justices of Peace) to bind any such Children to be Apprentices, where they shall see convenient, *Plus hic antea.*

Or else the said Church-wardens and Overseers (with the consent of the

the said Justices, as it seemeth) may impose upon such Master (refusing to take such Apprentice) a competent sum of Money, for the putting out of such an Apprentice elsewhere. And upon the Masters refusal, to pay such money, two such Justices may take their Warrant to levy the same by distress and sale of the Offenders goods, &c. See *Poulton* 2.4.

Or the refusers to take Apprentices, may be presented and indicted for the same, upon the *Statute* of 43 *Eliz.* at the Assises, or Sessions of the Peace, and upon such indictment they may be fined and imprisoned; *Resol.* 7.

But there is no necessity that any money should be given with Apprentices, for that must be left to the discretion of the Church-wardens and Overseers, all circumstances of age and ability being considered: and if they cannot agree with the Party, then the Justices of Peace adjoining; or in their default, the Sessions of Peace are to determine this, *Resol.* 2.

An Apprentice put to a man in regard of a Ferm, when his Lease expi-  
reth, his Apprentice must go still with the Ferm, if the first Master will: Otherwise where the Apprentice is put to a man in regard of his ability, or for other respect.

“Where the Master of the Apprentice dieth, I have known it ordered  
“by the Judge of Assise, that the Executor having Assers left him, shall  
“keep the Apprentice, or shall otherwise provide for him: otherwise  
“Apprentices, as also Servants, are by Law settled in that Parish (where  
“they were last) and if they become impotent, there the Parish must bear  
“the adventure, after their time, or term of Service be lawfully ended,  
“*Resol.* 25.

If the Parents of poor Children shall refuse to suffer their Children to  
be put forth (without good cause shewed) such Parents also may be bound  
over by the Justices to answer their said default: and if the Apprentices  
shall refuse, the Justices may send them to the house of Correction, *quousqz*  
6*c.*

“And if the Parents of such poor Children being so bound, shall entice  
“their Children away (themselves not being able to maintain them) such  
“Parents may be committed to the house of Correction, *Ref.* 7.

Note, that if the Master shall put his Apprentice into apparel, it is a gift  
in Law, and he cannot after take it away, though he should part with his  
Apprentice, &c. *Br. Trns.* 93.

An Apprentice which runneth from his Master, or shall be otherwise dis-  
ordered, may be sent to the house of Correction, by any Justice of Peace:  
or else by order from the Sessions. See *hic. cap.* 31.

P. 2. Two such Justices shall take the account of such Overseers, at the end  
of their year, and of the Church-wardens in every of these particulars  
following:

1. Of all summes of money by them received, or rated, and not recei-  
ved.

2. Of all such stock of Ware or stufte, as they, or any of the poor have  
in their hands.

3. What Apprentices they have put out and bound, according to the  
*Statute.*

4. What poor they have set at work, or relieved.

5. Whe-

The Over-  
seers ac-  
count.

5. Whether they have suffered any of their Poor to wander, and beg out of their Town, or in the High-ways, or in their Town, without their direction. See for this 39 *Eliz.* 3. & 4. and *Lamb.* 206. *Resol.* 15.

6. Whether they have monthly met to consider of these things.

7. Whether they have assessed the Inhabitants and Occupiers of Lands, &c. in their Parish, &c. all such as are of ability, and with indifferency. *Lamb.* 428.

8. Whether they have endeavoured to levy and gather such Assessments. *Ibid.*

9. Whether they have been otherwise negligent in their Office : within which words also there seemeth to lie included, if they have relieved the impotent, or shall neglect to execute the Justices Warrants to them, or any of them directed, for the levying of any forfeiture, according to this Stat. See *P.* 2. & 12.

Overseers  
defaults.

“ All sums of money given since 4 *Jac.* R. or hereafter to be given, to  
“ be continually employed for the binding out of Apprentices, shall for  
“ ever be so employed. And the Parson or Vicar, Constables, Church-  
“ wardens, and Overseers of the Poor, or the most of them, shall have the  
“ nomination and placing of such Apprentices, and the guiding and im-  
“ ployment of all such moneys : and shall yearly make a true accompt  
“ thereof, &c. before four, three, or two Justices of Peace dwelling  
“ there near within one month after *Easter*, &c. See the Statute 7 *Jac.*  
“ *cap.* 3.

Now if the Church-wardens, or either of them, or any of the Overseers, shall refuse to make and yield a true and perfect account to the said Justices of all such sums of money, and of all such stock, as aforesaid ; any such Justices may commit them to the common Goal, there to remain without Bail, till they have made a true account, and satisfied and paid (to the new Overseers) so much of the said sum and stock, as upon the said account shall be remaining in his (or their) hands, &c. And if they make a false accompt, they may be bound over to the Assises, or Sessions, and there an Indictment may be preferred against them. *P.* 24. 10.

Also, if any of the Church-wardens, or Overseers, shall refuse or deny *P.* 2. 4. to pay and deliver over to the new Overseers, the arrearages (sums of money, or stock) which shall be in their hands, and due and behind upon their account to be made as aforesaid ; any two such Justices of Peace may make their Warrant to the present or subsequent Church-wardens and Overseers, or any of them, to levy the same by distress, and sale of the Offenders Goods, rendring to the Parties the overplus ; and in defect of such distress, any two such Justices of Peace may commit him or them to the common Goal, there to remain without Bail, untill payment or delivery *Ibid.* of the said sum, arrearages and stock be made.

“ But if persons assessed die before the same be collected, without default of the Overseers, as it hapned by reason of the sickness in 1638. a  
“ new rate and assessment is to be made to supply the same, *Ord.* 27.  
“ *Aug.* 14. *Car. Lib. Sess. Pa. Middlesex.*

If any such stock shall be in the hands of any the Poor to work, and such Poor shall refuse to deliver the same, it seemeth any two such Justices may make the like Warrant to levy the same by distress, and in defect thereof may commit such Offenders, as aforesaid.

And

P. 2. And as for other the negligences of the Church-wardens and Overseers, in their Office, or in the execution of the Orders aforesaid, every of them making default, shall forfeit for every such default 20 s. (but it seemeth such default must be proved either by the offenders confession, or by examination of witnesses) which forfeitures shall be levied by Warrant from any two such Justices of Peace, by distress and sale of the offenders goods, &c. or in defect of such distress, it shall be lawful for any two such Justices of Peace to commit the offender to the Common Gaol, there to remain without bail, till the said forfeitures shall be paid: And the said forfeitures be employed to the use of the poor of the same Parish.

P. 12.

“ The refusers to pay their rates or money assessed upon them ; and  
 “ Overseers having money or stock behind upon their accompt, their forfeitures shall be levied by the new Overseers and Church-wardens, or  
 “ one of them, by warrant from two Justices of Peace, &c. But for other  
 “ negligences, or forfeitures of the Overseers and Church-wardens, the  
 “ Justices shall make their Warrant to the Constable to levy the same.

Two such Justices of Peace are to allow the cause or excuse of such Overseers, as shall not meet every moneth, to consider of the premisses, or as shall be otherwise negligent in their office, *Camb. edit. 1614. pag. 360.*

Two such Justices may make their Warrant (as well to the present as subsequent Overseers and Church-wardens, or to any of them) to levy all such summes of mony, and all arrearages ; (of every one that shall refuse to contribute according as they shall be assessed) by distress and sale of the offenders goods, (rendring to the party the overplus.) And in defect of such distress, such two Justices may commit him or them to the Common Gaol, there to remain without bail, till payment be made of the said sum and arrearages.

*Refusers to  
pay their  
rate.*

P. 3.

If the said Justices do perceive, that any Parish is not able to relieve their poor, then any two such Justices of Peace may tax and assess any other persons within the Hundred (where the said Parish is) to pay such summs of money to the Overseers of the said poor Parish, for the said purposes, as the said Justices shall think fit, according to the intent of this Law.

“ Or if the Parish be not able to provide for the poor Children of the  
 “ same Parish, the Justices may provide Masters for them in other Parishes  
 “ within the same Hundred ; and if the Hundred be not able, then in the  
 “ rest of the Countrey, as for other provision for the poor, which must be  
 “ at a Quarter-Sessions, *Reso. 5.*

He that without the consent of the Parish shall bring any poor to any Town, which are burthensome to the Town, may be raised in his rates towards the relief of the poor of that Parish. *Sir Nicholas Hide.*

Yea, Landlords, or owners, or Parishioners taking into their houses poor persons (out of the Parish) like to burthen the Parish, if the Landlord will not secure the Parish, &c. Then may he be charged towards the relief of the poor of that Parish to the value of his Rent reserved ; or according to the charge they so bring into the Parish. See *Reso. 35.*

“ Note, That Orders of this nature in the Sessions Book of *Middlesex*,  
 “ are very frequently made in presence and by the Justices of the Benches  
 “ at *Westminster*, *Vide* that 23. *March*, 13 *Car.* where a poor person was

L

“ sent

“ sent back to the house of Mr. *Nichols*, to remain there without paying  
 “ any Rent.

If any persons find themselves grieved with any Taxe, or other act done P. 7.  
 by the Overseers, or by the said Justices of Peace, they are to be relieved  
 at the Quarter-Sessions.

Corporate  
 Towns.

Head-Officers of Cities and Corporate Towns (being Justices of Peace) P. 9.  
 have the same authority within their limits, as herein is limited to Justices  
 of Peace of the County, &c. And no other Justice of Peace are to enter or  
 meddle there.

If any Parish shall extend into two Counties, or part thereof to lie in P. 10.  
 any City or Corporate Town where they have Justices, then the Justices  
 of every County, &c. shall intermeddle only within their own limits: And  
 every of them respectively within their limits, are to execute this Law  
 concerning the nomination of Overseers, binding of Apprentices, giving  
 Warrants to levy Taxations unpaid, taking account of Overseers, and com-  
 mitting such as refuse to account, or to pay their arrearages: And yet the  
 said Overseers shall without dividing themselves, execute their office in  
 all places within the said Parish, but shall give up several accounts, &c.

The Father, and Grand-father, and Mother, and Grand-Mother, and Resol. 16.  
 the Children, and Grand-children of every poor impotent person, or other 17. p. 8.  
 poor person not able to work, being of sufficient ability, shall relieve such  
 poor persons in such manner as the Justices of Peace (of that County  
 where such sufficient persons dwell) at their general Quarter-Sessions  
 shall assess; upon pain that every one failing therein, forfeit twenty  
 shillings for every moneth: the said forfeiture to be levied by the Church-  
 wardens and Overseers, or one of them by Warrant from any two such  
 Justices of Peace (the one being of the *Quorum*) within their limits, by di- P. 12.  
 stress and sale as aforesaid: and in defect of distress, any two such Justices 43 Eliz. 2.  
 may commit the offender to prison, there to remain without Bail, till the  
 said forfeiture be paid. And the same forfeiture shall be employed to the  
 use of the poor of the same Parish.

“ And the Father also may be compelled to allow maintenance to his  
 “ sons wife (the husband being absented) as was done in the case of one  
 “ *John Ball*, by Ord. 2. Sept. 15 Jac. lib. Sess. pa. Mid.

Now for the better furtherance of this so needful and charitable a ser-  
 vice, and for the better help as well of the Justices of Peace, as of the Over-  
 seers, &c. I thought it not amiss to set down here certain Resolutions and  
 Advices of the Judges (as I find them in M. *Lambard*) together with cer-  
 tain other observations to this purpose.

If there be but one Church-warden in the Parish, he sufficeth with the Resol. 20.  
 other Overseers.

If the Parents be able to work, and may have work, they are to find Resol. 8.  
 their children by their labour (and not the Parish:) But if they be over-  
 burthened with children, it shall be a very good way to procure some of  
 them to be placed Apprentices, according to the Statute. And such Ap-  
 prentices would be put out to Husbandry, and Huswifery.

Young children, whose Parents are dead, are to be set on work, relieved,  
 or maintained at the charge of the Town where they were dwelling at the  
 time of the death of their Parents, and are not to be sent to their place of  
 birth,

birth, &c. For if the Parents were not Rogues, we may not make the Children Rogues, except they wander abroad and beg. This was the direction of *Flemming*, Chief Justice, in a case between *Weston* and *Cowledge*, Anno 11 Jac. Regis.

“ A woman being delivered of a Bastard Child in one Parish, after go-  
 “ eth into another Parish with her child, and becometh a Vagrant, and  
 “ so is sent to the place of her birth, her Bastard Child being under the  
 “ age of seven years, this Bastard Child must be placed with the Mother  
 “ so long as it is within the condition of a nurse child, which shall be till  
 “ seven years of age; and then it is fit to be sent to the place of its birth  
 “ to be provided for, the mother or reputed father not being able. And  
 “ the Parish where the Child is born shall not be forced to contribute to  
 “ the charge, as long as the mother lives, and the child be under seven  
 “ years old, *Resol. 23*:

*Resol. 7.* If any (not being Rogues) shall travell with their Children through a Town, and the father or mother die, or run away, that Town is not bound to keep their children, nor to send them away but only in charity, except they become wandring beggers.

A travelling woman having a small child sucking upon her, is apprehended for felony, and sent to the Gaol, and is after arraigned and hanged, this child is to be sent to the place of its birth, if it can be known, otherwise it must be sent to the Town where the mother was apprehended; for that, that Town ought not to have sent the child to the Gaol (being no malefactor) and so was it delivered by Sir *Nicholas Hyde*, at *Cambridge*, Lent Assises, Anno 3. *Caroli Regis*.

*Resol. 10.* Such persons as be of any Parish, and have able bodies to work, if they refuse to work at such wages as are taxed, or commonly given in those parts, are to be sent to the house of Correction, and not to their place of birth, or last dwelling, by the space of a year. But if they have any lawfull means to live by, though they be of able bodies and refuse to work, yet they are not to be sent to the house of correction.

*Resol. 15.* None may be suffered to take relief at any mans door, though within the same parish, unlesse it may be by the order of the Overseers: neither may any be suffered to beg by the high wayes, though in their own parish.  
*39 Eliz.*

*Resol. 9.* No man is to be put out of the Town where he dwelleth, nor to be sent to their place of birth (or last habitation) but a vagrant Rogue; nor to be found by the town, except the party be impotent; but ought to set themselves to labour, if they be able, and can get work: if they cannot get work the Overseers must set them to labour.

And so of them that have or shall have houses, when their estates be expired: and servants, whose times of service are ended, though they cannot get houses: for they must provide themselves houses anew, if they be not impotent. *Ibidem*.

So that such persons, whose estates of their houses be expired, and servants when their service is ended, they shall not be put out of the Towns where they so last dwelt or served: Neither are they to be sent from thence to their place of birth or last habitation, but are to be settled there to work being able of body, or being impotent, are to be there relieved; & yet if such persons shall wander abroad begging, out of that parish, then they

may be sent as vagabonds (from the place where they shall be taken wandering or begging) to their place of birth, &c.

But for the placing and settling of these poor people (who now for want of charity are much sent and tossed up and down from Town to Town, and from Countrey to Countrey) it hath been holden by some, that it is in the power of the next Justice of Peace to give order therein, and that upon appeal from him, the Justice of Peace at the Quarter Sessions may fully take order therein, and that their order made in Sessions will not easily be avoided.

But Sir *Francis Harvey* at Summer Assise at *Cambridge*, Anno 1629. did deliver it, That the Justices of peace (especially out of their Sessions) were not to meddle either with the removing, or settling of any poor, but only of Rogues.

If a man hireth an house in A. and being there with his wife and children, he afterwards shall binde himselfe as a servant with one dwelling in B. yet are not his wife and children to be sent to B. or placed there, but are to remain still at A. where they were once settled. Otherwise, if the husband hath hired an house in B.

“A man with his wife and children takes a house in one parish for a year, and before the end of the term is put out of possession, and then goeth into another parish; where the woman in a barn, &c. is delivered of a child; this thrusting out of possession was an illegal unsettling (which the Law forbiddeth, for that none must be forced to turn Vagrant) and therefore such a one must be returned to the Town and Parish where he or she was last lawfully settled, and the child also born in the time of this distraction must be sent with them, *Resol. 24.*

“A woman unmarried being an hired servant in A. and is there gotten with child after her time of service expired, she goeth into another Parish, and is there hired in service, or is there otherwise settled by the space of one moneth, and is then discovered to be with child, here she is not to be sent to the place or Parish where she was begotten with child; but to the place where she was last lawfully settled, *Resol. 12.*

“A woman servant unmarried is gotten with child, and then goeth out of her Masters service before or after it is discovered that she be with child, and the reputed father be run away, or is not able to free the Parish, here if the Master hath legally discharged his house of such a servant, he is no more bound to provide for her then any other, *Res. 13.* But if she be not lawfully discharged out of her Masters service, nor her time of service with him expired, her Master may be forced to keep her still, or otherwise provide for her, till her time of service be expired, or that he be legally discharged of such servant.

“If a woman being with child procureth her self to be retained with a Master who knoweth nothing thereof, this is a good cause to discharge her of his service, *Res. 22.*

“And if a woman servant be begotten with child during her service, this is a good cause to discharge her, *ibid.*

“But in the three former cases the Master must not turn away such servant of his own authority, *Res. 22.*

“And



“ And in these last three cases, the charge as misfortune, falleth upon  
 “ the Parish, which they must bear as in other cases of casual impotency.  
 “ See *Ref.* 22.

A Maid-servant gotten with child at A. by her fellow-servant (or by another young man of the same Town) after both their times of service are expired, and they marry, and then the young man is retained at B. then the woman is delivered of her child, she with her child are to be sent to the father at B. and there they are to be settled.

“ Now what shall be accounted a lawful settling.

“ Note, That every one who is settled a native, a householder, sojourner, an apprentice, or a servant retained for one moneth at the least, without a just complaint made to remove him or her, shall be held to be settled. *Resol.* 26.

“ Yet an abode by the space of a moneth, must not be to live or keep privately, sometimes in one house, sometimes in another; not to be an abode by reason of sickness, or the like, as Lameness, Lunacy, &c. Nor to a Nurse-child, or a Scholar at the Grammar-School, or at the University, or persons sent to an Hospital, house of Correction, or to the Common-Gaol; but their settling is where their Parents are settled, *Resol.* 32. or themselves last lawfully settled.

“ As for Children born in Common Gaols, and Houses of Correction, their Parents being prisoners, are to be maintained at the charge of the County, *Ref.* 32.

“ But note, If one be only lawfully retained in service, or hath but hired an house, or be otherwise lawfully settled, the Law unsettleth none so settled; nor permitteth it to be done by practice or compulsion; and such as shall use any indirect means to hinder a poor man from hiring an house, may for such disturbance be indicted upon the Statute, for causing them to turn Rogues.

Note, (by an old Law) a stranger, or he which cometh guest-wise to an house, and there lieth the third night, is called an *Hogenhyne* (or *Agenhine*) and after the third night he is accounted one of his family in whose house he so lyeth; and if he offend the Kings peace, his Host must be answerable for him. *Termes de Ley.*

“ *Secundum antiquam consuetudinem dici poterit de familia alicujus qui hospitatus fuerit cum alio per tres noctes, qui prima nocte dici poterit Uncouth, secundo Gust. tertia nocte Hogenhine, Bract. fo. 124. b.*

“ And *Minsb. verb. Hogenhyne*, third and *Uncouth* saith, that *Uncouth* signifieth *incognitus*, and is used in ancient Saxon Laws for him that cometh to an Inne Guest-wise, and lieth there for two nights at the most: and that by the Laws of *Edward*, and of the Conquerour, *Hospes trium noctium*, if he did any harm, his Host was answerable for the harm, as for one of his own family: and that if he tarried any longer, then he was called *Hogenhyne*, or *Agenhyne*, that is, *familiaris*. So it seemeth in those times, that to lodge in one place three or four nights together, was counted a settling.

*Resol.* 11.

Such as shall remove or put any out of their Parish, that be not to be put out, this is against the Statute concerning the relief of the poor, and finable; and if any have been so sent, they may be sent back again.

Now this Fine seemeth to be by force of the Statute 39 *Eliz. cap. 4.* and <sup>P. Vag. 5.</sup> to amount to five pounds, and is to be levied by distress and sale of the offenders goods, upon a Warrant under the hands and seals of any two Justices of Peace, either upon the confession of the offenders, or else upon the testimony of two sufficient witnesses.

All such persons as in any wise shall disturb the execution of this Law, concerning Rogues, or the relief, or settling of poor impotent persons, shall forfeit five pounds; and any two Justices of Peace may binde such offenders to their good behaviour; and may also by Warrants under their hands and seals, cause the said five pounds to be levied by distress and sale of the offenders goods, as aforesaid: which forfeiture the said two Justices also by their discretion, may order to be employed to the relief of the poor where the offence shall be committed, or to the maintenance of the house of Correction, &c. *Quære* for this forfeiture, for that the Stat. 39 *El. c. 3.* made for the relief of the poor, is expired.

*Resolutions of the Judges of Assizes, 1633.*

1. *Quest.* Whether the Church-Wardens and Overseers of the poor of the Parish, with assent of two Justices of the Peace, one being of the *Quorum*, may by the Statute of 43 *Eliz. cap. 2.* or any Law enforce a Parishioner of the same Parish to take a child of a poor Parishioner of the same Parish, who is not able to keep his said child, to be an apprentice?

*Of enforcing persons able to take apprentices.* *Resol.* The Statute of 43 *Eliz.* which saith, That the Church-wardens and Overseers of the Parish shall put out Children to be apprentices, necessarily implyeth, that such as are fit must receive apprentices, and the putting out of poor children to be apprentices, is one of the best ways for the providing for the poor. <sup>43 El. c. 2.</sup>

2. *Qu.* If they may, then whether they must not give mony with him, and who shall determine what mony shall be given with him, if the party that is to take such an apprentice, and the Church-wardens and Overseers cannot agree thereupon?

*Resol.* There is no necessity that mony must be given, but that must be left to the discretion of the Church-wardens, and Overseers, all circumstances of age and ability being considered; and if they cannot agree with the party, then the Justices of Peace near adjoining, or in their default, the Sessions of Peace are to determine these Controversies.

3. *Qu.* Whether a Knight, Gentleman, Clergy-man, or Yeoman, or one that is sojourner, using husbandry, cloathing, or grasing, or the like; may be enforced to take such an apprentice?

*Resol.* Every man who is by calling, or profession, or manner of living, that entertaineth, and must have the use of other servants of the like quality, must entertain such apprentices, wherein discretion must be given upon due consideration of circumstances.

4. *Qu.* Whether a wealthy man keeping few or no servants, nor wanting a servant, but living privately, may be forced to take such an apprentice?

“ Apprentice ; if not, then whether he may be taxed towards the putting forth of such an Apprentice ?

“ *Resol.* For the receiving of such Apprentices, the answer may be referred to the question next before ; but out of doubt every such person must contribute to the charge, as to other charges for the provision for the Poor. *Apprentices when to be put unto other Parish.*

“ 5. *Qu.* Whether they may enforce a Parishoner that is of one Parish, to take such a Child Apprentice, that is of another Parish, but within the same County or division, if the proper Parish be not able to provide for the Children of the same Parish ?

“ *Resol.* The Justices may provide Masters for them in other Parishes within the same hundred ; if the same hundred be not able, then out of that hundred in the rest of that County ; as for other provision for the Poor, which must be at a Quarter-Sessions.

“ 6. *Qu.* If such a Parishoner may be enforced to take such an Apprentice, and shall refuse not only to take such an Apprentice, but also refuse to be bound to appear at the next Quarter-Sessions, or Assizes, what shall be done to him ? *Persons refusing to take such Apprentices.*

“ *Resol.* If any refuse, let such a one be bound over to the next Sessions or Assizes ; if he refuse to give such Bond, let him be sent to the Gaol, there to remain untill he shall give such Bond.

“ 7. *Qu.* If such a Parishoner who refuseth to take such an Apprentice shall be bound over to the Sessions for not taking such an Apprentice, and when he appeareth there, shall likewise refuse what shall be done to him, and what shall be done to the Parents who refuse to suffer their Children to be put out to be Apprentices, themselves not being able to maintain them ?

“ *Resol.* If at the Sessions or Assizes such a one refuseth to take an Apprentice, and his excuse be not allowed, it is fit he be bound to the good behaviour, and it will be a good course to indict such a refuser for a contempt, and thereupon to fine and imprison him, if he refuse to be bound to the good behaviour, let him be imprisoned till he will ; and the Kings Book of Orders, directs that such be bound with good sureties to appear at the Council board ; and if the Parents of such poor Children refuse to suffer their Children to be bound Apprentices, or being bound, entice them away, themselves not being able to maintain them, let them be committed to the house of Correction. *Refusers to take Apprentices at the quarter Sessions, to be bound to the good behaviour.*

“ 8. *Qu.* Whether it be in the power of any general Quarter-Sessions to mitigate any penalty upon a Statute Law ; if the Party indicted shall submit himself to the fine of the Court, and wave the traverse ? *Fines certain not to be mitigated.*

“ *Resol.* If the Party be convicted, or confesse the fault, it is not in the Power of the Court to mitigate the Fine, in such cases where the Statute makes it certain: but if the Party indicted protesting his innocency, yet *quia noluit placitare cum domino rege* puts himself up into the grace of the Court, the Court may impose a moderate Fine, and order to forbear the prosecution.

“ 9. *Qu.* If any be bound to appear at the Sessions, and shall tender submission to the Court, whether the Sessions may stay the indictment, and mitigate the Fine aforesaid upon the confession of the Fact ?

*Resol.*

No discharge of any forfeiture after conviction for drunkenness, tippling, &c.

*Resol.* This is answered before to the next precedent Article.  
 “10. *Qu.* If a man be convicted for being drunk, tippling, and keeping an unlicensed Alehouse, or being licensed, for suffering others to remain tippling in his house; or for swearing, or driving Cattel upon a Sunday, contrary to the *Statute* in that case provided; whether the Justice of Peace, before whom he was convicted, or any other Justice of the Peace may discharge him of all or part of the Forfeiture or Punishment appointed by the Statute?

*Resol.* The Justices have no such power or mitigation after conviction, where the *Statute* appoints the measure of the punishment.

Constable.

“11. *Qu.* Whether a Constable may upon a Warrant for carrying one to the house of Correction for keeping an unlicensed Alehouse, upon the second conviction break open the house wherein the party convicted is, to apprehend him?

*Resol.* This question is to be advised upon, it is put in general terms, and referred to be considered in the particular where it appeareth.

Settlement of a woman gotten with Child.

“12. *Qu.* If a Woman unmarried be hired from week to week, or from half year to half, in one Parish; and there be gotten with Child, and then goeth from thence unto another Parish, where she is settled in Service by the space of two or three months, and then discovered that she is with Child: the question is, whether she shall be settled in the Parish where she was begotten with Child, or in the Parish where she was last settled?

*Resol.* The place where such a Woman was lawfully settled, is the direction in this case, not where she was begotten with Child.

A woman gotten with Child, the Master to provide for her till her delivery.

“*Q.* If a Woman, servant unmarried, be begotten with Child, and then goeth out of her Masters service before or after it is discovered that she is with Child, and the reputed father be run away, or is not able to free the Parish: whether the Master may be enforced to provide for her till she be delivered, and for a month after?

*Resol.* If the Master hath legally discharged his house of such a Servant, he is no more bound to provide for her then for any other.

Ten in ancient demesne.

“14. *Qu.* In case a Parish consist part of ancient *Demefne*, and part of *Guildable*, an assise is made for the relief of the maimed Souldiers, the Goal, &c. according to the *Statute* of 24 *El. cap. 2.* where the Tenants in ancient *Demefne* shall contribute with the *Guildable* for the payment of the Assise?

*Resol.* The *Statute* doth not distinguish between the ancient *Demefne* and the *Guildable* in these cases, *ubi lex non distinguitur, ibi nec nos distinguimus.*

Indictment of forcible Entry removed by Certiorari.

“15. *Qu.* Whether an indictment of forcible detainer be within the *Statute* of 1 *Jac. cap. 5.* and not to be removed by *Certiorari*, unless the Party indicted first find Sureties according to the statute, and whether the Party indicted be to be bound in his absence to prosecute according to that Stat. and whether an Indictment of forcible Entry, &c. found at a private Sessions, be to be removed by *Certiorari* without Sureties, according to that Statute?

*Resol.* This is fittest to be left unto the Court of Kings Bench, to whose Commission and jurisdiction this is most proper.

“16. *Qu.*

- 3 Car. 6. 13. " 16. *Qu.* If One be convicted upon the *Statute* of 3 Car. R. cap. 13. for driving of Cattel on the Sunday throughout several Parishes; whether he shall forfeit 20 s. to every of the said Parishes, or only to one; if to one, then to which of them?
- " *Resol.* This *Statute* giveth the forfeiture but of one 20 s. for one Sabbath day, although the driving of that day be through divers Parishes. Therefore where the action is first attached, and the distress first taken, that Parish shall have the benefit of the Forfeiture, and not the other.
- 5 El. c. 4. " 17. *Qu.* If One who is under the age of 30 years, and brought up in husbandry, or a Maid servant, or brought up in any of the Arts and Trades mentioned in the *Statute* of 5 El. Car. 4. and not enabled according to that Stat. to live at his or her own hand, shall be warned by two Justices of the Peace to put him or her self in Service by a day prescribed by them, and shall not do the same accordingly, but shall after continue living at his or her own hand; what course shall be taken with such a person, and how punished?
- " *Resol.* Such persons being out of Service, and not having visible means of their own, to maintain themselves without their labour, and refusing to serve as an hired servant, by the year, may be bound over to the next Sessions or Assises, and to be of the good behaviour in the mean time, or may be sent to the house of Correction.
- 43 El. c. 2. " 18. *Qu.* Whether the Tax for the relief of the Poor upon the *Statute* of 43 E. shall be made by ability, or occupation of Lands, or both; and whether the visible ability in the Parish where he lives, or general ability wheresoever; and whether his Rent receiv'd within the Parish where he lives shall be accompred visible ability, and whether he shall be taxed of them only, and for any Rent received from other Parishioners; and what shall be said visible ability?
- " *Resol.* The Land within each Parish is to be taxed to the Charges in the first place equally and indifferently, but there may be an addition for the personal visible ability of the Parishioners within that Parish, according to good discretion, wherein if there be any mistaking, the Sessions, &c. or the Justice must judge between them.
- the Parish, and not the part neither of that Land, nor in any other Parish is taxable.
- " 19. *Qu.* Whether shops, salt-pits, sheds, profits of a Market, &c. be taxable to the poor as well as Lands, Cole-mines, &c. expressed in the *Statute* 43 Eliz.
- " *Resol.* All things which are reall and a yearly revenue, must be taxed to the poor.
- 14 El. c. 1. " 20. *Qu.* Whether the Tax for the County stock, Gaol, and house of Correction is to be made by the *Statute* of 14 Eliz. cap. 43 Eliz. by ability, and upon the inhabitants of the Parish only, or upon them, or the occupiers of lands, dwelling in that Parish, or whether such as occupy lands in that parish, and dwell in another parish, shall be taxed?
- " *Resol.* If the *Statute* in particular cases give no special direction, it is good discretion to go according to the rate of taxation for the poor: but when the *Statutes* themselves give direction, follow that.
- " 21. *Qu.* Whether any Taxes ought to be made for the charges that petty
- Driving Cattel on the Sabbath.  
Persons able not putting themselves to service after warning.  
Taxes for the Poor now to be made according to the Stat.  
where upon complaint to the Judges of Assise adjudged, that the Land in  
Things taxable to the Poor.  
Tax for the County-stock, Gaol, House of Correction, how to be made.  
Tax for the Charges of petty Const.

“ petty Constables and Borshoulders are at in conveying Rogues from parish to parish, and relieving of them, and how to be rated ?

“ *Resol.* It is fit to relieve the Constable and Tything-men, in such sort as hath been used in the severall places where they live.

“ 22. *Qu.* Whether a Justice of Peace may discharge a Servant being with Child from her Service, allowing that as a reasonable cause that she is thereby made unable to do the Service, which otherwise she might have done ; and if he may discharge her, whether that Parish shall provide for her, till her delivery, if she cannot provide for her self ; and so also if her time be expired before her delivery, who shall provide for her after her time ended ?

*A woman  
servant  
with child  
how to be  
discharged.*

“ *Resol.* If a Woman being with Child, procure her self to be retained with a Master who knoweth nothing thereof, this is a good cause to discharge her from her Service. And if she be gotten with Child during her service, it is all one : but the Master in neither case must turn away such a servant of his own authority. But if her term be ended, or she lawfully discharged ; the Master is not bound to provide for her, but it is a misfortune fallen upon the Parish, which they must bear, as in other cases of casual impotency.

“ 23. *Qu.* Whether one being delivered of a Bastard-Child in one Parish, and goeth into another with her Child, and becomes Vagrant, and so is sent to the place of her Birth : her Bastard-Child being under the age of seven years, shall be settled with the Mother, and there maintained ; if the Mother be not able, nor the reputed Father known, found : or whether it shall be sent to the place of its Birth, or being settled with the Mother, whether the Parish where it was born, shall be ordered by the two next Justices to pay a Weekly summe towards the maintainance of it ?

*Bastard  
Children  
how to be  
disposed.*

“ *Resol.* The Bastard-Child must be placed with the Mother, so long as it is within the quality or condition of a Nurse-Child, which shall be, till seven years of age ; and then it is fit to be sent to the place of its Birth to be provided for, the Mother or reputed Father not being able. And the Parish where the Child is born shall not be forced to contribute to the Charge, as long as the Mother lives, and the Child be under seven years old.

“ 24. *Qu.* A man with his Wife and Children takes an house in one Parish, for a year, and before the end of his term is unlawfully put out of possession, and after takes part of an house, as an Inmate in another Parish, from whence he is also put out, and then not being able to get any dwelling, they come to lie in a Barn in a third Parish, where the Husband falleth sick, and the Wife is delivered of another Child, where ought these to be settled ?

*Illegal un-  
settlement  
not to be  
allowed.*

“ *Resol.* If a Man or Woman having house or habitation in one Parish, be thrust out, this is an illegal unsettling, which the Law forbiddeth, for none must be enforced to turn Vagrant, and such one must be returned to the place where he or she was last lawfully settled, and the Child also born in the time of his distraction.

*Apprentices  
put out into  
another Pa-  
rish where  
the Master  
dies.*

“ 25. *Qu.* Whether an Apprentice put out by the Church-wardens, &c. according to the Statute to a Master in another Parish, if his Master

“ dye,

“ dye, and leave no Executor or Administrator fit to keep an Apprentice,  
 “ or able to place him : He shall be provided for in the Parish where he  
 “ was Apprentice, or shall be sent back to the Parish from whence he was  
 “ put out ?

“ *Resol.* Servants and Apprentices are by Law settled in that Parish,  
 “ and if they become impotent there, the Parish must abide the adventure,  
 “ after their term or time of service be lawfully ended.

“ 26. *Qu.* What is accounted a lawful settling in a Parish, and what  
 “ not ? *What is accounted a lawful settlement.*

“ *Resol.* This is too general a question, to receive a perfect answer to  
 “ every particular case which may happen : but generally this is to be  
 “ observed, that the Law unsettleth none who are lawfully settled ; nor  
 “ permits it to be done by practice or compulsion ; and every one who  
 “ is settled as a native Householder, Sojourner, an Apprentice or Servant  
 “ for a month at the least, without a just complaint made to remove him  
 “ or her, shall be held to be settled.

“ 27. *Qu.* A Rogue is taken at C, and will not confess the place of  
 “ his Birth : neither doth it appear otherwise, but that he confesseth the  
 “ last place of his habitation to be at S, hereupon he is whipped, and sent  
 “ to S ; at his coming to S, the place of his Birth is there known to be at  
 “ VV, and thereupon the Rogue confesseth it to be so, whether he might  
 “ without any new vagrancy be sent to VV ? *A Rogue misconfessing the place of his Birth or habitation.*

“ *Resol.* In this case it is fit to send such a Rogue to the place of his  
 “ Birth : for this is but a mistaking, and no legal settling.

“ 28. *Qu.* If an Indictment be preferred to the grand Jury of the Quarter-  
 “ Sessions of the Peace against One for Murther, Man-slaughter ; for  
 “ Robbery, Felony, or Petty larceny, and *Ignoramus* found thereupon,  
 “ whether the said Sessions may deliver the Party by Proclamation or  
 “ not ? *In what the Gaol may be delivered at the Sessions.*

“ *Resol.* Not by Proclamation at all, but for petty Larcenies, and  
 “ other petty Felonies, in discretion the Gaol may be delivered of them.

“ 29. *Qu.* If a Constable be chosen, and refuseth to take his Oath,  
 “ what shall be done, and whether a Constable may make a Deputy : and  
 “ what by means ? *Constable elect refusing.*

“ *Resol.* The refusal or neglect to take an Oath in such a case, is a contempt  
 “ worthy of punishment, and thereupon to Fine and Imprison him ;  
 “ and the making of a deputy is rather by toleration, then by Law. *Deputy Constable.*

“ 30. *Qu.* If a Constable dye, or remove out of the Parish where, &c.  
 “ how is his place to be supplied ? *Constable dying, how to be supplied.*

“ *Resol.* By the Lord of the Leet, if that time fall near, otherwise by  
 “ the Sessions ; but if that be too far off, then by the next Justices.

“ 31. *Qu.* If a poor weak man be chosen Constable, or Tythingman,  
 “ and be unfit for the place, how may he be removed, and a fit man sworn  
 “ in his room ? *Constable unfit, how to be removed.*

“ *Resol.* The Justices of Peace must help this, and if the Lord of the  
 “ Leet have power to choose a Constable or Tythingman, and perform it  
 “ so ill, it is a just cause to seize his liberty. *Nurse child, Schollar, Bastard in a Gaol, houses of Correction.*

“ 32. *Qu.* If a Nurse-child, a Schollar at a Grammar-school, or in  
 “ the University prove to be impotent by Sicknes, Lameness, Lunacy,  
 “ OF Correction.

“ or discovery of Ideocy, &c. how such persons shall be disposed ?

“ *Resol.* A Nurse-Child, or a Scholar at the Grammar-school, or at the University, or persons sent to the common Goal, Hospital, or house of Correction, are not to be esteemed as persons to be settled there, more then Travailers in their Inns, but their settling is where their Parents are settled ; and Children born in Common Goals, and houses of Correction, their Parents being Prisoners, are to be maintained at the charge of the County.

“ 33. *Qu.* What proportion shall Parsonages, or Tythes bear to the taxation of the Poor of the Parish ?

“ *Resol.* The Parson or Vicar presentative, shall bear according to the reasonable value of his Parsonage, having consideration to the just deductions.

“ 34. *Qu.* Whether for placing the Poor of the Parish, not to be removed by consent of the Parish, these poor men may not be placed as Inmates for a time ?

“ *Resol.* They may by exprefs words of the Statute of the 43 *Eliz.*

“ 35. *Qu.* If a Parishioner, or Owner within a Parish, do bring into the Parish, (without the consent of the Parish) a stranger of another Parish, which is, or apparently is like to be burthensome unto the Parish, how may they ease themselves ?

“ *Resol.* By taxing such a one to the charge of the rates of the Poor, not only having respect to his ability, or the Land he occupies, but according to the damage and danger he bringeth to the Parish by his folly.

“ 36. *Qu.* For warding in the day-time, for apprehending of Rogues, whether the Constable may not enlarge it to a further time ?

“ *Resol.* Warding in the day-time is of great use, and must be left to the discretion of the Constables, or direction of the Justices to vary according to the occasion.

“ 37. *Qu.* Whether Alehouses ought to be allowed only in thorow-fare Towns, and others in other places to be restrained only to sell to Poor out of doors ?

“ *Resol.* The Justices shall do very vell to allow none but in places very fit for their situation and uses, and to moderate the number.

“ 38. *Qu.* A man for his quality otherwise fit to be a Constable, or of other Office of that nature, procures himself to be the Kings Servant extraordinary, and by that means would excuse himself to serve in the Countrey ?

“ *Resol.* A Servant extraordinary may well perform his ordinary Service in the Countrey, according to his quality.

“ Upon complaint made by the Church-wardens, or Overseers of the Poor of any Parish, to any Justice of Peace within 40 dayes after such persons coming to settle in any Tenement, under the yearly value of 10 l. Any two Justices, whereof one to be of the *Quorum*, may remove such persons to such Parish where they were last settled, either as a Native, Householder, Sojourner, Apprentice, or Servant for the space of 40 dayes, unless they give security to discharge the Parish, to be allowed by the said Justices: Provided, persons grieved may appeal to the next Quarter-Sessions.

14 Car. 2.  
cap. 12.

And

Parson, Vicar, how chargeable to the Poor upon the St. 43 El. In what cases poor may be placed as Inmates. Strangers apparently like to be chargeable to the parish brought in, the bringers in of them to be taxed.

warding in the day time for apprehending of Rogues.

Alehouses to be moderated in number.

Constable the Kings servant.



“ And provided, all persons may go from place to place to work in  
 “ Harvest, carrying with them Certificates from the Minister, one Church-  
 “ warden, and one of the Overseers of the Poor of the place where they  
 “ inhabit : and such working in Harvest, or falling sick, shall not be ac-  
 “ counted a settlement ; and if such refuse to go, and shall not remain in  
 “ the Parish where they ought to be settled, any two Justices of the  
 “ Peace, where the offence is committed, may send them to the House  
 “ of Correction, as Vagabonds, or to the publick Work-house, there to  
 “ labour.

“ And by the said Act there is a Corporation in *London and Middlesex,*  
 “ and *Westminster*, for ordering matters concerning the Poor: And the  
 “ Justices of the Peace of *Middlesex* and *Surrey* respectively in their Quar-  
 “ ter-Sessions, may choose Presidents, Treasurers, and Assistants for their  
 “ respective Corporations and Work-houses ; and the Officers to give  
 “ accompt in Writing at every Quarter-Sessions. *For which, see the*  
 “ *Act.*

*The Justices Opinion touching the Commission by which the Justices sit at  
 Newgate.*

“ **T**HE Justices at *Newgate* sit by vertue of two Commissions (*viz.*  
 “ Gaol-delivery, and *Oyer and Terminer.*

“ By the Commission of Gaol-delivery they may try all prisoners in  
 “ the Gaol, or by Bail, or such as be indicted and will render themselves  
 “ generally for all Felonies : and also for such other offences as are parti-  
 “ cularly assigned to them by Statute.

“ The Statute of 4 *Elizabeth*, 3. *cap.* 2. doth give them power to receive  
 “ Indictments against prisoners, or such as are upon bayl, and to proceed  
 “ to try the same, *viz.* Indictments taken before the Justices of the Peace  
 “ and by equity thereof, all indictments before Coroners, 3 *Mar. Bro.*  
 “ *Commission omnium* 24. saith, the Commission is, *ad deliberand. Gaol. de*  
 “ *prison. in eisdem existen.* But they cannot take Indictments as Justices of  
 “ Gaol-delivery, but being Justices of the Peace, they may take Indict-  
 “ ments against prisoners, but not against them that be at large, forasmuch  
 “ as no power is given them consequently, they must have means to do so,  
 “ which is by Indictments. *Id. querend.*

“ Howsoever it is clear, that they may inquire of many offences, and  
 “ take indictments in such cases where power by the Statute is given to  
 “ the Justices of Gaol-delivery, in such cases where they have authority  
 “ by Law or Statute, there the title of indictment is, that *ad gaolam de-*  
 “ *liberand. tent.* before the Commissioners of Gaol-delivery *J. S.* was in-  
 “ dicted, and the record must be made up so.

“ And whereas by the Statute of 4 *Eliz.* 3. *cap.* 2. Indictments taken be-  
 “ fore Justices of Peace or Coroners, or any other against any prisoner,  
 “ then the entry of the Indictments is returned taken, *Memorand. quod ad*  
 “ *generalem Sessionem tent.* before *A. B. C.* Justices *ad pacem in Com. Mid-*  
 “ *dlesex* or *London*, *J. S.* was indicted, and then tryed before Justices of  
 “ Gaol-delivery, and by vertue of the said Statute, Indictments taken be-

M

“ fore

“ fore Justices of the Peace of *London* or *Middlesex*, are tryed before the  
 “ Justices of Gaol-delivery.

“ The Commissioners of *Oyer* and *Terminer* is *Ad triand. inquirend. audiend. & determinand.* They may inquire of all offences mentioned in  
 “ the Commission, albeit the offenders be at large, but they cannot try  
 “ prisoners upon Indictments taken before any other then themselves, as  
 “ the Justices of Gaol-delivery may by the aforesaid Statute, unless there  
 “ be a speciall Commission made, as it was in the case of the Earl of *Leicester*, mentioned in *Plow. Com.* for the ordinary Commission of *Oyer* and *Terminer* is *ad inquirend. audiend. & determinand.* therefore they cannot  
 “ determine of things unless they made inquiry first; and on the other side  
 “ also the Justices of Gaol-delivery may try Indictments taken before Justices of the Peace; yet if one be indicted before Commissioners of *Oyer*  
 “ and *Terminer*, the Justices of Gaol-delivery cannot try the same, because the Record of the Commission of *Oyer* and *Terminer* are to be returned in the Kings-Bench, 44 E. 3. 31. 3 Mar. Br. Com. 24.

“ The Commission and the Records of the proceedings before the Justices of Gaol-delivery, are to be returned to the *Custos Rotulor.* of the  
 “ County, when the same persons are Justices of Gaol-delivery, and of  
 “ *Oyer* and *Terminer*, they may sit the same day and place, and inquire by  
 “ the same Jury, but the entry of the Records must be severall, according  
 “ as the Indictment is.

“ At the Assizes in the Countrey, the Justices have their severall  
 “ power as the Justices of Gaol-delivery, *Oyer* and *Terminer*, and Justices  
 “ of Peace.

“ But when the Records are made up, they must be according to the  
 “ power they made election to proceed upon.

“ This is the regular and legal course. But the Clerks of the Assizes  
 “ promiscuously make entry thereof; but if a Writ of Errour be brought,  
 “ they must certifie according to Law, or else it will be erroneous; and  
 “ so upon a *Certiorari*.

“ The Sessions of *London* may be begun at the *Guild-Hall*, and then adjourned to *Newgate*; if some Indictments be at *Guild-hall*, then those must  
 “ be so certified: if others at *Newgate*, then the adjournment must be mentioned, and that the Indictment was then taken.

“ Note, That the triall of Indictments taken before Justices of the  
 “ Peace of *London*, cannot be tryed at *Newgate*, as in nature of a tryall  
 “ before Justices of the Peace at *London*, for many of the Commissioners  
 “ for Gaol-delivery, are not Justices of the Peace for *London*, but in such  
 “ cases the tryal must be before the Justices of Gaol-delivery: as upon  
 “ Indictments taken before the Justices of the Peace of *London*; as in  
 “ the case of Indictments taken before the Justices of the Peace of *Middlesex*.

“ But if Indictments at *Newgate* be originally taken before them, as Justices of Gaol-delivery, then it is inquirable how the Jury sworn, and  
 “ impanelled to inquire at the Sessions of the Peace for *London* or *Middlesex*, do serve to present Indictments before the Justices of Gaol-delivery  
 “ at *Newgate*, unless the custome and usage will warrant the two severall  
 “ Juries sworn at the Sessions of the Peace for *London* or *Middlesex*, are  
 “ also

“ also by the same oath and impannelling to serve for the Grand Jury for  
 “ the Commission of Gaol-delivery, and Oyer and Terminer.

“ Upon Conference with the Clerks for *Newgate* of *London*, and  
 “ *Middlesex*, and the Clerks of Assizes, and view of the severall  
 “ Entries, more certain resolution may be given, as occasion may  
 “ be offered, in any particular case.

Next, here is consideration to be had of three sorts or degrees of poor :

1. Poor by impotency and defect.

- 1. The aged and decrepit, that are past labour.
- 2. The infant, fatherless, and motherless, and not able to work.
- 3. The person naturally disabled, either in wit, or member, as an Ideot, Lunatick, Blind, Lame, &c. not being able to work.
- 4. The person visited with grievous disease, or sickness, though casually, yet thereby for the time being impotent.

All these (being impotent and not able to work) are to be found and provided for by the Overseers, of necessary relief; and are to have allowances proportionable, and according to the continuance and measure of their maladies, and needs; and of these it may be said, *Si non parvisti, occidisti*.

2. Poor by casualty.

- 1. The person casually disabled, or maimed in his body, as the Soldier, or Labourer, &c. maimed in their lawful callings.
- 2. The householder decayed by casualty of fire, water, robbery, suretiship, &c.
- 3. The poor man overcharged with Children.

All these last (and such others) having ability and strength of body, but not sufficient means to maintain themselves, are to be holpen, or set to work by the Overseers; and being not able to live by their work, are in charity further to be relieved in some reasonable proportion, according to their severall wants and necessities.

3. Thriftless poor.

- 1. The riotous and prodigal person, that consumeth all with play, or drinking, &c.
- 2. The dissolute person, as the Strumpet, Pilferer, &c.
- 3. The slothful person, that refuseth to work.
- 4. All such as wilfully spoil or imbezle their work, &c.
- 5. The Vagabond that will abide in no service or place.

For all these last, the House of Correction is fittest; and there such persons being able in body are to be compelled to labour, that by labour and punishment of their bodies, their froward natures may be bridled, their evil minds bettered, and others by their example terrified. Also the rule of the Apostle is, *That such as would not work, should not eat*, 2 Theff.

3. 10.

And all such persons sent to the House of Correction, must there live by their own labour and work, without charging the Town or Countrey for any allowance. See to that purpose the Stat. 7 Jac. cap. 4.

But for the Overseers to suffer such persons (or any other persons, which can live of their labours or otherwise) to be chargeable to the Town, or to relieve such, were a means to nourish them in their lewdness, or idleness, which take it, and to rob others of relief that want it, to wrong those of their money that pay it, and to condemn them of oversight which dispose it.

And yet if any of these last happen to prove impotent, then according to the Statute 11 H. 7. cap. 2. they are to be relieved with bread and water without other sustenance: And so a Reverend Judge delivered it in his charge at Cambridge Assizes: But yet charity wills us in cases of manifest extremity, it seemeth, that they are to be relieved by the Town: But I leave that to better consideration.

Where any summes of money (at any time within three years before the making of the Statute 7 Jac. cap. 3.) have been given, or hereafter shall be continually imployed for the binding out of Apprentices unto Trades and Occupations, the Parson, or Vicar, Constables, Church-wardens, and Overseers for the poor, in Towns not incorporate, or the most part of them, are by the Statute appointed to have the disposing of such stocks and summes of money: which persons shall once every year, within one moneth after Easter day, make a true and perfect account before two or more Justices of the Peace (dwelling in or next to every the said Towns or Parishes) of all such sums as they have so imployed, and of all Bonds taken for the payment thereof, and of all sums remaining in their hands and not imployed.

Licensed to travel

Two Justices of Peace may licence poor diseased persons to travell to the Baths for remedy of their griefs, so as they be provided of necessary relief (*sc.* with money in their purses, &c.) for their travel, and beg not. See hereof *postea tit. Rogues, cap. 47.*

9 Eliz. 4.  
1 Jac. 25.

The Justice of Peace dwelling near where any person suffering shipwreck shall land, or where any poor Souldier, or Mariner shall land, may, and ought to make a testimonial under his hand to such persons, of their landing, &c. and thereby to licence them to pass the next direct way to their place of birth or dwelling, &c. limiting them therein a convenient time for their passage. See the title *Rogues.*

39 Eliz. 4.  
39 Eliz. 17.

But it seemeth no Justice or Justices of Peace may or can in any case license any poor man to wander or beg at all; nor may license any poor to travel, but only in these former three last cases. See the title *Rogues.*

Here I thought it not amiss shortly again to observe such offences, as the Justices of Peace out of their Sessions are to deal withall, and where the forfeitures (or part thereof) are given by the Statute to the use of the poor of the Parish where the offences be committed.

Forfeitures and penalties to the use of the Poor.  
*Alehouses.*

Alehouse-keepers, and Inn-keepers, &c. suffering Townesmen, or any other person to continue drinking in their houses, the forfeitures shall be to the use of the poor of that Parish, &c. See before *tit. Ale-houses, & 21 Jac. cap. 7.* So of Alehouse-keepers without licence, *Ibidem.*

1 Jac. 9.

So of Alehouse-keepers, &c. selling less then one quart of their best Beer or Ale for 1 d. and two quarts of their small for 1 d. See *ib.*

4 Jac.

So of Townsman, or others, tripling in Alehouses, &c. See *ib.*

1 Jac.

So of Constables, &c. not levying the forfeitures of the offenders aforesaid, or not whipping the offenders, upon the Justices Warrant. See *ibid.*

So of persons convinced of Drunkenness, *ib.*

So the money made upon sale of Teinters, or other like Engines (found by the Justices of Peace, or by the Overseers of Cloth.) See *tit. Cloth antea.*

All penalties and forfeitures for want of length, breadth, and weight of Cloth limited by any former Act now in force, or by this present Act, shall be distributed into three equal parts, whereof two parts shall be unto the poor of the Parish where the said Cloth shall be made, to be levied by Warrant made by two Justices of Peace (directed to the Church-wardens and Overseers of the poor of such Parish) by way of distress, and sale of the offenders goods, &c. 22 Jac. cap. 18.

The moiety of the forfeiture for destroying the spawn of Sea-fish. See *Fish. tit. Fish, antea.*

The flesh in Lent-time, found in any Victualling-house (upon the Justices search,) *Vide tit. Fish-daves.*

Taking, or destroying of any Fesant, Partridg, or other Fowl, *Vide tit. Fesants. Partridges.*

Taking or destroying the Eggs of any Fesant, Partridg, or Swan, See *ibid.*

Meeting of people out of their own Parishes, on the Sunday, for any sport or pastimes whatsoever, *Vide tit. Games.*

Using any unlawful Games or Pastimes within their own Parish, by any person upon the Sunday, *Vide ibidem.*

Taking, destroying, tracing or coursing in the snow, of any hare. See *ib.*

Keeping of any Greyhound, setting Dog, or Net, to take Partridges or Fesants, contrary to the Statute, See *ibid.*

Selling of any Deer, Hare, Partridge, or Fesant, see *ibidem*, & *vide Stat. 1 Jac. cap. 27.*

Hawking between the first day of July, and the last of August, *vide titulo Partridges.*

Overseers of the poor, negligent in the execution of their office. See before in this title, *Poor.*

Parents, or children, failing to relieve each other, as shall be ordered at the Sessions, See *ib.*

Such as shall put out any of their Parish, that be not to be put out. See *ibid.*

Such as shall any wayes disturb the relief or setling of the poor, See *ibidem.*

Persons absenting themselves from Church upon any Sunday, *Vide tit. Recusants, 3 Jac. cap. 4.*

Persons disturbing the execution of the Law made 39 Eliz. concerning the punishing, or conveying of Rogues, *Vide tit. Rogues.*

Sending Rogues by a general passport, See *ib. Resol. 13.*

Constables not receiving a Rogue, to convey him according to the Stat. See *ibidem.*

If a Rogue shall not be delivered to the next Constable, to be conveyed still forward, &c. See *ib.*

If a Rogue be sent to the Town whereto he ought, and be there refused.  
See *ibid.* *Resol.* 12.

The Minister not keeping a Register-Book, and therein entring every Testimonial made for the conveying of Rogues punished in his Parish. See *ibidem.*

Constables not doing their best endeavour for the apprehending, punishing, and conveying of all Rogues. See *ibid.*

The Constable which shall not punish a Rogue, &c. brought to him, shall forfeit 20 s.

Every person that shall not apprehend Rogues resorting to his house. See *ibidem.*

Every person bringing into this Realm any Rogue. See *ib.*

Profane Swearing and Cursing. See the Act for punishing Swearing according to the degree of the person offending, 28 June 1650. f. 804.

Carriers or Drovers travelling upon the Sunday. See the Act for better observing the Lords Day, 9. Apr. 1650. fo. 911. &c.

And Butchers killing, or selling upon that day. *Hic. cap.* 49.

Note, The Lord Mayor of London and others made a Corporation for ordering and putting in execution an Act for the Relief and Employment of the Poor, and the punishing of Vagrants and other disorderly persons within the City of London and Liberties thereof, *Act.* 7. May 1649.

And note, The Justices have no power to mitigate any Fine imposed for these offences.

### Preachers. CHAP. XLVII.

**I**F any person shall of his own authority, willingly and of purpose, by open act, maliciously disturb any Preacher in the time of his Sermon, or other Divine Service, or shall be aiding, procuring, or abetting thereto; or shall rescue any such offender being apprehended, or shall disturb the arresting of any such offender; and that any of the said offenders shall be brought before any Justice of Peace, (within the County where the said offence shall be committed) then every such Justice of Peace (upon due accusation thereupon made) shall forthwith commit every such offender (so brought before him) to safe custody, by his discretion.

*Two Just.*

Within six days (after accusation had of any the said offences) and after the committing of the said offender to safe custody by one Justice of the Peace, one other Justice of the Peace of that Shire must joyn with the first Justice in the examination of the said offence; and if they two upon their examination shall find the party accused guilty (and that by two sufficient witnesses, or by his own confession) then shall they commit him to the Gaol, there to remain without bayl, for three moneths then next ensuing: and further to the next Quarter-Sessions, &c. But inquire, if all this Statute be not repealed by 1 *Eliz. cap.* 2. in general words at the latter end thereof, *Lamb.* 199. yet it seemeth not to be repealed in this matter, *sc.* for disturbance of Preachers: for this Statute containeth divers several matters, and so divers Statutes, *Crompt.* 14.

And

And yet Sir *Nicholas Hide* at *Bury*, Lent Assises, *An.* 1629. delivered  
 1 Mar. c. 3. it (as I am credibly informed) that this Statute was wholly repealed, by  
 the Stat. made 1 *El. cap. 2.*

*Prophecies.* CHAP. XLVIII.

P. Iust. 24.  
 P. Prop. 1.

**I**T seemeth by the general words of the *Statute*, that every Justice of  
 Peace may imprison (by the space of one year, without Bail) such as  
 advisedly shall publish any false Prophecies (contrary to the tenor of the  
*Statute*, 5 *El.* 15.) to the intent thereby to make any rebellion, insurrection,  
 or other disturbances within the Kings Dominions.

*Prison.* CHAP. XLIX.

3 Jac. 10.  
 P. 7, 8.

**A**Ny Justice of Peace, having sent or committed to the Goal an Offender  
 (for any offence or misdemeanor) if the Offender (having  
 means or ability thereto) shall refuse to bear and defray the charges of  
 such as shall convey and guard him or them to such Goal, or shall not at  
 the time of their commitment, pay or bear the same, Then the said Justice  
 may give his Warrant under his Hand and Seal (to the Constable of the  
 Hundred or Constable of the Town) where such Offenders shall be dwelling,  
 or from whence he shall be committed, or where the said Offender  
 shall have any Goods within that County or Liberty, to sell so much of the  
 Offenders Goods, as by the discretion of the said Justice will satisfie such  
 charges, &c. the appraisment to be made by four Inhabitants of the Pa-  
 rish where such Goods be, (yielding to the Party the overplus of the mony):  
 And where the Offender hath no such Goods, then the charge thereof  
 must be born by the Town where the Offender was taken, and the taxation  
 made on the Town for that purpose, must be allowed under the Hand of  
 one Justice of Peace: and by like Warrant from such Justice, the Goods  
 of the person refusing to pay such taxation, may be distrained and sold.

*Purveyors.* CHAP. L.

13 Eliz. 21  
 P. 33.  
 1 Jac. 25.  
 21 Jac. 28.  
 3 Car. 4.

**I**F any person within five miles of *Cambridge* or *Oxford*, shall refuse rea-  
 sonably to serve the provision of the said Universities, then may the  
 Vice-Chancellor, and any two Justices of Peace within the same Univer-  
 sity, Town, or County, under their Hands and Seals, allow any the Kings  
 Purveyors to provide any Corn, or Victual of any such person, to the use  
 of the King, as they lawfully may in other places, without the said Pre-  
 cinct.

The Vice-Chancellor (or his Commissary for the time being) in either  
 of the Universities, with any two Justices of Peace of the same County,  
 may by the Oaths of twelve men, inquire of, and punish the offences of  
 Purveyors, Takers, Badgers, Loaders, Poulters, or other ministers for the  
 Kings Majesty, and of all other common Poulters, &c. committed con-  
 trary

2 & 3 P. &  
 M. cap. 15.  
 13 El. 21.  
 P. Iust. 60.  
 P. Purv. 32.

trary to the *Statutes* for the privileges of the Universities, &c. *sc.* in taking or bargaining for any victual or grain, within *Cambridge* or *Oxford*, or within five miles of either of them; or in taking or bargaining for any victual or grain brought within the said five miles by any common Minister of any Colledge or Hall, to be spent there; without the licence of the Chancellor, or Vice-Chancellor in writing, under the Seal of their Office; or not according to such licence: and every such Offender shall forfeit the quadruple value of such grain or victual, so taken or bargained for, and shall suffer imprisonment three months without Bail; which punishments the said Vice-Chancellor, &c. and two Justices of Peace may see duly executed accordingly.

If any Buyer, or other Officer of any Lord, or other person (but only for the King and Queen, and their Houses) do take any Victual, Corn, Hay, Carriages, or any other thing whatsoever, of any of the Kings people, in any wise against their will (without lawful bargain between the said Buyer and Seller made) then upon request made to the Mayor, Sheriff, Bayliff, Constable, Officer, or other the Kings ministers (under which word \* ministers, the Justices of Peace be also comprehended) of the Cities, Boroughs, Counties, or Places where such taking shall happen to be, the said Mayor, Sheriff, Minister, and Justice of Peace, shall presently take and arrest such Buyer and Officer so offending, and them shall send to the Kings next Prison, there to remain without Bail, untill they have delivered the said Goods so taken, or the value thereof.

See more of Purveyors, *tit. Felons by stat.* See c. 107.

And see title *Carriages*.

## Quakers. CHAP. LI.

“ Persons so called, may not assemble themselves together above five  
 “ in number, of the age of 16 years or more, under pretence of Re-  
 “ ligious Worship, upon penalty for the first Offence, upon conviction by  
 “ Verdict or Confession, by a Fine not exceeding 5 l. for the first Offence,  
 “ the second Offence 10 l. to be levied by Warrant of the Parties before  
 “ whom the Conviction shall be, and for want of distress and non pay-  
 “ ment within one week after Conviction; for the first Offence Imprison-  
 “ ment, or house of Correction three months, the second Offence six  
 “ months, which Penalties shall be employed for maintaining the house of  
 “ Correction; the third Offence the party offending shall abjure the  
 “ Realm, or otherwise the King may give Order to transport the Offen-  
 “ der to any of his Majesties Plantations beyond the Seas.

“ And Justices of Oyer and Terminer, Assise, Gaol-delivery, and Justi-  
 “ ces of the Peace in open Sessions, may hear and determine the said Offen-  
 “ ces within thier respective Limits. And any Justice of the Peace, May-  
 “ or, or Chief Officer of a Corporation, may commit to the Gaol, or  
 “ bind over persons with sufficient Sureties, in order to their Convicti-  
 “ on.

“ But such persons as after Conviction shall take such Oaths (for refu-  
 “ sing whereof they stand convicted) and give security to forbear meeting

13 & 14  
Car. 2. c. 11

\* Cromp.  
62. a.



“ in any such unlawful Assembly, shall be discharged of all the said  
“ Penalties.

“ And Peers or Lords of Parliament to be tryed for every such third  
“ Offence by their Peers.

## Recusants. CHAP. LII.

22 Eliz. 1.  
P. 19.

**I**F any person above sixteen years of age do forbear to come to Church *One Just.*  
by the space of twelve months, contrary to the Statute of 1 El.

2. Any Justice of Peace of the County where such Offender shall dwell, or be, may make thereof Certificate into the Kings Bench, to the end such Offenders may there be bound to their good behaviour.

35 Eliz. 1.  
P. 19.

Any one Justice of Peace may require the submission and declaration of conformity to his Majesties Laws, of Recusants and Sectaries, within three months after their Conviction, &c. And in default of such submission, may require them to abjure this Realm, which abjuration notwithstanding, shall be in open Sessions, 21 Jac. cap. 28.

*Abjuration.*

For the form of such submission, see the statute of 35 El. c. 1. P. Recus. 20.

No woman covert, or married woman, shall be forced to abjure, by virtue of this Statute.

Where one Justice of Peace may require a Popish Recusant to take the Oath of Allegiance. See *postea* in this title.

27 Eliz. 2.  
P. Jesuits 7

Any Justice of Peace within the County, in which any Jesuit, or other *Jesuits, their sub-*  
Popish Priest, or other Ecclesiastical person shall arrive or land, within *mis.*

P. Jesuits 4

three dayes after their landing, may take their submission, oath, and acknowledgement, touching their obedience to the Kings Majesty, and his Laws provided in cases of Religion: but if it be any other Subject, who is no Priest, &c. and yet brought up in any Seminary, they must make their submission, and take the Oath, &c. before two Justices, &c. See more in this title.

27 Eliz. 2.  
P. Jesuits 10.

Every Subject knowing any Jesuit or Popish Priest to be within the Kings Dominions, ought to discover the same to some Justice of Peace, or other higher Officer, within twelve dayes, &c. And such Justice of Peace ought within eight and twenty dayes after such discovery made to him, to give information thereof to one of the Kings Privy-Council, &c. upon pain of two hundred marks. And upon such information given by the Justice of Peace, he shall have re-delivered to him a note in writing, subscribed by such Privy-Councillor, &c. (with his own hand) testifying that such information was made unto him.

13 Eliz. 2.  
P. Rome 6.

If any person to whom any *Agnus Dei, Cross, Picture, Beads,* or such super- *Agnus Dei.*  
stitious things shall be delivered or offered, do disclose such deliverer or offerer to any Justice of Peace, &c. That Justice of Peace within fourteen dayes, must declare the same to one of the Kings Privy-Council, or else he shall incurr the danger of a *Premunire*.

Co. 11. 63.

b. 3 Jac. 4.

P. 50.

P. Sacra. 5.

If there be any Subject of this Realm, be he popish Recusant (convict, *Forfeitures of Recus.*  
or not convict) or other person, that shall not repair every Sunday to some Church (both to Morning and Evening Prayers) and then and there to abide

abide orderly during the time of Prayer, Preaching, or other service of God there used, according to the statute made, 1 *Eliz. cap. 2*. Then any one Justice of Peace of that limit where the said party shall dwell, upon proof to him made of such default (by confession of the party, or Oath of witness) may within one month next after such default, call the party before him, and if he shall not prove sufficient cause of his absence (to the satisfaction of the said Justice) the said Justice of Peace may give Warrant under his Hand and Seal to the Church-wardens, to levy twelve pence for every such default, by distress and sale of the Offenders Goods, &c. And in default of such distress, the said Justice of Peace may commit such Offender to prison, untill payment be made of the said summe so forfeited; the same to be employed to the use of the poor. Also this Statute seemeth to extend to Women that be married: See *Co. 11. 91. b*. See also the title, *Riots hic cap. 88*.

And so note that this penalty of 12 d. and of 20 li. a month, shall be both of them paid by a Recusant convict, *Co. 11. fol. 63. b*.

Also this repairing to Church every Sunday, must be as well to Evening prayers, as to Morning prayers, for it ought to be an entire day, and an entire service; " And so Sir *Richard Hutton* (one of the Judges of the " Court of Common-Pleas) did deliver it in his Charge at *Cambridge* " Lent Assises, *Anno 1 Caroli Regis*. And therewith agreed Sir *Robert Bart-* " *let at Summer Assises, Anno 9 Caroli Regis*.

The party that doth first discover to any Justice of Peace, any Recusant, or other person entertaining or relieving any Jesuit, Seminary, or popish Priest, or any Mass to have been said, or any of them that were present thereat, within three days after the Offence (and by reason of his discovery, any of the Offenders be taken and convicted) shall be freed from danger of the offence, if he be an Offender therein, and have the third part of the forfeiture which shall be forfeited by such offence, 3 *Jac. 5. P. 60. cap. 4*.

Before some Justice of Peace of the County, Liberty, or Limit where the Parents of a Child sent beyond Seas without Licence, did dwell, such Child must take the Oath of Allegiance expressed 3 *Jac. cap. 4*. And they that were beyond Seas before the making of this Act, are to take the same Oath within six months after their return, before some Justice of Peace where such persons inhabit, before they can take the benefit of a gift, conveyance, device or descent, &c. of any Lands or Tenements, &c. 3 *Jac. c. 5. P. 70, 71.*

So depart  
ten miles  
from Lond.

Popish Recusants indicted or convicted, and all other persons which have not repaired to some usual Church or Chappel, and there heard Divine Service, by the space of three months last past, dwelling, or which shall dwell in any County within ten miles of the City of *London*, shall depart from thence according to this Statute, and deliver up his or her name to the next Justice of Peace in the same County, upon pain of forfeiture of 100 li. 3 *Jac. cap. 5. P. 62.*

Their Ar-  
mour taken  
away.

Any one of the four Justices of Peace, which by this Statute may licence a confined Recusant to travell, may minister the Oath to be taken by such Recusant, that he hath truly informed them of the cause of his journey, and that he shall not make any causeless stays, 3 *Jac. cap. 5. P. 63.*

After

3 Jac. 5.  
P. 75.

After any Warrant be granted out of that Quarter-Sessions, or from any four Justices of Peace there for the taking away of the armour of any popish Recusant convict; if any such Recusant having any such armour, gun-powder, or munition? or if any other person having any such armour, to the use of any such Recusant, shall refuse to declare unto any the said Justices of Peace, or any of them, what armour he or they have; or shall hinder or disturbe the delivery thereof, to any of the said Justices, or to any other person authorised by their Warrant to take and seise the same, then every such Offender shall be imprisoned, by Warrant of and from any two Justices of Peace of such County, by the space of three months without Bail.

3 Jac. 4.  
P. 45. 49.

Any two Justices of the Peace (the one being of the *quorum*) may require any popish Recusant, Man or Woman, of the age of 18 years, or above, which is convicted or indicted for Recusancy, or which have not received the Communion twice the year past; or which travelleth the Countrey, and is unknown (and being examined upon Oath, shall confess or not deny themselves to be Recusants, or not to have received the Communion twice the year past) to take the Oath of Allegiance appointed by the *Statute*, 3 Jac. cap. 4. And if such person shall refuse to answer upon Oath, such Justices of Peace examining him as aforesaid, or take the Oath of Allegiance, then the said two Justices shall commit the same person to the Common Gaol, there to remain without Bail, untill the next Assises or Quarter-Sessions: But Noblemen and Noblewomen are excepted, as not to be dealt withall herein by the Justice of Peace. Two Just.

1 Jac. 7.

Also any two Justices of Peace may take the said Oath of Allegiance of such persons as have charge of Castles, Fortresses, Block-houses, or Garrisons, and of all Captains having charge of Souldiers within this Realm: And upon refusal may commit the Offender, being of the age of 18 years, to the common Gaol, there to remain without Bail till the next Assises or Quarter-Sessions, 7 Jac. 6.

Also by the same *Statute*, 7 Jac. cap. 6. any two Justices of Peace, the one being of the *Quorum*, may require any other person or persons, man or woman, be they Recusants or not, of the age of 18 years, or above (under the degree of a Baron or Baronesse) to take the said Oath; and may commit them as aforesaid, upon their refusal.

7 Jac. 6.

And by the said *Statute*, if any person whatsoever, of the age of 18 years (under the degree of a Baron) shall stand any may be presented, indicted, or convicted for not coming to Church, or receiving the Communion, before the Ordinary, or any other having lawful power to take such presentment, or indictment; or if the minister, pety-Constable, and Churchwardens, or any two of them shall complain to any one Justice of Peace near adjoyning, and the said Justice of Peace shall find cause of suspicion, then that Justice, or any one other Justice of Peace within whose Commission or power such person shall be upon notice thereof, shall require such person to take the said Oath; and if any person shall refuse to take the said Oath tendred to him, or her, as aforesaid, then such Justice or Justices shall commit such Offender to the Common Gaol, there to remain without Bail till the next Assises or Quarter-Sessions. One Just.

P. 45.

The said two Justices of Peace shall certify in writing (subscribed with Two Just.  
their

their Hands) at the next Quarter-Sessions, the names and place of abode of such persons as have so taken the said Oath before them, by force of the *Statute, 3 Jac. 4.*

And it seemeth requisite, that the Justices or Justices of Peace do make <sup>3 Jac. 4. P. 49.</sup> like certificate (at the next Assises or Quarter-Sessions) of such persons as have taken the said Oath before them, by force of the *Statute, 7 Jac. 6.*

Such persons as have been reconciled to the Pope, if they shall return into the Realm, and thereupon within six days next after their return, shall submit themselves to his Majesty and his Laws, before any two Justices of Peace, joyntly or severally, of the County where they shall arrive, the said Justices may take such submission, and withall may take their Oath to the Supremacy, and their Oath of Allegiance; and the said Oaths so taken, the said Justices shall certify at the next Quarter-Sessions upon pain of 40 li.

Any two Justices of Peace of the County where any of his Majesties <sup>37 Eliz. 2. P. Jesuits 4.</sup> subjects (not being a Jesuit, or other popish Priest, &c.) brought up in any Seminary, shall arrive within six months next after Proclamation to be made in that behalf in the City of *London* under the Great Seal of *England*, may (within two days next after such return) receive his submission to his Majesty and his Laws, and take his oath to the Supremacy.

The Justice or Justices of Peace that shall receive or take any submission, or oath, as aforesaid (by force of the *Statute of 27 Eliz. cap. 2.* shall certify the same into the Chancery, within three months after such submission, upon pain to forfeit one hundred pounds, *27 Eliz. cap. 2. P. Jesuits 11.*

If any married Woman (under the degree of a Baronesse) being lawfully <sup>7 Jac. 6.</sup> convicted as a Popish Recusant, shall not within three months after such conviction repair to the Church, and receive the Communion, &c. Any two Justices of Peace (the one being of the *Quorum*) may commit her to Prison, there to remain without Bail, untill she shall conform her self, &c.

Search for  
Reliques.

Any two Justices of Peace from time to time, may search the houses and lodgings of every popish Recusant convict, and of every person, whose wife is a popish Recusant convict, for popish Books and Reliques of Popery. And they may presently deface and burn such Books and Reliques as they shall find: yet if it be a Relique of any price the same is to be defaced at the general Sessions of the Peace, and to be restored to the owner. <sup>3 Jac. 5. P. 74.</sup>

Confined.

A convicted popish Recusant of small ability (not having twenty <sup>35 Eliz. 2. P. 54.</sup> Marks freehold *per annum*, or forty pounds in goods, nor being a feme covert) that shall not repair to his place of usual dwelling, or place of birth, &c. and there notify himself to the Minister and Constables (according to the *Statute of 35 El.* Or shall afterwards remove above five miles from the same, if after he be apprehended, and shall not conform himself within three months, in coming usually to the Church, and in making such publique submission, as in the said statute is appointed, being thereunto required, as hereunder is mentioned: Then any two Justices of Peace may require such Offender to abjure the Realm, and may assign him the time and Haven, &c. And every such Offender shall upon his corporal Oath, before the said Justices, abjure this Realm of *England*, and all other the Kings Dominions, for ever.

Abjuration.

The

The Oath of the abjuration may be taken by the Justices of Peace, of Recusants, in this form, or to this effect :

*You shall swear that you shall depart out of this Realm of England, and out of all other the Kings Majesties Dominions, and that you shall not return hither, or come again into any of his Majesties Dominions, but by the Licence of our said Sovereign Lord the King, or of his Heirs : So help you God. See Stamf. 119. Vide Wilk. 40.*

And such Recusants thereupon shall depart out of this Realm, at such Haven and Port, and within such time as shall in that behalf be assigned and appointed by the said Justices of Peace, unless he be letted and stayed by such lawful means or cause, as the Common Laws do allow in cases of abjuration for Felony, &c. 35 *El. cap. 2.*

If any such Recusant shall refuse to make such abjuration; or after such abjuration made, shall not go to such Haven, and within such time as is so appointed him, and from thence depart out of this Realm, according to this Statute, or after such departure, shall return or come again into any his Majesties Realms or Dominions, without his Majesties special licence, in that behalf first obtained; in every such case the person so offending shall be adjudged a Felon, *ibidem.*

The Justices of Peace before whom any such abjuration shall be made, shall cause the same to be presently entred of record before them, and shall certifie the same at the next general Gaol-delivery to be holden in the same County, 35 *El. cap. 2. P. 31.*

The Bishop of the Diocese, or any one Justice of Peace, or the Minister of the Parish where such convicted Popish Recusant of small ability shall be, may require the submission of such Recusant, 35 *El. 2. P. 31.*

The Form of such Submission, see *ib. P. 34.*

3 Jac. 5.  
P. 3.

Recusants confined to five miles, may be licenced by any four Justices *Four Just.* of Peace, and the Bishop or Lievtenant, or any Deputy-Lievtenant residing in the said County, under all their hands and seals, to travell about their necessary busineses out of the compass of five miles. But such Licences must specifie the particular cause of the said Licence, and the time of their absence must therein be limited, and the party so licenced must first take his Oath before the said four Justices, or any of them, that he hath truly informed them of the cause of his Journey, and that he shall not make any causeless stayes. See the form of such Licence, *hic post. tit. Presidents.*

See more *tit. Popish Recusants*, in the *Appendix.*

#### Revenue. CHAP. LIV.

14 Car. 2.  
cap. 10.

“ **T**HE Duties of the Justices of the Peace in their severall Counties  
“ in causing the Accompts of that part of the Kings Revenue of  
“ Hearths to be enrolled, and Duplicates thereof returned into the Ex-  
“ chequer. See the said Act, and the other additional Acts concerning  
“ the same.

15 Car. 2.  
cap. 11.

## Riots, Routs. CHAP. LV.

One Just.

**A**Ny one Justice of Peace alone, may use all good means to prevent a Riot or Rout before it be done; and for to stay it whilst it is in doing, and in the doing may take and imprison the Riotors, or bind them to their good behaviour: but being once done, and committed, one Justice of Peace cannot make enquiry thereof, nor assess any Fine, nor award any Process, nor otherwise meddle to punish it in the nature of a Riot or a Rout, but only as a Trespass against the Peace, or upon the Statutes of *Northampton*, or of *Forcible Entries*: whereof see the title *Forcible Entry*. Lamb. 185  
34 E. 3. 1.  
P. Just. 21.  
Cromp. 63  
14 H. 7. 8, 9  
Br. Peace. 7

And yet if one Justice of Peace, sitting in a Judicial place (as in the Sessions) shall see a riot, he may command them to be arrested, and may make a Record thereof, and the offenders shall be concluded thereby; but if one Justice of Peace shall see a riot in another place, and shall command them to be arrested, and shall make a Record thereof, the offenders shall not be concluded thereby, but may traverse it: And yet the Justice may record it, and certify the same to the next Sessions, &c. *Cro.* 41. Cromp. 65  
Ibid.

If a Justice of Peace will commit a man to Ward, pretending untruly that he did a Riot, where he did none, the party may have an Action of Trespass against him, *Fitz. Just. 9. tamen Vide Co. 8. fol. 121. a.* that the Record of a Force made by a Justice of Peace is not Traversable, for that he doth it as a Judge: And so the Justices Record of a Riot, is not traversable. See *hic postea*. Also see *Br. Judges 2. & 10.* That an Action will not lie against a Justice or Judge of Record, *& 2 R. 3. 10. hic cap. 120. sc. pro re facta judicialiter.*

Every Justice of Peace (being of and in the County, and having notice of any Riot, Rout, or unlawful Assembly) ought to have a care of the execution of the *Statute* made 13 H. 4. c. 7. (*viz.* that the Riotors, &c. be arrested, and removed) for if that *Statute* be not executed in every part thereof, by some of the Justices, the two next Justices of Peace shall forfeit each of them 100 l. and every other Justice of Peace within that County, in whom there shall be any default, shall be finable. Dyer 210.  
Lamb. 321

And therefore every Justice of Peace of the County, hearing of any Rout, or of any intention of a Riot, (without making any precept, or tarrying for his fellow Justice, or for the Sheriff) shall do well to go himself (if he be able) with his servants, or other power of the County (if need be) to the place where such persons be so assembled, and to suppress them, and all such as he shall find and see riotously assembled (and armed) to arrest them, and to force them to put in surety for the Peace, or for their good behaviour: and for refusing to give such surety, or in default of surety, to imprison them: and also he may take away their weapons and armour, and seize and prize them for the King, *Vide tit. Armour, and Forcible Entry*. 14 H. 7. 9. b  
Lamb. 185  
Br. Peace 7  
Lamb. 79.  
124.

So that one Justice of Peace seeing a Riot, may and ought to record it, and to attach the Riotors, and to commit them, or bind them over to the good Behaviour; But he may proceed no further therein. For he cannot fine them without enquiry, which enquiry must be by a Jury, and before two Justices of Peace; And may be at any time within the moneth. Otherwise for omitting of attaching or arresting the offenders at the first, the Justice

Justice which saw the riot is punishable : But the enquiry by a Jury must be within one moneth, *sub pœna* 100 li. to the two next Justices, &c; See *hic postea*.

14 H. 7. 10  
Br. peace 7 And if the Justices of Peace (being come to the place) shall not find the Riotors yet come thither, he may leave his servant there (with his Warrant in writing, or without Warrant, as it seemeth) to restrain them in their said enterprise, or else to arrest such offenders, when they shall come, if they shall offer to commit any Riot, or to break the peace; and this for speedy remedy.

14 H. 7. 10  
Br. peace 7 So if the Justice be sick, and shall hear of a Riot, he may send his servants, or other power of the County, if need be, (with his Warrant under his hand and seal, or without such Warrant, by word of mouth) to the place to repress it, or to arrest such offenders, and to bring them before him, to find sureties for the peace : and all this he may do without expecting the coming of any his fellow Justices, or of the Sheriff, or under-Sheriff; and this also for expedition.

P. 127. 6. Also one Justice of Peace, by the Statutes made 1 M. cap. 12. and 1 El. 16. might have made proclamation in the Kings name, That all persons riotously assembled, should depart to their habitations, &c. The form of which proclamation you may see in the same Statute, and in P. Riots, 27. But the said Statutes are now expired.

Also any one Justice of Peace (by the first *Assignavimus* in the Commission) may cause to be kept and put in execution, all other Statutes made for the repressing of riots, force, and violence : but therein he must deal only according to the form and order in such Statutes prescribed.

13 H. 4. c.  
7. P. 2. 5. But the ordinary power of punishing of Riots belongeth unto two Justices of Peace at least : and therefore the two next Justices of Peace which dwell nearest in the County, where any Riot, Assembly, or Rout of people shall be against the Law, together with the Sheriff or under-Sheriff of the County, upon complaint or other notice of the Riot, shall do execution of the Statute 13 H. 4. 7. (sc. of all and every part thereof respectively, as to them is appointed) every one of them, upon pain of 100 l. And in default of the two next Justices, the other Justices of Peace of and within the County (upon notice of such Riot) ought to do execution thereof, every one upon danger to be fined : but the penalty of 100 l. is only to be laid upon the two next Justices. Two Just.

See the Case of *Drayton Bassett*; *hic antea*, tit. *Forcible Entry*; where certain Justices of Peace which were not the next, nor did not dwell nearest to the place where the Riot was committed, and yet were fined upon the Stat. of 17 R. 2. cap. 8. But that Riot was notorious, for there were a great number assembled in the Mannor House of *Drayton Bassett*, who did detain the same forcibly.

And therefore if the Riot, &c. be great and notorious, whereof by common intendment every person may take knowledg, it is not safe for the Justice or Sheriff, &c. to expect and stay till complaint thereof shall be made unto them, or that they shall have information or notice given them thereof, lest they incur thereby the said penalty of 100 l.

If any one other of the Justices of the Peace of the County (besides those

two which are next) shall execute this *Statute*, that shall excuse the two next Justices, for that the *Statute* giveth power herein to all Justices. P. R. 30.

If one, or the two next Justices shall come, and not the Sheriff or under-Sheriff, such Justices as do come, shall be excused of the forfeiture of 100 l. but though the said Justices shall be excused of the said forfeiture; yet if there cometh but one Justice of Peace, he ought to arrest the Riotors, and to remove the force, and commit or bind over the Riotors; otherwise he is finable, &c.

And if there shall be two Justices present, and neither the Sheriff nor under-Sheriff; yet those two Justices are finable, if they shall not do all that, which (without the Sheriff or under-Sheriff) they are authorized to do by the said *Statute*. Lamb. 322

But no Justice of Peace that dwelleth in another County is bound upon the said penalty of 100 li. to execute the said Stat. of 13 H.4. although he dwelleth next to the place where the riot is, and although he be in Commission of the Peace for the County where the Riot is, as it seemeth: for the words of the *Statute* are, The Justices which dwell nearest in every County where the Riot shall be, and not which dwell nearest to the place where the riot shall be; and yet it seemeth safe, that such Justices dwelling out of the County, upon notice of such Riot do come into the County, and do his endeavour to suppress the same Riot, and to execute the Stat. for that he is one of the Justices of the County. Lamb. 321

If the Sheriff or under-Sheriff do not come, the Justices ought to send for them, as M. *Murrow* thinketh. P. 5.

And some seem to be of opinion, That if the Sheriff or under-Sheriff shall not come to the Justices, being sent for to assist them, that then all the Justices of Peace dwelling near or remote, shall be excused of the same penalty of 100 li. or of any other penalty or fine; for that the said *Statute* doth give the Sheriff or under-Sheriff equal authority, and as it were joyn him in Commission in the copulative with the Justices of Peace. But others seem to be of another opinion, viz. That if the Sheriff or under-Sheriff shall not come, yet the Justices of Peace shall be fined if they come not, and arrest the Riotors, and do not moreover proceed to do therein all that which (without the Sheriff or under-Sheriff) they are in any way authorized to perform. P. R. 30.

Now what the Justices of Peace may or ought to do therein (by force of this *Statute* of 13 H.4.7. without, or in the absence of the Sheriff and under-Sheriff, is worthy consideration, as being needful for the Justices of Peace to know, and safe for them to perform, as well for the speedy preventing of such present mischiefs as may happen to the Common-wealth by such dangerous assemblies, as also for their saving of the penalty of the Law otherwise like to lie upon them. Lamb. 322

But herein I dare not determine, finding that others (of good judgment and experience) that have written hereof, have seemed to doubt hereof. Crompt. 63

And yet there is no doubt, but that the Justices of Peace (without the Sheriff or Under-Sheriff) upon all Riots, may and ought first to go to the place, and such Riotors as they shall see or find riotously assembled, they may and ought to arrest them, and to take away their armour and



and weapons, and to remove and commit the Riotors, or may cause them to find sureties for the peace or good behaviour; and for want of such sureties, may commit them to the Gaol: all which any one Justice of Peace may do.

*P. Riots. 2.*  
*Cromp. 67*  
*b.* Also two Justices of Peace after the Riot committed (without the Sheriff or under-Sheriff) may and ought to inquire of the Riot; and if upon such inquiry the Riot be found, the said Justices may fine and imprison the offenders, as hereafter appeareth.

But whether two Justices of Peace seeing a Riot, may record the same upon their own view, without the Sheriff or under-Sheriff, and thereupon (without any inquiry) may fine them for the same, and may commit them to prison till they have paid the same fine, is to be considered. I know the common opinion to be, That they cannot record the Riot (without the Sheriff, or under-Sheriff) for, say they (by the *Statute*) the Sheriff or under-Sheriff are associated to the Justices of Peace, and have equal authority with them therein; and consequently the Justices of Peace alone upon their own view, without inquiry, can neither fine them, nor imprison them for their Fine.

*14 H. 7. 9.*  
*b. See Co.*  
*10. 103. b.*  
*such a*  
*matter.* Yet *Fineux*, Chief Justice, saith, That this \* *Stat. of 13 H. 4.* was made for the common profit of the Realm, and for a hasty remedy, and to avoid a present mischief like to happen, and therefore shall be construed largely for the common good, and in furtherance and advancement of expedition of Justice.

\* M Lamb.  
thinketh it  
to be the  
Stat. of 34  
E. 3. 1. that  
*Fineux*  
meant, ra-  
ther then  
the Stat. of  
13 H. 4.

*21 P. 6.*  
*55.* Also we see, that any one Justice of Peace may do all these things in case of a Forcible Entry, *sc.* Any one Justice of Peace may come with the power of the County, if need be, and may arrest the offenders, and may record the force by him viewed: and this record shall be a sufficient conviction, so that he may thereupon commit the offenders to the Gaol, and may fine them.

*P. 1.* Also this *Statute of 13 H. 4.* doth relate to the said *Statute of Forcible Entries, 8 H. 6.* touching the conviction of offenders by the record of the Justices.

*Fitz. Just.*  
*9. 17.*  
*14 H. 7. 8.*  
*Cromp. 65*  
*196.* Also if two Justices of Peace (without the Sheriff) shall see a Riot, they may arrest them and make a record thereof, and the offenders shall be concluded by such record, for that the view of the Riot is not to be traversed, *Lamb. 313.*

*P. Just. 18.* Also the *Statute 34 E. 3. 1.* seemeth to enable two Justices of Peace to imprison and fine Riotors, and that without inquiry, and then consequently, it seemeth they are to make a record of the Riot.

And yet *Quere* whether two Justices of Peace (upon the *Stat. of 13 H. 4. 7.*) without the Sheriff, may upon their view of a Riot, record the Riot, and without inquiry fine the offenders, and imprison them till they have paid their Fine (as convict by their view and record) though this may seem to be more for the Kings advantage, rather than to hazard the Fine upon the finding it by inquiry. But it rather seemeth, That the Justices upon their own view of a Riot, may record it, and commit the offenders, and then to certify or send the record into the Kings Bench, where the offenders shall be fined: And this I take to be more warrantable, and safer for the Justices, if they shall not inquire thereof.

Two Justices and the Sheriff.

And now to the particulars of that which the two next Justices of Peace, with the Sheriff or under-Sheriff, must do in execution of this Statute of 12 H.4.7. every one upon pain of 100 li.

1. To go with Posses Comitatus.

1. First, they shall go to the place in person, if they be able, where the riot, &c. shall be. 13 H.4.7. p. 1, 2.

And they shall take the power of the County (if need be) *sc.* they shall have the aid of all Knights, and other temporal persons under that degree, that be above the age of fifteen years, and be able to travell: for all the Kings Subjects that are in the County where a Riot, &c. shall be, being able to travel, must be ayding and assisitant to the Justices of Peace, Sheriff, or under-Sheriff, (or other Commissioners) when they shall be reasonably warned to ride or go with the said Justices and the Sheriff, &c. in aid to resist such Riots, &c. upon pain of imprisonment, and to make Fine and ransom to the King; which Ransome shall be treble so much at the least as the Fine, *Dyer* 232. Yet by others, by *Ransome*, is intended, That the party is to make his agreement with the King, *ad verum valorem omnium bonorum suorum mobilium*. 2 H.5.8. p. 12.

But Sir *Edm. Cooke*, *L.* 127. saith, That in legal understanding, a Fine and Ransome are all one.

And it is referred to the discretion of these Justices, how many, or few, they will have to attend them in these businesses, and in what sort they shall be armed, weaponed, or otherwise furnished for it.

Again, it is not good for the Justices to assemble the power of the County, without certain information, or knowledg of such riotous assembly: yet if upon false information of a Riot, to be at such a place, the Justices shall cause the power of the County to be assembled, the Justices shall be excused by reason of the information; and if without information the Justices shall think that such a riotous Assembly is made in such a place, and shall assemble the power of the County to go thither and arrest the Riotors, and when they come to the place they find a Riot there indeed, they must arrest and imprison the offenders, and shall be excused of the assembly made by them: but if they shall find no riot there, then shall they be punished for making such an assembly of their own heads, without information. Lamb. 301 Cromp. 64.

Arrest.

2. All such offenders as they shall find there present, they shall arrest them, or cause them to be arrested, and shall remove the force, *sc.* shall commit to prison all the Riotors, and take away their weapons.

Also it seemeth, that all such as came in the company with such Riotors, or in the company of any of them, if that the Justices shall find them there present (though they do nothing, and though they came without any intent of their parts to commit any Riot, yet they shall be arrested, imprisoned, and fined. See to this purpose in the title *Forcible Entry*, cap. 76.

Also all such Riotors as the Justices shall meet in their way (riotously arrayed, and coming from the place) they may arrest and imprison them, for that they found them unlawfully assembled; but they cannot record any Riot by them done, for that they saw it not, yet they must afterward (as it seemeth) inquire thereof by a Jury, that so the offenders may be fined, &c. See more in this title. Mar. Lec. 8 Cromp. 6.

But

But if the Justices do come and see the riot committed, and after the said Riotors shall escape from the Justices at that time, yet the said Justices shall record it; but they cannot arrest them at any other time, except it be presently after, and in fresh Suit; neither can they Fine the Offenders, nor award any process against them upon that record which they shall make: and yet for that they saw the riot (and these Rioters that be escaped, committing the riot) they shall record it. But that record shall not be kept amongst the records of the Peace, but the said Justices shall send the said record to the Kings Bench, that process may from thence be made upon it, against those Riotors that be escaped; where also the said Offenders shall not be admitted to any traverse, but must of necessity make Fine for their said offences.

Lamb. 312.

If after the Justices and Sheriff shall see the riot, the said Riotors shall escape, and the Justices and Sheriff shall record the same riot, and then one of the Justices be put out of the Commission, or the Sheriff, or one of the Justices shall happen to dye, yet shall that record be sent or certified into the Kings Bench, by the other Justice and Sheriff, *Lamb. 320.*

But if (after the inquiry, and before the Certificate) the Sheriff, or the Justices shall dye, or be put out of the Commission, or that their authority doth cease by the death of the King, or otherwise, such record cannot be certified without the Kings Writ of *Certiorari*. *Br. Record. 17. 64. and Lamb. 320.*

13 H. 7.  
Crompt.  
961.

Also such Offenders, as the Justices saw committing the riot, though they shall escape from the Justices, yet the said Justices may after grant out their Warrants for them, and send them to the Gaol, till they shall find Surety for their good behaviour.

34 E. 3. c. 1.  
P. Inst. 18.

If such Offenders shall be departed before the coming of the Justices, yet (upon certain information of their being there) the said Justices may also grant out their Warrants for them, and may commit them, till they have found sureties for their good behaviour: Or rather the Justices shall do well to proceed against them, by inquiry, and so to fine the Offenders for the King, &c. See more in this title.

Lamb. 310.  
Crompt.  
62. 158.

Also in the execution of this Arrest of the Riotors, the said Justices, &c. may justify the beating, wounding, or killing, of any of the Riotors that shall resist them, or that will not yield themselves to them. *Vide tit. Homicide, bis.*

Also the said Justices may take from such Riotors, their Armour, Harness, and weapons, and shall cause the same to be prized and answered to the King, as forfeited.

13 H. 4.  
c. 7. p. 1.

3. After the Arrest made, the said Justices and Sheriff, or under-Sheriff, shall make a record in writing, of the said riot (*scil.* of all that which they shall see, and find done in their presence against the Law) without any other inquiry: And that their record is a sufficient conviction of the Offenders. *3 Record.*

If two Justices of Peace shall see any making of a Riot, they may command others to arrest the Riotors, and then make their Record thereof, and the Offenders shall be concluded thereby, *Fitz. Just. of Peace, fol. 17.*

But if the Justices of Peace do not themselves see the Riot, they cannot make a record thereof; but then they must inquire thereof. If

If the Justices of Peace, &c. going to see a Riot, another Riot shall happen in their presence; they may record this, and arrest and imprison the Offenders.

So if the Riotors shall make a riot upon the Justices (and Sheriff) that do come to arrest them for their former riot, they may record that also.

So if two Justices of Peace (and the Sheriff, or under-Sheriff) shall meet for any other cause of service, or for any private business (as upon an arbitrament, or other like matter,) and a riot shall happen to be done upon themselves, or in their sight, they may record it, and may arrest, and imprison the Offenders.

And if the Justices of Peace shall record a Riot, and upon examination of the matter after, it shall appear to be no riot; or that they saw it not, or that there was no riot at all; yet the parties shall be concluded thereby, and have no remedy (as it seemeth) and therefore the Justices shall do well to be advised what they record. See 9 H. 6. fol. 60. Br. Judges 2. Fitz. Inst. of P. fol. 17. 9H.6.f.60.  
Crompt. 63.  
65.

And again, for that this record of the Justices and Sheriff, is a sufficient conviction in it self against the Offenders, therefore it ought to be formal and certain as well for the time and place, as also for the number, weapons, manner, and other circumstances, because the parties be concluded thereby, and shall not be received to traverse, or deny it in any point. Lamb.  
311.

The form of the Record, *vide hic cap.* 130.

This Record ought to remain with one of the said Justices of Peace; and shall not be left amongst the Records of the Sessions of the Peace, it being made out of the Sessions, and not appointed to be certified thither. Lamb.  
312. &  
365. 375.

4. Also the said Justice of Peace (and none other Justice of Peace) shall commit such Offenders to the Gaol, there to remain convict by their view, testimony, and Record (as in case of forcible Entry) untill they have paid a fine unto the King. P. 1. 11.  
Lamb. 312.

Also such commitment of the Offenders to the Gaol ought to be done presently. Co. 8. 120.

And the power of the County ought to be aiding to the Sheriff, or under-Sheriff, for the conveying of them to the Gaol. Lamb. 310.

If the Justices of Peace, and Sheriff, or under-Sheriff, shall record the riot, and shall not presently commit the Riotors to prison: or if they shall commit them to prison, and shall not record the riot, they shall forfeit every of them 100 l. by the Statute of 13 H. 4. for that they have not done execution of the same Statute: for by the Statutes they shall record and commit; and again, by the same Statutes, the Offenders must be as well imprisoned as fined. Crompt. 61.  
P. Force 2.  
P. Riots 1.

5. Also the said Justices of Peace (and none other) shall assess the Fines upon the said Offenders; for they have best knowledge of the matter, &c. Co. 8. 40. a. which fines by the Statute of 2 H. 5. 8. ought to be of good value, that out thereof the charges of the said Justices and other Officers may be born, *sc.* their charges in going, tarrying, and returning, &c. about the suppressing and enquiry of such riots; of which charges, payment shall be made by the Sheriff, by Indenture thereof made between him and the said Justices. Lamb. 312.  
557.  
Crompt. 162.  
P. 10.

And

And yet such fines must be reasonable and just, and *secundum quantitatem & qualitatem delicti*, and not unreasonable and excessive (for *excessus in re qualibet jure reprobatur communi*, Co. 11. 44.) and so it is commanded by the statutes, 9 H. 3. 14. 3 E. 1. 6, 18, 3, 2. and 34 E. 3. 1. P. Just. 1. & 18.

And the reasonableness of the fine shall be adjudged by the discretion of the same Justice of Peace, Co. L. 56. 6.

Note also, that the fine assessed in this, and such like cases, must not be imposed upon all the Offenders jointly, but must be assessed upon every Offender severally, Co. 11. 43, 44.

And yet note, that in some cases a fine or an amercement shall be imposed upon divers jointly; (*sc.* sometimes upon a whole County, sometimes upon a Hundred, and sometimes upon a Town, as for an escape of a Murderer, &c. whereof see *hic post.*) but that is by reason of the incertainty of the persons, and for the infiniteness of their number, Co. 11. 43.

And the said Justice shall cause the said fine to be estreated into the Eschequer, that so the said fines may be levied to the Kings Majesties use; and then they are to deliver the Offenders again, as it seemeth: Or else the said Justices may record such riot by them viewed, and commit the Offenders, and after certify the Record to the Assises or Sessions, or into the Kings Bench, as in case of forcible Entry.

6. But if the riot was not committed in the presence of the said Justice *Enquiers.* of Peace; or that the Offenders be departed before the coming of the said Justices, and Sheriff, or under-Sheriff, then the said Justices, or two of them at the least, within one month, immediately after such Riot, Assembly, or Rout, shall enquire thereof by the Oaths of a sufficient Jury to be returned by the Sheriff, (who shall return upon every person so by him impanneled in issues at the first day 20 s. at the second 40 s.) and the same Riot, &c. being found by such inquisition, the said Justices may make, or cause to be made a record in writing, of such their enquiry or presentment found before them, which record also is to remain with one of the said Justices, P. R. 29. See the form thereof, *hic cap. 130.*

The form of a precept to be made by the Justices to the Sheriff, to return a Jury, &c. *Vide hic postea, cap. 130.*

The form of such enquiry or presentment, See also the tile *Presidents, hic post. cap. 130.*

Cromp. 62. This enquiry shall not be, but where the Riotors are gone before the coming of the Justices: or where they had not the view of the Riot.

It is not necessary that one of the Justices of Peace (which shall make enquiry of a Riot) be of the *Quorum*.

Lamb. 316. Although the words of the *Statute* are, the same Justices (*sc.* which came to see the Riot) shall enquire; yet if any other two Justices of Peace of that County shall do it, that will suffice.

Also the Justices of Peace, although they go not to see the Riot, yet they may enquire thereof within the month after.

Lamb. 317 Neither is it of such necessity, to have the enquiry within the month, that for default thereof the presentment shall be void; for the Justices of Peace may enquire thereof at any time by force of their Commission. but if it be not within the month, then every of the two next Justices are in danger to lose 100 li. for it. And if these Justices do charge the Jury within

within the month, and do give day unto them for to yield their Verdict and Presentment after the month, the Statute is not offended.

But yet it seemeth that the Justices of the Peace are not bound upon the penalty of 100 l. to enquire within the month of all petty-Riots, but only of such riots as are notorious and dangerous, and in the nature of Insurrections or Rebellions.

At this inquiry, the Sheriff, or under-Sheriff, ought to be present with the Justices of Peace, but the Sheriff, or under-Sheriff, be now as Ministers only for the returning of the Jury (for this enquiry,) and be not herein associated with the Justices, as they were before in arresting the Riotors, and recording their disorder, and therefore they are now to be spared from being Judges therein; howbeit by this their presence, they may help to espy the evil; and besides, it addeth force and credit to the Certificate. Lamb. 316.  
318.

If the Justices do assemble themselves, the Sheriff and the Jury, to make enquiry of a riot within the month, and the Parties be agreed amongst themselves, so as none will sollicite the enquiry, nor give in evidence for the King upon that riot, yet ought the Justices to proceed (*ex officio*) to make enquiry of that riot, seeing it may be that some of the Jury may have knowledg of the riot. Lamb. 317  
Crompt. 62.  
P. 29.

And also the Justices ought to make proclamation, that if any man will give evidence for the King concerning that riot, or (generally) will informe the Kings Justices of any Riots, Routs, &c. And thereupon some other persons may perhaps come forth to inform him therein. P. R. 29.  
Crompt. 62.

But if (at the Parties request) the Justices shall dismisse the Jury without enquiry, they are finable for the same.

And if the Justices shall not proceed herein (*ex officio*) without some will give in evidence for the King, *quare*, if they shall not be hereby in danger to lose the hundred pound upon this Statute, for the reasons above-said.

And it seemeth that the Justices of Peace may justly bind to their good behaviour, the Parties that first complained to them of this riot, and have caused them to meet, and now will not prosecute the same for the King, but have agreed it.

Hear and  
determine.

After such enquiry had, and the truth of the riot found, the said Justices have authority (by the said Statute) to hear and determine the same according to the Law, *viz.* they may make out their Warrant, or Process, (*sc. a Venire facias, hic cap. 132.*) against the Offenders under their own Teste (thereby to cause the Offenders to come in and answer,) and upon the appearance of the said Offenders, the said Justices may assess their fine, and may commit them to Prison, till they have paid their said fine, and may deliver them after payment of the same fine, or upon sureties taken for it (which sureties ought to be bound by Recognizance;) or otherwise they may receive their traverse, and thereupon (if the matter will so serve) to discharge and dismis them: But then the said Justices shall do well to send such indictment or inquisition found (and such traverse) to the next Quarter-Sessions, or into the Kings Bench, and there the traverse shall be tried and determined according to Law, *P. R. 30.* 13 H. 4.  
c. 7. p. 2.  
Lamb. 317.  
Br. Imp.  
102.  
Lamb. 317.

Note that all Indictments, Inquisitions, or Presentments, taken and found

found before Justices of Peace, of any Riot, Forcible Entry, or other thing against the Peace, may be delivered into the Kings Bench, by the hands of the same Justices of Peace, before whom the same was found, or otherwise may be removed from the said Justices of Peace, before the Justices of the Kings Bench, by a *Certiorari*; in both which cases the Justices of the Kings Bench may proceed to hear and determine the same.

Now by the Statute made 2 H. 5. cap. 8. the King is to bear the charges of the Justices of Peace, which shall execute the *Statute* of riots. And therefore,

Concerning the fine so assessed by the Justices of Peace, the Justices of Peace may thereout (as it seemeth) pay the charges of the said Justices, and of the Jury (which made the enquiry, and by whom the riot was found) *sc.* for their dyet, and the Sheriffs fees, &c. And then they may bring the record of this inquiry to the next Quarter-Sessions of the Peace, and there deliver the same record to the Clerk of the Peace, together with the residue of the money remaining of the Fine, &c.

Also the Clerk of the Justice which maketh up the record of this inquiry, may have his fees out of that money: or else he may take of every Offender 12 d. when they have paid their fine; for so the Clerks of the Peace use to do.

Or rather the said Justices are to be paid their charges (in going, and continuing, in doing, and executing their said Office) by the Sheriff, by Indentures made between the Sheriff and the said Justices; whereof the Sheriff, upon his accompt in the Exchequer, may have due allowance, 2 H. 5. cap. 8. *The Justices charges.*

But when men are indicted of riots (or the like) they will usually yield themselves, and pray to be admitted to their fine (in which case the Justices of Peace commonly do assess but some small sum or fine) and upon the payment thereof, do discharge the Offender; and hereby the Offenders are not imprisoned, (which would work more for fear in such Offenders, then such fine) and therefore it is behoovefull for the Justices of Peace to use good care and discretion herein; for by the *Statute* 2 H. 5. cap. 8. the Offenders are as well to be imprisoned, as fined, and it seemeth much more serviceable, and more agreeing with the intent of the Law. Besides, this fine is called in divers places in the \* old Statute, Ransome (or *Redemptio*, in Latine) and seemeth by the property of this word to imply, That the Offenders ought first to be imprisoned, and then to be ransomed, and delivered in consideration of this fine; To which purpose see Mr. *Horne* in his *Mir. of Just.* l. 3. where he sheweth that Ransome is the redemption of a corporal punishment due by Law to any offence.

And these fines the Justices of Peace are willed by the *Statute* (2 H. 5. c. 8.) to put in greater sums then they were wont to be put in such cases, for the bearing of the charges of the Justices and other Officers, &c. as is before said.

At the Common Law, a Riot was punishable as a Trespass, and as well the fine, as the imprisonment were at the discretion of the Judges: and in the same manner the stat. of 13 H. 4. enabled the Justice of Peace to punish such Offenders. But now as well the Imprisonment, as the fine of such Offenders are to be encreased by the said *Statute*, 2 H. 5. c. 8.

And

Lamb. 559.

\* Marl.

c. 1, 2, 3, 4.

Lamb. 559.

And therefore where the Justices of Peace are remifs herein (*sc.* in not sufficiently punishing such Offenders by due fine and imprisonment) the Lords in the Star-Chamber, have often assessed upon Riotors for the same riot (for which the Justices of Peace have formerly assessed a fine in the Country) a greater penalty, if they see cause; and yet in this case the Offenders be not twice punished for one offence, but that one part of the due punishment is inflicted at one time, and part at another.

Crompt. 63.  
P. R. 24.

Certificate.

So lastly, if the truth or riot cannot be found by the Justices of Peace upon such enquiry (being hindred by the perverseness of the Jurors, or by the unlawful maintainance, countenance, or embracery of other persons that put themselves into the cause then within one month next after the inquiry, the same Justices and Sheriff, or under-Sheriff, shall certify before the King and his Council (to the Body and Board of the privy-Council, or into the Kings \* Bench; *Crompt. 63.* (so much of the fact and circumstances thereof, as may by any ways or means appear unto them, with the certainty of the names of the principal Offenders, upon pain of one hundred pounds to every of the said Justices, Sheriff, or under-Sheriff: & also the said Justices, with the Sheriff, or under-Sheriff, ought in the same Certificate, to certify the names of such maintainers and embracers, with their misdemeanors; and of the time, place, and other circumstances, and the impediments, why the truth of the Riot, &c. is not found, upon pain of forfeiture of twenty pound a piece, to every of the Justices and Sheriff, *Crompt. 63. b. & 199. b.* The form of such Certificate, See *hic cap. 130.*

13 H. 4. 7.  
19 H. 7. 13.  
P. 3. 15.  
Lamb. 318.

Lamb. 319.  
\* Br. Pre-  
munir.

The end of this Certificate is but only to put and force the Offenders to answer thereto before the King and his Council: and though the words of the *Statute* do make this Certificate to be of the force of a presentment of twelve men against the Offender: Yet such Certificate is no conviction, but that the Offenders may \* traverse it, by the words of the same *Statute*. And so this Certificate to be of the nature of a Declaration, or Indictment at the Common-Law, and therefore it ought to comprehend the certainty of the time, place, persons, and other material circumstances.

P. 3.  
Lamb. 318.

\* But such  
Traverse  
and Certi-  
ficate shall  
be sent into  
the Kings  
Bench, and  
there be  
tried.

If this Certificate be not made within one month after the inquiry, then is it not according to the *Statute*, and so not good to force the Offenders to answer.

If two Justices of Peace and the Sheriff, shall go to see a riot, yet any other two Justices of the County may make the inquiry, and then they all together, or the first two; or the last two (with the Sheriff or under-Sheriff) may make Certificate thereof within the month after that inquisition taken.

Where there be several Certificates made, or that the Certificate and the inquiry do disagree, then that shall be preferred which is best for the King.

Lamb. 320.  
Crompt. 63.

If there shall be twenty Parties to a Riot, and the Jury shall find but ten of them guilty, yet the Justices may certify that twenty committed that Riot, and this Certificate shall stand good.

Also it seemeth if any thing material happen to be omitted, or left out of the inquisition, yet it may be supplied by this Certificate, and it shall stand good.

If



Lamb. 320 If after the inquiry, and before the Certificate made, the Sheriff shall die, or one of the Justices be put out of the Commission, no Certificate can then be made, by the opinion of Mr. *Marrow*.

For the form of such Certificate, See *hic cap* 130.

2 H. 5. 3. Upon the default of the two next Justices, Sheriff, or under-Sheriff, for *commissioners*  
P. 6. not executing the said stat. of 13 H. 4. 7. the party greived may have Commission out of the Chancery, to inquire as well of the riot, as of the default of the said Justices of Peace and Sheriff or under-Sheriff.

2 H. 5. 3. Also the Lord Chancellor of *England* as soon he shall have notice of  
P. 9. such a riot, shall send the Kings writ to the Justices and Sheriff, commanding them to execute the said stat. of 13 H. 3.

And although that such writ come not to the said Justices, Sheriff, or under-Sheriff, yet they shall not be excused of the penalty of 100 li. aforesaid, if they make not execution of the said stat. *ibid*.

2 H. 5. c. 9. Also, if any assemblies of people in great number, in manner of insur-  
8 H. 6. c. 14 rection, or other rebellious riots, shall be done and committed; and that  
Rast. 374. such offenders shall withdraw themselves, to the intent to avoid the execution of the Law, then upon Certificate by two Justices of peace and the Sheriff of that County, by letters under their seals to the Lord Chancellor of *England*, of the same riot, and that the common voice and fame thereof runneth in the said County, the Lord Chancellor may make a *Capias* to the said Sheriff; for the apprehending of such offenders; and after, if need be, a writ of Proclamation, that the said offenders yield themselves in the Kings Bench, at a certain day, upon pain to be convicted thereof.

“ Note, That for riots in Cities or Corporations which are armed with  
“ power of government within themselves, the Franchises may be seized,  
“ or the Corporation fined, as it hapned in the case of the riot where Dr.  
“ *Lamb* was slain; the City of *Lond.* upon an information in the Kings  
“ Bench, was fined 1000 Marks, *Pasch. 8. Car.*

#### Rogues and Vagabonds: CHAP. LVI.

**T**He benefit of this Law, and of the former Law, made for the setting to work, and relief of the poor, are both of them worthy of the care of the Justices of peace, and of their best endeavours, for the due execution thereof; for by them.

1. Idleness is very much repressed: idleness, which of it self is the root of all evil.

2. Infinite swarms of idle Vagabonds are rooted out, which before wandred up and down, to the great danger and indignity of our Nation.

3. We our selves are now compelled but to releive the poor of our own Parishes (whose conditions and estates we know) and to a certainty of gift, wherewith we are now taxed by our neighbours: whereas before we gave we knew not what, nor to whom; and many times to such as were ready to have cut our throats, if opportunity had served them.

In this title of Rogues, I have intermingled certain Resolutions of the  
O Judges

Judges, made upon the Statute 39 *El. cap. 4.* for the better understanding thereof, which resolutions you shall find in *M. Lambert.*

One Justice  
may cause  
Rogues to  
be whipped.

Any one Justice of Peace may appoint all Rogues and Vagabonds which shall be taken begging, wandring, or misordering themselves, to be stripped naked from the middle upward, and to be whipped till their body be bloody, 21 *Jac. cap. 28.* 39 *Eliz. 4.*  
p. *Vag. 3.*  
1 *Jac. 7.*

After such whipping, the said Justice of Peace shall make them a Testimonial under his hand and seal, testifying their punishment, and mentioning the day and place thereof, and the place whither they are to go, and in what time they are limited to pass thither, &c.

The form of such a Testimonial, *vide hic cap. 124.*

All Rogues and Vagabonds are to be sent and conveyed forthwith, from Parish to Parish, by the Officers (*sc.* the Constables of every of the same) the next straight way to the Parish where they were born (if it may be known by the parties confession or otherwise: ) Or, the place of birth being not known, then to the Parish where such person last dwelt by the space of one year, there to put themselves to labour: Or, (it not being known where such person was born or last dwelt, then) to the Parish thorow which such person last passed without such punishment; and then the Officers of such Village or Parish, are to convey them to the House of Correction of that Limit wherein that Village is, or to the Common Gaol, there to remain and be employed till they shall be placed in service for one whole year; or not being able of body, till such person shall be placed in some Almes-house of that County. p. *vag. 3.*

The Rogue whose place of birth, or last dwelling cannot be known, having wife and children under seven years of age, they must go with the husband to the place where they were last wilfully suffered to pass without punishment; where the children must be relieved by the work of their parents, though the parents be committed to the house of Correction. 39 *El. 4.*  
1 *Jac. 28.*  
3 *Car. 4.*

A Rogue is taken at D. and will not confess the place of his birth, neither doth it appear otherwise, but that he confesseth truly his last dwelling to be at S. Whereupon he is whipped and sent to S. and coming to S. the place of his birth is learned to be at VV. and the rogue confesseth it to be so: in this case the Rogue is to be sent to the place of his birth, without any new Vagrancy, for his settling at S. was no legall settling. *Ref. 27.* Resol. 6.

Again, by the stat. made 7 *Jac. cap. 4.* all such Rogues, Vagabonds, sturdy beggars, and other idle and disorderly persons, as shall be found and apprehended in the generall privy search made by the Justices warrant &c. shall be brought before the said Justices at their said meeting, and shall be there punished; or by the said Justices warrant shall be sent to the house of Correction, there to be set on work, kept, and corrected, &c.

Who be  
Rogues.

But here, first to describe you these manner of persons (*sc.* Rogues, and Vagabonds) that you may the better know them.

A Vagabond (as one saith) is he which hath neither certain house, nor stedfast habitation; but liveth idly, and loytering: A man (as another describeth him) *sine re, sine spe, sine fide, sine sede*, or he may be called *Vagabundus quia errat per mundum.*

A Rogue may be so called, *quia ostiatim rogat. Midsh.*

Or it signifieth an idle beggar that wandreth from place place, without a lawful Passport.

A Beggar, *Mendicus quasi manu dicens* (speaking with the hand) *Mos enim erat apud antiquos Egexum silentio manum extendere.*

And yet Vagabond in its proper sense, is one that wandereth about: and a Rogue and a Vagabond seem to be all one; for the Latine words *vagus* and *vagabundus*, signify the one and the other: So as whosoever wandreth about idly and loytering, is a Rogue or Vagabond, although he beggerh not, *quod nota.*

39 Eliz. 4.  
P. Vag 2.

And more particularly, all these persons hereunder mentioned, being above the age of seven years, and offending as hereunder is mentioned, shall by our lawes be adjudged Rogues, or at least shall be punishable as Rogues.

1. All persons above the age of seven years, going about begging, upon any pretence or colour whatsoever: yea, although they be licensed by any subject, except it be in the Cases hereafter mentioned.

2. All idle persons going about the Countrey, either using any subtrill craft or unlawfull games, or being Fortune-tellers, or Juglers, or using any other like crafty science.

3. All Proctors, Patent-gatherers, or Collectors for Gaol, Prisons or Hospitals, wandring abroad.

4. All Fencers, Bearwards, Common players \* of Enterludes, and Minstrels wandring abroad. 21. *Jac. cap. 28.*

5. All Pedlers, petty Chapmen, Tinkers and \* Glasse-men wandring abroad, 21. *Jac. cap. 28.* especially if they be unknown; or have not a sufficient Testimonial.

Resol. 10.

6. All wandring persons, and common Labourers, being able in body using loytering, and refusing to work for reasonable wages, not having living otherwise then by labour to maintain themselves, are Rogues. And yet such persons as be of any parish, and have able bodies to work, and be no wanderers abroad out of the parish though they refuse to work, at such wages as is taxed commonly given in those parts, are not to be sent to their place of birth or last dwelling, &c. but to the house of Correction. See *tit. Poor.*

Resol. 15.

7. Poor Persons appointed to ask relief in the Parish where they dwell, by the Overseers therof, if they shall beg in any other sort then is so appointed them, or shall beg by the High-ways, though in their own Parish. See 39 *El. cap. 3.* & *Lamb. 427.*

And yet such persons are not to be sent to their place of birth or out of the town, except it be to the house of Correction,

So it seemeth of all other poor persons begging in the Parish where they dwell (without the appointment of the Overseers) they are to be sent to the house of Correction; *quare tamen.*

8 All persons wandering, and pretending themselves to be *Egyptians*, or wandering in the habit and form of *Egyptians*, not being Felons.

43 El. 3.  
P. chap. 23.

9. Souldiers or Mariners that shall beg (except as before, *hic cap. 40.* & *hic postea*) or shall counterfeit any Certificate from their General, Governor, Captain, Lievtenant, Marshall, Deputy, or Admiral, shall be adjudged as Common Rogues, and shall have the like punishment. But

Souldiers and Mariners in divers like cases shall incur the danger of Felony. See the title *Felonies by Stat.*

10. Poor diseased or impotent persons, travelling to the Baths for ease of their griefs (and being licensed) yet if they beg; Or if such person be not licensed by two Justices; Or shall not return home again, according as they are limited by their said Licence; Or shall not be provided of necessary relief, &c. for their travel; they shall be punished as Rogues. 39 Eliz. 4.  
P. Vag. 7.

11. A Rogue that hath been punished according to this Statute, and hath a Testimonial, if through his or her default they do not accomplish the order appointed by the said Testimonial, then are they to be whipped again as rogues, and so as often as any default shall be found in them, &c. P. Vag. 3.

12. A Rogue, &c. that shall go with a general passport, *sc.* which is not directed from Parish to Parish, is still to continue a rogue, and may be punished by whipping again. Rcsol. 13.

So also may such a rogue, as shall carry his own passport without a guide: For by the letter of the *Statute*, they are to be sent, *sc.* conveyed from Parish to parish by the Officers of every of the same.

13. Servants departing out of service, (*sc.* forth of one City, Town, or Parish to another, or out of one Hundred or County, to serve in another) without a Testimonial, &c. or which shall be taken with any counterfeit or forged Testimonial, shall be whipped as Vagabonds. 5 El. 4.  
P. Labor. 8.

14. Persons infected, or dwelling, or being in any house infected with the Plague, that contrary to the commandment of any Officer, shall wilfully go abroad and converse in company, shall be punished as Vagabonds. 1 Jac. 11.  
P. Plag. 4.

15. So all persons being able to labour, and thereby to relieve themselves and their families, that shall run away, or threaten to run away and leave their charge to the Parish, &c. 7 Jac. 4.  
21 Jac. cap. 28.

Incorrigible  
Rogues.

But such offenders last mentioned are to be dealt withall by two Justices of Peace; *sc.* All such persons so running away, shall be taken to be incorrigible rogues, and shall endure the pains of incorrigible rogues, *sc.* they shall be sent by two Justices of Peace to the house of Correction, or to the Gaol, there to remain untill the next Quarter-Sessions, and then he or she shall be there branded in the left shoulder with an hot Iron, &c. 1 Jac. cap. 7.

And all such persons so threatening to run away (the same being proved by two sufficient Witnesses upon Oath, before two Justices of Peace of that Division) shall be by the said Justices sent to the House of Correction (unless such person can put in sufficient Sureties for the discharge of the Parish) there to be detained and dealt withall as a sturdy and wandering Rogue; and from thence to be delivered at the Quarter-Sessions, or at the meeting of the Justices in that Division, made for a general privy search for the apprehending of Rogues, according to this *Statute* of 7 Jac. cap. 4. And are not otherwise to be delivered out of the House of Correction.

But upon such their delivery, they are not to be sent to their place of Birth, (as wandering Rogues) but to the place of their dwelling, if they have any; if not, then to the place where they last dwelt by the space of a year, &c.

And

And so of persons infected, &c. with the Plague, and punished as vagabonds as afore. *Vide hic cap. 39.*

39 Eliz. 4.  
P. Vag. 2. No Child under the age of seven years shall be adjudged a Rogue <sup>children under 7.</sup> (within the *Statute* of 39 *Eliz.* 4.) But it seemeth, such children being vagrant, must be sent to, and placed with the Father, or husband of the wife; and if he be dead, then with the Mother, (where she was born, or last dwelt by the space of one year.) And such children once thus settled or placed, must there remain, and not be sent from thence to their place of Birth, though after the Parents dye, or run away, or that the said children grow above the age of seven years, yea, and though the said children after beg, and prove vagrant in that Town, for there they must be set to labour. See *Ref.* 4. 9, 10.

39 Eliz. 4.  
Resol. 4. Children above seven years of age, going abroad vagrant, or begging in the Countrey, shall be punished as Rogues, and sent to their place of birth, &c.

Resol. 5. The wife being a vagrant Rogue, must be sent to her husband, though he be but a servant in another Town.

Resol. 3. If the husband or wife have a house (though as an Inmate) and either of them rogue about, they are to be sent to the Town where that house is.

Resol. 6. No man is to be put out of the Town where he dwelleth, nor to be sent to their place of birth or last habitation, but only a vagrant Rogue; *sc.* such as wander abroad in the Countrey; and not such as are vagrant, or do beg, in the same Town where they dwell.

Such as their Estates of their houses be expired, and servants whose time of service is ended, they shall not be put out of the Towns where they last dwelt, or served, &c. *Vide tit. Poor.*

39 Eliz. 4.  
P. Vag. 14. The Justice of Peace dwelling in or near the place where any Seafaring <sup>who may beg.</sup> man suffering shipwrack shall land, may make a testimonial under his hand to such person (not having wherewith to relieve himself in his travel homewards) setting down in such testimonial, the place, and time where and when he landed, and the place of his birth or dwelling unto which he is to pass, limiting him therein a convenient time for his passage; which <sup>Persons suffering shipwrack.</sup> person (without the danger of this Law) in his direct passage, and within his time in such his testimonial limited, may ask and receive necessary relief.

39 El. 17.  
P. Mar. 9. The Justice of Peace in or near the place where any poor, idle, and wandering Souldier or Mariner (coming from the Seas, or from beyond the Seas) doth land, ought upon request to give him a testimonial, under his hand, licensing him thereby to pass the next and direct way to the place whither he is to repair, expressing therein the time and place of such his landing, with the place of his dwelling, or birth, to which he is to pass, and to limit him a convenient time for his passage thither: and such person pursuing such licence, may ask and receive necessary relief, without the danger of Law, 21 *Jac.* cap. 28. <sup>Souldiers, &c. from Sea.</sup>

But now *Quære* of these persons, and see *infra.*

39 El. 4.  
P. vag. 3. Also one Justice of Peace, (or the Constable, with the Minister, and one other of the Parish) after the whipping of a Rogue according to the <sup>Rogues whipped.</sup> Statute, may make the said Rogue a testimonial under their hand and seal, for the conveying of such Rogue according to the Statute of 39 *El.* 4.

And yet such Rogues may not beg in their travel, neither may the Constable of the Parish thorough which they pass, or any other person, give them any relief (as it seemeth) for that were contrary to the *Statute 1 Jac. cap. 7.* and a forfeiture of 10 s. But now for that after so many years (since the making of these Statutes) they will not be reformed of their roguish life, they are rather to be dealt withall as incorrigible Rogues, *sc.* to be carried by the Constable before the next Justice of Peace, and then by Warrant from two Justices to be sent to the House of Correction, or to the Gaol, there to remain untill the next Quarter-Sessions, &c. See *Stat. 1 Jac. 7.* and the Directions of Sir *Francis Harvey* at Summer Assizes 1630. *hic postea.*

And as for the Souldier or Mariner (specially such as are sick, hurt, or maimed) they now are usually, or may be relieved with money by the Treasurers of every County where they come, *viz.* with such convenient sums as may carry them to the next County; and this is by a latter Law, and therefore now it may seem unfit, that either the Constable should relieve them, or suffer them to beg or ask relief in their Towns, for so the Country shall be double charged towards their relief, *sc.* in paying to the Treasurer towards their relief, and again in giving them at home at their doors, *21 Jac. cap. 28.*

So that I do not find, that any one or more Justices of Peace may or can in any case licence any man to beg, or ask relief at all; but only may make a Testimonial or Licence in the two first former cases, *sc.* to such as suffer shipwrack, and Souldiers or Mariners coming from the Seas, to pass from place to place; and in those two cases only the Law tolerateth them to ask and receive necessary relief, as aforesaid. For I observed before, That poor diseased persons travelling to the Baths (though licenced by two Justices of Peace) yet they might not beg, and besides must be provided of maintenance for their travel. See more in this title before. 39 Eliz. 4.

Likewise poor prisoners delivered out of Gaols, may in no wise beg, *Stat. 39 Eliz. cap. 4.*

I observe further, That (by the *Statute 39 Eliz. cap. 3.* though it be now expired) no person whatsoever, might go wandring abroad and beg, in any place wheresoever, by licence or without, upon pain to be taken as a Rogue.

And therefore *quare*, of such Briefs and Licences as lately have usually come from or in the name of the Lord Mayor of *London*, licencing poor persons to travel, and to ask, or beg relief in their travel, and by general passports, not directing them from Parish to Parish. See more in this title after *Resol. 13.*

And yet any one Justice of Peace may licence labourers in Hay time, and Harvest time to pass from one Countrey to another to work; but not to wander or beg. See the title *Labourers.* 5 Eliz. 4.

*Two Just.* And so any two Justices of Peace may make a Testimonial to Serving-men, (or other servants as it seemeth) departing from their Masters, but such persons under colour thereof may not wander up and down idly, nor beg. See the title *Labourers.* See 5 Eliz. 4.  
P. Labor. 7.

*Incorrigible* Any two Justices of Peace of the Limit where any incorrigible Rogue shall be taken (the one being of the *Quorum*) may commit such rogue to the 39 El. 4.  
P. Vag. 4.  
1 Jac. 7.

the house of Correction, or to the Gaol, there to remain unto the next Quarter-Sessions of the Peace, there to be dealt withall as incorrigible Rogues, according to the stat. 1 Jac. c. 7. See *hic antea*.

P. Vag. 11.  
39 Eliz. 4.

Now these incorrigible Rogues be such as shall either appear to be dangerous to the inferiour sort of People, or such as will not be reformed of their roguish kind of life.

Of the first sort are such as shall offer any violence, or shall use any threatening speeches, or other like misdemeanours towards any person.

Of the other sort seem these which follow, and such like.

1. Such as having had punishment, and thereupon sent to their place of Birth, &c. and there settled according to the Law, shall notwithstanding fall to their roguish life again.

Refol. 1.

2. A Rogue that affirmeth, he was born in such a Town, in such a County, and is sent thither, if he were not born there in truth, he is to be said an incorrigible Rogue, and is to be sent thence (by two such Justices as aforesaid) to the house of Correction in that County; and if there be none, then to the Gaol, untill the next Sessions, there to be dealt withall according to the *Statute*.

Refol. 2.

3. The same course is to be observed (if it appear not where he was born) if he untruly affirm, that he was last dwelling in such a Town and County, by the space of a year, and was not.

7 Jac. 4.

All persons being able to labour, and thereby to relieve themselves and their Families, that shall run away out of their Parishes, and leave their Families or Children to the Parish, shall be deemed and punished as incorrigible Rogues. Their punishment see *hic antea*.

7 Jac. 4.

Also all persons being able to labour as aforesaid, that shall threaten to run away, and leave their Families aforesaid, it being proved by two sufficient witnesses upon Oath, before any two Justices of Peace of that division, shall be sent by the said Justices to the house of Correction, there to be dealt withall, and detained as sturdy and wandring Rogues, &c. unless such persons shall put in sufficient sureties for the discharge of the Parish. See *hic antea*.

39 Eliz. 4.  
P. Vag. 5.

All such persons as shall in any wise disturb, or hinder the execution of the Law, made 39 Eliz. cap. 4. or any part thereof concerning the punishment, and conveying of Rogues; or shall make rescous against any Officer or Person authorized for the execution of this *Statute*, shall forfeit for every such offence 5 li. and shall be bound to the good behaviour; and

*Disturbers  
of this law.*

P. Vag. 5.  
11.

any two Justices of Peace may bind such Offenders to the good behaviour, and may also by Warrant under their Hands and Seals cause to be levied by distress and sale of the Offenders Goods, the said sum of 5 li. upon the confession of the Offenders, or upon the testimony of two sufficient witnesses, before the said Justices, of such offence.

Within the compass of which words and *Statute*, seem to be these Offenders and Offences which follow:

Refol. 13.

1. To send Rogues by a general passport, without conveying them from Parish to Parish, is a let to the conveying of Rogues, according to the Stat. and so a forfeit of 5 l. upon them that shall so send them, and they are to be bound to their good behaviour.

Refol. 14.

2. Note, that all Rogues are to be conveyed to their place of Birth, &c. by

by the Constables of every Parish (*sc.* from Constable to Constable, the next straight way.) And therefore if the Officer (*sc.* the Constable) of any Parish will not receive a Rogue, to convey him to the place where he was born or dwelt, this is a forfeiture of 5 li. in such Officer that shall not receive the party, to convey him or her, and he is to be bound, as aforesaid, to his good behaviour.

3. So it seemeth, if the Constable, or other person, which shall convey a Rogue towards his place of Birth, &c. if he shall not deliver him to the Constable of the next Parish. Resol. 12.

4. If any be sent to a Town whereto he ought to be sent, and is refused being a sturdy or impotent Rogue, the persons so refusing, shall forfeit 5 l. and may be bound to the good behaviour.

Note that he which is to be sent, is to be delivered or offered to the Church-wardens and Overseers, and if they shall refuse him, they shall forfeit 5 l. as aforesaid. Resol. 12.

*The forfeitures.*

Also any two Justices of Peace (by Warrant under their Hands and Seals) may cause to be levied by distress and sale of the Offenders Goods, all fines and forfeitures appointed, or to grow by this Act of 39 Eliz. 4. or by the Statute of 1 Jac. cap. 7. by conviction of any person, for any offence hereunder mentioned: (but such conviction must be, either by confession of the Offender; or by the testimony of two sufficient witnesses before the said Justices) as namely:

1. The Minister which shall not keep a Register Book, and therein enter the substance of every testimonial made for the conveying of Rogues (punished in his Parish) shall forfeit for every default five shillings. P. Vag. 39

2. The Constable which shall not do his best endeavour, for the apprehending, punishing, and conveying of all Rogues which shall be found in their Parish, shall forfeit for every such default ten shillings. 39 Eliz. 4.

3. The Constable which shall not cause to be punished, and to be conveyed (according to the Statute of 39 Eliz. 4.) all such Rogues as shall be brought or sent to him by any of his Neighbours, shall forfeit for every such default 20 s. 1 Jac. 7. P. Vag. 5.

Note that the Constable is to execute the said punishment of whipping of Rogues, either himself, or by some other by his procurement. See to the like purpose in the title *Trespas*s, cap. 57.

4. Every person shall apprehend, or cause to be apprehended, such Rogues as he shall see or know to resort to his house to beg, or receive any alms, and him or them shall carry, or cause to be carried to the next Constable, or else shall forfeit for every such default 10 s. 1 Jac. 7. P. 5.

Master Perkins in his Exposition of the eighth Commandment, *Thou shalt not steal*, saith, That he breaks that Commandment, which being lusty, lives by begging. And so of him that shall relieve, feed, or cloath stout and lusty Rogues and Beggars, Perkins, pag. 91. & 749.

5. Every person that shall willingly bring or convey in any Vessel, out of Ireland, or the Isle of Man into this Realm, any Rogue, or any such as shall be like to live by begging, &c. shall forfeit for every such person so brought over, 10 s. 39 Eliz. 4.

All (or the most part of) which fines and forfeitures appointed, or to grow by these Acts (39 Eliz. 4. and 1 Jac. 7.) are to be employed to the main- 39 Eliz. 4. 1 Jac. p. 11.



maintenance of the houses of Correction, or relief of the poor where the Offence shall be committed, at the discretion of any two Justices of Peace (as it seemeth) of the same limit.

39 Eliz. 4.  
p. luff. 74.  
p. Vag. 11. Note that any two Justices of Peace (whereof one to be of the *Quorum*) have power to hear and determine all causes that shall grow or come in question, by reason of the stat. made for the punishment of Rogues, *Two Justices, Judges, of all matters touching Rogues.*

39 EL. 4.

At Summer Assises held at *Royston* for the County of *Cambridge*, *Anno Dom. 1630*. Sir *Francis Harvey* delivered these rules or directions, upon the Statutes made against Rogues, *viz.*

1. That now (after so long time since the making of the Statute of 39 EL.) no Passe is to be allowed for these wandring People, and that such of them as do pass or travell, though with any passport, yet are to be punished as Rogues, notwithstanding such their passport. And herewithall agreed Sir *Nicholas Hyde* at *Cambridge* Assises, *Anno Dom. 1630*.

2. That if any Alehouse-keeper, or other person shall but lodge a Rogue, this is a relieving them, and contrary to the Statute, of 1 Jac. and is a forfeiture of 10 s.

3. That giving of mony by a Constable to a Rogue, is a relieving of a Rogue within this Statute, and a forfeiture of 10 s. *Hec ille.*

For the way to rid the Country of these Rogues, is to give them either due punishment (and that often, yea, at every Town if they will not be reclaimed) and to keep them from lodging and other relief, as much as may be; or also to send them to the Gaol as incorrigible Rogues. (*Vide hic antea.*) For punishment is all the charity that the Law affordeth them.

Now a great cause of the still continuing of Rogues, is for that in many Out-houses and Barns they be received and lodged by companies, and have their set places of Meeting; to prevent and punish such, it were very fit that persons that suffer their Barns and Out-houses to be so imployed, without giving notice to the Constable, should be bound over to the Assises or Sessions. As for the charges of conveying Rogues, the Constables ought to have their allowance and relief, if need be, at the Sessions, *Ref. 21.*

39 Eliz. 4.  
P. Veg. 7. Any two Justices of Peace may license diseased persons to travell to *Bathe* or *Buxton*, for the ease of their griefs, so as they be provided of necessary maintenance for the time of all their travell, &c. but they may not beg. See hereof more in this title before.

7 Jac. 4.  
21 Jac. 28. The Justices of Peace, or the more part of them, within their divisions twice in every year at the least, shall meet for the execution of the Statute, 7 Jac. 4. against Rogues and Vagabonds, sturdy Beggars, and other idle and disorderly persons. And some four or five days before their meeting, they shall by their Warrants Command the Constables of every Hundred, Town, and Parish, &c. within their several divisions, to make a general privy search in one night, for the apprehending all Rogues, and wandring and idle persons to be brought before them at their said meeting, there to be examined of their idle life, and there to be punished: or otherwise by Warrant of such Justices to be sent to the house of Correction within the said County: which sending to the house of Correction, shall be by the said

said Constables who apprehended them (yet at the charge of the Hundred.) But by whom they shall be punished and whipped (*quare* : it seemeth by the Officers of the Town where the Justices so sit or meet,) and thereupon to be sent to their place of Birth, &c.

Also at the same meeting, the Constables of every Hundred and Parish <sup>7 Jac. 4.</sup> are to appear before the said Justices, and there shall give an account (upon Oath) in writing, and under the hand of the Minister of every Parish, what Rogues they have apprehended, as well in the same search, as also between every such their meetings, and how many they have punished, or conveyed to the house of Correction.

Also the said Justices at their said meetings, may assess reasonable <sup>7 Jac. 4.</sup> fines (being not above 40 s. upon any the Constables) as well for their neglecting to perform this service; *sc.* in not appearing, or giving account, as aforesaid, as also for the neglecting the safe conveying of Rogues, and other idle and disorderly persons, sent to the house of Correction by Warrant from the said Justices of Peace. Conveying of such persons to the house of Correction, must be at the charge of the Hundred, as is aforesaid.

Also the said Justices at their said meetings, may deliver such persons <sup>7 Jac. 4.</sup> as they have formerly sent to the house of Correction from such their meetings.

“ Every Justice of Peace may reward any persons that apprehend and <sup>14 Car. 2.</sup> bring before them any Rogues, Vagabonds, or sturdy Beggars, by granting an Order or Warrant under his Hand and Seal to the Constable of the Parish, which such Rogue or Vagabond passed thorough un- <sup>Ca. 12.</sup> apprehended, for payment of 2 s. for every Rogue so apprehended; and upon default of payment, to proceed against such defaulter according to the *Statute* of *1 Jac. cap. 7.* and to allow out of the said forfeiture 2 s. and allowance for loss of time, as they shall think fit.

“ And if any person shall apprehend a Rogue, Vagabond, or sturdy Beggar, at the confines of any County, which passed thorough another County unapprehended, he may go to some Justice of the Peace of the County, thorough which such Rogue or Vagabond passed unapprehended, who (upon Certificate under the hand of some Justice of the Peace of the County where such Rogue was apprehended) shall grant his Order or Warrant under his Hand and Seal to the Constable, to pay to such persons 2 s. and what he thinks fit for expenses and loss of time, and upon refusal of payment, to proceed against such Constable for the forfeitures by the *Statute*, *39 Eliz. cap. 4.*

“ And there a Proviso also in the said *Statute*, empowering the Justices of the Peace, to transport convicted Rogues, Vagabonds, and sturdy Beggars to English Plantations beyond the Seas.

### Robbery. CHAP. LVII.

One Just.

**A**fter a Robbery committed, the Party robbed shall not have his action upon the *Statute* against the Hundred, except he shall with all speed convenient, give notice of the said Robbery, to some of the Inhabitants dwelling in some Town, Village, or Hamlet, near to the place where <sup>27 Eliz. 13</sup> <sup>P. Hue and</sup> <sup>Cry, 8. 10.</sup> <sup>Co. 7. 7.</sup>

where such Robbery was committed : and also except he shall commence his Suit or Action within one year next after such Robbery committed : and also except he shall first be examined upon his Oath (within 20 days next before such Action brought) by some one Justice of Peace (of the County where the Robbery was committed) dwelling within, or near to the said Hundred where the Robbery was done, whether he doth know the Parties that committed the said Robbery, or any of them : and if he knoweth any of them, then also (before such Action brought) he shall be bound before the same Justice by recognisance, to prosecute effectually the said Offenders by Indictment, or otherwise, according to the due course of Law, *Vide Plo. 128.* See here c. 28.

*In action sur le Statute de Winchest. ceux points ont esse Resolue in Communi Banco : sc.*

1. *Le party Robb. doner notice speedily al prochain village, ou al ascun inhabitant prope al Robbery : & le declaration in tiel cases, est, que le plt. immediate apres le Robbery fait, levie Hue & Crie, & done notice a le ville ou le Robbery fuit fait, & alibi per totum Hundredam al inhabitants, &c. Plo. 128.*

2. *Le party doit commence son suit deins 1 ann. apres le Robbery, & apres le 40 jours puis le Robbery.*

3. *Le party Robb. doit esse examine sur son Serement, devant le Justice de P. si nad conuzance del Robbery, &c.*

4. *Si mon servant ou Carrier qua carrie mes bienz soit Robb. cesty de que les bienz fuer prises serra examin, & jure devant le Justice de P. & nemy le owner del bienz : & si le servant ou Carier ne veol esse examin, l'owner n' ad remedy.*

5. *Que home poit esse jure in son proper cause, sc. quant argent son servant avoit.*

27 Eliz. 13  
P. Huy and  
Cry 4.5.

After a Robbery committed, and notice thereof given, as aforesaid, the whole Hundred must answer the loss, if the Robbers be not taken within forty days. And if the robbery be done in the division of two Hundreds, both the Hundreds, and the Franchises within them shall be answerable for the robbery done, and also for the damages, *Stat. Winch. c. 2.*

27 Eliz. 13

And yet for that the party robbed hath his recovery and execution against some one or few persons of that Hundred, therefore for Contribution to be yielded from the residue of the said Hundred, upon complaint made by the Parties against whom such recovery and execution is had ; any two Justices of Peace (the one being of the *Quorum*) being of the same County, and inhabiting in or near the said Hundred where such execution shall be had, may assess and tax according to their discretions, proportionably, all and every the Towns, Parishes, and Hamlets, as wel of the same Hundred (where the said Robbery was committed) as also of the Liberties within the said hundred, towards an equal contribution to be had for the relief of the Parties charged : The which taxations or sums, the Constables of every Town, shall within their Town, Parish, or Limits, ratably and proportionably tax and assess upon every Inhabitant and dweller in every such Town, Parish, Village, or Hamlet, for, and towards the payment of such taxation and assessment so made by the said Justices upon such a Town, &c. And if any Inhabitant of such Town, &c. shall refuse to pay the said taxation, so by the Constables taxed, then it shall be lawful

lawful for the said Constables, and every of them to distrain for the same, &c. And the same distress to sell, and the money thereof coming, the said Constables must deliver over to the same Justices, or to one of them within ten days after collection: All which the said Justices shall deliver over (upon request) to the parties charged, to whose use the same was collected.

“ Note, a person coming to inhabit after the robbery and judgment given is not chargeable to be taken in execution; and so was the Opinion of the Court in one *Deans Case*, *Mich. 10 Car.* in the Common Bench. Ibid.

“ But a person coming after thither to inhabit is assessable, because the Country is chargeable at the time of the assessment, and not the persons which were there at the time of the robbery committed. Or as Justice *Barkly* said, and the Court seemed to agree in *Sir Jo. Comptons Case*; *Pasch. 15 Car.* in the Kings Bench, *quare* the difference.

Note, that the Inhabitants of any other Hundred (within the same County where the Robbery was committed, or within any other County, with the Franchises within the Precincts of such Hundred) wherein negligence, fault, or defect of pursuit, and fresh suit after Hue-and-Cry made, shall happen to be, shall answer and satisfy the one moiety or half of all and every such sums of money, and damages, as shall be recovered or had against the Hundred in which the Robbery was done.

And the like taxation, assessment, levying, and payment, as aforesaid, shall be had and made for a Contribution within every Hundred, where there was any negligence, fault, or defect of pursuit, and fresh suit after Hue-and-Cry, *viz.* if upon suit any recovery and execution of any money, or any damages shall be had against some one or few persons of that Hundred where such default was (towards the ease of that Hundred where the robbery was done) upon complaint made by the Parties so charged, to any two such Justices of Peace, the said Justices may make the like assessment, &c. toward the relief of the said Parties so charged.

*27 Eliz. 13*  
*P. Hue and*  
*Cry 6.5*

Note, that if any man be robbed in his house, the Hundred shall not be charged therewith, whether it were done in the day or in the night.

*Co. 7.6.*

Also a Robbery done in the night, shall not charge the Hundred: but yet if it be in the day-time, or by day-light, though it be before the Sun-rising, or after the Sun-setting, the Hundred shall answer for it. Ibid.

If upon pursuit any one of the Offenders be apprehended, the Hundred shall not be charged, although the residue of the Offenders happen to escape; but pursuit without apprehending some one of the Robbers, is no excuse.

*27 Eliz. 13*  
*P. Hu. &c. 7*  
*Co. 7. 7.*

If the Party that was robbed shall himself take any of the Thieves after Hue-and-Cry made, this shall excuse the Hundred. *Cro. 179.*

Although that one of the Thieves be taken, yet if Hue-and-Cry be not duly made, the Town where the default is, shall be amerced; But the Party robbed shall have no remedy for his money (of the Hundred) in regard that one of the Thieves is taken; and this is by force of the Stat. *27 El.* whereas the amercement is by force of the Statute of *Winchester*.

It seemeth by my Lord *Dyer*, *An. 22 Eliz.* that the Statute is satisfied, if the names of the Offenders be discryed, so that they may be indited and outlawed; *quare inde*, for the words of the Statute of *13 Edw. 1.* and *28 Edw. 3.* are, That the Country must answer for the bodies of such Offenders, *Winch. 13 Edw. 1. cap. 2. and stat. 28. El. 3. cap. 11.* *Dyer 3704*  
*Pl. 9.*  
*P. R. 1551*

*Nota,*

*Nota*, The party robbed must bring and commence his Action within 20 days next after his examination taken before the Justice of Peace, 36 *Edw's Case*.

Also the Justice of Peace must be abiding within the County, at the time of examination taken by him, as it seemeth; for the Justice of Peace being out of the County, is but a private man, and hath no authority to take such examination. See the Title, *Justices of Peace*, *hic. c. 6*.

If a man be robbed in *Middlesex*, and maketh Hue and Cry freshly into *Essex*, if the Towns adjoyning do not according to the Statute of *Winchester*, the party robbed may have his Action of Debt, in the one County; or the other, by *Fincham* 15 *Edw. 4. 18. Br. Dett. 104*.

High-ways leading from one Market-Town to another, shall be enlarged, so that there be neither dike, underwood, nor bush, whereby a man may lurk to do hurt; within two hundred foot of the one side, and of the other; and if by default of the Lord that will not amend the wayes as afore said, any Robberies be done therein, the Lord shall be answerable for the Robbery: And if a Park be near the High-way, the Lord must set his Park 200 foot of each side from the way as afore said; or else must make such a Wall, Dike, Hedg, or Pale; that such offenders may not pass to and fro there, *Winch. 13 Edw. 1. cap. 5*.

Every Justice of Peace may cause such high-wayes to be enlarged and cleansed as afore said. See *hic antea, tit. High-wayes*

### Sacraments. CHAP. LVIII.

*1 Ed. 6. 1. P. Just. 8.]* **I**T seemeth, that three Justices of the Peace (one of them being of the *Three Just.* *Quorum*) may out of the general Sessions, take information and accusation (by the Oaths of two honest persons) against such as shall deprave, or unfeverently speak of the Sacrament of the Body and Blood of our Lord and Saviour Jesus Christ, against the Statute, &c. And may bind the Accusers (and such other witnesses as were by) by Recognizance (in five pounds apiece) to give in evidence at the tryal: but Mr. *Lamb.* maketh a *quare* hereof.

*Lamb. 352*

“ Of the Uniformity of Common-Prayer and Sacraments, see the Sta-

*14 Car. 2. cap. 4.*

“ tute 14 *Car. 2. cap. 4.* at large, and 15 *Car. 2. cap. 4.*

“ And the Act of 16 *Car. 2. cap. 4.* of *Conventicles*. See *Conventicles*.

### Sabbath-day, or Sunday. CHAP. LIX.

**N**O Carrier with an Horse, nor Waggoner, Carter, nor Wainman, with any Waggon, Cart, or Wain, nor any Drover with any Cattle shall travel upon the Sunday, upon pain that every person so offending shall forfeit 20 s. for every such offence, 3 *Car. c. 1*.

This Statute gives the forfeiture but of one 20 s. for breach of one Sabbath day, although the driving on that day be through many several Parishes, and where the action is first attached, or distress first taken, that Parish shall have the benefit of this forfeiture, *Resol. 16*.

If any Butcher shall kill, or sell any victual upon the Sunday, he shall forfeit for every such offence, vs. 8 d. *ibid.*

*One Just.*

Any one Justice of Peace (Mayor, or head Officer of any City, or Town-Corporate) within their limits, upon their own view of any of the said offences, or upon proof thereof upon oath, by two or more witnesses, or upon the confession of the party offending, may make their warrant to any Constable or Church-warden (within their several limits, where such offence shall be done) to levy the same forfeitures by distress, and sale of the offenders goods, rendring to the party the overplus. *ibid.*

Every Justice, and head Officer aforesaid, have power to minister an oath to such witnesses, *ibid.*

All the said forfeitures shall be employed to, and for the use of the poor of the Parish where the offence shall be committed, *ibid.*

And yet any such Justice, or other head Officer, out of the said forfeitures, may reward any person or persons that shall inform, or otherwise prosecute any such offender according to their discretions, so that such reward exceed not the third part of the forfeiture, *ibid.*

Provided that no person shall be impeached by this Act, unless he be questioned thereof within six moneths after the offence committed, Stat. 3. *Caroli Regis cap. 1.*

There shall be no unlawfull exercises, &c. used upon the sabbath day: *Hic ca. 23.*

Against Fairs; and buying and selling upon the sabbath day. *Hic cap. 27.*

### Sewers. CHAP. LX.

“ Sewer signifieth such passages, gutters or drains, as carry the water  
 “ into or towards the River or Sea, and the Office of the Commission-  
 “ ers of Sewers, is principally to see such passages, gutters, drains, and  
 “ ditches well scoured, kept and maintained in the Marish and Fen  
 “ Countreys for the better conveyance away of the Water into the  
 “ Sea. 13 El. 9.  
p. 16.

*Six Just.*

Six Justices of Peace in the Shire where any Laws and Ordinances of Sewers, are to be executed, (two being of the *Quorum*) within their limits, may execute the said Laws and Ordinances of the Commissioners of Sewers, for one year after the expiration of any such Commission, except a new Commission be published in the mean time.

Note, That the proceedings of the Commissioners of Sewers, ought to be limited and bounded with the rules of Law and Reason, and according to the ancient Statutes and Ordinances. See *hic cap. 6.* Co. 5. 100.  
& 10. 138.  
140.

Now these ancient Statutes concerning Sewers, are many, and are of three sorts. Co. 10.  
143.

The first sort consist in defending and reparing of the walls, banks, and Sewers, &c. of this sort are the Statutes made, 9 H. 3. c. 15, & 16. 6 H. 6. c. 5. 18 H. 6. c. 10. 23 H. 6. c. 9. 12 Eliz. 4. c. 6. 4 H. 7. cap. 1. and 6 H. 8. c. 10.

The

The second sort consist in pulling down, and removing Nuisances, &c. as by the Statutes made, 9 H. 3. c. 23. 25 E. 3. 4. 45 E. 3. 2. 1 H. 4. 12. 9 H. 6. c. 9. & 12 E. 4. c. 7.

The third consisteth of both sorts, *sc.* as well in repairing the banks, &c. as in pulling down Nuisances, &c. And of this sort are these Statutes following, *viz.* 23 H. 8. c. 5. 25 H. 8. c. 10. 3 E. 6. c. 8. 13 El. c. 9.

The inconveniences which ensue by these Nuisances, and especially by the new levying, or inhancing of Weares, Mills, Stanks, Fish garthes, Locks, Stakes, Kidles, and Floodgates; are these: *sc.* The common passage of ships and boats in the great rivers, as also meadows, pastures, and arable grounds adjoyning to the Rivers, be greatly disturbed, drowned, wasted, and destroyed, many people perished, and the young fry of fish destroyed See 1 H. 4. c. 12. 4 H. 4. c. 11. & 12 E. 4. c. 7.

The form of the Commission of Sewers; the authority of the Commissioners, as also the form of their oath, you may see at large in the Stat. 23 H. 8. c. 5. & P. 2. 4.

Note that the King by the common Law, may award his Commission of Sewers, for the amending of the sea-banks, and for the repairing, amending, and scouring of other banks, Sewers, gutters, ditches, pits, and trenches, so as the fresh waters may have their direct course, *F. N. B.* 113. d. And see there the form of that Commission, and the proceedings thereupon.

Co. 10. 141. These Commissioners cannot make any new great river, neither can they make new inventions (as artificial mills to cast out the waters, or such like) but such new rivers, and new inventions (if they be for the publick good) ought to be made by Parliament: And yet the making new of an ancient bank or a Sewer in a place more fit, and with some little alteration and distance, and upon necessity, seemeth to be warrantable.

These Commissioners cannot cast down any mills, caufies, or stanks, &c. erected before the time of *Ed. 1.* but only may cause them to be abated, if they be raised above their ancient heights. Co. 10. 138.

These Commissioners ought to tax none towards these reparations, &c. but such as have prejudice or losse by the Nuisances or defaults, and which have benefit by the amending or removing of them. Co. 10. 142. See the Statute and form of the Commission, 6. H. 6. c. 5.

Co. 5. 100. Co. 10. 143. Also these Commissioners ought to tax all that be in danger to be indamaged by the not repairing, &c. (and that according to their land, &c.) And not tax him only whose grounds lye next adjoyning to the river, &c. for, *Qui sentit commodum, sentire debet & onus.*

Co. 5. 100. Co. 9. 124. a. Co. 10. 139. Note that in all cases of taxing or rating by these Commissioners, it ought to be proportionable, and according to the quality, and yearly value of the lands, tenements, rents, commons, and fishings of the persons chargeable) and not according to the quantity or content thereof.

And the yearly value shall be accounted as the lands, &c. are of their own nature, without respect to the bettering or impairing thereof by the good or bad husbandry of the owners or occupiers thereof (as it seemeth.) See Co. L. 171. & 179. to such purpose

Co. 5. 108. & 10. 139. 140. Again if the owner of any land be bound by prescription, or otherwise to repair the bank of a river, wall, or Sewer, &c. he ought to do it: yet if

he be not able to repair it; or that there be other inevitable necessity, or that there was no default in the party, but that the Banks, or Wall, &c. are broken or overflown by tempest or unusual overflowing of waters, or the like, (which be the acts and handy-work of God, and which no providence or industry of him that is bound to the reparations, could prevent;) in these cases the Commissioners ought not to charge him, only, with the whole, but may, and in good discretion ought, to charge and tax all such as have any lands (or other profits) there, in danger, or subject to loss, according to their Lands, &c.

But when one is bound by prescription, or otherwise, to repair a Bank, or Wall, &c. if there be any default in him, and the danger not inevitable, but that he alone may well repair it, the Commissioners may there charge him only to repair this: and if by his default the danger become inevitable, or that by his default he alone is not able to repair it, whereby others are charged as aforesaid, every of them may have the Action of the Case against him, &c. and shall recover their damages according to their loss.

Also, where a man hath any Lands lying between the Sea, the River of *Thames*, or any other River, and his Neighbours grounds, and is bound by prescription, or otherwise, to make, or keep certain Banks, or to scour certain Ditches or Sewers, between his said Neighbour and the said River or Sea, and doth not make, keep, amend, and scour the same, as he ought to do, by reason whereof his neighbours grounds are drowned, the party so indamaged shall have his Action of the Case against the other so making default, &c. See *F.N.B.* 93.g. & 7 *H.4.8.* & 41. Co. 10. 130

Also, these taxations ought to be particular, *sc.* upon every severall owner; or occupier of Lands, Tenements, Rents, Commons, and Fishings, &c. And not to be a general sum in gross upon a whole Town. See more hereafter, *tit. Stock of the Shire, cap. 53.* Co. 10. 139. & 143.

See Master Sergeant *Callis* reading upon the *Statute* of 23 *H. 9.* of Sewers.

### Sheriffs. CHAP. LXI.

One Justice  
to Overseer  
the County  
Courts.

**T**HE *Custos Rotulor.* or the eldest Justice of the *Quorum* (in his absence) ought at the general Sessions after *Michaelmas*, to appoint two Justices of the Peace (the one being of the *Quorum*) to have the oversight and controllment of the Sheriff, under-Sheriff, and other their Officers and Deputies, and the inspection and examination of their Books and Amerciaments, and for making of Estreats, &c. in their County Courts. 11 H. 7. 15  
P. 16. 18.  
20.

Also either of those two Justices of Peace, or any other Justice of Peace; (as it seemeth by the words of the *Statute*) upon complaint of the party grieved may examine the Sheriff, under-Sheriff, Shire-Clerk, and Plaintiffs concerning the taking, or entring of plaints in their said County-Courts, and Books against the *Statute*: *viz.* La. 23.  
291. p. 16.

1. If any Plaints shall be entred in their Books, in any mans name, unless the party Plaintiff be either present in Court in person, or by a sufficient



sufficient Attorney or Deputy, that is known to be of good name and behaviour.

2. If that the Plaintiff find not pledges to pursue his said plaint (*sc.* such persons as are known in that County.)

3. If the Plaintiff shall enter more then one plaint, for one trespass, contract, or cause.

4. If the Sheriff, under-Sheriff, &c. shall enter or cause to be entred any more plaints then the Plaintiff supposeth he hath cause of action for against the Defendant.

And if the said Justices, or Justice of Peace, upon his or their examination, shall find any such default in the said Sheriff, under-Sheriff, or Clerk, that shall stand for a sufficient Conviction, without any further inquiry, or examination; and they shall forfeit upon the same examination, forty shillings to the King for every default; the same to be recovered in the Exchequer. 11 H. 7. 15. P. 17.

And the same Justice or Justices that so shall take the examination, shall certify the said examination into the Exchequer within a quarter of a year, upon pain of 40 s.

*Bayliff's defaults.* Also the said Justice of Peace may examine the defaults of the Bayliff of the Hundred, for not warning of the Defendants (in such Plaints) to appear, according to his precepts received from the Sheriff or under-Sheriff. And if upon examination, the Justice shall find any default in such Bayliff, in not warning the Defendant to appear, or otherwise in not executing his said Office, that shall stand for a sufficient conviction, and the said Bayliff thereupon shall forfeit to the King for every such default 40 s. the same Examinations to be certified into the Exchequer as aforesaid. Ibid.

*Two Justices to oversee the Book and Estreats in County-Courts.* Sheriffs, &c. shall make no Estreats to levy their Shire-amerciaments, untill the said Justices (appointed at the general Sessions as aforesaid) have had the view and oversight of their Books: And their Estreats shall be made by Indentures (or shall be indented) between the said Justices, and the Sheriff, and under-Sheriff, and sealed with their seals, and the one part to remain with the said Justices, and the other part with the Sheriff, for to be his Warrant to levy the amerciaments by. 11 H. 7. 15. P. 18.

The Bayliffs, &c. Collectors of the said amerciaments shall be sworn by the said Justices, that they shall not take more money than is forfeited and contained in their said Estreats, sealed by the Justices as aforesaid. P. 19.

*One Just.* Also the said Justices of Peace, or one of them, may examine the default of the said Collectors, Bayliffs, and other gatherers of the Sheriffs amerciaments; whether they have taken or gathered any more money then is forfeited and contained in their Estreats (sealed with the seals of two Justices of Peace as aforesaid:) And if upon examination the Justices or Justice shall find any such default, That also without further inquiry, shall stand for a sufficient conviction; And the said Collectors, Bayliffs, or other Gatherers of such amerciaments, thereupon shall forfeit to the King for every default 40 s. The said examination also (whether it be by one or two Justices) is to be certified into the Exchequer as aforesaid. Ibid.

Two Just.

Also the said Justices of Peace upon suggestion or information of the party grieved, shall make like process, as in an action of Trespass against the said Sheriff, Under-Sheriff, or other their Officers (offending in any the particulars aforesaid) for to appear before them to answer the said suggestion or information. See what the process is in the title *Process, cap.* 132.

The *Custos Rotulorum*, or any two Justices of the Peace, the one being of the *Quorum* (*ex officio*, and without any Commission to that purpose to them to be directed) may take the Oaths of the under-Sheriff of their County, his Bayliffs, Deputies, Clerks, and other Officers, before they shall exercise their said offices, *sc.*

{ The Oath of Supremacy :

{ The Oath for the true exercising their Office.

See the form of this last Oath, *Stat. 27 El. P. 32.*

But special Bayliffs made for the serving of process, are not to be sworn by this *Statute*, as Mr. *Crompton* reporteth, and saith, *That it was so adjudged in the Kings-Bench* : And yet the words of the *Statute* be, *That every person which shall have authority, or take upon him to intermeddle with execution of process, &c. shall receive and take the said Oaths, Crompt. 76. & 103.*

27 El. 12. P. 32, 33.

## Souldiers. CHAP. LXII.

One Just.

**E**very Justice of Peace of the County where any Souldier, which hath served the King in his Wars, shall be found, which hath sold, given, purloyned, or put away, &c. any horse or harness (wherewith he was set forth, or which was after appointed to him by the Lieutenant or Captain, &c.) upon complaint and due proof of the offence to be made (by the owner, his Executors, or Administrators) to any such Justice, shall by the said Justice be committed to Ward, there to remain without Bail untill he hath satisfied the party grieved, his Executors, or Administrators ; for such horse or harness, &c. unless he do bring with him before the same Justice sufficient Testimony from his Captain, &c. in writing under his seal, testifying that the said horse or harness, &c. was lost in the King's Service against the will of that Souldier ; or was taken by his Captain, &c. from him, and appointed to some other to serve withall (except the same Souldier were imprisoned for the same offence before, by his Lieutenent or Captain, &c. and made restitution.)

Crom. 76.

b.

2 Ed. 6. 2.

p. Just. 84.

The next Justice of Peace to the place of landing of any poor Souldier, Mariner, or Seafaring man suffering shipwrack, may make them a Licence to pass to the place where they are to repair, &c. See hereof in the title *Rogues.*

39 El. 4.

17.

43 Eliz. 3.

8. cap. 17.

In default of the Parishioners, Church-wardens, and Constables (that shall not assess the Tax imposed upon the Parishioners by the Justices at their *Easter-Sessions*, towards the relief of disabled Souldiers and Mariners) any Justice of Peace dwelling in that Parish, (or if none dwell there) in the parts next adjoining, may assess the same; and the same Justice of Peace may also in default of the Church-wardens and Constables, levy the same by

by distress and sale of the Goods of the party so refusing or neglecting, rendering to the Party the overplus, &c.

If any poor Souldier or Mariner, coming from, or beyond the Seas, shall repair to his place of Birth, &c. and cannot there get work, then upon his complaint, any two Justices of Peace near the said place, shall take order (by their discretion) to set him to work; and for want of work, the said Justices shall tax the whole Hundred (by their discretion) for his relief, till sufficient work may be had.

39 Eliz. 17  
P. Mar. 8.

A maimed Souldier came to the County for relief at the Sessions, but because it appeared, that he was not settled, but vagrant at the time of his being prest, he was not relieved by pension from the County-stock, but sent to the place of his settlement, *Ord. 2. Oct. 4. Car. Lib. Sess. pa. Mid. 13 Car. 2. 6.* See the several Acts concerning the Militia, *viz. 14 Car. 2. cap. 3. And 15 Car. 2. cap. 4. St. 3.*

### Stock of the Shire. CHAP. LXIII.

43 Eliz. 2.  
P. Poor 12.

**I**N the default of the Parishioners, Church-wardens, and Constables (that shall not assess the tax imposed upon the Parishioners by the Justices at their *Easter* Sessions, towards the relief of the prisoners in the Kings Bench and Marshalsey, and of the Hospitals of that County; and of the losses by Fire, Water, and other casualties, and relief of the poor within that County) any Justice of Peace dwelling in that Parish, or (if none dwell there) in the parts next adjoining, may assess the same: and the same Justice, or any other Justice of Peace of that limit (in default of the Church-wardens and Constables) may levy the same by distress and sale of the Goods of the Party refusing or neglecting to pay his part thereof, rendering to the Party the over-plus: and in default of such distress, any Justice of Peace of that limit may commit such person to prison, there to remain without Bail, till he hath paid the same.

*One Just.  
To what  
uses they  
must be im-  
ployed.*

Also in default of the Parishioners, Church-wardens, and Constables (that shall not assess the tax imposed upon the Parishioners, by the Justices at their *Easter* Sessions, toward the relief of maimed Souldiers and Mariners) any Justice of Peace dwelling in that Parish, or (if none dwell there) in the parts next adjoining, may assess the same: and the same Justice of Peace (in default of the Church-wardens and Constables) may levy the same by distress and sale of the Goods of the Party refusing or neglecting to pay his part thereof, rendering to the party the over-plus. But in default of such distress, the Justices of Peace may not commit such person to prison, as they might in the former case, *43 El. cap. 3. P. Captaine II.*

Now in these, and other rates and taxations, you shall observe these rules following.

Co. 9. 12.  
See here  
120.

Co. 5. 67.

Co. 5. 65.

1. First, that the most reasonable rating of Land, is by the yearly value, and quality thereof, and not by the quantity or content.

2. He that occupieth (in his own hands) Lands lying in several Parishes, shall be charged in every Parish proportionably for his Land there.

3. The Fermor shall be rated for the Lands, and not the Lessor, or Land-lord.

4. A

4. A man (*sc.* the Landlord) shall not be rated or taxed for his Ferm Rents, in as much as the Fermor or Occupier of the Land is chargeable for the same Land. So where my Fermor is assessed by his Goods, I ought not to be assessed for my Rent of the same Ferm. *Br. Quinz. 2. 4. 7 Hen. 4. 33. and 11 Hen. 4. 35.* Co. Ibid.

“ Upon a complaint to the Judges of Assise in the County of *Lincoln*,  
 “ It was resolved and ordered, That the Lands in the Parish, and not the  
 “ Rent neither of that Land, nor of other Lands could be taxed. *Sir Anth.*  
 “ *Irby's case, Assise Linc. 1633.*

By Goods in most cases a man may be rated as well as by Lands, but not both by Goods and Lands, as it seemeth.

The like you may see in divers Acts of Subsidies, wherein there is usually a special Proviso, That no person shall be taxed both for his Lands and Goods, nor double rated. See the Acts of Subsidies, *Ann. 7. 18. and 21 Jacobi Regis, & Annis 27. 29, 31, 35, 39. and 43 Eliz. 11. and 4 Caroli Regis*, and yet see 44 E. 3. *Br. Customs 6.* where a tax of ten pound was made by the Parishioners for the amending of their Church, and was taxed to be levied of every plow-land six pence, and of every Cow one penny, and of every ten sheep *ob.* and J. S. for his Land, Cows, and Sheep, was rated at 9 s. and was distrained for the same, and upon a replevin by J. S. sued, no Exception was taken to the manner of rate imposed upon J. S. But note, that the said tax was made by his consent, *Et omnis consensus tollit errorem, Co. 5. 36. & 40.*

So then he that hath both Lands and Goods shall be charged by the best (of them both) but he is not to be double charged, *sc.* by the one and the other: and yet in some places they do use to charge one person both by Lands and Goods; which if it be warrantable by Law, yet it seemeth to be with this difference, *sc.* That where a man occupieth Land, and also hath in his hands a great estate or stock of Merchandise, or be also a Clothier, Maltster, or the like, that such person peradventure may be charged by his Lands, and also by such his stocks; but for such Goods, or stock of Cattel whereby a man doth occupy, compass, or manure his Lands (as for horses, sheep, kine, &c. wherewith he stocketh his Land) a man shall not be charged; *sc.* if he be charged by his Land, he shall not also be charged for such his Cattel which do manure the same Land.

Also where a man is rated by his Goods, it seemeth reasonable that such Goods be rated after the value of Lands to be purchased: *sc.* One hundred pounds in stock or Goods to be rated after 5 or 6 *li. per annum* in Lands. And so after the like proportion for a greater or lesser estate in Goods, Stock, Merchandise, or the like.

Note, where a man is charged by Goods, they must be *bona notabilia*, as it seemeth: and yet to the subsidy, men are rated not only by their stock of Merchandise, or Cattel, Corn, Household-stuff, or other moveable Goods which are *Notabilia*, but also to their coyn and debts owing to them (deducting such debts as they owe to others, and such debts as be desperate:) But there the Party over-rated, upon his complaint to the Commissioners, and his Oath taken before them, that his Goods, Coyn, or Debts be not of such value (which Oath the said Commissioners are authorized to take by the Stat.) the said Commissioners may abate the said assessments according  
 as

as upon such examination shall appear to them just. See the afore-recited Acts of Subsidies.

Also for Goods, a man shall be charged only in that Town where the Goods be at the time of the assessment. *Br. Quinz. 4. & 6.* See the stat. 9 *H. 4. c. 7.*

Also if a man be assessed for his Goods in D, when as he hath no Goods there, and be distrained for such assessment, he may have an action of Trespass, *B. Quinz. 3. & 4.*

The Constables (or other Officers) and greater part of the Parishioners (upon a general warning given in the Church) assembled, may make such taxations by Law. See *Coke 5. 6, 7. Fi. 49.*

The like may be done by the Church-wardens, and the greater part of the Parishioners, for Church-charges.

And if the greater part of the Parishioners will not meet upon such warning given, it seems the Officers, and such of the Parishioners as will meet, may make such taxations.

Note, That such taxations being made for a Commonwealth, as for the making or amending of a Bridge, High-way, Causey, Sea-bank, or the like, they shall bind all persons (although they assent not) 44 *Ed. 3. 18, 19.* *Br. Customs 6. Co. 5. 63. Fi. 49.*

And so of taxations made to repair the Church, or for other common Town charges (as it seemeth) where such taxations are made by the greater part of the Parishioners, as aforesaid. See *Co. 5. 63. & 67. and 21 H. 7. fol. 20. b. and 8 E. 1. Fitz. Aff. 413.*

Also when assessments are made for the reparations of Bridges, High-ways, Sea-banks, Causeys, and the like, it seemeth, that the sum assessed upon particular men (or Towns) ought to be competent and reasonable, having regard to the benefit which the Parties assessed or charged, shall or may have and enjoy by reason of the said assessment, and so reasonable as that the Party shall or may have more benefit then charge thereby; and then such assessments cannot be reputed burthenfome, or a charge to the Subject, when he shall or may reap benefit thereby. See 13 *H. 4. fol. 14. and Co. 5. c. 3.*

If a Township be amerced, and the Neighbours do (by assent) assess a certain sum upon every Inhabitant, and do agree, that J. S. shall gather it up, and that if it be not paid such a day, that J. S. shall distrain for the same, in such case a distress taken by J. S. (for such rates behind) is good, *Br. Cust. 6. Doct. & Stud. 74. b.*

“ And issues estreated upon the Parish, may by order of Sessions be  
“ equally rated upon the Inhabitants, and levied accordingly, *Ord. 16.*

“ May 8. *Car. lib. Seff. Pac. Mid. Consimil. Ord. for the Inhabitants of Ful-*

“ ham 9. April 11. *Car. Inhabitants of Eling. Ord. 2. Dec. 9. Car.*

Subsidie. CHAP. LXIV.

**I**F any person that ought to be set to the Subsidie, do by his craft or covin escape the taxation, and it be proved before two Justices of Peace of that County; then shall he be charged at the double value of so much as  
he

he ought to have been taxed at, and shall further be punished at the discretions of the said Justices. See 7 & 21 *Jac. Reg.* and divers former acts of Subsidies.

*Swearing.* CHAP. LXV.

**I**F any person or persons shall profanely swear, or curse in the hearing of any Justice of Peace of the County, (Mayor, Bayliff, or head-Officer of any City or Town corporate) where such offence shall be committed; or shall be thereof convicted by the Oaths of two witnesses, or by confession of the Party before any such Justice of Peace, or head-Officer, &c. every such Offender shall for every time so offending, forfeit and pay to the use of the Poor of that Parish where the offence shall be committed, the sum of 12 d. 21 *Jac. Regis cap. 20.* and 3 *Caroli 4.*

Every Justice of Peace, and every such head-Officer may minister the said Oath to every witness, 21 *Jac. cap. 20.*

Every Justice of Peace, and every such head-Officer, may make their Warrant to the Constables, Church-wardens, and Overseers of the Poor of that Parish where the said offence shall be committed; and the said Constable, Church-wardens, and Overseers of the Poor, by vertue of that Warrant, may levy the same sum and sums of money by distress and sale of the Offenders Goods, rendring to the Party the overplus, *ibid.*

In defect of such distress, the Offender (if he or she be above the age of 12 years) shall by Warrant from such Justices of Peace, or head-Officer, be set in the Stocks by three whole hours. But if the Offender be under the age of 12 years, and shall not forthwith pay the said sum of 12 d. then he or she, by Warrant of such Justice of Peace or head-Officer, shall be whipped by the Constable, or by the Parent, or Master, in the presence of the Constable, *ibid.*

“ But every offence against this Law, shall be complained of, and proved as aforesaid, within 20 days after the offence committed, *ibid.*

*Tobacco.* CHAP. LXVI.

“ **N**O person may plant, sow, or otherwise make Tobacco upon any Ground in *England, Wales, Isles of Guernsey, Jersey, Berwick, or Ireland,* upon pain of forfeiture of 40 s. for every Pole of ground planted, set, or sown; one moiety to the King, and the other moiety to him who will sue for the same in any Court of Record. 12 *Car. 2. cap. 33.*

“ And all Sheriffs, Justices of the Peace, Mayors, Bayliffs, Constables, and every of them, upon complaint made to them, or any of them, of any such Tobacco sown or planted within their Precincts, shall within 10 days after such complaint, cause the same to be destroyed. And any person resisting or opposing the execution of the said Act, to forfeit 5 l. for every offence, to be recovered as aforesaid, and by distress and sale of the Offenders Goods, and for want of distress, the Offender to be imprisoned two months without Bail.

*Transportation.*

*Transportation.* CHAP. LXVII.

**I**T should seem by the words of the *Statute*, that any one Justice of Peace may inquire of, hear and determine (as also may examine the Mari-<sup>One Just.</sup>ners, and every other person) of all and singular the Offenders against the Act, 1 and 2 *Phil. & Mar.* provided for the restraining of carrying Corn, Beer, Butter, Cheese, Herrings, and Wood, beyond the Sea; but *quare*.

Yet note, that every man may transport Corn, it being at these prices following (except it be prohibited by Proclamation) *sc.*

Wheat	} the quarter	32 s.
Rye		20 s.
Barley and Malt		16 s.
Pease and Beans		16 s.

21 Jac. 4. ]  
3 Car. 4.

Also that every man may transport any Beer, when the price of a quarter of Malt exceeds not the sum of 16 s. 3 *Jac. cap. 11.* 21 *Ja.* 28.

And it is holden to be great policy, to provide that Corn be always of a reasonable and competent value, it being an assured means to increase and advance Husbandry & Tillage, the ancientest of all Trades and Professions, and commanded by God to *Adam, Gen. 3. 23.* One of the greatest commodities of this Realm, and much respected and favoured, as well by the common Law, as also by the common assent of the King, the Lords and Commons in many Parliaments, *Co. 4. 39.* See the *Statutes*; 17 *R. 2. c. 7.* 4 *Hen. 6. cap. 5.* and 1 & 2 *P. & M. c. 5.* And besides it is the means whereby the Fermors are better enabled to pay their Landlords their Rents, to maintain their own Families, and to set on work, and to relieve their poor Neighbours.

*Trespafs.* CHAP. LXVIII.

43 El. 7.  
P. 1.

**A**LL and every lewd and mean persons, which shall unlawfully cut or take away any Corn growing; or rob any Orchards or Gardens; or break or cut any hedge, pale, rail, or fence; or dig, pull up, or take away any Fruit-Trees; or shall cut or spoil any Woods, Underwoods, Poles, or Trees standing (not being felony) and their Procurers or Receivers, knowing the same, being thereof convicted by confession of the Party, or by the testimony of one sufficient witness upon Oath before any one Justice of Peace (where the offence shall be committed, or the Offender apprehended; ) shall for the first fault give the Party wronged such recom-<sup>One Just.</sup>pence, (and within such time) as by any one Justice of Peace (of the County where such offence shall be done) shall be appointed. And if such Offender shall be thought (in the discretion of the said Justice) not able, or do not make satisfaction accordingly; then the said Justice shall commit the said Offender to some Constable, or other inferiour Officer (where the offence shall be committed, or the Offender apprehended) to be whipped.

Also it seemeth, that for the second fault, and every other offence whereof such Offender shall be after convicted in form aforesaid, such Offender shall

shall be whipped as aforesaid, without any satisfaction to be taken. *ibid.*

If any Constable or inferiour Officer, do refuse, or do not, at the com- p. 2.  
mandment of the Justice (by himself, or some other by him to be appoin-  
ted) execute upon the Officer the punishment aforesaid, the said Justice of  
Peace may commit such Constable, &c. to the Common Gaol, there to  
remain without Bail, untill the said Offender be by the said Constable, or  
by some other by his procurement, whipped as aforesaid.

But no Justice of Peace shall execute this *Statute* for any of the offences p. 3.  
aforesaid, done unto himself, unless he be associated and assisted with one  
or more other Justices of the Peace whom the offence doth not concern.

It seemeth that any one Justice of Peace (not being the Party grieved)  
may send such Offenders for their second fault, &c. to the house of Cor-  
rection, as idle and disorderly persons, there to be detained, &c. at the dis-  
cretion of the said Justice of Peace; and this by force of the *Statute*, 7 Jac. 4.  
especially if they be common Offenders in this kind; or may bind them to  
their good behaviour, and so over to the next Quarter-Sessions, and by or-  
der from thence, to be sent to the house of Correction, there to be conti-  
nued some convenient time.

“ But for the gleanings and leaving of the Harvest, &c. God command-  
“ eth, that it be left for the Poor, the Fatherless, the Widow, and the  
“ Stranger, *Levit. 19. 9, & 23. Deut. 22. 24.* And it were worthy the  
“ consideration of the Justices, to take some course that such only might  
“ have the benefit of gleanings, and not Fermors and Tradesmen, that in  
“ many places in Harvest-time set their Servants to that employment,  
“ which is no better then to rob the Poor of what properly belongs to  
“ them.

### Tythes. CHAP. LXIX.

**T**WO Justices of the Peace (the one being of the *Quorum*) upon com-  
plaint by any competent Judge of Tythes, for any misdemeanor of the  
Defendant in a Suit of Tythes (or for other duties of the Church) may  
cause him to be attached, and committed to ward, there to remain without  
Bail, untill he find sufficient Sureties (unto the said Justices) by recogni-  
sance to the Kings use, to obey the process and sentence of that Judge.

Also upon complaint or certificate in writing by any Ecclesiasticall  
Judge, that hath given definitive sentence in the case of Tythes against one  
which wilfully refuseth to pay the Tythes or sums of money so adjudged,  
two such Justices of Peace may cause the party to be attached, and com-  
mitted to the next Gaol, there to remain without Bail, till he find such  
Sureties (as aforesaid) to perform that sentence.

✍ *Ou si le partie disobey tiel sentence, il poit estre excommunge pur tiel Con- 32 H. 7. 18.  
tumacy; & donque si cesty issint excom: ne voile per 40 jours estre reconcile al P. luff. 104  
eglise, sur Certificat fait al Roy per la Ordinary en le Chancery, le partie serra  
mise en prison tanque il voile satisfaire leglise, & ceo per un brief de Excom: :  
Capiendo. Fi. 41.*



## Tyle, CHAP. LXX.

17 Ed. 4. 4.  
p. 3. 4.  
Lamb. 197  
Crompt.  
130.

**I**T seemeth by the words of the Statute, That any one Justice of Peace may inquire, hear and determine (by examination, or otherwise by their discretion) of all and singular the offences committed in Tyle-making, *sc.* if they be not made good, and of earth well prepared, and also of due assize in length, breadth and thickness) and may assess the Fines limited by the same Statute; and may call before him such as have best knowledg in Tyle-making, and appoint them searchers of the said defaults: But Mr. Lamb. 197. maketh a doubt thereof.

“ But the Justices so resolved, and accordingly made an Order for Licensing certain persons to be searchers of all manner of Tyle made within the County of *Mid.* for four years, *Ord. 5. Oct. 7. Jac. lib. Sess. pa. Mid.*

## Watch. CHAP. LXXI.

“ **I**N great Towns walled, the Gates shall be shut up from the Sun-setting untill the Sun-rising: and no man shall lodge in the Suburbs, or any place out of the Town, from nine of the clock till day, except his Host will answer for him, 5 *H. 5. c. 3.*

13 Ed. 1.  
p. 1.

Every Justice of Peace may cause night-watch to be duly kept, for the arresting of persons suspect, and night-walkers (be they strangers or others) that be of evil fame or behaviour: and this they may do by force of the Commission, the first *Affig. Lamb. 190.*

Ibid.

This Watch is to be kept yearly from the Feast of the *Ascension*, untill *Michaelmas*, in every Town, and shall continue all the night, *sc.* from the Sun-setting, to the Sun-rising.

Winch. 13  
E. 1. c. 4.  
5 E. 3. 14.

All such strangers, or persons suspected, as shall in the night time pass by the Watch-men (appointed thereto by the Town, Constable, or other Officer) may be examined by the said watchmen, whence they come, and what they be, and of their business, &c. And if they find cause of suspicion, they shall stay them, and if such persons will not obey the arrest of the watchmen, the said watchmen shall levy Hue-and-Cry, that the offenders may be taken; or else they may justifie to beat them (for that they resist the Peace and Justice of the Realm) and may also set them in the Stocks (for the same) untill the morning; and then if no suspicion be found, the said persons shall be let go and quit: but if they find cause of suspicion, they shall forthwith deliver the said persons to the Sheriff, who shall keep them in prison untill they be duly delivered; or else the watchmen may deliver such persons to the Constable, and so to convey them to the Justice of Peace, by him to be examined, and to be bound over, or committed, untill the offenders be acquitted in due manner. See more of *Watch*, in the title *Felony, c. 109. Fine.*

These Watchmen are also to apprehend all Rogues and Vagabonds, Night-walkers, Evesdroppers, Scouts, and such like, and such as go armed, &c.

Q

Note,

Note, That in an action of false imprisonment brought by one *Sm.* against *Brown* (a Constable of *Chelmesford* in *Essex*) these things were holden for Law concerning watches, about 32 *Eliz.*

1. First That no man is compellable to watch, except he be an inhabitant within the same town.

2. That such as are inhabitants within the town, are not compellable to watch at the will of the Constable, but only when their turn cometh; and therefore *Gawdy* (Justice) said that the statute of *Winchester* is, That from henceforth watches shall be kept as hath been used in times past, &c. and so the manner of watching is not referred to the will of the Constable, but only to the use heretofore, which is commonly by turn, or by the house.

3. That if a man who is compellable to watch, shall contemptuously refuse to watch upon commandement of the Constable, the Constable *ex Officio* may set him in the stocks for such his contempt: *Tamen quare de hoc.* Or else the Constable may present such his default at the Assizes or Sess. of the peace, &c. or may complain thereof to any Justice of peace who may bind the offender to the good behaviour, and so over to the next Quarter-Sess. &c.

Note, also that both watching and warding must be by men that be able of body, and sufficiently weaponed.

And note, that watching is properly intended of the night, and warding for the day time; and for the warding in the day time, for the apprehending of Rogues and the like idle evil members, is of great use, it therefore is and must be left to the discretion of the Constable and directions of the Justices of peace to appoint or alter it according to the occasion. *Refs. 36.*

## Watermen. CHAP. LXXII.

**E**Very Justice of peace as it seemeth by the general words of the Statute) within the shires next adjoyning to the river of *Thames* (between *Gravesend* and *Windsor*) within his several jurisdiction, hath power (upon complaint made to him by the Overseers and Rulers of the watermen and wherry-men, or two of them, or by the masters of any such servants) to examine, hear and determine all offences against the Statute, and to set at large him that shall be imprisoned by such Overseers or Rulers, according to this Act (if there be just cause) and also by his discretion to punish those Overseers and Rulers that shall unjustly punish any person by colour of this Act.

2 & 3 P. & M. cap. 16.  
p. Botem. 2  
p. Just. 109  
Lamb. 205  
Crom. 131

The offences of watermen against this Statute are these:

1. No single man shall be a waterman there unless he be an house-keeper, or an apprentice, or retained in service by the whole year. See the stat. 1 *Ja. c. 16.*

p. Botem. 4

2. One of the (two) watermen, rowing together in one boat, must be allowed by the most part of the eight Overseers, by writing under their seal and must have used rowing there two years before.

p. Ibid. 3.

3. watermen shall not hide themselves in time of pressing for the Kings service, &c.

p. Ibid. 6.

4. Water-

P. ib. 7.

4. Watermen shall not take for their Fare and Labour above the prices assessed, &c. and set up in Tables in *Westminster-Hall*, &c. But *Quere* whether the Justice of Peace be to meddle in this. See the Statute at large.

## Wax. CHAP. LXXIII.

21 H. 6. 12.  
P. Wax 8.  
P. Just. 42.

Every Justice of Peace may examine and search (by his discretion) such as do sell, or set forth to be sold, any candles or other works of Wax at higher price then after the rate of 4 *d.* the pound, over the common price of plain Wax between Merchant and Merchant, and may punish them by forfeiture of the work or value thereof, and by Fine to the King.

## Wine. CHAP. LXXIV.

24 H. 8. 6.  
P. Wine 4.

Every Justice of Peace (as it seemeth by the words of the Statute) within the precinct of his Office (at the request of any Subject, to whom denial of sale shall be made of any wine, and full payment therefore offered according to the prices set down by the Lords, &c.) may enter into the places where such Wine shall lie, and may sell and deliver the same wine desired to be bought, to the person requiring to buy the same, taking the buyers money towards the satisfaction of the forfeiture, &c.

“ Note, That no person may sell any wine in any Town not Corporate, but by the Licence of the Justices of Peace in open Sessions by writing under the several seal of every of the said Justices, upon pain of 5 *l.* for every day of so offending, 7 *E. 6. cap. 5. Co. lib. Entr. fo. 370. Finch's Case*, who recovered 550 *li.* in an information upon this Statute, notwithstanding the Queens Licence there pleaded in barr of the said action.

“ And by the Statute in Towns Corporate, no person to seal but by Licence of the Mayor, Aldermen, &c. And that under the common Seal of the Corporation upon the same penalty. *Quod nota.*

## Wood. CHAP. LXXV.

35 H. 8. 17.  
13 Eliz. 26  
P. 8. 9.

Two Justices of Peace (not being of kindred, alliance, counsel, or fee to the Lord or owner of a Wood) appointed by the more part of the Justices of Peace at their Sessions, upon complaint of the Lord made unto them, may divide and set out the fourth part of the Wood, if the Lord and Commoners thereof (being first called before them) cannot agree upon it.

15 Car. 2.  
cap. 2.  
Sat. 3.

“ Whereas the Statute of 43 *Eliz.* doth not sufficiently prevent nor punish the Cutting and spoyling of Woods, by this Statute It is Enacted, That every Constable, and other person in every County, City, or other place where they shall be Officers or Inhabitants, shall and may apprehend, or cause to be apprehended, every person they shall suspect having, carrying, or conveying, any Burden or Bundell of Wood, Poles, young Trees, Bark, Bast of Trees, Gates, Stiles, Posts, Pales, Rails, or Hedg-wood, Broom, or Furzes.

Q. 2

And

“ And by Warrant under the hand and seal of any one Justice directed to any Officer, he may enter into, and search the Houses, Yards, Gardens, and other places belonging to the houses of any persons, they shall suspect to have Trees afore said, and finding any such wood, to apprehend the persons suspected for cutting or taking the same, and as well such persons apprehended or taken carrying any kind of wood or other premisses, as those in whose houses, or other places belonging to them, any of the same shall be found, to carry before any one Justice of the Peace of the same County : and if such persons suspected do not give a good accompt how they came by the same, by the consent of the owner, such as shall satisfy the said Justice, (or within some convenient time to be set by the said Justice) produce the party of whom they bought the said Wood, or some credible witness upon oath, to prove such sale, then such persons suspected, not giving such good accompt, nor producing such witness, shall be judged as convicted, for cutting and stealing of Wood, Underwoods, Poles, Trees, Gates, Stiles, Posts, Pales, Rails, Hedg-wood, Broom, or Furze, within the meaning of the said Statute of 43 *Eliz.* and liable to the punishment therein, and of this Act; *Viz.*

“ Every person so convicted, shall for the first offence give the owner satisfaction for his damages within such time as the Justice shall appoint, and over and above, pay down to the Overseers of the poor of the Parish where such offence is, such sum of money, not exceeding 10 s. as the said Justice shall think fit : in default of either of which payments, the said Justice may commit such offender to the house of Correction, for such time (not exceeding one moneth) as he shall think fit, or to be whipt by the Constable, or other Officer, as in his judgment shall seem expedient.

“ And if such person shall again commit the said offence, and be thereof convicted as before, that then the persons offending the second time, and and convicted, shall be sent to the house of Correction for one moneth, and there to be kept to hard labour : And for the third offence, convicted as before, shall be judged and deemed as incorrigible Rogues.

“ And whosoever shall buy any burdens of wood, or any the premisses, suspected to be stolne, or unlawfully come by, the Justices, the Mayor or chief Officer, or any one of them within their respective Jurisdictions, upon complaint, may examine the matter upon oath : And if they find the same was bought of any suspected to have stolen or unlawfully come by the same, then any one of the said Justices or chief Officer, shall and may award the party that bought the same, to pay treble the value thereof to the party from whom the same was stoln or unlawfully taken : And, in default of present payment, to issue forth Warrant to levy the same by distress, and sale of the offenders goods, rendring the overplus to the party : And for want of such Distress, to commit the party to the Gaol, at his own will, there to remain one moneth without Bail.

“ But no person is to be questioned for any offence within this Act, unless within six weeks after the offence committed ; nor if punished by any former Law for the same.

## Weights. CHAP. LXXVI.

11 H. 7. 4. **T**wo Justices of peace (one being of the *Quorum*) may by examination  
 p. Just. 92. or enquiry, hear and determine the faults of head officers in cities, *Two Just.*  
 Lamb. 345 boroughs and market towns, that do not twice every year view and examine all weights and measures in their towns, &c. and do not break and burn the defective. See *cap. 6.*

Ibid. Also two such Justices may by examination or inquiry hear and determine the faults of all buyers and sellers, which do not buy and sell with weights and measures that be lawful, *sc.* with such as be marked and sealed. *sc.* in market towns, (like and equal with the Kings Standard, *sc.* out of market  
 Lamb. 345 Towns; *quare*) Also the said Justices may break and burn all defective  
 P. Weights 9. weights and measures. See *hic postea.*

Ibid. & The said Justices may fine all and every the offenders aforesaid by their  
 P. Just. 92. discretion, and may make process against them as if they were indited of  
 Lamb. 345 Trespass against the peace. For the process. see hereof in the title. *Process.*  
*cap. 132.*

Now for the readier direction of the Justices of the Peace herein, I thought good to set down the just and certain contents of all (or most sorts of) weights and measures, that so they may the better judge what weights and measures be unlawful, or defective, and what not.

9 H. 3. 25. By the statute of *Magna Charta*, *cap. 25.* there shall be but one weight  
 P. weights. and one Measure of corn, wine, beer and ale; and one yard throughout the  
 1. whole Realm (*sc.* according to the Kings Standard in the Exchequer) and  
 P. 7. this statute of *Magna Charta*, hath since herein been confirmed by many  
 several Parliaments, *viz.* by the stat of 14 E. 3. 12. 25 *Ed. 3. cap. 10. 27 Ed. 3.*  
*10. 34 Ed. 3. 5. 13 Rich. 2. 9. 8 Hen. 6. 5. 7 H. 7. 4. 11 H. 7. 4. 12 H. 7. 5.*  
 as thereby appeareth.

*Vera fides,  
 pondus,  
 mensura,  
 moneta sit  
 una.  
 Ac status  
 illæsus to-  
 tius orbis  
 erit.*

17 Car. 1. **T**here shall be one Weight, one Measure, and one Yard, according  
 cap. 19. to the Standard of the *Exchequer*, throughout all the Realm, as well in  
 places Priviledged as without, and every Measure of Corn shall be stri-  
 ked without heap; and whosoever shall keep any other Weight, Mea-  
 sure or Yard, whereby any Corn, Grain, or other thing is bought  
 or sold, shall forfeit for every offence five shillings, being thereof  
 Convicted, by the oath of three witnesses, before any Justice of  
 Peace, or Head-Officer of City, Town or place where the offence is  
 done, to be levied by the Church-wardens or Overseers of the poor of  
 the Parish, to the use of the poor of the said Parish, by distress and  
 sale of the offenders goods, and for want of distress, to be impris-  
 oned without bail untill payment. And any Justice of Peace upon  
 Suit against him for any thing done upon this Act, to plead the Gene-  
 rall Issue, and give the Act in Evidence, and to have treble Costs, if un-  
 justly vexed.

Raft. 8. And yet notwithstanding there always hath been, and still are, two kinds  
 Diu. fo. 5. of weights used in *England*, and both warrantable: the one by law, the  
 7. b. other by custome (as it seemeth) but they are for several sorts of wares  
 or commodities; for there is *Troy weight*, and *Averdupois*.

Ibid. 1. *Troy Weight* is by Law; and thereby are weighed Gold, Silver,  
 Pearl, precious Stones, Silk, Electuaries, Bread, Wheat, and all man-

“ net of grain, or corn, is measured by *Troy* weight. And this hath to  
 “ the pound xii. ounces, or xx. s. *sterling* weight, and no more. It is cal-  
 “ led by some, *Libra medica* : by others, *Libra & uncia Trojana*.

Raft. 8. &  
 14. 27 E. 3  
 c. 10.

“ 2. *Averdupois* weight is by custome (yet confirmed also by Statute ;) and thereby are weighed all kind of Grocery wares, Physicall Drugs, Butter, Cheese, Flesh, Wax, Pitch, Tarre, Tallow, Woolls, Hemp, Flax, Iron, Steel, Lead, and all other commodities not before named (as it seemeth) but especially every thing which beareth the name of garble, and whercof issueth a refuse, or waste. See *Raft. 8. fol. 527.* and the Book of *Assise, impress. 1597.* This is called *Libra Civilis*.

“ The word *Averdupois*, in *French* is as much as to say, to have full weight, *habere pondus*. *Geo. Agricola* in his Learned *Treatise, De ponderibus & mensuris*, pa. 339. saith thus of both these kinds of weights, *Medica & civilis libra numero non gravitate unciarum differunt*.

And this hath to the pound 16 ounces, or 25 s. *sterling* weight.

Also in this *Averdupois* weight, unto every hundred is allowed 12. pounds weight ; so as 112 pounds make a hundred weight ; six and fifty pounds make half a hundred, and 28 pounds make a Quarter.

27 Ed. 3.  
 10.

Also all manner of *Averdupois* shall be weighed by lawful weights, sealed according to the Standard of the *Exchequer*, *P. Weights 14.*

Averdupois weight.	14 Ounces and a half, and two pence weight <i>Troy</i> ,		Measures of Corn, accord- ing to <i>Averdu- pois</i> weight.
	do make 16 ounces of <i>Averdupois</i> ,		
	7 pounds,	} <i>Averdupois</i> , make the Gallon.	
	or 7 pintes,		
	14 pounds,	} <i>Averdupois</i> , make the Peck.	
	or 14 pintes,		
	56 pounds,	} <i>Averdupois</i> , make the Bushell.	
	or 56 pintes,		

Troy weight.	Pintes, or pounds,	5120	512	256	64	16	8	4	Measures of Grain, accord- ing to <i>Troy</i> weight.
	Quarts,	2560	256	128	32	8	4	2	
	Pottles,	1280	128	64	16	4	2	1	
	Gallons,	640	64	32	8	2	1		
	Pecks,	320	32	16	4	1			
	Bushells,	80	8	4	1				
	Coombes,	20	2	1					
	Quarters.	10	1						
		Ten Quarters of Corn is a Last.							

Beer Measures.					Ale Measures				
Pintes,	288	144	72	8 4 1	256	128	64	8	Measures of Beer and Ale.
Quarts,	144	72	36	4 2	128	64	32	4	
Pottles,	72	36	18	2 1	64	32	16	2	
Gallons,	36	18	9	1	32	16	8	1	
Firkins,	4	2	1		4	2	1		
Kilderkins,	2	1			2	1			
Barrel,	1				1				

See for **Corn, Beer, and Ale**, more fully in that which followeth :

32 Wheat Corne taken in the midst of the Ear,  
weigheth I d. sterling.

Twenty pence sterling maketh the ounce Troy.

12 Ounces maketh in } weight 1 l' Troy.  
                                  } measure one pint.

Two pintes, or pounds, maketh the quart.

Two quarts maketh the pottle.

8 pintes,  
4 quarts,  
2 pottles, } maketh the Gallon.

**Eight Quarts maketh the Peck.**

64 pintes, }  
32 quarts, } maketh the } Bushell  
8 gallons, } or  
4 pecks, } Firkin.

**Troy Weight,**  
12 H. 7. 15. 6  
51 H. 3.

Sixteen Gallons, } maketh the } Kilderkin.  
Two Firkins, } Half Barrell.  
Rondlet.

256 pintes,  
128 quarts,  
32 gallons,  
4 firkins,  
2 Kilderkins,  
4 Bushels,

} maketh the { Coomb,  
or  
Barrell.

5 12 pintes,  
2 5 6 quarts,  
64 gallons  
8 firkins  
4 kilderkins,  
2 barrells,  
8 bushells

} maketh the { Quarter,  
or  
Hoghead.

So the  $\left\{ \begin{array}{l} \text{Pint and Pound} \\ \text{Firkin and Bushel} \\ \text{Barrel and Coomb} \\ \text{Hogshead and Quarter} \end{array} \right\}$  are of like content.

Also the *Statute* of 23 H. 8. cap. 4. doth limit the weight of every of these three Vessels here next named, being empty, as followeth, *sc.*

1. The Barrel
  2. The half Barrel or Kilderkin
  3. The Firkin
- $\left\{ \begin{array}{l} \text{must weigh (be-} \\ \text{ing empty)} \end{array} \right\} \left\{ \begin{array}{l} 26 \\ 13 \\ 6\frac{1}{2} \end{array} \right\}$  pounds.

*Measures of Corn.*

All kind of Corn and Grain is measured by Troy-weight.

By *Statute* the Bushel must contain eight gallons, or 64 pounds or pints of Wheat, 31 E. 1. 12 H. 7. 4. P. *Weights*. 2 *Rastal*. 34. *Diu*.

And yet by the Book of Assise, imprinted *An. Dom*, 1597. the Bushel is to contain 56 pounds (or pints) of Averdupois weight (which is three pounds, or three pints and eight ounces Troy, more then the stat. or Troy weight.) For 56 pounds or pints Averdupois weight, and 67 pounds eight ounces Troy weight do justly agree.

See the  
Book of  
Assizes.

Also eight Bushels stricken, make the quarter of Corn, 11 H. 7. 4. 25 E. 3. 10. and 34 E. 3. 6.

P. 3.  
15 R. 2. 4.  
P. 1.  
34 E. 36.

Also every measure of Corn shall be stricken without heap, 25 E. 3. 10. and all purveyances shall be by such measure, *sc.* stricken without heap. *ibid.*

Water-measure, sold within ship-board, shall contain five pecks stricken to the bushel. P. 9.

No person shall buy or sell with a Bushel, except it be sealed, and marked by the Officer, and according to the Kings Standard. P. 59.

But note, that in many places and Countries the measure of Corn doth much differ, and the Bushel in one place is greater then in another.

And yet in the measure of Corn *Consuetudo loci est observanda*, if it be a custome exceeding all memory, and used without any lawful interruption; for such time and usage sufficeth for a Law, though regularly custome or prescription against a stat. is not good, except that such customs and prescriptions be also confirmed by stat. or that they be saved by another stat. See *Br. Presc.* 2. 50. *Pl.* 36. *b.* and 8 H. 7. *fol.* 4. *b.* *Dr. & Stud.* 47.

9 H. 6. f. 56  
30 aff. pl.  
38.  
Co. lib.  
113. 115.

Bushel.  
Several  
Clerks of  
the markets  
cause the  
diversity of  
measures.

But this difference of measure of Corn, should seem to come partly from the diversity of Clerks of the Market (there being a Clerk of the Market for the Kings house, another for the Prince, another for the Dutchy; others in Corporate Towns, and others belonging to Lords of Liberties) and partly from the abuse of divers corporate Towns, and other privileged Places or Liberties, where they by usurped custome (without any good warrant of Law have used to have and to buy by such measures: And where the Clerk of the Market for the King, hath forborn or neglected to meddle, in regard perhaps of their Corporation, Liberty, or some other respect. But this abuse two Justices of Peace (the one being of the *Quorum*) may reform: *sc.* two Justices of Peace of the County, where there be no Justices of Peace within that Corporation, &c.

Also the Clerk of the Market for the Kings house, may reform this in all places within the Verge, 27 H. 8. c. 24. And



And yet by the words of the statutes of 25 E. 3. cap. 10. and 34 E. 3. cap. 6. the Rents and Firms of Lords shall be measured by such measures as they were wont to be, whether it were by heaped measure, or greater measure than the *Statute* appointeth.

And note, that the Clerk of the Market shall carry with him all his weights and measures signed according to the Standard of the Exchequer, 16 Rich. 2. c. 3. And the Justices of Peace may, yea ought, for to sit with the Clerk of the Market at his coming into the Country, &c.

Sir Francis Harvey hath often delivered in his charge at Cambridge Assizes, these directions, *sc.* That one Justice of Peace at the least, ought to sit with the Clerk of the Market, to see that the Kings Subjects be not wronged. And that the Clerk of the Market ought to have with him his directions out of the Exchequer: And that he may take no money for any Bills, &c. And that he ought to seal no bushel, or other measures or weights, but once (and not yearly as they use to do:) And that if after the first sealing, he shall take any thing for the sealing thereof again, or for the shewing thereof, &c. it is Extortion; yea, it is one of the greatest oppressions (saith he) for that it concerneth almost all men.

“ The Clerk of the Market his duty is, to take charge of the Kings measures, and to keep the standard of them, that is, the examples and patterns  
“ of all the measures that ought to be throughout the Realm, as ofells,  
“ yards, quarts, pottles, gallons, &c. of weights, bushels, and such like, and  
“ to see that all measures in every place, be answerable to the said Standard or Pattern, *Flet. li. 1. Cha. 8. 9, &c.* And he is to have with him,  
“ when he goeth to assay, weights and measures signed according to the  
“ Standard, and none other his weights and measures, 16 R. 2. Ca. 3.

For the Assize of Bread, I refer you to the Books made for the assize thereof, and will only set you down some short observations therein:

1. All sorts of Bread ought to be weighed by Troy-weight.
2. *Post septem dies, panis non ponderetur.*
3. The Bakers shall not sell to any Victualler, &c. to be retailed, but only thirteen penny-worth for twelve pence, as well mans bread as horse bread.
4. Every Baker shall have a mark of his own for his Bread, *Poult. stat. at large, p. 111. & Rast. weights 7.*
5. Every sort of Bread shall be weighed according to the price of the middle sort of Corn.
6. No man shall be a common Baker, except he that hath been an Apprentice to that Trade by the space of seven years at the least.
7. The *Statute* doth appoint three sorts of Bread to be made and sold to the Subjects; *viz.* White-bread, Wheaten, and Household-bread, besides the Horse-bread.
8. The Bakers of Cities, Boroughs, and Corporate Towns, shall have 6 s. allowance for the baking of every quarter of Wheat, over and above the second price of Wheat in the Market.
9. Bakers inhabiting out of Cities, Boroughs, and Corporate Towns, shall have 6 s. in allowance for their charges in baking of every Quarter, &c.
10. But Forreigners bread should wigh six ounces in the penny-loaf, more

more than the Town dwellers, for that they bear not such scot and lot as the others do.

11. Lastly, for horse-bread, that three horse loaves be sold by the Baker for a penny, 13 d. for 12, and every loaf to weigh the full weight of a penny white loaf at what price soever the wheat be sold.

Bakers, and  
their pu-  
nishment.

For the punishment of the Bakers for their unlawful bread, *quare* whether they shall only be amerced, &c. after indictment and conviction of their said offence; or that the Justices of Peace (or sworn Officers in Leets) may take away their unlawful bread, and give it among the Poor, as Officers in Corporate Towns are enabled or appointed to do, in the end of the Book of Assise, imprinted Anno 1597. and all Justices of the Peace are there willed and required to be aiding and assisting to the said Officers therein. But by the *Statute 51 H.3. and 13 R.2.8.* Bakers and Brewers being convict for not observing the Assise the first, second, and third time, they shall be amerced according to the offence (if it be not grievous.) But if the offence be grievous, or often, then shall they suffer punishment of the body, without redemption (or remitting of the offence either for Gold or Silver) *sc.* a Baker to the Pillory, and the Brewer to the Tumbrell (now called the Cucking-stool, as it seemeth by Mr. Lamb. 62. *Minsh.* taketh Tumbrell for a Dung-cart) or to some other correction. See another *Statute* concerning Bakers and Brewers, and their punishments, and to the same effect, made *incerto tempore, c.2. & 6. Poalt. statutes at large, fol. 111.*

All process and proceedings upon indictments preferred of Bakers for breach of assise of Bread were staid, for that it was doubted whether this Court hath Jurisdiction to enquire, hear, and determine the said offence, *Ord. Seß. Pa. Middlesex, 6. Dec. 7. Car.*

Note, that within every Leet or Market, there ought to be a Pillory, and a Tumbrell, to punish the Bakers and Brewers that offend, &c. *Fit. Leet.*

12. And for want thereof, the Lord of such Leet, or Market, shall make a fine to the King, *Cro. 141.*

Also they which have the keeping and correction of the Assise of Bread and Beer, if they have not a Pillory and a Tumbrell to punish Bakers and Brewers that are faulty, they shall forfeit their Franchise, *Cro. 148.*

Also a Leet may be seised into the Kings hands, if the Steward there shall take money to spare the punishment of the Tumbrell, where one shall offend in the assise of Bread or Ale, *Libr. Intr. Cromp. 181.*

The Millers toll-dish also must be according to the Standard.

Millers.

Now Millers are to take for the toll but the twentieth part, or 24 part, according to the strength of their Water, and custom of the Realm, *stat. 3. E. 1. de viculariis Rast. tit. Weights Din 7.*

And yet in some places the Millers do claim and take the 16 part; and where the Custom hath been so used time out of mind, it seemeth good and warrantable; *tamen quare.*

But the Miller ought to take but one quart, for grinding of one bushell of hard Corn, and if he fetch and carry back the grist to the Owner, he may take two quarts of hard Corn; and this hard corn is intended of Wheat, Rye, Meslin (which is Wheat and Rye mixed.) And for Malt, the Miller shall take but half so much toll as he taketh for hard Corn, (*sc.* one pint in the bushell) for that Malt is more easily ground then Wheat, or Rye: but

if

if the Miller do fetch to his Mill, and carry back the Malt to the Owners house, then the Miller also shall have double toll. See *Crompt. author. des Courts*, 221. & 224.

Note, that Millers are not to be Common buyers of any Corn, to sell the same again, either in Corn or Meal: But ought only to serve for the grinding of Corn that shall be brought to their Mills.

*Measures of Wine, Beer, and Ale, &c.*

*Measures  
& Weights.*

18 H. 6. 17  
P. Wine 13.  
1 R. 3. 13.

Wine	} their mea- sure is all one, <i>sc.</i> the	Rondlet, 16 and di.	} gallons.
Oyl, and		Barrel, 32 and di.	
Honey,		Hogshead, 33	
		Pipe, 126	
		Tunne, 252	

Yet for honey the Assise is altered to 32 Wine gallons the Barrel, 16 gallons the Kilderkin, &c. 23 *El. 8. P. Wax*, 6.

Beer, the measure thereof, *is as followeth, sc. the*

} Firkin, 9 Kilderkin, 18 Barrell, 36	} gallons.
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23 H. 8. 4.  
P. Coop. 2.

And so Beer-measure containeth in the Barrell four gallons more than Wine, or any other Vessel.

Ale, the measure thereof, *is as followeth, sc. the*

} Firkin, 8 Kilderkin, 16 Barrell, 32	} gallons.
---	------------

No Cooper shall make any other Vessel for Beer or Ale, to be sold within this Realm, of any greater or lesser number of gallons than is afore-said, unless he shall cause to be marked upon every such Vessel (of greater or lesser number of gallons) the true and certain number how many gallons every such other Vessel shall contain, 23 *H. 8. c. 4.*

Also no Brewer of Beer or Ale shall put the Beer or Ale to sale, to be spent within this Realm, in any other Barrells, Kilderkins, Firkins, or other Vessels of Wood, other then shall be marked by a Cooper, and whereof every Vessel shall contain and hold the number of gallons above-said, of full and just measure, or above and not under that measure, *ibid.*

The Wardens of Coopers in all Cities, and Boroughs where there be such Wardens, and in all other Boroughs and Towns, the Mayor, Sheriffs, Bayliffs, Constables, or other head-Officers, may search and gage all such Vessels (made in such City or Town) whether they bear their true contents, as afore-said; and if they find any Vessel defective, they may make or amend the same, according to the true content, or else may cause the same to be burned, *ibid.*

It appeareth by M. *Crompt.* that it was agreed by the Justices, that the measure of Wine and Ale should be all one, but now by the stat. of 1 *Jac. c. 9.* Ale and Beer shall be sold by retail by one and the same measure, *sc.* by the Ale quart.

And for the prices of all Vessels of Ale and Beer, by the stat. 23 *H. 8. c. 4.* two Justices of Peace might assess the prices thereof, and that no Brewer shall take for any Barrel, Kilderkin, or Firkin, &c. of ale or beer, but after such prices and rates as shall be assessed by the said Justices of Peace in the Country, or by the Mayor, or their Head-Officers in corporate Towns, &c. But now by the Stat. 8 *El. c. 9.* the assessment of the prices thereof by

*Crompt.*  
94. b.  
P. Aleh. 7.

by the Justices shall be by the Just. or the more part of them, being present at the *Easter Quarter-Sessions*, and only of such Vessels as shall be made or sold out of Cities or Corporate Towns.

*Sope.* Sope, the Barrel, half Barrel, and Firkin, shall be of the same content that ale is, *sc.* the barrel 32 gallons or above, and the empty Vessel not to be in weight above 26 pound; the empty Firkin not to weigh above 6 pound and an half, and to contain 8 gallons or above, of full and just measure. 23 H. 8. 4. P. Sope 1.

*Butter.* Butter also shall be of the same measure that sope is of.

*Cheese.* Cheese, a weigh of Cheese must contain 32 cloves, and every clove 8 l. of Averdupois weight: although the *Statute* 9 H. 6. 8. *Raft.* 28. *diu.* and the Book of Affize, imprinted 1597, seem to make 7 l. to be a clove. And yet by the Book of Affize, the weigh of *Suffolk* Cheese must contain 256 l. or 12 score and 16 l. of Averdupois weight (and their barrel of Butter is of like weight with the foist :) but the weigh of *Essex* Cheese or Butter is 300 l. weight, after the rate of five-score and 12 l. to the hundred, which is 336 l. or 16 score and 16 pounds of Averdupois weight. P. weights 6.

*Flesh.* Beef, and other flesh are 16 ounces Averdupois to the pound, and eight of them pounds to make the stone, except where the usage of the Country require more pounds to the stone, *Book of Affize.*

*Fish.* Herrings the barrel, half barrel, and firkin shall be the same content that ale is, *sc.* the barrel 32 gallons, &c. 11 H. 7. c. 23. and 13 EL. 11. P. *Fish.* 9.

Also herrings are sold by tale, *sc.* six-score herrings shall go to the hundred, ten hundred to the thousand, and ten thousand to the Last, 31 E. 3. c. 2.

Salmon and Eels, see the contents of their Vessels, *Stat.* 11 H. 7. c. 23. P. *Fish.* 8. 10.

*Wool.* Wool; 14 pound weight goeth to the stone of Wool, 28 pounds goeth to the Tod, and 26 stone goeth to the Sack, 11 H. 7. 4. P. 3. 31 Ed. 1. cap. 8. 23 E. 3. 9.

Hemp, 20 l. weight maketh the stone, P, *Cables* 2. 21 H. 8. c. 12.

Sugar, spices and wax 8 l. maketh the stone, and 13 stone and a half, or 100 l. maketh the hundred: see the *stat. de compos. ponder. Raftal, weights* 8.

Hops, five-score and twelve pounds maketh the hundred.

Lead, the content of the pound, the stone, and the load; see *Raftal, weights* 8.

Leather, the content of the Dicker, and the Last; see *Raft. VWeights* 8.

The contents of Iron, Glass, Linnen Cloth, and divers other things; see the *stat. de compos. ponder. Raft.* 8.

All other commodities of tale, or number, are sold by the hundred,

whereof { Cattel and fish are sold six-score to the hundred, and yet the hundred of hard fish must contain eight score, *Raft.* 8.  
Also all other headed things, as nails, pins, &c. are sold six-score to the hundred.

All other things have but five score to the hundred.

*Fuel.* For the affize of Fuel, *sc.* of Cole, Tall-wood, Billet and Fagot, see the *stat.* of 7 Ed. 6, 7. 43 EL. 14. A sack of Coles is four bushels. Fuel 1.

Timber well hewen, and perfectly squared, fifty foot thereof maketh the load.

Lath

Lath shall contain in length five foot, in breadth two inches, and in thickness half an inch.

Tile, six score go to the hundred: as for the assize thereof, (*sc.* the length breadth and thickness thereof.) See Statute, 17 *Edwardi* 4. *cap.* 17. *P. Title* 2.

A Bale of paper is ten ream, a ream is twenty quires, a quire is twenty five sheets.

A Roll of Parchment is five dozen or sixty Skins.

P. Weights  
4.

Three barley corns measured from end to end (or four in thickness) maketh one inch.

Four inches make an handful, 27 *H.* 8. 6.

Twelve inches make a foot.

Three foot a yard.

Three foot and nine inches make an ell.

Five foot do make a Geometrical pace.

Seaven foot make a fathome.

Five yards and a half (which is 16 foot and an half) make a pole, rood or perch, *Ibid.*

And yet by the usage of many countries the pole doth vary, for in some places it is 18 foot, and in some places 21 foot, and other places 24 foot goe to the pole: and there if a man sell a certain number of acres of wood, &c. it shall be measured according to the usage of the country there, and not according to this Statute, for herein *consuetudo loci est observanda*. See *Crompt. des courts* fol. 23. & 222.

Co. 6. 67.  
47 E. 3.  
f. 18.

The same reason may seem to hold of measures of corn by the bushel; see a little before.

Master *Osborn* writeth that the measure of 18 foot to the perch (or pole) is commonly called wood-land measure, 21 foot to the pole is called Church measure (*sc.* of land which now doth, or formerly did belong to the Chnrch) and twenty four foot to the pole is called (and that rightly) Forrest measure.

Note, that the Clerk of the market may inquire of the pole or perch, whereby land is measured, as well as of other measures. *Crompt. Author. des courts* 221. but the Justices of peace are not to meddle therewith, especially out of their Sessions.

Also note that no measure shall be sealed but the bushel, half bushel, peck, gallon, pottel, quart and pint, *Crompt. fol.* 222 *tamen quere.*

35 El. c. 6.

Forty pole in length make a furlong.

Eight furlongs (or 320 pole) make an English mile.

Furlong.  
Mile.

Note, that our English mile contains 280 foot more then the Italian mile, the Italian mile being of 1000 paces, and five foot to a pace, and so the Italian mile is in length 5000 foot whereas the English mile is 5280 foot in length, 1760 yards.

P. weights.  
4.

Forty pole in length, and four in breadth (or 160 pole do make) an acre *Acre.*

Co. 9. 124. *Stat. Compos. ulnarum, & Stat.* 34. *Ed.* 1.

And (by the opinions of *Mr. Camden* fol. 339. and *Hollinshead*, p. 13. *impr.* 1586) one hundred acres is a hide of land: but yet (it seemeth) that a hide of land or plow-land, or carve of land, (which are all one) are not of any certain content; see hereof before, *tit. Highways.*

*Litrata terra* containeth four Oxgangs, and every Oxgang 13 Acres.  
*Min.*

A yard-land containeth in some places more, in some other less.

And yet M. Norden in his Surveyors Dialogue, page 59, saith, that every plow-land containeth commonly 120 Acres; and every plow-land is four yard-land (in latin called *quatrona terra*, or *virgata terra*) every yard-land containeth thirty Acres: and yet after some computation, every yard-land containeth but 20 Acres, and in some places 24 Acres; and this is the common account with us on the East part of Cambridg-Shire.

Now that I have set you down the contents of most weights and measures, you must further observe.

Standard in  
every Shire-  
Town..

First that in every County (*sc.* in the Principal or Shire town there) there are (or ought to be) standards of brass for weights and measures, (*sc.* for the bushell and gallon) according to the Kings standard of his Exchequer, there to remain with the Chief Officers of the same town; according to the scantling of which, every City, Borough, and market town within the same County ought to make them common weights and measures, to be marked by him that keepeth the standard. <sup>11 H. 4.  
12 H. 7. 5.  
P. 7.</sup>

Market  
Town.

Also in every City, borough, and market town, there ought to be a common ballance, and a common bushell, and weights sealed, and according to the standard in their Shire town (as afore said,) upon pain to every City x li. to every borough 5 li. and to every market town xl s. for their defaults. <sup>11 H. 6. 8.  
8 H. 6. 5.  
P. 9. 11.</sup>

Also no man with in any City or market town, ought to buy or sell with any weights or measures, except they be sealed and marked in form afore said (*sc.* according to the Kings standard, and by the officers in whose possession the Kings standard remaineth: nor any other person out of a market town, except their weights and measures be like equal with the standard. See *Rastall fol. 531. c. diu. 33.* <sup>11 H. 7. 4.  
P. 9. 7.</sup>

Weights  
and Mea-  
sures sealed.

And yet it seemeth by the Statute 31 Ed. 1. & 8 H. 6. 5. (*Rastall diu. 3, & 26*) that no man (though out of a market town) shall use weights or measures, nor other thing in the place of weight or measures that is not sealed, according to the Kings standard, upon pain to forfeit the value of the goods weighed or measured, and two years imprisonment, and to be fined and ransomed, and yield *quatreble* damages. See *Rastall tit. weights, & Cromp. 94.* <sup>See Ra. diu.  
315. 26.  
29. 32. 33.  
27 E. 2.  
c. 10.  
8 H. 6. c. 5.  
13 R. 2. 9.</sup>

*& stat. incerti temporis, ca. 8. Poulton stat. at large, pag. 112.*  
The officer that keepeth the standard (in the Shire town) shall mark and seal other weights and measures, to all other the Kings subjects that shall require it; and they shall take for the marking of the bushell but 1 d. and for all other measures but an half penny; and for weights, for every hundred weight 1 d. and for half an hundred weight an half penny, and for every weight under, but a farthing. <sup>21 H. 7. 4.  
P. 8.</sup>

Now

## Now follow the Names of the Principall

Towns in every Shire (or County) appointed to have the keeping  
of Standards for the Weights and Measures according  
to these Statutes.

**B**edfordshire, Town of Bedford.  
Barksh. the Town of Reading.  
Bristol, the same Town.  
Buck. the Town of Buckingham.  
Camb. the University of Cambridg.  
Cheshire, the City of Chester.  
Cornwall, the Town of Lustythiel.  
Cumberland, the City of Carlile.  
Derb. the Town of Derby.  
Devon. the City of Excester.  
Dorset. the Town of Dorchester.  
Essex, the Town of Chelmsford.  
Glouc. the Town of Gloucester.  
Hampsh. the City of Winchester.  
Hertf. the Town of Hertford.  
Heref. the Town of Hereford.  
Hunt, the Town of Huntingdon.  
Kent, the Town of Maidstone.  
Lanc. the Town of Lancaster.  
Leic. the Town of Leicester.  
Linc. the City of Lincoln.

London, the same City.  
Middlesex, the City of Westminster.  
Norf. the City of Norwich.  
North. the Town of Northampton.  
Northum. the Town of Newcastle.  
Nottin. the Town of Nottingham.  
Oxford, the University of Oxford.  
Rutland, the Town of Uppingham.  
Shropsh. the Town of Shrewsbury.  
Sink-Ports, the Castle of Dover.  
Staff. the Town of Stafford.  
Somers. the Town of Ilchester.  
Southampton, the same Town.  
Suff. S. Edmonds-bury.  
Surrey, the Town of Guilford.  
Sussex, the Town of Lewes.  
War. the Town of Coventry.  
Westmer. the Town of Appulbie.  
Wiltsh. the City of Salisbury.  
Worc. the City of Worcester.  
Yorksh. the City of York.

Stat. 11 H.7.

Levit. 19. 35, 36.

*Ye shall not do unjustly in Judgment, in Line, in Weight, or in Measure: ye shall have just Ballances, and true weights.*

Prov. 11. 1. & 20, 20.

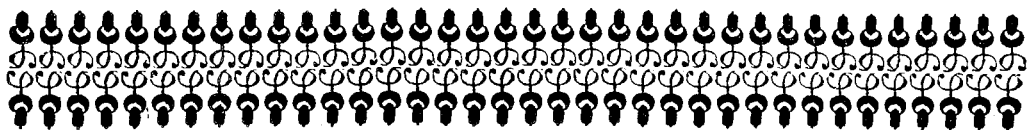
*False Ballances, or divers Measures, are all an abomination unto the Lord.*

Deut. 25. 13, &c:

*Thou shalt not have two manner of weights, a great and small; nor divers measures; but a right, just, and perfect weight, and measure, that thy dayes may be lengthned in the Land, &c.*

R 2

Here



Here also I will give a short View of such  
particular and private STATUTES (made only for some  
particular Shires, Cities, or Towns) as do give some  
Power also unto two (or more) Justices of Peace  
out of their Sessions.

CHAP. LXXVII.

*Aldgate.  
Cardiff.*

**F**Or paving of *Aldgate-street*, 13 *Eliz.* 23. & 23 *Eliz.* 12.  
For the repairing of *Cardiff* Bridg, 23 *Eliz.* 11.

*Cheshire.  
Chepstow.*

For Justices of Peace in *Cheshire*, &c. 27 *H.* 8. 5.

*Chichester.  
London.*

For repairing of *Chepstow*-Bridg, 3 *Jac.* 23.

For *Chichester* Haven 27 *El.* 22.

For paving *Drury Lane* near *London*, 3 *Jac.* 22.

See more here before, *titulo London*.

*No such.  
Norfolk.  
Suffolk.  
Norwich.  
Northumb.*

For repairing the High-way at *Non-such*, 3 *Jac.* 19.

For recovery of Marsh ground in *Norfolk* and *Suff.* 7 *Jac.* 20.

For making Coverlets and Dornicks there, 5 *Ed.* 6. 24.

For Recognisances to be taken of Lessees in *Northumberland*, 11 *H.*

7. 9.

For amending Bridges within five miles thereof, 18 *El.* 20.

*Oxford.  
Shepey.*

For making the River of *Thames* Navigable to *Oxford*, &c. 21 *Jac.* 32.

For repairing a Ferry in the Isle of *Shepey*: See 18 *Eliz.* 10. & 27 *Eliz.*

26.

*Suffex.  
Kent.*

For laying out new High-ways in *Suffex* and *Kent*, 14 *H.* 8. 6. 26 *H.* 8. 7.

See before. *tit. Purveyors*.

*Upton.*

For repair of *Upton* Bridge, 3 *Jac.* 24.

*Wales.*

For wages of the Knights of Parliament in *Wales*, 35 *H.* 8. 11.

For establishing Justices of Peace in *Wales*, 34 *H.* 8.

*Wilton.*

For making of the Bridge at *Wilton* over *Wyke*, in the County of *Hereford*, 39 *Eliz.* 24.

Thus much concerning such Statutes as the Justices of the peace, out of their Sessions of the peace, are to meddle withall.

Now for a conclusion of these Statutes and of the services of the Justices of Peace therein, I wish them, that in all cases where the whole matter is (by the Statute) committed to the Justices of peace (to one alone, or to two Justices, or more) out of their Sessions, to hear and determine &c. as where upon his or their own view, or by confession of the offender, or upon examination and proof of witnesses; (and without any indictment found or preferred) they may commit, or punish an offender as convict by such his confession, or examination and proof; as also where they may proceed by inquiry and indictment; that in every such case of such their judicial proceeding, they be led by no affection, but advisedly to examine and consider



consider of, as well the fact it self, as of the circumstances, and then (in the fear of God, and according to Law) to proceed and to see, or cause due and diligent execution of the punishment to be done upon the offenders according to the quality and quantity of their offence, and as the Statutes themselves do direct; for law without due execution and punishment of the offenders, is as a sheathed sword without any use or profit.

But in all cases where the Justices of Peace have power to hear and determine out of their Sessions (sc. upon their own view, or upon the confession of the offender, or upon proof of witnesses) if upon such conviction the offender be to be committed to the Gaol, the Justices of peace ought to make a record in writing under their hands, of all the matter, and of the proofs, &c. which record notwithstanding in many cases they may keep by them, &c.

Also if upon such conviction the offender be to be fined to the King, then the Justices of peace are to estreat such fine, and to deliver, or send the estreat into the Exchequer, whereby the Barons of the Exchequer may cause the said fine (or forfeiture) to be levied to the Kings use.

And here I will shortly point you out some particular offences, which by the Statutes are referred to the Justices of peace to hear and determine (out of their Sessions) as aforesaid, and will leave the rest to your own search.

1. Some particulars where one Justice of peace upon his own view, or *one Just.* hearing of the offence may punish the offenders.

Alehousekeepers, &c. suffering townsmen, or any other person, to continue drinking in their houses contrary to the Statute, 1 Jac. c. 9. & 21 Jac. 7. *Vide antea, tit. Alehouses.*

Townsmen, or strangers tippling in Alehouses, &c. contrary to the Statute 4 Jac. cap. 5 & 21 Jac. cap. 7. *ibidem.*

Persons that shall ride or go armed, contrary to the Statute, 2 E. 3. c. 5. *Vide antea, tit. Armour.*

Persons that shall have any Teinters, &c. for the deceitfull stretching of cloth, *Vide antea, tit. Cloth.*

Offenders in forcible entries, or detainers, contrary to the Statutes: see *antea, tit. Forcible Entry.*

Keepers of places for unlawful gaming, *Antea, tit. Games unlawful.*

Players in such places, *ibid.*

Players at unlawfull games wheresoever contrary to the Statutes, see as before.

Swearing profanely, or cursing in the hearing of any Justice of peace, &c. *Antea, tit. Swearing.*

2. Where one Justice of peace may punish offenders as convict upon their own confession.

Alehousekeepers, Innkeepers, or Victuallers, suffering townsmen, or strangers, to continue, or be tippling in their houses, &c. see *Antea, tit. Alehouses.*

Townsmen or strangers, continuing tippling in any Inn, Alehouse, or victualling house; See *ibidem.*

Sheriffs, &c. entring plaints in their Courts unduely; *Vide antea, tit. Sheriffs.*

Persons not repairing every Sunday to Church, see *antea*, tit. *Recusants*.

Profane swearers or cursers, *hic ante*, tit. *Swearing*.

Trespassers in Corn, Orchards, or Woods, &c. contrary to the Statute, 43 *El.* 7. *Vide ante*, tit. *Trespass*.

Offences in Tile-making, contrary to the Statute, *Vide ante*, tit. *Tile*.

Offences in Watermen, contrary to the Statute, *Vide ante*, tit. *Watermen*.

3. Where one Justice of Peace may punish offenders as convict upon examination and oath of witnesses.

Alehouse-keepers, &c. suffering Townsmen or strangers to be tipling in their houses contrary to the Statute, 1 *Jac.* & 21 *Jac.* *Vide ante*, tit. *Alehouses*.

Alehouse keepers, &c. selling less Beer or Ale then according to the Statute, 1 *Jac.* *ibid.*

Townsmen or strangers, tipling in Alehouses, &c. contrary to the statute, 4 *Jac.* c. 5. *ibid.*

Persons not repairing every Sunday to Church, they may be convicted upon the oath of one witness, *Vide ante*, tit. *Recusants*.

Profane swearers or cursers, *hic ante*, tit. *Swearing*.

Transporters of corn, &c. *Vide ante*, tit. *Transportation*.

Trespassers in corn, orchards or woods, &c. they also may be convicted upon the oath of one witness; *Vide ante*, tit. *Trespass*.

And yet here, and in all cases of conviction upon the oath of witnesses, the offender himself must also be heard to speak, and be examined by the Justice of peace, &c. or else it is no lawfull conviction; See *hic cap.* 6. & 7. & *hic infr.*

4. Where one Justice of peace may punish offenders, as convict upon examination generally, the Statutes not shewing what persons shall be examined; in which cases it seemeth the Justice of peace may thereupon examine, as well the offenders themselves as other witnesses.

The defaults of the Collectors of the Sheriffs amerciaments; as also of Bailiffs of hundreds; *Vide ante*, tit. *Sheriffs*.

Offences in Tile making; *Vide ante*, tit. *Tile*.

Offences in watermen; *Vide ante*, tit. *Watermen*.

5. Where one Justice of peace may punish offenders upon accusation or proof, generally; which accusation or proof must be by examination of witnesses only (as it seemeth) and yet the party delinquent is (here also) to be first heard, before he be convicted or condemned, *ut supra*.

Offenders in keeping or using guns or crosse-bows &c. contrary to the Statute; *Vide ante*, tit. *Guns*.

Disturbers of Preachers; *Vide ante*, tit. *Preachers*.

Souldiers that purloyned their horse or harneys; *Vide ante*, titulo *Souldiers*.

Note, that in these former cases, and in all other cases where the Justice of peace is to take such examination of witnesses, or such other accusation or proof aforesaid, though the Statute doth not expressly set down that it shall be upon oath, yet it seemeth fit that the Justice doth it upon oath: for Mr. Brook (sometimes Chief Justice of the Common Pleas) was of opinion, that every examination ought to be upon oath: and Mr. Lamb. 517. was also  
of

of opinion, that these examinations taken by the Justices of Peace ought always to be upon Oath, the rather, because the trial in these cases dependeth wholly upon these examinations; yea, in all other cases whereforever any man is authorized to examine witnesses, such authority to examine shall be taken and construed to be in such manner as the Law will, which is only by Oath; *Vide postea, tit. examination, cap. III.*

Plo. 12. 2.

Also where the matter is to be tried by witnesses only, it is fit there be two witnesses at the least (except where the statute doth expressly allow the Oath or Testimony of one witness.) And so was the opinion of Mr. Brook, that in such case there ought to be two witnesses at the least; and agreeable thereto also is the Book and Word of God, *Math. 18. 16.*

Deut. 17. 6. & 19. 15

*2 Cor. 13. Ps. 12. a.* Otherwise it is, where the trial is by a Jury of twelve men, there one witness sufficeth, yea, there many times witnesses are not necessary, see *1 Plo. 12. a. & hic cap. III.*

Where two Justices of Peace (out of their Sessions for the Peace) may punish Offenders as convict before them, upon the confession of the offender, or upon examination of witnesses, or upon their own view. *Two Just.*

Clothiers refusing to pay the wages assessed, &c. see *antea, tit. Cloth.*

Spinsters, &c. which shall imbecil any part of their Wool, contrary to the Statute, *7 Jac. 7.* (upon proof of one witness.)

Clothiers making deceivable Woollen Cloth, *21 Jac. cap. 18. hic antea, tit. Cloth.*

Servants or Labourers assaulting their Master, see *antea, tit. Labourers, p. 12.*

Servants departing, refusing to serve, or taking excessive wages, &c. see *tit. Labourers, p. 4. 6, 14.*

Persons restrained from malting, &c. see *antea, tit. Malt.*

Destroyers of Partridges or other Fowl, or of their Eggs, or of Hares, or keeping hunting Dogs, contrary to the Statute, *1 Jac. 27.* see *antea, tit. Parridg.*

Destroyers of Pheasants or Partridges, contrary to the Stat. *7 Jac. 11.* upon proof of one witness, *ibid.*

Such as shall put out of their Parish (as poor persons) those that be not to be put out, *Vide antea, tit. Poor.*

Also the defaults of the Overseers of the Poor, *ibid.*

Disturbers of Preachers, *Vide antea, tit. Preachers.*

Offenders which shall disturb the execution of the Statute for Rogues; and Officers which shall be remiss or negligent therein, &c. *vide antea, tit. Rogues.*

The defaults of Officers and others, touching Weights and Measures, *vide antea, tit. VWeights.*

But note, that this manner of triall by examination of the Offenders or Witnesses, is not permitted to Justices of Peace, but only in cases where either the Statutes do generally refer the Trial to their discretions, or else do specially authorize them to take the examinations.

And in all these former cases, where the Justices may hear and determine, or may punish Offenders as convict upon their own confession, or upon examination of Witnesses (it seemeth in congruity) the Justices of

of Peace may grant out their warrants against such Offenders (or at least ought to send for them) to appear before them to answer their said offences : and thereupon may proceed to examine, hear, and determine the offences.

Where one or two Justices of Peace may hear, and determine, by inquiry and indictment taken before them, out of their general Sessions as it seemeth, *viz.*

Defaults of Sheriffs and Bayliffs, in not returning sufficient Jurors to inquire of Forcible Entries, *vide antea, title Forcible Entry.*

Offenders in Riots, *vide antea, title Riots.*

Transporters of Corn, &c. *vide antea, title Transportation.*

Offences committed in Tyle-making, *vide antea, title Tyle.*

Defaults as well of Officers, as of Buyers and Sellers, with unlawful Weights or Measures, *vide antea, title Weights, &c.*

And in these cases the offence being found upon such enquiry, these Justices have authority not only to make out process against the Offenders, under their own *Teste*, but also to fine them, and to commit the Offenders to Prison till they have paid their fine, and to deliver them upon payment of the same, or upon Sureties given for it : or otherwise (it seemeth) the Justices may receive the traverse of the Offenders, &c. for to all these effects, the words (in those statutes) Hear and Determine, do seem to lead and enable the said Justices.

See Lam.  
317 and  
496.

Also in these cases, the Justices precept to the Sheriff, to return a Jury before them, may be in this or the like form : and either in the Kings name, or under the name of the Justices, &c.

*Carolus Dei Grat. Rex Anglia, &c. vicecom' Cantabr. salutem. Præcipimus tibi quod non omittas propter libert. aliquam Comit' tui, quin venire fac' coram Justic. nri's de pace in comitat' præd. conservand. assign' apud Linton in Cō. præd. die Julii proxim' sequent' 24 probos & legales homines de Hundred de Radfield & Chilford ad audiend' & faciend' ea quæ eis ex parte nostra ibidem tunc fuerit injungend'. Et habeas tunc & ibidem hoc mandatum. Teste Mi. D. (apud Westwratting) tali die, &c.*

Vide hic  
cap. 130.

## Sureties for the Peace. CHAP. LXXIX.

**S**urety for the Peace, is the acknowledging of a Recognisance (or bond) to the King (taken by a competent Judge of record) for the keeping of the peace : and it is called Surety, of the word *Securitas*, because the Party that was in fear, is thereby the more secure and safe.

Lamb. 772

This surety for the peace, every Justice of Peace may take and command in two manners, or by a two-fold authority.

F. N. B.

79. h.  
Lamb. 77.

1. First, as a Minister (commanded thereto by a higher authority) as when a Writ of *Supplicavit*, directed out of the Chancery, or Kings Bench, is delivered to his hand : upon this Writ, that Justice of Peace only (to whom such Writ is delivered) is to direct his Warrant, to cause the Party to be brought before him (alone) to find Sureties for the Peace. And therein the said Justice is to do in every behalf, according as the same Writ doth direct him.

See

See more concerning this Writ of *Supplicavit*, &c. *postea*, *sub hoc tit.* *Surety for the peace*, cap. 73.

2. Secondly, as a Judge, (and by vertue of his Office, and of his own power derived from his Commission) he may command this surety of the Peace to be found; and that, either of his own motion and discretion, or else at the request or prayer of another.

The Justice of Peace upon his own motion and discretion, may (if he see cause) command surety of the peace to be found, or may bind a man to the peace (and that against all the Kings Subjects, if the Justice shall so think meet) in these cases following. *upon discretion.*

1. One that maketh an assault, or affray upon the Justice of Peace himself, the Justice may cause or command him to be arrested or attached, and carried presently before another Justice of Peace, who may commit him to Prison, till he hath found Sureties for the peace. *Vide hic*, cap. 120.

2. Such as in his presence shall make an affray upon another, or shall strike, or assault, or offer to strike another, the Justice may commit him to Prison, untill he hath found Sureties for the peace. *Vide antea*, tit. *Affray & Br. faux. imprisonment.* 22.

3. So of such as in his presence and hearing shall threaten to kill, beat, or hurt another, or to burn his house.

4. So of such as in his presence shall contend only in hot words; for from thence oftentimes do ensue affrays and batteries, and sometimes maims, yea manslaughters and murders.

5. So of such as in his presence shall go or ride, armed offensively, or with an unusual manner of Servants or Attendants: for these are accounted to be an affray and fear of the People, and a means of the breach of the peace: so of Servants and Labourers, that shall bear any weapons, contrary to the Statute of 12 R. 2. *Vide antea*, tit. *Armour.*

6. Also he may bind to the peace any other person, to him suspected to be inclined to the breach of the peace.

7. If (out of the presence of the Justice of Peace) any man shall threaten to kill, maim, or beat another, or do attempt, or go about to do it: then any Constable being present, may arrest such Offender, to come before a Justice of Peace, to find Sureties for the peace, and the Justice may bind him to the peace.

8. If any Constable shall perceive any other persons in his presence to be about to break the peace, either by drawing weapons, or by striking or assaulting one another, or by assaulting the Constable himself; he may take assistance, and carry them all before the Justice, to find Sureties for the peace, and the Justice may bind them.

9. If the Constable shall learn, that certain persons be fighting or quarrelling in a house, he may break open the doors, and arrest them, and carry them before a Justice of Peace, to find surety of the Peace: and the Justice may bind them.

10. Yea, the Justice of Peace (either upon his own discretion, or upon any mans complaint) may make his warrant, for any such as have made an affray (though out of his presence) and may bind them to the peace. *Vide antea*, tit. *Affray.*

11. If one hath received a wound, it seemeth the Justice of Peace may take

take surety of the peace of the one and the other, (by his discretion) untill the wound be cured, and the malice be over. *Popham*, late Lord chief Justice of *England* (an honourable and grave Judge) did accordingly between *James* and *Benton* at *Cambridge Assises*, 3 *Jac.*

12. All such as shall go or ride armed (offensively) in Fairs, Markets, or elsewhere; or shall wear or carry any Guns, Dags, or Pistols charged; it seemeth any Constable, seeing this, may arrest them, and carry them before the Justice of Peace, and the Justice may bind them to the peace; yea, though those persons were so armed or weaponed for their defence upon any private quarrel, &c. for they might have had the peace against the other persons: and besides, it striketh a fear and terrour into the Kings Subjects. 2 E. 3. c. 3. Commission.

See more *hic antea*, tit. *Affray and Armour*.

13. Also the Justice of Peace (upon his discretion) may bind to the peace a common Barrettor, *vide tit. Barrettor*.

14. So of Rioters, *vide tit. Rioters, & Lamb. 79.*

15. He that standeth bound to keep the Peace, if he hath broken (or forfeited) his recognisance by breach of the peace, the Justices of Peace may and ought of discretion to bind him anew, and by better sureties, for the safety of the person in danger; but yet by good opinions, that must not be done, untill the party be convicted of the breach of the Peace upon his recognizance; for before his conviction, it resteth indifferent whether the recognizance be forfeited or no: but after that he is thereof convicted, and that the forfeiture be levied, the recognizance is then utterly determined; and then he is to be compelled to find new surety, or else to be sent to the Gaol. 21 E. 4. 40. Br. peace 17. Lamb. 117 Crom. 142.

So it seemeth, though the forfeiture be not levied, yet if the Party be convicted for breaking the peace, he shall be bound of new, *Cromp. 141. and Br. Recog. 21.*

16. Also he that standeth bound to keep the Peace, if his sureties be insufficient, the same Justice, or another Justice of the Peace, may compell him to find better Sureties.

And in many of the former cases, the Justice of Peace ought of duty (or at least in good discretion) to command this surety for the Peace, although the same be not required by any other person: and if any such person shall refuse to give such surety, the Justice of Peace ought to send him to Prison, there to remain untill he shall find such surety.

If a Justice of Peace (upon his own discretion) shall cause one to be arrested to find sureties for the Peace, and shall after let him go without taking surety, or binding him to the peace, yet the Party hath no remedy: for an action will not lie against the Justice of Peace for this, he being a Judge of Record. See 6 *H. 6. f. 60. and 9 E. 4. f. 3. Br. Judges 2. 10. and Br. fx. imp. 12. & hic cap. 46. & 120.* 9 Ed. 4. 3. Br. peace 8.

A Justice of Peace may perswade a man to require the surety of peace against another, and he himself may grant a warrant for it, because it is no more then he might have granted of his own authority, without any demand made; and it shall be presumed that he saw cause to do all this. Lamb. 80. P. R. 18.

Also at the request or prayer of another, the Justice of Peace may command this surety of the Peace, and may grant his Warrant for it.

But

F. N. B.  
79 H.  
Lamb. 84.  
85.

But here the Justice of Peace must and ought first to take an Oath of the Party that demandeth the peace, which Oath must be to this purpose, *sc.* That he standeth in fear of his life, or of some bodily hurt to be done to himself, or to have his houses burned (and that he doth not crave the peace for any private malice, or for vexation, but of very fear, and for the needful safety of his body or houses) for the words of the Commission herein are, *Et ad omnes illos qui alicui, vel aliquibus de populo nostro, de corporibus suis, vel de incendio domarum suarum, minas fecerint, ad sufficientem securitatem de pace, &c. inveniendam, &c.*

So he that shall be threatned to be hurt in his body (*sc.* to be beaten, wounded, maimed, or killed) the Party so threatned may crave, and have the surety of Peace against the other, and it is to be granted properly in such cases.

Also if a man do fear that another will kill, maim, beat, assault, or hurt him in body, he may crave the peace against such other person.

So if a man do fear that another will burn his house.

Fitz. 79.  
g. h.

So if a man do fear that *A.* will procure or cause any such hurt to be done by another, either in his body, or in his houses; for the words of the Recognizance be, *Non faciet, nec fieri procurabit.*

Crompt.  
135. a.

So if a man lieth in wait to beat, kill, or hurt another, it is good cause to require this surety, *Crompt. 135.*

*Une' nota les parolz deñt in le Commission, Minas fecerit, &c. per quelx parolz scē que per le Cōmission, le peace neme destre grant sur ascun request, ne aut remēt, Si non tantum lou home est menace, & pur ceo lou A. craved le peace versu B. pur ceo que B. usa de vaer ove un Pistol, & le Justice de P. sur ceo granted le peace, Sir Nick. Hyde blamed le Justice, disant que il ne devoit aver lye B. a le peace, pur ceo que il n' ad menace A.*

Lamb. 84.

If a man be threatned to have his Goods burned, it seemeth by the opinion of *M. Fitz.* that he may demand surety of the peace for this: *quare tamen*, because he may recover his Goods, or Damages for, and to the value of the same, *Co. l. 255.*

17 Ed. 4. 4.  
Br. peace  
22.

And where a man shall threaten to imprison another, it is holden, That the peace shall not be granted; for that the Party wronged may have his action of false imprisonment, or a Writ *de homine Replegiand'*, and so shall recover damages for his imprisonment.

Lamb. 85.

Yet inquire hereof, for to threaten imprisonment is within the words *minas de corporibus*; and like harm may happen to a man by hard imprisonment, as by cruel beating of him: and to threaten imprisonment, is a cause to avoid a Deed or Bond, as well as to threaten to kill, or maim one, &c.

F. N. B.  
80. g.  
Lamb. 85.

39 H. 6. Br. Dureff. 9. *vide Co. l. 253.*

Where a man is in fear that another will hurt his Servants, or his Cattell, or his Goods; this surety of the peace shall not be granted by the Justice of Peace: but in this case *M. Fitz.* saith, the Party may have a special Writ out of the Chancery, directed to the Sheriff, that he shall cause such person to find surety, that he shall do no hurt or damage to the other man in his body, or to his Servants or Goods. And if he will not find surety, that then he shall arrest and detain him in Prison, untill he shall find surety: and that the Sheriff shall certify all that he shall do thereupon into the Chancery, &c. And it seemeth the Sheriff ought to take such surety,

ty, by Recognizance. And yet if a man shall threaten to hurt my Servant, or my Wife, or Child, I see no cause but that in their behalf I may crave the peace at the Justices hands, by the words of the Commission, and that the Justice ought to grant it.

If a man will require the peace, because he is at variance, or in suit with his Neighbour, it shall not be granted by the Justice of Peace.

Note also, the surety for the peace shall not be granted but where there is a fear of some present or future danger, and not meerly for a battery, or trespass that is past, or for any breach of the peace that is past: for this surety of the peace is only for the security of such as are in fear. Now *Metus, est presentis vel futuri periculi causa, mentis trepidatio*: and so this surety is, *providere presentia, & futura, & non praterita*. Br. F. imp.  
41.  
I. R. 14.

And as for a Battery, or other like Trespass that is past, the Party wronged may have his action of Trespass or Battery, &c. or may punish the Offender by indictment at the Kings Suit: and yet in such case the Justice may (if he see cause) bind over the Affrayer. *Vide an. & Ex. 21. 19. & hic c. 8. 10.*

If the Justice of Peace shall perceive that this surety for the peace is demanded meerly of malice, or for vexation only, without any just cause of fear, it seemeth he may safely deny it. As in common experience we find it, That where *A.* shall upon just cause come and crave the peace against *B.* and hath it granted to him; when *B.* shall come before the Justice, *B.* likewise will crave the peace against *A.* (and will perhaps surmise some cause) but yet will nevertheless be content to surcease his Suit and Demand against *A.* so as *A.* will relinquish to have the peace against him; here the Justice of Peace shall do well (as I think) not to be too forward in granting the peace thus required by *B.* but to perswade him, and to shew him the danger of his Oath which he is to take; but yet if *B.* will not be perswaded, but will take his Oath that he is in fear (where indeed he neither doth fear, nor hath cause to fear) this Oath shall discharge the Justice, and the fault shall remain upon such complainant.

And when the Justice hath so granted the peace to one that (in the Justices Judgment) shall crave or require it only out of malice, or for vexation, the Justice may presently in good discretion bind him to the good behaviour, that so required the peace.

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*For whom, and against whom this surety for the Peace shall be granted.* CHAP. LXXX.

Noblemen.

**T**HE Law hath conceived such an opinion of the peaceable disposition of Noblemen, that it hath been thought enough to take one of their promises upon his honour, that he would not break the peace against a man, *Br. Contempts, 6. 24 E. 3. 3. and 17 E. 4. 4.*

And therefore if a man shall have cause to have the surety of the peace against a Lord of the Parliament, or such great and noble Personage, he shall not have a Warrant from the Justices of Peace to that purpose; nor yet have a *Supplicavit* out of the Chancery, directed to the Justice of Peace therefore: but if there be cause, he may have a *Subpoena* out of the Chancery Fitz. Subp.  
20.



cery (of common right, as it seemeth) and there such Lord or Nobleman shall be bound to the peace. And yet if such Lord will not appear upon the *Subpœna* served, *quare*, if an attachment will lie against him upon such his default, *M. Cromp. f. 134. b.* saith that it was holden in the case of the L. Cromwell, in the Chancery, about 18 *EL.* That an attachment lieth not against a Lord where he maketh default upon a *Subpœna* against him out of the Chancery, *Dier 315.* seemeth to accord.

Co. 65.53. But though it be true that the person of a Baron (who is a Peer of the Parliament) shall not be arrested (for, or in cases of debt, or trespass, &c) by his body, first in respect of their dignity, secondly in respect that the law presumeth that they have sufficient lands and tenements whereby they may be distrained, yet in cases of contempt, it seemeth, they may be arrested by *Capias*, or attachment, &c. *Vide 27 H. 8. f. 22. b.*

Fitz. Sub. 20. Or else (it seemeth) that the party may crave the peace in the Chancery, against such Lord or Peer (*sc.* to have a *Supplicavit* directed to the Sheriff) and then the Sheriff may and ought to execute the same: and if the Sheriff shall not do his office therein, an *Alias, Plur.* and attachment lieth against him. And if the Sheriff shall return, That such Lord is so puissant, that he cannot arrest him; upon such return the Sheriff shall be grievously amerced (for he might have taken *Posse comitatus*, *sc.* he might have levied 300 men by his discretion, if there had been need, to have aided him in such case.) And if such Lord or Peer, who is by the Sheriff so arrested, shall refuse to obey the arrest, and shall make a *Rescous*, whereupon the Sheriff shall return a *Rescous*, hereupon shall there be an attachment granted out against such Lord, to arrest and take his body for such his contempt.

Co. 6.52. The same law and remedy seemeth to be where a man hath cause to have the surety of the peace against a Dutches, Countess, or Barones; for they are Peers of the Realm, and shall be tried by their Peers, though in respect of their sex they cannot sit in Parliament: and they are in the same degree (as concerning their Nobility, and the privileges incident to their dignities) with Dukes, Earls and Barons. But here note this diversity, *sc.* if such woman being a Countess, or Barones, &c. by marriage only, shall marry again under the degree of nobility, she hath thereby lost her name of dignity (together with the privileges of her said nobility, also, as it seemeth) for in such a case, *Si mulier nobilis nupserit ignobili, deserit esse nobilis*, and that which was gotten by marriage may also be lost by marriage; for, *Eodem modo quo quid constituitur, dissolvitur*; But if she be noble by birth or descent, whomsoever she shall marry, yet she remaineth noble: for birth-right *est Character indelebilis*, *vide Dyer 97. & Br. Nosme de dignity, 31. & 69. & C. l. 16. 8.*

Co. *ibid.* And yet by the curtesie of England, if women get to any degree of estate they never lose it by marrying after more meanly, but do still take place according to the state of their first husband.

Surety of the peace may be granted by the Justice of peace against a Knight and against all other lay persons being under the degree of a Baron, or Peer of the Realm, and they shall be bound with sureties:

Ecclesiastical persons (if they be not attending upon Divine Services) may

may be arrested for the peace, and they shall be bound with sureties: But whilest they are doing any Divine Service in the Church, Church-yard, or other place dedicated to God, they may not be arrested 50 *Ed. 3. 5. P.* 36. H. 6. 23.  
Br. Moigne  
14. & 15.

*Arrests* 1. See stat 1. R. 2. cap. 15. & 1 *Ma. c. 3.*

Surety of the peace may be granted against the Sheriff, under-Sheriff, Coroner, Escheator, and other such officers of Justice. But M. Marrow, adviseth, that such persons be not bound *versus cunctum populum*. but only against such persons as shall demand it, lest otherwise it should argue them unworthy and unmeet to bear or exercise any such office in the Common-wealth, if there should be cause to binde them *versus cunctum populum*.

*Si in overt Sessions un Justice de peace abuser auter Justice de peace semble que les autres Justices poit luylier al peace Crompt. 122. a. Quere sil ne amnasse l'auter?*

One Justice of peace may grant his Surety to any man, against one of his fellow Justices (and yet the Commission is joynt;) but great discretion is herein to be used.

Yea, a Justice of peace upon demand, may grant this Surety of the peace against his own wife: and yet he and his wife are but one person in Law.

If surety of the peace be demanded against a Juror at the Sessions, it is grantable; but yet the same would not be granted or done before the Sessions be ended.

One Justice of the peace may demand his surety of the peace (at the hands of his fellow Justice) against another man.

If a man hath cause to have Surety of the peace against one dwelling in the *Cinque Ports*, he must have a writ out of the Chancery, directed to the Constable of Dover, and to the warden of the *Cinque-Ports*: the form thereof, See in *Fitz N. B. 80.*

The wife may demand this surety against her husband, (if he shall threaten to kill her, or outrageously to beat her, or if the wife hath any notorious cause to fear that he will do so) and it shall be granted her by the Justice of Peace, or she may have it by *Supplicavit* in the Chancery, *Fitz. 238. f. Br. Peace 23.* Fitz N. B.  
80.

The Husband for the like causes, may demand surety of the Peace against his wife. *Et si el ne poit trouve Sureties, el serra commit, &c. & isint home poe: est rid dun Shrew.* Fitz. 80. f.

Also the Justice of Peace upon his own discretion, may in either of the aforesaid Cases between the husband and wife (especially happening in his presence) grant surety of the peace.

An Infant under the age of fourteen yeers, may demand this surety, and it shall be granted him. Lamb. 81.

Also this surety of the peace may be granted at the prayer of any person, against a *feme covert*, or against an infant though he be under 14 yeers of age. (For if an Infant under 14 hath discretion to demand the peace &c. then hath he discretion to break the peace.)

But if an Infant and a *feme covert*, shall be bound by sureties, only, and they themselves shall not be bound, and if they cannot finde sureties, they shall

Co. 10. 43. shall be committed to prison untill they have found sureties. And yet if  
Crompt. an infant shall be bound to the peace, &c. by recognisance taken by a Ju-  
239. q. stice of peace, it seemeth he shall be estopped to avoid such a record, if he  
doth not avoid it during his minority, for it is not void but voidable, by  
*Audita querela*, during his minority. *Dyer* 232.

But if a *feme covert*, shall be bound or acknowledge such a recognisance  
(though her husband joyn therein with her) yet it is meerly void as to the  
wife, although she overliveth her husband.

A man of *Non sane memoire*; this surety shall neither be granted against  
him, nor to him upon his request; and yet if there shall be cause, the Ju-  
stice of peace (upon his discretion) ought to provide for his safety.

A man that is Lunatick (*sc.* who at some seasons hath the use of reason,  
and at other times not) it seemeth this surety of the peace may be granted  
against him; and also that he may demand the same against another.

See Co. 4. And if one of *non sane memoire* or a Lunatick. be himself bound by Re-  
124. & 11. cognisance before a Justice of Peace, to keep the peace, it seemeth such re-  
77. cognisance shall binde them, and all others for ever.

But *quare*, if there be not a difference to be taken herein, where a Re-  
cognisance by an infant, or one that is *non Compos mentis*, shall be acknow-  
ledged in a Court of record, or in open Sessions, and where before a  
Justice of peace out of the Sessions.

A man that is deaf, dumb, and blinde, be it naturally, (*sc.* that he was  
so born,) or accidentally, he shall not have this surety granted to him, for  
he hath no understanding to ask it, and yet for such a person, (or any other  
person not having reason to demand the peace) if there be cause, the Justice  
of peace, upon his discretion, ought to provide for their safety.

A man that is born dumbe and blinde, may have understanding; and  
therefore it seemeth this surety may be granted to him, or against him.

But a man that is born dumbe and deaf, can hardly have understanding;  
for though the sight be the chiefest sense, yet by hearing we come chiefly  
to knowledge, and therefore it seemeth not grantable to him, or against  
him. See *Stamf. de Prærog. fol. 33, 34. Co. l. 135.*

And yet a man that is dumb and deaf, or blinde and deaf accidentally,  
may have understanding, and therefore this surety may be granted to him,  
or against him.

Also this surety of the peace may be granted against an impotent per-  
son, although he be such a one as is not like to break the peace himself; for  
he may procure another to kill, or beat one: and the common form of Re-  
cognisance is to bind a man from procuring hurt, as well as from doing  
hurt.

This surety of the peace may also be granted to, or against, a man at-  
tainted of Treason or Felony.

The like law of him that is convicted of Heresie.

Crompt. 34 A man excommunicate may have this surety granted to him; or against  
him.

So also of a man that hath abjured the Realm; for notwithstanding the ab-  
juration, he oweth the King his allegiance, and remaineth within the Kings  
protection, and the King may pardon and restore him again: *Qui abjurat  
regnum, amittit regnum, non Regem, Co. 7. 9. b.*

The manner of abjuration, see *lib. Intr. fo. 1.*

A man attainted in a *Premunire*, may (at this day) require, and ought, to have this surety granted to him, *P. R. 19. Cromp. 133.*

An alien born who is made Denizen, may have this surety; and so of an alien born who liveth in *England* under the Kings protection (although he be not made Denizen.) *Crom. 134. R. 19.*

And so of an alien, whose King is in League with our King; or if there be no Wars between this Realm and that Realm whereof the alien is; for by the Common Law, all these may get and have within this Realm any personal goods, and may sue for the same, and so have the benefit of the Kings Laws and Protection. But an alien who is the Kings enemy, (scil. where there is open War between our King and his King) shall not have this surety granted to him, nor any other benefit of the Kings Laws. *Co. 7. 17. Dyer 2.*

Who shall be said to be an alien, see *Co. 7. 16, 17.*

In *Calvin's Case*, 6 *Jac. Reg.* there is a difference taken between *ante-nati*, & *post-nati*, in *Scotland*, where it is holden, That *ante-nati* in *Scotland*, se. such as were born before the Kings happy coming to the Crown of *England*, they are here aliens born; the reason is, for that at the time of their birth, they were under the legiance and obedience of another King; and he could not be a subject born of the Kingdom of *England*, that was born under the legiance of a King of another Kingdom. And yet it is manifest, That *ante-nati*, being the Kings Subjects, are herein provided for, by the Commission it self; the words whereof are, *Et ad omnes illos qui alicui vel aliquibus de populo nostro*, &c. of which number *ante-nati* be; so as they may and ought to have this surety granted them, as well as any other subjects. See *Dyer fol. 304. & Pl. 306. a.* *Co. 7. 18.*

An *Irishman* born, is a natural born Subject, and capable of, and inheritable to Lands in *England*, and therefore may have this surety. *Co. 7. 23.*

But it may be questioned, whether an Infidell, Pagan, or Jew, shall have this surety granted them. For in Law they are *Perpetui inimici*, there is between Christians and them perpetual enmity, and can be no peace: neither can they get any thing within this Realm, nor maintain any action at all, 12 *H. 8. 4.* *Co. 7. 17.*

A Villain or Bondman may have this surety of the peace against his Lord, and the Lord may have it against his Villain, and yet it maketh no manumission, although it were demanded by the Lord without any protestation, &c.

*How this Surety of the Peace may be commanded, and how the same Commandment shall be executed. CHAP. LXXXI.*

**T**He Justice of Peace may command this *Surety of the Peace* either by word only, or by writing.

1. By word only, the party being in his presence; as if in the presence and hearing of the Justice of Peace, one man doth threaten another, or shall make an affray or assault upon another, or do the like thing tending to the breach of the Peace, the Justice of Peace may command him by word to find sureties for the peace. *14 H. 7. 8.*

Also

14 H.7.9. Also if one shall demand this surety against another, who is then in the presence of the Justice of Peace, and will be sworn that he is afraid of him, the Justice may by word command the same party to find sureties for the peace.

14 H.7.8. 9. And the Justice of Peace in such cases may (by word only) command the Constable, or any other known Officer (or his own servant) being then present, to arrest such party to find sureties for the peace, (and to take the party into his or their custody, &c.) and if the party shall refuse to find such sureties, then the Justice of Peace may commit him to the Gaol.

But if the party (against whom this surety of the peace is demanded) be absent, it is otherwise; for a Justice of Peace cannot send for any man, or command any man to be arrested, or brought before him, or to be imprisoned, who is not in his presence, by word only, but he must make his warrant or precept in writing. And *Popham*, Chief Justice, said, That the Justices of the Kings Bench, when they send for any of the Kings Subjects, it is either by Writ, or by a Warrant, or by a Tipstaff: But the Tipstaff (said he) is by prescription, except that the party be in *Westminster-Hall*, &c. See the case between *Woody versus Bokers & Read-head: Termino Mich. Ann. 2 Jac. Regis, Rotul. 480. in Banco Regis.*

This Precept or Warrant then must be made in writing, and under the Justice his seal; and must be directed to some Officer, or other indifferent person, and must contain the cause, and at whose suit, to the intent the party to be bound may provide his sureties, and take them with him. By writing

The form of which Precept, see *postea, tit. Warrants, cap. 121.*

Co. 5.59. Br. Peace 9. The Justice of Peace may make his Warrant to bring the party before himself, (to find surety for the peace) by the Opinion of *Wray*, Chief Justice; for he that maketh the Warrant, for the most part, hath the best knowledg of the matter, and therefore he is the fittest to do Justice in such case. And yet the most usual manner is, to make such a Warrant to bring the party before the same Justice, or some other of the Justices of Peace of the same County, &c. And Judge *Fineux* his Opinion was, That where a Justice of Peace doth make any Warrant for the peace *ex Officio*, (*sc.* by force of the Commission, and not by vertue of a *Supplicavit*.) there the party may chuse to appear before him or any other Justice in that County: And that the party may have his Action of False Imprisonment against the Officer, if he do otherwise compell him. Otherwise it is in the execution of the Writ of *Supplicavit*, as you may see here *postea, sub hoc titulo.*

5 Ed.4. 13 Lamb. 92. Yet some Presidents are, *Quod capiatis, &c. P.R. 20. & Cromp. 2. 5. Br. F. imp. 18.* Who may serve this Warrant, and whether the Officer may make his Deputy; and whether they need shew their Warrant or no; and whether they may break open the doors, &c. See hereof *tit. Warrants postea, cap. 117.*

The Constable (or other officer) before he arrest the party, upon such a Warrant, ought first to acquaint him with the matter, and withall to require or charge the party in the Kings name, to go (with him) before the Justices to find and put in sureties according to the Warrant: and if the party shall refuse to do this, *sc.* shall refuse either to go before the Justices or to find sureties, then the officer (by the words of the Warrant) may

*How it shall be executed.*

and ought forthwith to arrest him, by vertue of that Warrant, and may convey him to the Gaol without carrying him to any Justice, and there the party shall remain untill he shall voluntarily offer and find sureties: and then such Officer ought to be at the next Sessions of the Peace, there to deliver in his said Warrant, and to certifie all that he did thereupon.

But if the party shall yield to go and find sureties, then the Officer may not absolutely arrest him; but yet the Officer is not bound to go up and down with the party, to find sureties, but may keep the party untill he can procure sureties to come to him: and if afterwards the party shall make any resistance, or shall offer to go his way, then the Officer may arrest him, and by vertue of that Warrant may carry him to the Gaol, and may also imprison him in the Stocks, untill he can provide aid to carry him to the Gaol.

When the party cometh before the Justices of Peace by force of this Warrant (or by force of any other like Warrant for the peace, good Behaviour, or a Riot, or the like) the party must offer sureties to the Justice of Peace, or else the Justice may commit him to prison; for the Justice needeth not to demand surety of him. 14 H. 7. 1  
Br. peace 7  
& Mainp. 39.

Also after that the party shall be brought before the Justice, if before him he shall refuse to find sureties, the officer without any new Warrant or Commandment, may carry the party to prison, and that by the words of the first Warrant; and if he shall refuse thus to do, that then, &c. See the form of the Warrant. C. 5. 50.

If the Officer do arrest the party, and do not carry him before some Justice of Peace to find sureties, &c. or upon the refusal of the party, if the officer shall arrest him, and do not carry him to the Gaol, in both these cases the officer is punishable by the Justices of Peace for this neglect, (by Indictment and Fine at their Sessions:) And also the party arrested, may have his Action of false imprisonment for the arrest: for where the officer doth not pursue the effect of his Warrant, his Warrant will not excuse him of that which he hath done, 21 H. 7. 23. a. 3 H. 7. fol. 3. b. *Brian & Br. faux imp.* 21. 5 Ed. 4. 6.  
P. R. 20.

And if the party be imprisoned for default of sureties, and after he that demanded the peace against him happen to die, or shall release the peace, it seemeth in these cases, the Justice of Peace may make his *Liberate* or Warrant for the delivery of such prisoner; for after such death or release, there seemeth no cause to continue the other in prison. Also any Justice of peace may (upon the offer of such prisoner) take surety of him for the peace, &c. and may thereupon deliver him.

It seemeth (by some Opinions) That if the party imprisoned for not finding sureties, hath a Suit depending in the Common Pleas, he may by the course of that Court, by a Writ of Priviledg, be discharged of his imprisonment, if the other party be not ready in the Court at the day of the return of the Writ, to pray there new sureties of the peace. But *Quere*, for it may be, he which demanded the peace, hath no notice of the removing of his body, and then how can he be ready in the Court of Common Pleas at the day? and therefore it may seem a hard case so to be defeated of this surety. 4 E. 4. 16.  
2 H. 7. 24.  
Br. Priviledg. 35.  
52.  
Lamb. 96.

If

Co. 5. 59.  
B. Ex. Imp.  
11.  
Br. peace 9.

If the Party hath gotten sureties, then if the Warrant proceed *ex officio* (and not upon the Writ of *Supplicavit*) and be a general Warrant (*sc.* to come before me or some other Justice) the party may go before any other Justice of Peace to offer his surety; yet he shall not intorce the Officer to travell to a Justice out of the Division or Limit where they be dwelling, without good cause: Nay, it is at the election of the Officer (who is the minister of Justice) to carry the Party attached to any other Justice of Peace that he will: for it is more reason to give this election to the Officer (who in presumption of Law is a person indifferent, and is sworn to execute his Office duly) then to give the election to the delinquent himself, who by presumption will seek shifts, and weary the Officer; this hath been so adjudged.

Lamb. 98.

If the other Justice of Peace (before whom the Party so attached shall come) shall refuse to accept and take such surety being offered to him, this is punishable: for such Justice of Peace ought to take of him such surety, and to bind him by recognisance: but yet that must be done in such sort, in all points, as the form of the former precept doth require: and thereupon the same other Justice of Peace (having so taken surety for the peace) may and ought upon request, to make his *Supersedeas* to all Officers, and to all other the Justices of Peace of the same County, and thereby the said Party shall be discharged from finding other surety, and from any other arrest for the same cause: But by such *Supersedeas* that other Justice cannot discharge the first Warrant of the first Justice, untill the Party be bound indeed; nor can give any other day to the Party to appear at any other Sessions, &c.

Crompt. 145.

*Superseded. by  
a Justice of  
Peace.*

Also a Justice of Peace of the County, by a *Supersedeas* cannot discharge a Warrant awarded by his fellow Justice, by force of a *Supplicavit* to him directed out of the Chancery, or Kings Bench, to take the surety of peace of one resident in that County.

Also when a man doth fear, that surety of the peace will be demanded against him in the County, or doth hear that such a Warrant for the peace is already granted out against him, by a Justice of Peace; it seemeth in either of these cases, he may go and give surety of the peace before any other Justice of Peace of the same County where he dwelleth, and thereupon may have a *Supersedeas* from that Justice of Peace, &c. But in such case it is fit that such Party be urged by such Justice to put in sufficient sureties, and that he be bound towards the King and all his People, and to appear at the next Sessions.

If any Officer having a Warrant from a Justice of Peace to arrest a man to find surety of the peace, shall receive a *Supersedeas* (out of the Chancery or Kings Bench, or from any Justice of the Kings Bench, or from any Justice of Peace of that County) to discharge the same surety of peace, and yet nevertheless will urge the Party (by force of his Warrant) to find (new) surety for the peace, the Party may refuse to give it; and if he be arrested or imprisoned for such refusal, he may have his action of false imprisonment against such Officer: for such *Supersedeas* is a discharge of the former precept or warrant.

Lamb. 101.

The form of a *Supersedeas* granted by a Justice of Peace; See *postea, tit. Warrants. cap. 122.*

And

And this *Supersedeas* is sufficient, though it neither name the Sureties, nor contain the sums wherein they are bound ; but yet it is the better form to express them both. See 2 H. 7. 1. Lamb. 59.

*Supersedeas  
from above.*

If the Party shall mislike to be (or stand) bound to the peace, by the Justices of Peace in the Country, then may he (either before or after that he is bound in the Country) go or send up to *London*, and there give surety for the peace (either in the Kings Bench or in the Chancery ; ) and thereupon the Party may have a *Supersedeas* (out of the Court, where he hath given such surety) to restrain the Justices of Peace of the Country from taking any surety of the peace of him : and then the Justices of Peace of the Country, after the receipt of such *Supersedeas*, must forbear to make any warrant for the peace against that Party. And if any Justice of Peace have granted out any such warrant against the said Party, the said Justice must make his *Supersedeas* to the Officers, thereby commanding them to surcease, to put his former warrant in execution, and so to discharge it, and to discharge the Party of an arrest, or imprisonment thereupon. See more *postea*, *sub hoc titulo*. Fitz. N.B. 81. a. & 238. c.

The form of a *Supersedeas* for the peace, or good behaviour, out of the Kings Bench. See *lib. intr.* 454. *Quia invenit suffic. securit. pacis nostræ quod ipse se bene geret erga nos & cunctum populum, &c.*

The form of a *Supersedeas* for the peace out of the Chancery. See *Fitz.* 81. c. & *Register* 89.

Note, that this *Supersedeas* out of the Chancery, may be procured at any time in the vacation, and out of term, *Fitz. Nat. Br.* 236. a.

These Writs of *Supersedeas* from the Chancery, or Kings Bench, are commands to the Justice of Peace to stay him from binding the said Party to the peace, which otherwise he might not deny.

If the Justices of Peace shall not surcease after a *Supersedeas* (out of the Chancery or Kings Bench) to them delivered, an attachment will lie against him or them for such contempt, and besides they may be fined and imprisoned for it. Lamb. 102.

Yea such a *Supersedeas* coming out of those high Courts to the Justices of Peace, they ought thereupon to surcease, although such a *Supersedeas* should be awarded against Law.

If such a *Supersedeas* shall be directed to the Justices of Peace, and Sheriff ; that Justice to whose hands it shall be delivered, may keep it, and may deliver the labell to the party.

And in these and the like cases, the Justice of Peace shall do well to send to the next general Sessions of the peace, as well the said *Supersedeas* (if it come to his hands) as also the recognisance which he had formerly taken of the party (if he have taken any) for peradventure the recognisance was forfeited before the *Supersedeas* was purchased ; or if it were not forfeited, yet the Conusor is not indamaged thereby.

If the Party shall procure such *Supersedeas* (out of the Chancery, or Kings Bench) after that he is bound (by recognisance) before the Justice of Peace, to keep the peace, &c. and to appear at the next Sessions, *quære* whether the Party sending (by his Servant) such *Supersedeas* to the Justice of Peace at the next Sessions, be thereby discharged of his appearance there, the recognisance also being certified thither by the Justice.

*Lamb.* 115.  
116.  
Crompt.  
140.

It,



It seemeth to some, this difference is to be holden therein, *sc.* if the Party were bound (before the Justice of Peace) to keep the peace against all men, &c. and shall after procure such a *Supersedeas*, testifying that he hath found surety in the Chancery, &c. against all men for ever, and shall send this to the Sessions, this shall discharge his appearance at the Sessions: otherwise if the *Supersedeas* shall testify, that he hath found surety, but till a certain day (which is after the next Sessions.) But yet it seemeth safest in both cases, for the party to appear to save his recognisance. See to like purpose the case in 28 H. 8. Dyer f. 25. where a man being arrested by the Sheriff upon a *Capias*, found sureties for his appearance at the day, and there came a *Supersedeas* to the Sheriff, and it was moved, whether it were necessary for the Defendant to appear, or not, to save his Bond; or that his appearance or surety were discharged by the *Supersedeas*: And the opinion of the Court was, That he ought to appear for the saving of his Bond. Also the Presidents of Entries are, that the Party bound did shew his *Supersedeas* in Court, and prayed allowance thereof, and was thereupon discharged.

28 H. 8.  
Dyer 25.  
Crompt.  
140.

Lib. Intr.  
453.

But for that divers contentious persons (deservedly fearing to be bound to the peace or good behaviour, by the Justices of Peace in the Country) do oftentimes procure themselves to be bound to the peace or good behaviour, in the Chancery or Kings Bench, upon insufficient Sureties, or upon colourable prosecution of some person, who will be ready at all times to release them at their own pleasure; whereupon his Majesties Writ of *Supersedeas* is often directed to the Justices of Peace, &c. requiring them to forbear to arrest or imprison the Parties for the causes aforesaid; by means whereof the said contentious persons do greatly disturb their Neighbours, and affront the Justices of Peace, to the evil example of others; therefore it is enacted by the Statute made 21 Jac. cap. 8. That all Writs of *Supersedeas* to be granted by or out of either of the said Courts of Chancery, or Kings Bench, shall be void; unless such process be granted upon motion in open Court, and upon such sufficient sureties as shall appear unto the Court, upon Oath to be assessed at 5 li. Lands, or 10 li. in Goods in the Subsidy Book at least, &c. And unless it shall also appear first unto the said Court, that the process of peace or good behaviour, is prosecuted against him or them, desiring such *Supersedeas*, *Bona fide*, by some party grieved in that Court, out of which such *Supersedeas* is desired to be so awarded and directed.

21 Ja. ca. 8.

“ Mes coment le Supersedeas serra void per aucun des defauts ou raisons  
“ avandits uncore (sée les Justices de Peace en pais doient surcester sur deliv-  
“ ry de ces al eux.

“ Si garrant pro pace soit grant vers un que ne Ossa appeare al Sessions pur  
“ seare de auter arrest, &c. son remedy soit este in deux manuers, *sc.*

1. Devant que soit lye per le Justic. de peace en pais, il soit dontr Surety par les peace in le Chancery, ou in Banco Regis, & dilonques avera *Supersedeas* ut supra. Et donque il ne serra lye per les Just. de peace.

2. Apres que est lye per les Just. de P. en pais, semble n' ad auter remedie, mes daver Certiorari (hors del Chancery, ou Banco Regis) de remover la Recognisance price per le Justic. de peace, &c. hic cap. 71.

## Now concerning the Recognisance for the Peace. CHAP. LXXXII.

Recogni-  
sance.

**T**His Recognisance which the Justice of Peace taketh for the keeping of the peace, is rather of congruence, than by any expresse authority given them, *Fitz. 82. a. 7 H. 4. 34. accord*.

And this Recognisance for the peace, if the Justice of Peace doth take it by force of the Writ of *Supplicavit*, then he ought to execute it, and to do in all things as the Writ directeth him. But where such Writ prescribeth not the sum, &c. or such like, that resteth in his own discretion.

But if he taketh the Recognisance *ex officio*, and by force of the Commis-  
sion, (and so as a Judge, and not as a Minister) then it resteth in the discre-  
tion of the same Justice of Peace, wholly to appoint and allow the number  
of Sureties, their sufficiency in Goods or Lands, the sum of mony wherein  
they shall be bound, and to limit the time how long the party shall be  
bound, and such other circumstances.

Lamb. 103

In the Book 7 *H. 4. fol. 34. a.* you shall find the principal to be bound in 7 *H. 4.*  
1000 li. and four Sureties, every of them in one thousand marks before  
Justices of Peace, and for the keeping of the peace.

*Quere*, if a Justice of Peace may not examine upon their Oaths the Sure-  
ties concerning their sufficiency: it seemeth to be the usage in the Courts  
at *Westminster*, and *M. Crompton* saith, that the Justices of Peace in their  
Sessions may do it, *Crompt. 194. See hic, cap. 114.*

Br. Imp. 18

The most usual manner, and safest way for the Justice of Peace, is, to  
take two Sureties at the least (and those Subsidy-men) besides the party  
himself, and to bind them by Recognisance to the King, *viz. Domino Regi*:  
And it must always be for the keeping of the peace.

And yet by the opinion of *M. Marow* (who was in the time of King *H.*  
*7.*) a Justice of Peace might have taken this surety by a gage pawned only  
to him.

Also (by his opinion) a Justice of Peace might have taken this surety by  
an Obligation made to himself, by the name of Justice of Peace.

Yet if a Justice of Peace had enjoined a man upon pain of 20 l. to keep  
the peace, this had been nothing worth: but in this case and the former  
two cases, and the like, this one general ground or reason may be given for  
all, *sc.* that a man cannot be bound to the King, but only by matter of Re-  
cord, and therefore such surety taken by gage or obligation, or such injoy-  
ning of the peace, seemeth nothing worth to bind the party.

Fitz. N. Br.  
1. d.

The form.

Besides, by the *Statute 33 H. 8. c. 39.* there is a plain law made (in these  
and the like cases) which willet, that all Obligations, &c. which shall be  
taken in any wise for the King, shall be made in the Kings name, and by these  
words, *Domino Regi*: And if any person shall make or take any Obligation  
(or Recognisance to the Kings use in any other manner) he is punishable by  
imprisonment at the Kings pleasure, &c.

P. Accom.  
1.

A Justice of Peace may take a Recognisance, and thereby may bind the  
party to keep the peace for one year, or for a longer time (by his discretion)  
yea, he may bind the party during his life upon reasonable cause: and this  
the Justice may do, either by his own absolute authority, or upon complaint  
to him made, and upon good cause shewed; as, if the Offender be a com-  
mon

mon

mon Barreter, a Rioter, or else in the Justices conscience a dangerous person : but if such surety be so taken during the Offenders life, the Justice of Peace can never release that afterwards, and therefore the Justice must be well advised how he granteth such surety.

If the Recognisance be made to keep the peace (generally) without any time or day limited; it shall be construed to be during the Parties life, *Lambert, 113.*

*Lamb. 105* A Justice of Peace intending to take a Recognisance for the peace, and yet maketh no mention there (nor in the condition thereof) that it is for the preservation of the peace, it seemeth to be void, as being taken *coram non Judice* : for a Justice of Peace hath no authority to take a Recognisance generally, but for matters concerning his Office specially.

*Lamb. 106* If the Recognisance be, that the party bound shall not beat nor maim *A*, yet it is not good, because it ought to be for the keeping of the peace (generally) and the peace may be broken by burning the house of *A*, or the like.

*Ibid.* If the Recognisance do not limit any time of appearance for the Conuzor, but be generally to keep the peace; yet it is good, for the time of appearance is referred to the discretion of the Justice, and the chief scope is, the keeping of the peace. *Marrow.*

Also (by his opinion) if the Recognisance do limit a time of appearance, but herein is no person named, before whom the party so bound shall appear, then may he appear (in any place out of the Sessions where he will) before that Justice of Peace which took the Recognisance. *Ibidem.*

But in the two last cases, if a Recognisance should be taken in such manner at this day, I should think it safe for the party to appear at the next Sessions for the peace, and there to record his appearance. See more *postea, sub hoc titulo.*

If the Recognisance be to appear before the Justice of Peace within forty days next after the date or taking of the Recognisance, and before the end of the forty days, a general Sessions of the peace shall be holden, &c. the Party now ought to appear at the same Sessions, *Crompt. 123.* See the like matter, *Br. Condition 28.*

Also if these words be in the Recognisance, *sc.* that he shall appear before the same Justice, & *sociis suis*, then must he appear at the next Sessions.

*Crompt. 141.* If the Recognisance be to appear at any other Sessions after (and not at the next Sessions) yet the Recognizance is good : And yet by the *Statute 3 H. 7. cap. 1.* It is now enacted, That every Recognizance taken for the peace, by the Justice of Peace, and *ex officio*, shall be certified (*sc.* sent or brought in) at the next Sessions of the peace, and there delivered to the *Custos Rotulorum*, that the party so bound may be there called : whereby it may seem that every Recognizance taken for the peace now, ought to say, to appear at the next Sessions.

*Lamb. 107* If the Recognisance be in twenty pounds to be levied of his Lands only, or of his Goods only, yet it is good; and this word [only] may seem void : for the acknowledgment of the Recognizance (before a competent Judge) both maketh it a debt, and implieth the ordinary means of Law to come unto it : See hereof *post. tit. Recog. c. 123.*

If the Recognisance be to keep the peace towards the King and all his People, but not towards any person certain, it seemeth good.

So if the Recognisance be to keep the peace towards *A.* only, it seemeth good, or to keep the peace towards *A.* and his Servants, without being bound toward the King and all his Subjects, it seemeth good. Fitz.N.Br.  
80. g.  
Crompt.  
141.

But the best form is to bind the party to keep the peace towards the King and all his People; for first the words of the Commission are to find surety, *Erga nos & Populum nostrum*; and again, the common usage is so. And besides it may otherwise prove dangerous to the party, who hath cause to crave this surety of the peace; for the other party who shall give me just cause to crave this surety against him (because he will not be bound to the peace towards me) he will perhaps pray to bind himself to the peace to *A.* who is his Companion, and then if the Justice of Peace shall so bind him, then he and *A.* go before another Justice of Peace (and that peradventure within one week) and there *A.* may release him of the peace, and so (I trusting that he is still bound) may be after beaten, maimed, or slain by him, or by his procurement.

So then, though the Recognisance being taken in any manner or sort aforesaid, may prove sufficient to bind the party to the King; yet peradventure it will not excuse the Justice of Peace from blame, and therefore it is safest for the Justice of Peace to follow the received form.

The form of the Recognisance for the peace: see *postea*, tit. *Recognisance*, cap. 123.

Recogni-  
sance to be  
forfeited.

The Recognisance for the peace, being thus taken, if it were by vertue of the Writ of *Supplicavit*, the Justice ought to return the Writ, and to certify (under his Seal) his doing therein into the Court from whence the *Supplicavit* proceeded; and he may also send such Recognisance (so taken by him) with his Certificate, or else he may keep the Recognisance in his hands still, untill he shall receive a *Certiorari* out of the Chancery, directed to him for removing of this Recognisance. See more *sub hoc tit. post*.

But if this Recognisance for the peace were taken by the Justice of Peace *ex officio*, then the Justice of Peace ought to certify (send or bring) the Recognisance to the next Sessions of the Peace, so that the party bound may be called thereupon; and that if the party make default of appearance, the same default may be then and there recorded. See 2 *H. 7. fol. 1.* 3 H. 7. ca. 7.  
P. Just. 106

If a man do forfeit his Recognisance (either for default of appearance, or for breach of the peace) the Justices of Peace may not award any process for the forfeiture thereof, but must certify the Recognisance, with the cause of the forfeiture, into some one of the Kings Courts at *Westminster*, *sc.* into the Chancery, Kings Bench, or Exchequer.

And note, that the said Recognisance it self, with the record of such default of appearance, or other forfeiture, shall be sent and certified into the Chancery, Kings Bench, or Exchequer, that from thence Process may go out against the Party: and so ought it to be, if it be presented by the Jury, or great Enquest, that the Party hath forfeited his recognisance by breach of the peace; *Lamb. 570.* Lamb. 506  
3 H. 7. ca. 5

Recogni-  
sance to be  
forfeited.

If the Justice of Peace shall not certify such Recognisance (taken for the keeping of the Peace) at the next Sessions, the said *Stat. 3 H. 7. cap. 1.* limiteth no penalty; and yet see *Brook, tit. Peace 11.* That the Justice shall forfeit

forfeit *x li.* if he do not certifie the recognisance of the peace at the next Sessions but Mr. *Brook* there mentioneth the stat. of 3 *H. 7. c. 3.* which Stat. of 3 *H. 7. c. 3.* was onely for bailment of prisoners, and certifying the same, and so seemeth to mistake the stat. *Vide Fitz. 251. f.*

*Crompt. 169.* If he which demanded the peace shall release the peace, before the said next Sessions, then it may seem though the Justice of peace shall not certifie the recognisance, that the Statute is not transgressed or offended; for it hath been holden that the party shall not be called in such case upon his recognisance: *tamen quere inde & vide hic postea, cap. 71.* but howsoever, it is better to certifie the recognisance, for peradventure it was forfeited before the release made.

2 H. 7. 1  
Br. Peace  
11 F. N. B.  
81

But he that demanded this surety, or he that is bound to the peace, may by a *Certiorari*, remove such recognisance into the Chancery or Kings Bench before the Justice hath certified the same to the Sessions. And so in case the Justice shall not certifie the same thither. *Fitz. 81. c.* and then the party bound, need not to appear. See *hic post. c. 73.* the form of the Justices return of such *Certiorari*, and of the Recognisance. *Recogni-  
fante re-  
moved.*

If the Justice of peace were deceived in the sufficiency of the sureties, the same Justice of peace, or any other Justice of peace, may afterwards compel the party to find and put in other more sufficient sureties, and may take a new recognisance for the same; for that the precept is, *Ad inveniend. sufficientem securitatem.* But if the sureties dye, the party principal shall not be compelled to find new sureties. See more *postea, sub hoc tit. & postea, tit. Bailment. cap. 114.*

*What things shall discharge this Recognisance (of the peace) or the party of his Appearance at the Sessions. CHAP. LXX XIII.*

30 H. 6. 26.  
Br. Surety  
10. & Def.  
60.

**W**Hether a *supersedeas* out of the Chancery, &c. shall discharge the party of his appearance. See *antea, sub hoc tit. c. 69.*

He which is bound to the peace, and to appear at a certain day, he must appear at that day, and record his appearance although he who craved the peace cometh not in to desire that it may be continued, otherwise the recognisance shall be forfeited.

And if a man be bound to keep the peace towards the King and his people, but not towards any person certain, and to appear at such a Sessions, the Court at that Sessions may make Proclamation, That if any man can shew cause why the peace granted against such a one shall be continued, that he speak, &c. And if no person cometh to demand the peace against him, or to shew cause why it should be continued, then the Court may discharge him. But if a man be bound, as afore said, and especially to keep the peace towards *A.* there though *A.* cometh not in to desire that the peace may be continued, yet the Court by their discretion shall do well to bind him over till the next Sessions, and that may be to keep the peace against *A.* only if they shall think good: for it may be that *A.* who first craved the peace is sick, or otherwise letted, so as he cannot come to that Sessions to demand the continuance of the peace further: and in some places in such case, they ordinarily use to bind him over for two or three sessions together; by order among themselves.

Lamb. 112

T

And

And yet by the course of the Common Pleas, one that was imprisoned for the Peace (being removed thither by a writ of privilege) was there discharged, for that he which demanded the peace, came not at the day (of the return of the writ) to pray continuance thereof. See more *antea*, *sub hoc tit. cap. 69.* 13 H. 7. 4.  
Br. Surety  
13.

If the Justice of Peace shall not certify the Recognizance to the Sessions, yet the party ought to appear, and to record his appearance. See such a matter of a Sheriff, who took bond of one to appear in the Common Bench, at a certain day, &c. although the Sheriff return not his writ, &c. yet the party must appear to save his bond. *Vide* 18 E. 4. 18. for this last case.

If the party that is bound to appear, be so sick that he cannot appear, nor by any means travell at the day, yet it seemeth his Recognizance in strictness of Law is forfeit, and so it is by the course of the Courts at *Westminster*, *ut dicitur*; yet in this case, upon the due proof of such his sickness, I have known the Justices of Peace (in their discretion) have forbore to certify or record such forfeiture or default: and that they have taken sureties for the Peace of some Friends of his present in Court, untill the next Sessions; for that the principal intent of the Recognizance was but the preservation of the peace: But, *quare*, how this is warrantable by their Oath; besides, the party so bound, might (by a *Certiorari*) have removed his Recognizance into the Chancery, or Kings Bench, before the day of his appearance, and then he should not have needed to appear at the Sessions, for that the Justices there should have no record whereupon to call him. Crompt.  
143.

But the Civil Law in such cases is more favourable; for with them the Rule is, *Citatus ad locum non tutum, non ardetur comparare*: as if the Plague shall be hot in the Place or Town where the Party is to appear, or where their Court is held, this is a good excuse in their Law, *ut dicitur*.

So if there shall be any other inevitable accident, whereby the Party shall be hindred, as by any great Snow, inundation of Waters, or by any fall, or other hurt or sickness, whereby the party is in danger of death; in these and the like cases the Civil Law doth dispense with defaults, referring these things *arbitrio Judicis*.

See Mr. Brook, *tit. Safer de default*. 17. 28, 45, & 48. and divers other Books, shewing that the Common law doth allow divers cases to save a default of not appearing in Court, the same being pleaded and proved, as imprisonment, inundation of Waters, Tempest and Sickness, *vide lib. intr.*

If the husband be bound, that he and his wife shall appear at such Sessions, and that they shall keep the peace in the mean time, &c. and at the day the husband doth appear, but not his wife; here Mr. Crompt. saith, the Recognizance is not forfeit; for if there shall be cause to continue this surety of the peace against the husband and wife still, the husband shall be bound and not the wife, and therefore the wives appearance seemeth not greatly material, *tamen quare* & *vide Fitz. Forfeiture* 17. 8 E. 2. Crompt.  
144.

*Release.* If a man be bound to the peace during his life, or generally, without any time or day limited, in such case neither the King, the Justice of Peace, nor the Party can discharge this Recognizance, during the life of the Party so bound, by release, or otherwise, *Br. Peace* 17. 21 E. 4. 40.  
Lamb. 113. Also

Also it hath been holden that the Justice of peace who upon his own discretion hath compelled one to find surety of the peace upon a certain day, and hath taken recognisance for his appearing, &c. may upon the like discretion release the same before that day; and that such a release will discharge the recognisance taken by that Justice, if it were not forfeited before, and will also discharge the party so bound of his appearance: for that here all this business depends only upon the discretion of the Justice of peace who bound him. See *Fitz. Just. de P. fo. 9. Lamb. 113. & Cromp. 139.*

Again, it hath been holden, if a Justice of peace shall grant the peace at the request of another (*sc.* at the suit of *A.*) and the recognisance be taken to keep the peace against *A.* only, then (before the next Sessions) may *A.* only release it (and none other) and that release being certified at the next quarter Sessions, will discharge the party so bound of his appearance, so as he shall not be called upon his recognisance; for that release being so certified, is now become of record as well as the recognisance.

Br. peace 17. If the recognisance were to keep the peace *versus curatum populum & precipue versus A.* yet may the same *A.* release it: for although this may seem popular, and that all others shall have interest therein as well as *A.* yet as it appeareth by the word *precipue*, it was specially taken for his safety: but the contrary was holden by all the Justices, 21 E. 4. 48, *sc.* that the party at whose suit the same was granted, cannot release the same. And Mr. *Lamb.* alloweth best of that opinion; nevertheless the usage now is, and long hath been, as is aforesaid, as appeareth by Mr. *Brook tit. Peace 17.*

But (in these former cases) although this surety of the peace be released, and the parties agreed, yet the recognisance shall not be cancelled by the Justice of peace, for peradventure the recognisance was forfeited before such release made: And therefore the Justice of peace shall do best, nay, ought to certify such recognisance, together with the release, the next quarter Sessions.

The form of the release of the Justice of Peace. See *postea, tit. Release, c. 128.*

The forme of the release of the party. See *ibidem.*

Note, it hath been holden that the party that first demanded the peace, might release the same before the same Justice of peace that took the recognisance, or before any other Justice of peace.

Note, also that to release such surety of the peace by deed under his hand and seal is nothing worth.

But yet it is now holden, That neither the Justice of peace nor the party can discharge the recognisance of the peace by their release out of the Sessions; for first, the recognisance is made to the King, and therefore none but the King can release or discharge the same. Secondly, the recognisance is taken for the appearance of the party, &c. (as well as for his keeping of the peace) and the release of the Justice or of the party; cannot discharge the appearance of the party bound. And therefore notwithstanding that the Justice of peace out of Sessions shall make or take any release of the peace, yet it shall be safe for the party bound to appear for the safeguard of his recognisance; and upon the Certificate made by the Justice of

Peace to the Sessions of such release, the conusor shall be there discharged (at least) against the party who craved the peace.

And in truth the appearance of the party bound seemeth requisite notwithstanding any release made; first for the safeguard of his recognisance, as aforesaid: Secondly, that others may object against him (in the open Sessions) if he hath in any sort broken the peace, so as he may be there indicted upon the same, &c.

Note, also, the King can in no case release or pardon the surety of the peace, nor such recognisance (taken in the behalf of any of his subjects) until it be forfeited, for the mischief that may come to the party thereby, but being forfeited, then the King, and none other may release and pardon the forfeitnre.

But the death (or resignation) of the King dischargeth this surety of the peace taken by his subject: for the recognisance is to keep the peace of the King (then being) and when he is dead, &c. it is not his peace. *Br. 15 Br. Cor. 21*  
*Surety 20.*

Also the death of the recognisor (*sc.* of the party principal that is bound) dischargeth this surety of the peace and the recognisance. See 21 E. 4. 70. & 15 H. 7. 2. & 13. *Lamb. 116*

Also the death of the party, at whose suit the peace was taken, dischargeth the recognisance, if it were to keep the peace against him alone. *Lamb. 116*

But yet in these three former cases, such death shall not discharge the recognisance, if it were forfeited before: and therefore it shall be best for the Justice of peace to send to the next Sessions, such recognisance (notwithstanding such death) else the King may be defrauded of a forfeiture, if any were before.

The death of the sureties shall not discharge the recognisance, neither shall the party principal be compelled to find new sureties after their death; for if the peace be broken after their deaths, their executors shall be charged therewith; and there is no mischief by their death: yet *alii è contra ibid sc.* that the principal shall be compelled to find new sureties. *21 E. 4. 40 Br. Peace 17*

Also such surety for the peace may be discharged by a *Supersedeas* made by another Justice of peace of that County, or by a *Supersedeas* out of the Chancery or Kings Bench.

If the King and the recognisor be at issue upon the Breach of the peace, and the King waves the issue: yet is not this recognisance discharged, but remaineth in force, and may be sued again upon a new breach of the peace afterwards. *21 H. 4. 40 10 H. 7. 21 Br. Rec. 21*

*What act shall be (or makes) a forfeiture of the recognisance taken for the peace.* CHAP. LXXXIV.

**W**Hatsoever act is a breach of the peace, the doing, threatening, or intending thereof, against the person of another being present, is a forfeiture of his recognisance. *Lamb. 117*

And therefore first, this breach of the peace may be committed by using any fearful or threatening speeches to the person of another; therefore all menacing, or threatening to kill or beat another to his face, is a forfeiture *18 E. 4. 28 Br. Peace 16*  
*ture*



ture of his Recognizance : otherwise if the party so threatned be absent. And yet if the party so bound shall threaten to kill or beat *A.* who is absent, and after shall lie in wait for him to kill, or beat him, this is a forfeiture of his Recognizance, without any threatning, assault or affray to the person, 22 E.4.35. *Cromp.* 135.

So assaults, *sc.* to strike at, or offer to strike at a man, although he never hurt or hit him, this is an assault, 22 *Ass. Pl.* 60. And this is a forfeiture of this Recognizance. See *Cromp.* 137. *b.* & 40 E.3. fol. 40.

Much more all affrays, or violent and malicious batteries, strikings, beatings, woundings, or other mis-intreatings of the person of another, are forfeitures of this recognizance.

The difference of these three are, menacing beginneth the breach of the peace, assaulting increaseth it, and battery accomplisheth it.

Or thus : Battery, is the wrongfull beating of another, *Fi.*

Affault is, when one unlawfully sets upon the person of another, offering to beat him, although he beats him not, or striking at him, though he strikes him not, *ibidem.*

Hither also belongeth lying in wait, besetting his Mansion-House, and not suffering his servants to go in and out, &c. *Fi.*

Menaces, are threatning words to beat another, or the like, for fear whereof he dares not go about his business, *ibid.*

For breaches of the peace without word or blow given, as to go with weapons, or company unusually, which be in *affrey del pais.* See *page seq.*

If he that is bound do but command or procure another to break the peace, and that it be done indeed, this is a forfeiture of this recognizance, *Br. Peace.* 20.

*Lamb.* 130 Also false imprisonment, or arresting of another without warrant, is a forfeiture of this recognizance. Now false imprisonment, is any unlawfull restraint of liberty. *Fi.*

So to thrust another into the water, whereby he is in danger of drowning, is a forfeiture of this Recognizance.

So to ravish a woman against her will.

So to commit Burglary, Robbery, Murther or Manslaughter (all which are to the person of another) or to procure the same ; all and every of these are forfeitures of this recognizance.

So to do any Treason against the person of the King, this is a breach of the Peace, and a forfeiture of this recognizance : for although the words of the Recognizance usually be, *Quod gerat pacem erga cunctum populum Domini Regis, et precipue erga A. B.* (and is not *erga ipsum Dominum Regem & cunctum populum, &c.*) yet because this fact is done against the Head of the Body of the whole Realm, it is to be adjudged a prejudice and hurt, *ad cunctum populum*, and a breach of the Peace in the highest degree.

*Mar. lect.* 7 But note, That the act which must make a forfeiture of a recognizance, for the Peace must be done or intended to the person of another (by the Opinion of *M. Marrow.*) And the Book of 2 *H.* 7. importeth as much, saying, That this Surety of the Peace is not broken without an affray, fighting, beating, or the like.

*Marr.* And yet to be riotously assembled, is a breach of the Peace, and a forfeiture  
*Lamb.* 311

feiture of this Recognisance, for that it is *in terrorem populi*. Nay, if two Justices of Peace shall record a Riot upon their view (against a man so bound to the peace) although it were no Riot, &c. yet he cannot plead Not guilty in a *Scire facias* upon his Recognisance. Marr. Lamb. 311

Also to wear armour, or weapons not usually worn, or to go with an unusual number of attendants, seem also to be a breach or means of breach of the peace, and a forfeiture of this recognisance for the peace, for they strike a fear and terrour in the people, and be in *affray del pais*. See *Br. Surety 12. & hic cap. 74.*

He that is bound to the peace, ought to carry himself well in his behaviour, and company. See *ant. sub hoc tit. Et post. tit. Surety for the good Behaviour.*

Yet the having of weapons or company unusual, are in some cases allowed, and lawful, and are no breach of the peace. See hereof *postea, tit. Posse Comitatus, et postea, tit. Riots.*

Battery justifiable.

Also though assaults and batteries be for the most part contrary to the peace of the Realm, and the Lawes of the same, yet some are allowed to have a natural, and some a civil power (or authority) over others; so that they may (in reasonable and moderate manner only) correct and chastise them for their offences, without any imputation of breach of the peace; yea they may (by the Law) justify the same; and so in such cases the beating or battery of the person of another, maketh no breach of the peace; but the manner of the battery only doth make the breach of the peace.

And therefore the Parent (with moderation) may chastise his Child within age.

So may the master his servant, or apprentice, for their evil service.

So may the School-master his Schollers.

Ex. 21. 103  
21.

So may a Gaoler (or his servant by his command) his unruly prisoners.

So may any man his Kinsman that is mad, &c. And none of these shall be in perill therefore to forfeit any recognisance of the peace. Plow. 18.

Note, That the Master may strike his Servant with his hand, fist, small staff, or stick, for correction; and though he do draw blood thereby, yet it seemeth no breach of the peace, as appeareth by the *Stat. of 33 H. 8. ca. 12.* P. Fighting.

And where the servant shall be negligent in his service, or shall refuse to do his work, &c. there the master may chastise his servant for such negligence or refusal; so as he doth it not outragiously.

But if the servant shall depart out of his Masters service, and the Master happen after to lay hold of him, yet the Master in this case may not bear or forcibly compell his said servant against his will to return, or tarry with him, or do his service; but either he must complain to the Justices of peace for his servants departure, or he may have an action against his servant, if being required to do his service he shall refuse it. See *antea, titulo Labourers.* 38 H. 6. 25  
Br. Faux.  
imp. 17.  
5 El. 4.  
P. Labor. 6.

And as the Master without the breach of the Peace cannot by beating or force, compell his servant to serve him against his will: no more can a Lord or Guardian in Chivalry compell his Ward by beating or by force to come unto him, or tarry with him against his will. 38 H. 6.  
25.

Also

21 Ed. 4. 6. Also the School-Master, with a Rod, may chastise his Schollar which is  
Lib. intr. careless and negligent in learning, or that shall abuse his School-fellows,  
613. or for other the like occasions.

21 Ed. 4. Also it is lawful for the Parents, Kinsmen, or other Friends of a man  
45. that is mad or frantick (who being at liberty, attempteth to burn an house,  
23 aff. p. or to do some other mischief, or to hurt himself or others) to take and put  
56. him into an house, to bind or chain him, and to beat him with Rods, and to  
do any other forcible act to reclaim him, or to keep him so as he shall do no  
hurt, *Br. F. imp.* 35.

Lib. intr. Also if a Constable, Sergeant, Bayliff, or other Officer of Justice, or any *An Officer*  
612. other being of their Company, for the better executing of their Office,  
Stamf. 13. shall be forced to strike any person that will not yield to their arrest, or that  
14. shall resist, or fly from their arrest, they shall not be in any danger to for-  
21 H. 7. feit any Recognizance of the peace by any such assault or striking, but may  
39. well justify such act.

Lib. intr. Also it is no breach of the peace for any private man to beat, strike, or *In defence*  
611. wound another in defence and safeguard of his own person from killing, *of any per-*  
16 Ed. 4. wounding, or beating, but it is a thing justifiable. And in action of Tres- *son*  
11. pass *de assault & battery*, the Defendant may plead, *De son assault demesme*,  
12 Ed. 4. 6. *sc. quæ il fait ceo in defence luy mesme, enconter le assault del Plantiff, &c.* And  
yet by others, if another shall assault me, if I may escape with my life, or  
without being wounded, maimed, or hurt, it is not lawful for me to beat or  
wound the other who first made the assault, but I must first flee, or go from  
him so far as I can, 25 E. 3. 42. 2 H. 4. 8. 33 H. 6. 18. *br. Trn's* 28. 71 Cro.  
137. *hic. c.* 78.

*Sed vim vi repellere licet, modo fiat moderamine inculpatæ tutelæ.*

*Non ad sumendam vindictam, sed ad propulsandam injuriam, Co. l. 162.*

By the Civil Law he shall not be said to have done a wrong, who incon-  
tinently for his safeguard, after the same manner whereby he is assaulted,  
doth defend himself, as when a man is assaulted by weapons, he may resist  
with weapons: but if he do exceed measure, in repelling an injury; as if  
being wronged in words, he shall resist with weapons, and by such re-  
sistance do beat or wound the other party, he which is so beaten or grieved,  
may have his action, and shall recover damages, &c.

And to prescribe some temper and moderation in the resisting of verbal,  
or actual injuries, one hath these Verses:

*Res dare pro rebus, pro verbis verba solemus,*

*Pro busis busas, pro trufis reddere trufas.*

Things must be recompens't with things, buffets with blows,

And words with words, and taunts with mocks and mows.

Or rather by the Law of God and Nature, we should practise this  
lesson:

“ ——— *Per te nulli unquam injuria fiat,*

“ *Sed verbis aliisque modis fuge ledere quemquam,*

“ *Quod nulli nollis, aliis fecisse carreto;*

“ *Quodq; tibi velles, aliis præstare studeto.*

If one trained Souldier hurt another by mischance, and not willingly, or  
by negligence, it is excusable in an Action of Trespas or Assault. *Hobarts*  
*Reports, weavers case, p. 189.*

If two, or more, do agree together to play at Barriers, Back-sword, Buck-lers, Foot-ball, or such like, and one of them doth wound and hurt another, the Party hurt, shall not have an action of Trespafs therefore against the other, for that it was by consent, and to try their valour, and not to break the peace, *Fitz. barr. 244.*

Yet if such a man were before bound to the peace, such act seemeth to be a forfeiture of his Recognizance. See *Br. Cro. 229.* for although such sports be suffered, yet they are not lawful. See, *ch. 96.*

In defence  
of others.

Also it is no breach of the peace, for a man to beat him that doth assault and would beat him, wound or evil intreat his Wife, Father, Mother, or Master, but is justifiable.

So if the Wife shall beat him, that shall assault, and would beat or evil intreat her Husband.

So if the Father, or mother, shall beat him that doth assault, and would beat or evil intreat their Child, being then within age, and not able to defend it self.

But though the Servant may lawfully beat him that doth assault, and would beat or evil intreat his Master or Mistrefs: yet the Servant cannot justify the beating of another, in defence of the Father, Mother, Brother, Sister, Son, or Daughter of his Master or Mistrefs, for he oweth no obedience or duty to any of them. See *Fitz. Bar. 73. & 102.*

By some opinions, the Master cannot justify the beating of him that doth assault and would beat his Servant: but the Master with a Sword, Staff, or other weapon, may defend his Servant assaulted, from being beaten, in respect of the loss of his Service. Yet *M. Lambert* and *M. Crompton* are of Opinion, That the Master may beat another in defence of his Servant; but  
*P. R. 5; P. Justific. 3; Lamb. 132; Crompt. 136.*

Neither can the Fermour or Tenant justify such an act in defence of his Landlord, nor a Citizen, &c. in defence of the Mayor, (or Bayliffs) of the City, or Town corporate, where he dwelleth. *Lamb. 132*

And yet where the life of any person is in danger by beating of another, there any stranger may lawfully resist it, and that with force, and beating of him which offereth such violence. *Vide 21 H. 8. 2. b. hic c. 78.*

In defence  
of my goods.

Also the Law doth tolerate a man to beat another for the preservation of his Goods: and therefore he that shall attempt by force and violence to take away my Goods wrongfully from me, whether they be Goods whereof I have a lawful property, or such Goods whereof I have only a possession by the bailment of another; I may justify to defend the same by force: and if I shall hurt or beat such a person, it is no breach of my Recognizance for the peace, yet if I shall wound him by such beating, that is not justifiable; but if I kill him, it is Felony; and in both these last cases, it is a breach of the Recognizance. See *hic c. 78.*  
*9 E. 4. 21; 19 H. 6. 31. 65; L. b. Int. 611.*

If another man will take away my Goods, I must first lay my hands upon him, and disturb him; and if he will not leave, then I may beat him, rather than he shall have or take away my Goods. *Fi.*

The same Law is in every case, where another shall attempt by force to take away, or to put me out of possession of my Land, Free-hold, Copy-hold, or Lease, or to stop or turn my lawful high-way, or my ancient River or Water-course leading to my Mill; in these and the like case, if I shall  
*10 Ed. 4. 6; 5 H. 4. 9; 11 H. 6. 33.*

shall disturb him therein, whereupon he doth assault, and attempt to bear me, I may justifie to beat him again, as well in defence of my person, as of my possessions, but not to kill him.

The same Law is also in every case, where an Offender is by order of Law punished with whipping, stocks, pillory, or otherwise, for any offence by him committed, contrary to the Laws or Statutes of the Realm; there is no peace broken, nor any Recognizance of the peace forfeited by him or them which shall lawfully execute any such punishments. *In execution of Justice.*

**Lamb. 132** Note farther, that there are divers things which may be done against the peace, and divers offences, for which an indictment *contra pacem* will lie, and yet the committing or doing of such offence or act, shall be no forfeiture of the Recognizance for the peace; for that the act that shall breed a forfeiture of such a Recognizance, must be done or intended unto the person, as afore said, or *in terrorem populi*.

Therefore to enter into Lands where he ought to bring his Action, or to disseise another of his Lands.

**Marr. lect. 7.** Or to enter into Lands or Tenements with force, being without offer of violence to any mans person, and without publick terror, *Crompt. 136.*

Or to do a trespass in another mans Corn or Grass:

Or to take away another mans Ward:

Or to take away another mans Goods wrongfully, so it be not from his person:

**Ibid.** Or to steal or take another mans Horse, or other Goods feloniously, being not from his person.

**7 H. 7. 8.** All these and the like be breaches of the peace, and yet these will make no breach of this Recognizance, nor breach of the peace within the meaning of the Commission of the peace.

Note, that if a man be bound in such a Recognizance for himself and his Servants, if any one of them break the peace, the whole Recognizance is forfeited. *Et sic in similibus.*

Note also, that the Sureties may plead, that the Party principal hath not broken the peace, although upon issue the same shall be found against the said principal; for they are strangers thereto. *Fitz. Averment. 46.*

*Now concerning the Writ of Supplicavit. CHAP. LXXXV.*

**T**He forms of this Writ, out of the Chancery, are of divers sorts, as you may see, *Fitz. N. B. 80. d. & Register. 89.*

By which forms of the Writ it appeareth, that it may be directed to the Justices of peace, or to one of them; or to the Sheriff, or to every of them, to cause the Party that is to be bound, to come before him or them, to find surety of the peace. And this Writ may be, that the principal shall be bound in such a sum, and the Sureties in such a sum certain, (and that may be in what certain sums the Demandant will) or the sums may by the Writ be referred to the Justice of Peace, &c. with this clause therein contained, *pro qua respondere volueris*: and the said Writ is further, that if the Party shall refuse, &c. that they shall commit him to the Gaol, *quousque*, &c. and that when they have taken such surety, they do certifie the recognizance

zance (which they have so taken) under their Seals, and return the Writ into the Court from whence the same was awarded, and that without delay.

And for that this Writ is of divers forms, the Justice of Peace must have a care that he do execute the same in every behalf, as the same Writ shall direct and appoint him.

When the Writ doth refer the sum (wherein the principall and his sureties shall be bound) to the Justices, &c. then it resteth in their discretion; but yet it is then safe for them to take good sureties, and to bind them in good fums, and the rather, when the clause is in the Writ; *pro qua respondere volueris*.

When this Writ is directed to the Sheriff, and to all the Justices of Peace of that County, and is delivered to any one of them, he only to whom it is first delivered, ought to execute the same Writ (in every behalf) *sc.* he only shall make a Warrant, &c. returnable before himself, and he only shall take Sureties, and make return thereof (only) without any other.

21 H. 7. 20.  
Br. peace.

The form of a Warrant for the peace upon a *Supplicavit*. See *postea*, tit. *Warrants*, c. 121.

Also the same Justice of Peace for such surety taken, may make the Party a *Supersedeas* to discharge him from any other arrest; or to deliver him being in Prison for the peace, (at any other mans Suit, as it seemeth.) *Crompt. 237. b.*

The form of such *Supersedeas*; see after, tit. *Presidents*, c. 122.

The Party who is attached upon this Writ of *Supplicavit*, cannot go to be bound before any other Justice of Peace, but only before him from whom the Warrant proceeds upon this Writ; neither can another Justice of Peace (by a *Supersedeas*) discharge such a Warrant made by his fellow Justice, by force of this Writ.

21 H. 7.  
Br. peace 92

The Justice or Sheriff, to whom this Writ shall be delivered, may make a deputy herein; *sc.* may make his warrant to the Bayliff, Constable, or other person indifferent to apprehend the body, or to cause the party to come before him (the said Justice or Sheriff) to find sureties, &c. And that if he shall refuse, that then the Constable, &c. shall carry him to Prison, there to remain, untill he shall find sureties; and yet the Writ of *Supplicavit* is to commit the Party to the Gaol, if he shall refuse before the Justices (*si coram vobis, vel te recusaverit, &c.*) but the Justice or Sheriff cannot give their power to another, to take this surety, for that is a judicial power, which cannot be assigned over; neither can they make any Deputy therein, but they must take this surety themselves: and the Bayliff or Constable who apprehended the body, cannot take this surety, *Br. Office 39. & faux. imp. 34.*

9 E. 4. 32.  
F. faux.  
imp. 4

If the Party shall make resistance upon the execution of this Writ, the Officer may take *posse comitatus*, *sc.* the help of his Neighbours to aid him to arrest such party: see *postea*, tit. *Posse Comitatus*: or else the said Justice may make his warrant to the Sheriff, to apprehend the party, and upon resistance, the Sheriff may take *posse comitatus* to arrest the party.

He that is to be bound to the peace, by force of this Writ of *Supplicavit*, out of the Chancery, is to be bound against him only that sueth out the Writ, as appeareth by the form of the Writ aforesaid.

F. N. B.  
80. d.

But yet at this day it is used otherwise, and I once received out of the Chancery

Chancery a special Writ of *Supplicavit*, directed *Custodibus pacis, ac vic. & eorum cuilibet*, commanding us to take Sureties of the Party to be bound, *quod ipse damnum vel malum aliquod alicui de populo nostro, & imprimis ei de Iob. &c.* (that sued out of the Writ) *non fac. nec fieri procurabit.*

F. N. B.  
80. d.

Also by this Writ of *Supplicavit*, the party (against whom the Writ is sued forth) shall be bound to the peace for ever (if he be taken; ) for the Writ containeth or mentioneth, not that he shall be bound to keep the peace untill any certain time; but generally (*ad sufficientem securitatem inveniendam sub pœna, &c.* And therefore to prevent this, the party (before he be attached) may come into the Chancery, and there find sureties, and be bound untill a certain day, that he shall do no hurt, &c. unto the party that sued forth the *Supplicavit*; and thereupon he shall have a *Supersedeas* out of the Chancery, directed to the Justices of Peace, and to the Sheriff, or to one of them, commanding them to surcease to arrest the said party, or to compel him to find any Sureties, &c. And that if they have arrested or imprisoned him for this cause, and none other, that then they deliver him, &c. *Fitz. 18. a.* The form of the *Supersedeas*, see *Register. 89.*

F. N. B.  
812.  
Crompt.  
142.

And if the party against whom this Writ is sued forth, cannot travell, (or else will not travell) to bind himself in the Chancery, then he may cause some of his Friends to be bound, or to find sureties in the Chancery for him, according to the *Supplicavit*, and thereupon they may purchase a *Supersedeas* out for him, directed to the Justices of Peace, and to the Sheriff, and by this *Supersedeas* the Justices and the Sheriff shall be commanded to take also surety of the party himself in the Country (according to the writ of *Supplicavit*) that he shall keep the peace, &c.

Also if the party happen to be arrested, and imprisoned upon this writ, yet if he can procure a *Supersedeas* out of the Chancery, it seemeth by the words in the end of the *Supersedeas*, that this will discharge him of the arrest or imprisonment.

Now after the party is arrested and imprisoned (upon this writ) the means for him to procure a *Supersedeas* out of the Chancery, must be :

1. Either to get some of his Friends to be bound in the Chancery for him, and they to get a *Supersedeas, ut supra.*

2. Or else to get a Certificate to the Lord Chancellor, from three or four Justices of Peace in this behalf, signifying, that the party Plaintiff never demanded the peace in the Country, and further, that the Plaintiff is a contentious man, and the other party of good fame : and upon such certificate (*dicitur*) they will either discharge the party, or else grant him a *Supersedeas.*

F. N. B.  
79. h.  
Lamb. 86.

This writ of *Supplicavit* is granted (or may be granted) in the Chancery, or Kings Bench, upon great cause shewed and proved there, and is (or ought to be) granted upon Oath, that the party is in fear, &c. of some bodily hurt, &c.

Co. 8. 37.

But this writ of *Supplicavit* hath heretofore oftentimes been procured and gotten out rather of malice, and for vexation, then upon any needfull or just cause : And Sir Edward Coke speaking of such as maliciously shall purchase out any special *Supplicavit*, or *Latitat*, of the peace, (and that by fraud and malice to enforce the other party, *ad redimend. vexationem*, to give them money, or to yield them other composition) brandeth them as

Barre-

Barretours, and notable Oppressours of their Neighbours; oppressing thereby the poor and innocent by colour and countenance of Law, which was ordained to protect the innocent from all oppression and wrong. Neither was this a wrong only to the party thus maliciously vexed, but also to all the Justices of peace in that County, taxing them (*tacite*) as though the Demandant could not have justice at their hands in such case, whereas perhaps the Demandant never so much as desired the same at any of their hands. And besides, the said Justices of Peace (having in all likelihood, knowledge of each party, and their behaviours) or any one of the Justices of Peace, might and would, no doubt, yea, and ought to have yielded the Demandant, upon request and just cause shewed to them, as sufficient and good security in the Country, every way (as I conceive it) for his safety; as namely, as many and able sureties, and better known, and to have been bound in as great sums, and for as long time, if the cause should so require. So as what should move them to seek (with more trouble, charge, and delay to themselves) that security above, which they may have (more speedily, and with less charge and trouble) at home, I see not, but only or chiefly the vexing and oppression of their Neighbours, as aforesaid. And for that this manner of oppression grew over common; therefore by the *Stat. made 21 Jac. cap. 8.* It is now enacted, That all process of the peace, or good behaviour to be granted out of the Chancery, or Kings Bench, against any person whatsoever, at the suit of any other, shall be void, unless such process shall be granted upon motion first made before the Judge or Judges of the same Court, sitting in open Court, and upon declaration in writing upon Oath then exhibited, of the causes for which such Process shall be granted; and unless that such motion and declaration be mentioned to be made upon the back of the Writ (the same writings to be there entred of record.) And if after it shall appear to the said Courts, that the said causes expressed in such writing, be untrue, then the Court may award Costs and Damages to the party grieved, and may also commit to Prison the Offenders, untill they pay the said Costs and Damages.

See more  
before in  
this title.

Now to conclude this business: if the surety of the Peace be taken by vertue of a *Supplicavit*, then must the Justice of Peace make return of the writ, and Certificate of his doings under his Seal into the Court from whence the *Supplicavit* did proceed; which may be done in this manner:

The return  
of the Supp.

First let him write upon the back of the *Supplicavit*, thus:

The execution of this writ, appears in a schedule to this writ annexed.

Then may the Certificate or Schedule be thus, and be filed to the back of the writ.

The certi-  
ficate.

**I** A. B. One of the Justices of the Peace in the County of — do certifie into the Chancery, That I by vertue of this Writ (to me by C. D. in the same Writ named, first delivered) caused personally to come before me (such a day and place) E. F. in the same Writ named, and did then and there also cause him the said E. F. to find sufficient security and manucaptors of the peace, according to the form of the said Writ, viz. &c. as the writ shall appoint; in testimony whereof I have to this my Certificate set my Seal, dated at W. aforesaid, in the said County the 16. of January, in the year of our Lord, 1654.

The return  
of a Certi-  
ficate.

The Justice may also therewith send the Recognizance, if he will; or may



may keep and stay the recognisance untill a *Certiorari* come to him for it.  
 - And if a *Certiorari* be directed out of the Chancery to the Justice of Peace, <sup>And of the Recog.</sup> for removing of this recognisance (because it was not sent up together with the Certificate, as there was no necessity that it should) then that Writ also may be thus answered.

Lib. Intr.

c. 3.

Write upon the back of the *Certiorari* thus :

By virtue of this Writ, I A. B. one of the Justices of the Peace in the County of Camb. the tenor of the security of the Peace, of which mention is made in this writ, (or within made) the said into the Chancery do certifie under my Seal plainly, as in the Schedule to this writ annexed.

And then write the Recognisance *verbatim*, in this manner hereunder following, and thereto set your Seal. <sup>The Schedule or Certificate.</sup>

To be remembered, that the 16 day of Jan. &c. (reciting the whole Recognisance unto the end) in testimony whereof, I the said J. C. have set my seal, Dated, &c.

And file this Schedule (or note of the recognisance to the back of the *Certiorari*.

The form of the *Certiorari*, you may see *F.N.B.* 81. 82.c. *Vide postea, tit. Certiorari, cap. 134.*

F.N.B. 81.

Also this form of a Certificate may serve where a *Certiorari* is brought to a Justice of Peace to remove a recognisance of the Peace or good behaviour taken by him *ex officio*, without any Writ of *Supplicavit*. See more *antea, sub hoc tit. Surety, &c.*

c.

F.N.B. 11.

b.

And if the Justice of Peace shall not return the *Supplicavit*, nor certificate of his doings therein, untill a *Certiorari* come to him for it, yet it seemeth no danger to him.

Lamb. 111

Also if the *Supplicavit* be against divers, and the demandant will release his prayer of the P. against one of them, then that release ought to be certified for him, and the Writ must be served and executed for the rest : or else, *Non est inventus*, may be certified for him, and the Writ executed for the rest. <sup>Release.</sup>

By the Book 30. *Assisarum plac.* 14. it appeareth, that a man may be compelled to find surerries both for the good behaviour, and for the Peace ; for there one that had beaten a woman in *West. Hall*, was bound to the Peace towards the woman, and was also bound to the good Behaviour towards the King, &c.

And so where one shall strike another in the presence of the Justice of Peace, the Justice may bind him to the Peace, and also to the good Behaviour, *Crompt.* 140.

So where one coming to the Sessions to prefer a Bill of Indictment, or about a Traverse to be tryed there, &c. if he shall be assaulted or threatened, &c. the Justices may bind the offender to the peace, towards the party ; and to the good Behaviour for such contempt to the King and the Court, *Crompt.* 141.

Br. Surety.

11.

2 H. 7. 2. b.

And yet it seemeth that the good Behaviour includeth the peace, and that he that is bound to the good behaviour, is therein also bound to the Peace. See the usual forms of both Recognisances, & *hic postea.*

But if the recognisance taken for the good Behaviour, be only *quod bene se gerat, &c.* *Quare* how far these words will extend. See 2 H 7. 2. b. where

the Justices held, That the good Behaviour might be forfeit by the number of his people, and by the harness (or weapons) and the like, although they break not the Peace. And they thought, that he which is bound to the good Behaviour, ought to carry and demean himself well in his port, gesture, and carriage, and in his company, not doing any thing which shall be cause of breach of the peace, or to put the people in fear, dread, or trouble; and so shall be intended of all things which concern the peace; But not in misdoing of other things, which touch not the peace. See *hic postea*.

*Surety for the good Behaviour.* CHAP. LXXXVI.

THIS Surety for the good Behaviour, or good abearing, is granted by the Justices of Peace, as well by authority of the Commission of the Peace the first of *Assign.* as also by force of the Statute 34 *Ed. 3. cap. 1.*

And this Surety for the good Behaviour is of great affinity with that of the Peace, and is provided and ordained chiefly for the preservation of the peace (as that other is) as you may observe out of the usual forms of the Recognisances; yea by some Opinions it differeth in little or nothing from that of the Peace; but that there is more difficulty in the performance thereof; and the party so bound, may sooner fall into the danger of it, and of his recognisance. For the Peace (say they) is not broken without an affray committed, battery, assault, imprisoning, or extremity of menacing; whereas the good abearing may be broken, and the parties recognisance forfeited without any of these: as namely,

1. By the extraordinary number of people attending upon the party bound. See *hic cap. 72. & 73.*

2. Or by his wearing of harness, or other weapons more then usually he hath done, or more then be meet for his degree. See *ibid.*

3. Or by using words or threatnings, tending or inciting to the breach of the Peace.

4. Or by doing any other thing which shall tend to the breach of the peace, or to put the people in dread or fear, although there be no actual breach of the Peace.

Yet note, These four last matters, as they are the breaches of the good abearing, so are they also causes to bind a man to the peace; yea, they are breaches of the Peace, and a forfeiture of the recognisance for the peace: *Vide tit. Surety for the Peace, cap. 72.*

The Book 2 *H. 7. fol. 2.* before recited, concludeth, That the Justices were not all certainly advised how those words, *de se bene gerendo*, should be taken: Mr. *Br.* abridging thereof, *tit. Surety 12.* saith, that it was holden, That he who is bound to the peace, ought to demean himself well in his port, (*sc.* behaviour) and company, not doing any thing that may be the cause of the breach of the Peace, or to put the people in fear or trouble; yet the Book seems to mean this of the good behaviour. See *Fitz. Surety 21.*

But though this extraordinary number of attendants, and wearing of harness, &c. are breaches as well of the peace, as of the good behaviour; yet it may seem, that this for the good behaviour, doth include the peace, and besides importeth some greater or other matters of misbehaviour, and for

for which the surety of the peace is not to be granted, (although they also are against the peace and quiet or good government of the land) and you shall finde *hic cap. 75.* that this surety of the good behaviour is grantable in divers other cases, in which the surety of the peace is not grantable.

This surety of the good behaviour is to be granted at the suit of divers, and those being men of credit, and to provide for the safety of many ; whereas the surety of the peace is usually granted at the request of one, and for the preservation of the peace chiefly towards one.

Also this surety of good Abearing, is most commonly granted either in open Sessions of the peace; or out of the Sessions, by two or three Justices of peace ; whereas that of the peace is usually granted by one Justice of peace, and out of Sessions.

And yet by the words of the Commission, as also by the common opinion of the learned, any one Justice of peace alone, and out of the Sessions may grant this surety of the good Abearing (and that either by their own discretion, or upon the complaint of others) as they may think fit for the peace. 14 H.7.8.  
2.  
Lamb. 123  
14 H.7.8.  
2.  
Lamb. 213

But this is not usual, unless it be to prevent some great and sudden danger ; (especially against a man that is of any good estate, carriage, or report.)

Also this surety may be granted at the suit of some one person.

But the more difficult and dangerous this surety is to the party bound, the more regard there ought to be taken in the granting of it : and therefore, it shall be good discretion in the Justices of peace, that they do not command, or grant it, but either upon sufficient cause seen to themselves ; or upon the suit and complaint of divers others (as aforesaid) and the same very honest and credible persons.

*Supplicavit.*

Also this surety of good abearing, is often taken by the Justice of Peace, by vertue of a special Writ in the nature of a *Supplicavit*, directed out of the Chancery or Kings Bench ; and then the Justice of Peace upon such a Writ is to proceed as a Minister, (as in case for the peace, *mutatis mutandis.*) See before, *tit. Surety for the Peace*, and *Supplicavit*.

Once received out of the Chancery such a Writ directed to the Justices of the Peace in the County of *Cambridg*, and to the Sheriff of the said County : and to every of them (and grounded upon the Stat. 34 *Edw. 3.*) commanding us, and every of us, to take four Sureties (besides the party) whereof every one should have lands of such a yearly value, or goods of such a value ; and to bind the sureties every one in such a summe, and the party in such a summe ; That he shall be of good behaviour henceforward towards us and all our people, and shall attempt nothing contrary to the said Statutes, &c. and therein I proceeded as a Minister only.

The party against whom such a *Supplicavit* for the good Behaviour shall be granted out, before he be attached thereupon, may go or send up, and give surety above in the Chancery, &c. (as here before, *cap. 69.* for the Peace) and thereupon he shall have a *Supersedeas* out of that Court directed to the Justice of Peace, and Sheriff, and to every of them, commanding them to surcease to arrest the said party, or to do any other execution of the said Writ of *Supplicavit* ; and that if (before the coming of the said *Supersedeas*) they have taken any such security for the good behaviour of the

party, that then they presently release the party of such surety found by him, the former Writ of *Supplicavit* notwithstanding.

*For what cause this Surety for the good Behaviour shall be granted.* CHAP. LXXXVII.

1. **I**T is chiefly to be granted (by the Justices of Peace out of their Sessions) in these cases following; viz. First, against common Barreters, common Quarrellers, and common breakers or perturbors of the peace. See what Barreters be, *tit. Barreters, before.*

P. Just. 13.

2. Also it is grantable against Rioters. See hereof before, *tit. Riots.*

3. Also against such as shall lie in wait to rob, or shall be suspected to lie in wait to rob, or shall assault, or attempt to rob another, or shall put passengers by the way in fear or peril.

4. Also against such as be generally feared (or suspected to be robbers) by the high-way.

5. Also against such as are like to commit murder, homicide, or other grievances to any of the Kings Subjects in their bodies. Cro. 135. b.

6. Also against such as shall practice to poison another.

I lately granted the good behaviour against one, for that he had bought Ratsbane, and mingled the same with Corn, and then wilfully and maliciously did cast the same among his neighbours fowls, whereby most of his fowls died; and it was holden to be a good cause to bind the offender over, by the whole Bench: And since I have known it allowed as a good cause by the Judges of Assize.

7. The Justice of Peace also upon his own discretion (and without complaint) may bind to the good behaviour any other person which in his presence or hearing shall misbehave himself in some outrageous manner of force, or fraud, and may commit such person to the Gaol if he refuse to be bound. Sir Francis Bacon, 11.

It is also grantable against such as be of evil name and fame, generally, but more specially against such as are defamed or detested in any of these particulars following: P. Just. 18. 34 E. 3. c. 1

1. First, against those that are greatly defamed for resorting to houses suspected to maintain Adultery, or Incontinency. 13 H. 7. 10

2. Also against the maintainers of houses commonly suspected to be houses of common Bawdery.

One that had such lewd women found in his house, was bound to his good behaviour, (by *Wray, Anderson, and Manwood,*) 28 El. Crom. 140

3. Also against common whole-mongers, and common whores; for (by good Opinion) Avoutry or Bawdery is an offence temporal, as well as spiritual, and is against the peace of the Land. 1 H. 7. 7. 27 H. 8. 14

Upon Information given to a Constable, that a man and a woman be in adultery or fornication together (or that a man and a woman of evil report, are gone to a suspected house together in the night) the Officer may take company with him; and if he find them so, he may carry them to prison; or he may carry them before a Justice of Peace to find Sureties for the good behaviour. 13 H. 7. 10 Br. Travers 432.

4. Also

4. Also against Night-walkers, that be suspected to be pilferers, or otherwise like to disturb the Peace, or that be persons of evil behaviour, or of evil fame or report generally, or that shall keep company with any such, or with any other suspicious persons in the night, 13 *H.7.10.* & 13 *E.1. Winch. cap.4.*

Against such as by night shall Evefdrop mens houses.

Against Night-walkers that shall cast mens Gates or Carts, &c. into ponds, &c. or shall commit other like misdemeanors or outrages in the night time.

5. Against suspected persons who live idly, and yet fare well, or are well apparelled, having nothing whereon to live; (except upon examination, they shall give a good account of such their living.

6. Against common haunters of Ale-houses, or Taverns, and common gamesters; but more especially if they have not whereon to live.

7. Against common drunkards; and yet by the Stat. 4 *Jac.* 5. such offenders must be thereof lawfully convicted: *sc.* by presentment of the offences at the Assizes, Quarter-Sessions of the Peace, or in the Court Leet, and thereupon a due proceeding to conviction, &c.

But now by the Stat. 21 *Jac.c.7.* any one Justice of Peace (or any head Officer in any City, &c.) hath power to convict any person of drunkenness, &c. See *hic antea, tit. Ale-houses.*

And for the second offence of drunkenness, any one Justice of Peace may, (upon his view, confession of the party, or proof of one witness upon oath) as it seemeth, bind such offender to the good behaviour, 21 *Jac. cap.7.*

8. Against all such as use to go on message to Thieves, see Stat. 18 *E.2. P.1.1.*

For all these former offenders and the like, are evil members in the Common-wealth, and such their demeanour and living is greatly to be suspected, (and besides, do seem to be more properly said against the peace of the Land, then *Acountry* in the case before, 1 *H.7.7.*) and therefore it seemeth reasonable, just, and expedient, that the Justices of Peace (upon their discretion) should convent such persons before them, and examine them and their courses of life; and if they cannot yield a good reason and account of such their courses, then to bind them to their good behaviour.

Also the good behaviour seemeth grantable, against such as shall make false out-cries, or shall raise Hue and Cries without cause; for these are disturbances of the Peace, *Crompt. 179.*

If one man do levy *Hue-and-Cry* upon another without cause, either of them may be attached (and bound over) as disturbers of the Peace, *P. R. 156. 29 E.3. Fitz. Trespass 252. tamen quare*, concerning him upon whom the Hue-and Cry is levied: Except that he be either a man of evil fame, or that there be some felony committed, &c.

Also it seemeth grantable against Cheaters and Couseners:

*Libellers.*

Libellers (it seemeth) also may be bound to their good behaviour, as disturbers of the Peace, whether they be the contrivers, the procurers, or the publishers of the Libel: for such libelling and defamation tendeth to the raising of quarrels, and effusion of blood, and are special means and occasions tending, and inciting greatly to the breach of the peace.

See Co.5.  
25.  
P.R. 1.2.

*Libellus*, literally signifieth a little book.

By use it hath also two other significations: First, it signifieth the original Declaration of any action in the Civil Law.

Secondly, it signifieth a criminous report of any person, cast abroad, or otherwise unlawfully published, and is called an infamous Libell.

Another describeth it thus, *Famosus libellus est qui impingit delictum aliquod notabile*

And yet this libelling may be done after divers sorts or manners.

1 By scandalous writings, be it in book, ballad, epigram or rhyme, either in meeter or prose as aforesaid. *Co. 5. fol. 125.*

2 By scandalous words, scoffs, jests, taunts or songs, maliciously repeated or sung in the presence of others.

3 By pictures or signes, as by hanging of pictures of reproach, or signes or tokens of shame, or disgrace neer the place where the party thereby traduced, doth most converse: as the picture of the Gallows, Pillory, Cucking-stool, Horns, or such like. *Co. 5. fol. 125.*

And in such cases it is not material whether the libel be true or false, or the party thereby scandalized, be living or dead, or be of good name or evil.

And these libellers, as also their procurers, and the publishers thereof, *Ibid.* may be punished in divers other manners:

1 Either they may be indicted for the same.

2 Or the party grieved may have his action upon the case, and recover his damages, *Lib. Intr. fol. 13. Mes cest semble quand les parols sont actionnable.*

If therefore any man shall finde a libel, and would keep himself out of danger; if it be made against a private man, the finder may either burn the same, or else he must presently deliver the same to some Magistrate.

But if it concerns, or be made against a Magistrate, or other publike person, the finder ought presently to deliver the same to some Magistrate, to the intent that by the examination and industry of such Magistrate, the author may be found out.

Also this surety of the good behaviour, is used to be granted against the putative father of a bastard childe. See *tit. Bastardy.*

It seemeth also grantable against unlawful hunters in Parks, after their examination taken, See before *tit. Hunting.*

Also it shall be granted against him that shall abuse a Justice of Peace, Constable, or other Officer of the peace in executing their office.

*A.* assaulted a Constable in doing his office, it is a good cause to bind *A.* to the good behaviour. *Fitz. Barr. 202. Cromp. 135.*

The Sheriffs Bailiff, upon a Warrant from the Sheriff (to make execution of the goods of *A.*) went into the house of *A.* finding the doors open, and *A.* shut the doors upon the Bayliff, and so detained him as a prisoner in his house, and Sir Robert Houghton, one of the Judges of the Kings Bench, thought it a good cause to grant out process of the good behaviour against *A.* for thus abusing an Officer of the Law, *Anno 17 Jacobi Regis.*

A Justice of Peace seeth a man break the peace, (*sc.* make an assault, or affray upon *A.*) and he chargeth him to keep the peace, and the other answereth that he will not, the Justice of Peace may bind him to the good behaviour. 9 E. 4. 3.

For

For if (as one saith) contempt, or contumely, used to the person of a mans better, neither Policy for Example, nor Religion for Peace, may tolerate, much less may any use contempt towards, or abuse such as are in authority, specially when they are in executing their Office.

Nay, it seemeth that he which shall use words of contempt, or *contra bonos mores*, against a Justice of Peace, though it be not at such time as he is executing his Office, yet he shall be bound to his good behaviour. See *Ex. 22. 28.*

Co. 11. 98. If a Citizen, or Freeman of a Town Corporate, shall use words of contempt, or *contra bonos mores*, against the chief Officer of the City or Town, or his Brethren, they are good causes to commit him to Prison, untill he shall find Sureties for his good behaviour: for obedience and reverence ought to be yielded to the Magistrate, for that they derive their authority from the King; and *obedientia est legis essentia*.

Also he that shall abuse a Justice of Peace his Warrant, may be bound to the good behaviour. See after, *tit. V. Warrants*.

A man complaineth of a Riot, or Forcibly Entry, so that the Justices of Peace are assembled to inquire thereof, and then the Party that complained will not prosecute the matter, it seemeth that the said Justices of Peace may bind him to his good behaviour for thus deluding them.

And so of such as shall charge another with Felony before a Justice of Peace, and yet will not give evidence, &c. See before, *tit. Felony*.

Cromp. 134. A. is bound to keep the Peace against B. only, and getteth a *Supersedeas*, and after B. releaseth him; after A. is arrested for surety for the peace at another mans Suit, and sheweth his first *Supersedeas*, it seemeth he shall be bound to his good behaviour for this deceit.

Yea, whatsoever act or thing is of it self a misbehaviour, or is against the good behaviour, is cause sufficient to bind such an Offender to the good behaviour: for the Magistrate ought to maintain all civil honesty.

Also by the expresse words of the Statutes, the Offenders hereunder named shall be bound to their good behaviour: *By Statute*

1. Disturbers of Preachers, 1 M. 3. P. 1.

2. Destroyers of Fish-ponds, &c, or stealers of Fish, (after lawful conviction, &c.) 5 Eliz. 21. P. Fish. 7.

5 Eliz. 21. 3. Takers of Hawks or Hawks eggs, out of other mens ground, after lawful conviction, &c. P. Hawks 1.

3 Jac. 13. 7 Jac. 13. 4. Unlawful stealers, hunters, or killers of any Deer or Conies in the night or day time, in any Park or Warren, after lawful conviction, &c. See the Stat. 5 Eliz. cap. 21.

But all these former Offenders must be bound at the Sessions.

5. Popish Recusants, absenting themselves from Church twelve months, shall be bound in the Kings Bench, 23 Eliz. 1. P. Recusants 1.

10 E. 3. 3. P. paron. 5. 6. He that is attainted of Felony, and hath a pardon for the same, shall within three months find Sureties for his good behaviour; but he shall be bound before the Sheriff and Coroners, who shall return the same into the Chancery.

Also he that is acquitted of Felony, if he be of evil fame, or of evil behaviour, it seemeth the Justices of Peace upon their discretion, may bind him to his good behaviour, Cromp. 135.

7. Such

7. Such persons as shall disturb the execution of the *Stat. 39 Eliz. 4.* concerning the punishing, or conveying of Rogues; any two Justices of Peace may bind them to their good behaviour. See before, *tit. Rogues.* 39 Eliz. 4.

8. So of such as shall disturb the execution of the *Statute* for the relief, setting on work, or setting the Poor. See before, *tit. Poor.*

9. The Mother of a Bastard-Child (which may be chargeable to the Parish) for her second offence shall be committed to the house of Correction, there to remain, untill she can put in security for her good behaviour, &c. See before, *tit. Bastardy.* 7 Jac. 4.

10. Such as have their Houses infected, or be themselves infected with the Plague, and being commanded to keep their Houses, shall disobey, &c. they shall be bound to their good behaviour for one whole year. See before, *tit. Plague.*

Forfeiture  
of the Re-  
cognizance.

What Act shall be a forfeiture of the Recognizance taken for the good behaviour, see here before, *cap. 74.*

Also it seemeth, that the Party bound to his good behaviour for offending against any the *Statutes* here before mentioned, if he shall afterwards offend against any the said *Statutes*, he shall thereby forfeit such his Recognizance. Lamb. 121.

To be drunken, is a breach of the good behaviour, as Sir *Nicholas Hyde* did deliver it in his Charge at *Cambridge*, Lent Assise, *Anno tertio Caroli Regis.*

The form of a Warrant for the good behaviour. *Vide postea, titulo, Warrants, cap. 121.*

The form of the Recognizance for the good behaviour. See after, *titulo, Recognizances, c. 123.*

Release.

Whether the surety of the good behaviour (taken upon complaint) may be released by any special person, some do doubt, because it seemeth more popular than the surety of Peace; yet other do hold, That it may be released, either by the Justice of Peace himself that took it, in discretion, or by the Party upon whose complaint it was granted, even as that for the peace may. Lamb. 126.

Supersedes.

It seemeth also a *Supersedeas* of the good behaviour may be granted by the Justices of Peace (as well as for the peace, *mutatis mutandis*) upon good sureties taken by the said Justices, of the Party, to be of the good behaviour. P. R. 224.

If a man be bound to the good behaviour (before the Justice of Peace) and to appear at the next Assises or Sessions, yet the Party bound, may by a *Certiorari* remove the Recognizance into the Chancery, or Kings Bench before the day, and then he shall not need to appear at the Assises or Sessions; for they shall have no Record, whereupon he may be called there. Cromp. 237. Cromp. 146.

Certiorari.

### Forcible Entry, and Forcible Detainer. CHAP. LXXXVIII.

THE Common Law being the Preserver of the common peace of the Land, hath always abhorred force, as the capital Enemy thereto, *Co. 3. 12.* and yet, before the Reign of King *RICHARD* the Second, the Common Law seemed to permit any man to have entred into Lands and Tenements with force and arms, and also to have kept and detained them with force, where his Entry was lawful. And Lamb. 138. Crom. 76.



And at this day, if a man doth enter into any Lands or Tenements with force, or multitude of People where his Entry is lawful, he is not punishable by action, either at the Common Law, nor by action upon any *Statute*; for where the title of the Plaintiff is not good, there he hath no cause of action, although the Defendant doth enter with force: but in such case he that entred with force, must be indicted upon the *Statute*: or otherwise complaint may be made thereof to the Justices of Peace: and as well upon such indictment, as upon such complaint, the Offender shall be punished; yet the Party (*ousted*) shall not be restored without indictment, and the force thereby found. *Vide antea, tit. Forcible Entry.*

15 H. 7. 17. B. 2. Forc. 11. And for the better restraining of such force and forcible Entries into  
5 R. 2. c. 7. Reg. 182. Lands and Tenements, and to inflict condigne punishment upon the Offenders therein, it was first provided by the *Statute*, 5 Rich. 2. That no man should enter into any Lands or Tenements with force or multitude, though he had good Right or Title to enter, but should enter only in peaceable and lawful manner. See *Plo. 86. b.*

15 R. 2. c. 2. But this *Statute* provided no speedy remedy, nor extended to holding with force, nor gave any special Power therein to the Justices of Peace, but upon a general enquiry, in a general Sessions of the peace, (and not otherwise) and therefore by another *Statute* made 15 Rich. 2. It was further provided, That if any man should detain (or hold) with force, after such Forcible Entry made, upon complaint thereof made to any Justice of Peace, the same Justice shall presently take and come with the Power of the County, and shall go and view the same, &c. and if the same Justice do find any holding the same forcibly, that then they should be imprisoned in the Gaol by the same Justice, as convict by the record of the same Justice; there to remain, until they have made Fine and Ransome to the King.

8 H. 6. c. 9. Yet neither of the former stat. extended to those that entred peaceably, and then held with force, nor yet doth give any remedy, if the Parties who made the Entry with force, be removed before the coming of the Just. of P. nor yet ordained any pain against the Sheriff, if he did not obey the precepts of the said Justices, for to execute the said *Statute*, when the said Justices would inquire of the same. And therefore the *Stat.* of 8 H. 6. doth give remedy, first where any man shall enter with force, or shall enter peaceably, and after detain, hold, or keep possession by force.

Also these two last *Stat.* of 15 R. 2. and 8 H. 6. do inable any one Just. of P. to give present remedy, *viz.* to remove the force, and commit the Offenders, in cases of Forcibly Entry, or holding against the aforesaid stat.

And the said stat. of 8 H. 6. extendeth further, reaching the Offenders, if they were removed or gone before the coming of the Justices; giving an inquiry, and restitution, and also punishing the Sheriff that shall not obey the precepts of the Justice in this behalf.

So that these *Statutes* do now give full remedy, and do prohibite, and are made against these three degrees or sorts of force, *viz.* against,

1. Such as enter peaceably, and then hold forceably.
2. Such as enter with force, and then hold peaceably.
3. Such as do both enter forceably, and hold forceably.

I have (here before) already shewed in some measure how the Justice  
of

of Peace shall demean himself in the execution of these *Statutes*; now I will proceed to give him some further light in this business, in these particulars following.

1. First, what is a forceable Entry, and what is a forceable holding within the meaning of these *Statutes*.
2. Who may commit a forceable Entry, &c. and upon whom.
3. Where a force, or forceable holding, is justifiable, or lawful.
4. What, and how many several remedies the Party hath, that is so put out, or kept out of his Possessions.
5. The manner of proceeding of the Justice of Peace by inquiry.
6. Of restitution to be made to the Party so put out.
7. What causes there may be for staying the Justice of Peace from making Restitution.

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*What is a Forceable Entry, or holding within these Statutes.*

CHAP. LXXXIX.

“ **F**orce, in the Common Law, is most usually applied to the evil part,  
 “ and signifieth unlawful violence used either to things or persons, *Co.*  
 “ *L. 161. b.*

“ Our Law taketh knowledge of two manners of force; the one may be  
 “ termed a force in Judgment of Law, which accounteth every private  
 “ Trespass to be a force; so as if I do but pass over another mans ground  
 “ without Licence, he may have his action of Trespass against me, why  
 “ or wherefore with force and arms, &c. See *Co. L. 257.*

The other manner of force is more apparent, and always carrieth some fearful shew and matter of terror with it.

This last sort of force is, that which is prohibited by these *Statutes*: and therefore note, That every force punishable by these *Statutes*, must have one of these two Badges, *sc.* it must be either *Manu forti*, with force or strong hand, or *Multitudine*, with multitude of People, *Lamb. 145. and 5 R. 2. c. 7.*

*Manu forti, viz.* either with apparent violence (in deed, or in word) offered to the person of another, as threatening Speeches, turbulent Behaviour, or actual violence, or else that they be furnished with offensive weapons (by them not usually born) whether they offer violence or fear of hurt to any other there or no, and this may be done by one person only. See after, *sub hoc tit.*

*Multitudine, sc.* with company more then usually they have attending on them, *10 H. 7. 12.* Now by some opinions, the Law calleth a multitude, when there be ten or more in one company; *Multitudinem decem faciunt.*

And yet Sir *Edward Coke* upon *Littleton 257.* saith, That he never read it restrained by the Common Law to any certain number, but left to the discretion of the Judges, or Justices.

*Forc. entry.* Now any one may commit a Force: and three may commit a Riot, &c.

If therefore one or more persons shall come weaponed (especially with weapons not usually born) to a House or Land, and shall violently enter thereinto, this is a forceable Entry, within the meaning of these *Statutes*. *Lamb. 146*  
Much

Much more, if (being so entred) he or they shall there offer violence, or fear of harm to the person of any that is in possession thereof; most of all; if he or they shall forcibly and furiously expell and drive another out of such his possession.

So it is, if one shall enter peaceably (the door being open, or only latched,) and after he is in the House, he shall forcibly put another out of his Possession.

So it is, if he or they which shall enter peaceably, shall after their entry offer apparent violence, threatnings, or fear of harm to the person of any that is in possession, to the intent to get him out, and to make him leave the possession, though they do not put him out of Possession, much more if they get possession thereby.

If he or they that have entred peaceably, shall after use words to any in possession to this effect, as to say, They will hold it or keep it, though they die for it, or in spite of the other, or such like, or other threatening words; this maketh it a forcible Entry.

Lamb. 146  
Cromp. 69. So it is, if divers persons shall come with weapons (not usually born by them) to a House that is open, or to ground, and shall there enter peaceably without any disturbance; yet this is a forcible Entry, for it shall be intended, that they would have used force, if they had been resisted.

Co. L. 247.  
10 H 7. 12  
Br. Forc. 30 So it is, when the Master entred into an House, or Land, being attended with a greater number of Servants then usually do wait on him.

Note, that though a man do actually use no force in his Entry, yet if he do come so appointed, either with weapon or company, that other men may be reasonably affraid that he meaneth to make his way by force, rather than he will fail of his purpose, it seemeth to be a forceable Entry.

And if three or more, shall enter peaceably, (upon another being in possession) and shall continue there peaceably, though this be no forceable Entry or Detainer, yet it may prove a Riot in regard of the number.

Now there are two sorts of forces, as is aforesaid, *sc.*

1. An actual force; as with weapons or number of persons, &c. not usual.

2. A force implied in Law; as every Disseisin, Rescous, and Trespass implieth a force, and is with force and arms, *Co. L. 157.*

Also it seemeth, that every Entry into another mans house, or ground which is made with force (*sc. manu forti, or cum multitud.* either with apparent violence offered to the person of any other, or furnished with weapons, or company, which may offer fear) though it be but to cut or take away another mans Corn, Grasse, or other Goods, or to fell or crop Wood, or do any other like Trespass; and though he do not put the Party out of his Possession, yet it seemeth to be a forceable Entry, and an actual force punishable by these Statutes. See *Lamb. 145.*

Lamb. 145. But if the Entry were peaceable, and after such Entry made, they cut or take away any other mans Corn, Grasse, Woods, or other Goods without apparent violence or force, though such acts are accounted a Disseisin with force, yet they seem not to be punishable by these Statutes, *sc.* the Justices of Peace are not to remove, imprison, or fine such Offenders.

Also, if one or more shall enter into another mans House or Land peaceably, and after his or their Entry, shall by force, or violence, cut or take

take away any Corn, Grasse, or Wood, &c. or shall forceably or wrongfully carry away any other Goods there being; this seemeth to be a forceable Entry, punishable by these *Statutes*. Cromp. 70.  
11 H. 4. 16

So is it, if a man shall distrain with force for a Rent (be it due or not due) this doth countervail any Entry with force, *Lamb. 147. Br. forc. 1.* 20 H. 6. 11

And in these cases of Trespass only, the Justice of Peace (upon complaint to him made) may, as it seemeth, remove such force; and upon view thereof, may imprison and fine such Offenders.

By words.

If a disseisor hath entred peaceably, and being entred, shall presently threaten to kill the Disseisee (if he re-enter) this seemeth a forceable Entry in the Disseisor. See more *postea sub hoc tit.*

But note, that a forceable Entry cannot be without an actual Entry, for the words of the *Statutes* be, *whosoever doth enter, &c.* 2 H. 7. 16.  
Br. force 25

Note also, if one that hath right to enter upon Land, shall go with divers in his Company, and with weapons, over the Land whereto he hath right, to the Church, Market, or some other place; this is no Entry with force, except he shall express his intent, that he doth enter there claiming the Land. Cromp. 70

Note also, that if a man shall enter with force (into House or Land) although he obtaineth not, nor getteth the actual possession thereby, yet shall he be imprisoned and fined for the only entering with force (as it seemeth,) See the *Statute*: but Restitution is not to be made, but only where there is a forceable putting out, or a holding out, of another out of his possession, and found by a Jury.

If by fair means, a man (whose Entry is lawful) shall perswade or intice them which are within the House, to come out, and then the door being open or shut by the latch only, he shall enter peaceably, without multitude, offensive weapons, or other violence; this Entry seemeth to be justifiable.

So it is, if he shall enter peaceably, and then by gentle perswasions can send them out that are within the house, and after shut the door, and keepeth them out; this seemeth justifiable, so that afterwards he holdeth it not forceably, nor useth violence or threatening Speeches.

So it is, if I shall take a man being out of his house, and then I do put or send into the house my Servant (or some other) in peaceable manner, and do hold away the other by imprisonment of his person; this is no forcible Entry nor Detainer within these *Statutes*, but a false Imprisonment, punishable by action only. Lamb. 149

So it is, if he whose Entry is lawful, shall enter peaceably into his house (the doors being open, or shut by the latch only) and being so entred, shall continue and abide there peaceably; this is justifiable. And if they which were before in possession, shall put or thrust him out forceably, this is a forceable detainer of their parts. See more hereof *sub hoc tit. postea.*

Forceable detainer is a violent act of resistance by strong hand of men weaponed with arms, or other account of fear in the same place, or elsewhere, by which the lawfull Entry of the Justices, or any other is barred or hindred.

Forcible  
Detainer.

And forceable detainer, must be understood of a forceable detaining or withholding of the Possession of Lands or Tenements, and not of the person of a man, as before. Ibid.

Note

Note also, though the entry were at the first peaceable, and lawful, yet  
 8 H. 6. c. 9. if there be after a holding by force, it is punishable by the statute, except  
 P. force 4. where there was at the first a lawful and peaceable entry, and thereupon  
 a lawful possession; peaceably continued by the space of three years together,  
 Lamb. 164 without interruption; for there a man may hold and keep such possession  
 with force against all others (saving against the Kings officers.)

Lamb. 148. If the Justice of peace shall come to the house or place, that is supposed  
 P. R. 4. 1. to be holden with force, and there shall find the doors or gates shut, and he  
 Crop. 70. or they within shall deny him to enter, (or will not suffer him to enter) this  
 is a forcible holding and detainer, though there be no weapons shewed or  
 used and though there be but one person in the house or upon the ground.

Ibid. So it is if when the Justice of peace, entreth the house or ground, he  
 shall find there any persons in harness or otherwise armed or having harness,  
 armour or other weapons (not usually borne by them) lying ready by  
 them, this is forcible detainer.

Ibid. So it is, if the Justice of peace shall find in the house, any great number  
 of people, other then the ordinary family or company.

P. R. 41. 3. Also if a man shall enter peaceably into a house, and after shall bring  
 into the same more weapons then he and his ordinary family doe usually  
 wear, or shall make any use of, such weapons as he doth find in the house,  
 to defend his possession therewith, these are forcible detainers within  
 these statutes.

Ibid. If a man that hath peaceably entred into an house, will bestow men with  
 force, (*sc.* with harness, guns, or other weapons) in some other house or  
 place not far distant, to the intent that they may be ready to assault such as  
 shall enter upon him, this is a detainer with force.

Lamb. 149 So it is, if the disseisor of an house or land, shall forestall the way of the  
 Cromp. 69 disseisee, with force and arms, so that the disseisee dareth not enter, or  
 come neer thereto for fear of death, &c.

So if a man shall distrain for a Rent service or a rent charge and a Ref-  
 cous shall be made unto him, this is a disseisin with force. *Co. L. 161. b.*

P. R. 39. So it is, if a man shall keep his cattell in another mans ground by force,  
 claiming Common there, where he hath no Common; and in this case,  
 the Justice of peace upon complaint to him made, may remove this force,  
 and upon view thereof may record it, and commit such offenders to pri-  
 son, and may fine them therefore as it seemeth, but cannot award restitu-  
 tion.

Also there may be a forcible detaining of possession by word onely with-  
 out any forcible act.

Lamb. 140 As if *A.* hath wrongfully though peaceably entred into the house, or *By words.*  
 Cromp. 70 upon the land of *B.* and hath put out *B.* and shall presently threaten or say  
 P. R. 39. to *B.* that if he do come thither again to enter, he will kill him, this seemeth  
 a forcible entry by *A.* And if *B.* shall afterwards come again to make his  
 entry, and then *A.* shall threaten to kill him, if he entreth there this is a  
 forcible detainer in *A.*

And it seemeth that to threaten to maim, beat or to do other bodily hurt  
 to *B.* in the case aforesaid, amounteth to a forcible entry, or detainer, for  
 that death may insue upon such beating or hurt. See 39 H. 6. 50. 7 E. 4. 21.

But to threaten to burn the house or to spoil his goods therein, (if *B.* shall

come thither, to enter again) this seemeth not to amount to any such matter, for that *B.* may afterwards have his action for the burning of his house, or spoiling of his Goods, and shall thereby recover damages, to the value thereof, &c. 39 H.6.50.  
Br. Dures.  
12. 116.

Also when *B.* shall come to make his Entry as aforesaid, if *A.* shall say to him, that he will not open the door, this is no forceable detainer. Cromp. 70

So it is, if *A.* be in possession of a house, or hath a Lease thereof at the will of *B.*, and after *B.* entreth into the house, and commandeth *A.* to go out, and to leave him the Possession. And *A.* will not go out, this is no force, for refusing, or denying only to go out, is no force, unless there be withall some forceable act or threatening speeches: *ubi factum nullum, ibi fortia nulla*, where there is no fact, there is no force, *Co.* 4.43. Cromp. 73

where no  
fact, no  
force.

*A.* morgageth his house to *B.* upon condition, that if *A.* shall pay to *B.* such a day 40 l. then the said Mortgage and Feoffment to be void, and by agreement of them both, *A.* the Morgagor continueth the possession, untill the day of Redemption, at which day *A.* payeth not the 40 l. and after *B.* cometh to re-enter, and *A.* keepeth the possession by force, this is a detainer by force in *A.*: This was *M. Rich. Godfreys* Opinion between *Willomes* and *Turger*.

The Disseisor maketh a Gift in tail to *B.*, who keepeth the Land with force, at the time when the Disseisee maketh his Claim, which Claim is made within the view so near as he dareth, for fear of death, battery, or other bodily hurt, if *B.* after such Claim shall continue the Possession with force, he may be thereof indited, &c. for this amounteth to a new Entry, and a detainer with force by *B.* Cromp. 69  
Lit. 429.

And note, that wheresoever mine Entry is lawful, if the possession be detained, or holden from me by force, I may pray the aid of the Justices of Peace to remove such force as it seemeth. Lamb. 147.  
Cromp. 70.  
P. R. 53.

If a man hath a rent or common of Pasture out of another mans Land, and coming to distrain for his rent, or to use his common, he is so forceably resisted by the Tenant of the Land, that he cannot, or dareth not, either distrain for his rent, or take the benefit of his common, this is a holding with force in the Tenant, and punishable by these *Statutes*.

So it is, if the Tenant of the Land shall ~~ob~~restall the way with force and arms, or shall threaten him (that hath the Rent or Common) so that he dareth not to come to distrain for his Rent, or to take his Common. Cromp. 199.

So it is, if a man shall distrain for his Rent, and the Tenant of the Land shall make rescous with force and arms. Ibid.

And in these cases of a Rent, or Common, the Justice of Peace upon Complaint to him made, may remove such force, and upon view of such force may record it, and may therefore imprison and fine such Offenders, but cannot award restitution, *sc.* cannot restore the Party to his Rent or Common, which are to be taken, and used in another mans Land, for Restitution is not to be made, but only of House or Land, as you may see hereafter. Br. Imp. 70.

*The persons.* One person alone, may commit or make a forceable Entry, or Detainer, if so be he do it with offensive weapons, not usually born, or do use turbulent behaviour, violence or threats, &c. to the affray or terror of others; or do refuse to suffer the Justice of Peace to enter. Lamb. 174  
Co. L. 257.

An

Cromp. 69 An Infant of the age of 18 years, by his own act may commit a forceable Entry or detainer : and so he may though he be under eighteen, if so be that he be of the age of discretion ; (*sc.* of the age of 14 years.) See *Perk. fol. 10. b.* and it seemeth the Justice may fine him therefore. But yet it shall be good discretion in the Justice of Peace to forbear the imprisonment of such Infants. See *B. imp. 43. 45. 75. 101. & hic post. tit. Imprisonment.*

For an Infant shall suffer no imprisonment or corporal pain for any offence by him committed against any Statute, wherein an Infant is not expressly named.

But yet he may forfeit the penalty of a penal Statute, and so by a penall Statute may forfeit and lose his goods, if he be of years of discretion. See *DoFor & Stud. 147, 148.*

And an Infant of the age of 18 years, may be a Disseisor with force, and may be imprisoned for the same, *22 Ed. 4. fol. Old Nat. Br. 128.*

That Infants may be imprisoned by exprefs words in some Statutes, See *hic, cap. 45.*

But if an Infant commandeth another to enter, or hold with force to his use, which is done accordingly ; yet the Infant shall not be punished, for such offence, for his commandment therein was void.

Cromp. 69 Also a *Feme Covert*, (by her own act) may commit a Forceable Entry or  
16 Afs. 7. Detainer ; and upon the Justices view of the force, she shall be imprisoned  
Br. Imp. therefore, (and she may be fined in such case :) But such Fine set upon the  
45, 53. wife, shall not be levied upon the husband ; For the husband shall never  
See more be charged for the act or default of his wife, but when he is made a party  
after in the to the action, and Judgment given against him and his wife, *Co. 9. 72.* and  
tit. Riot. *Co. 11. 61.* And if upon the tryal it be found to be her only act, she onely  
shall be taken and imprisoned.

2 H. 7. 19. Divers do enter with force to the use of *A.* who is not then present with  
Br. Force. him, but doth after agree thereto ; this agreement after maketh *A.* to be a  
35. Disseisor, but not to be punished for the force. *Quare* if *A.* had counselled,  
consented, or agreed thereto before the Entry. It seemeth, that a command-  
ment, consent, or agreement before or after, though it may make one a Dis-  
seisor, yet it is not to be punished by the Justice of Peace upon these Sta-  
tutes, for that a forceable Entry cannot be adjudged against a man, with-  
out an actual entry be also made by him, or he at least present.

But if *A.* that shall command or counsel others thereto, shall also be pre-  
sent at the time of the entry, although he doth then nothing, yet he is now  
become a principal, and punishable by these Statutes, *Vide 17. Afs. pl. 14.*

Co. 9. 67. If divers do come in one company, to enter into lands, &c. where  
112 & 115. their entry is not lawfull, and all of them saving one did enter, and de-  
See hereof mean themselves in peaceable manner, and one onely doth enter with  
after in the force, or (after entry made) doth use force and violence, this shall be ad-  
tit. Mur- judged a forceable entry in them all (although the force were against their  
der. will ; ) for where divers doe come in one company to any place, to the in-  
Fitz-Co- tent to doe any unlawfull thing, be it robbery, homicide, riot, affray, or  
ron. 314. any trespass, here the act of one of them shall be adjudged the act of all of  
350. that part that are present, and every of them shall be adjudged a principall  
doer, although they stand by and doe nothing. So it seemeth, though some  
of them came without any intent of evill, if they came together in com-  
pany

pany with the other offenders, or if they came after, yet if they be either aiding, or countenancing to the offenders, they shall be also adjudged principall doers as well as the other. And yet *Fineux* Chief Justice, 2 H. 8. made a difference where their intent at the first was to doe an unlawfull act, and where not. *Cro.* 161. See *Co. L.* 157.

The persons  
put out.

An indictment upon the statute of 8 H. 6. for the King, is not good; for the King cannot be disseised nor put out of his freehold; neither can the King bring any action upon the statute of 8 H. 6. nor any other action which might prove him out of possession of the land. *P. R.* 39. b. Co. 1. 69.  
& 10. 112.

And if the Kings termor be put out by force, he cannot prefer a bill of indictment (upon the stat. of 8 H. 6.) that he was put out, and the King disseised: But he must have an information of Intrusion in the Exchequer. Crompt. 46

The Kings  
Tenant.

Yet it seemeth, that upon complaint made to the Justice of peace by the Kings termor, of any such force, the Justice of peace, may, nay ought to amove the force, and upon his view thereof to record it, & to commit the offenders to prison, and may fine them; and after such force removed, the Kings Termor may presently re-enter (if he can) in peaceable manner.

Lessee for  
years.  
Copyholder.

If a forceable entry or detainer shall be made upon any Lessee for years, Tenant at will, or upon a Copyholder, whether it be by a stranger, or by the lessor, or by the Lord, the Justices of Peace upon their view thereof, are to remove such force, and may commit to the prison, the parties which made such entry, or which shall hold it with force, and may fine them: But whether the Justice of Peace might make restitution, and set them (*sc.* the lessee for years, Tenant at will, or Copyholder) into their possessions again, hath been much questioned.

Some hold Opinion, That the Justice of Peace might put them in possession again; and of this opinion was M. Marrow, and M. Lambert: and to maintain this opinion, these reasons may be given: Lamb. 149

First, for that the words of the old Statutes seemeth to warrant it: for the Statute of 15 R. 2. in the Preamble thereof, as also the Stat. of 8 H. 6. in the body thereof, hath this word [*Possessions*] which word most properly doth extend to a Lease for years, &c.

Again, that Clause of the Stat. 8 H. 6. which provideth the restitution, is thus; If it be found that any doth contrary to this Statute, then the said Justices, &c. shall put the party so put out in full possession, &c.

Now it cannot be denied, but that he which by force expulseth Lessee for years, Tenant at will, or a Copyholder, doth contrary to this Statute; also they be the parties put out.

Again, the same mischief and inconvenience, which these Laws do labour to remove, is to Lessee for years, Tenant at will, and to the Copyholder.

And we may find it usual, that where Statutes are made for to remedy any common mischief, there to help things in the same degree one action, thing, place, and person, hath in construction been taken for another: And a good expounder, saith Sir Ed. Co. 11. 34. maketh every sentence to have his operation to suppress all the mischiefs before the said act, and principally those that are specified in the act. Co. 11. 33.  
34.  
Plow. 172.

And again, saith he, It is the office of the Judges always to make such construction of Statutes as may repress the mischief, and advance the remedy, and to suppress all Evasions which may continue the mischief, and Co. 3. 7.  
& 12. 73.

to



to add force and life to the cure, and remedy, according to the true intent of the makers of the *Statute*, Co. 11. 73. b. & Co. 3. 7.

Others hold the contrary, *sc.* That Lessee for years, nor Copy-holder, or Tenant at will could not have restitution by the hands of the Justice of Peace; and this seemed to be the common Opinion: Their reason was,

Raft. 174. For that the words in the *Statute* of 8 H. 6. (in that clause which specially provideth the restitution) as thus; The said Justices, &c. shall re-seise the said Lands or Tenements, and thereof shall put the party so put out, in full possession, &c. Which words, [*Lands or Tenements*] are only to be understood of them that have Inheritance, or a Free-hold at the least. But to this it may be answered, That the said *Statute* of 8 H. 6. (in the body thereof hath these words; *Where any do make any forceable entry into Lands, Tenements, or other Possessions, or them hold forceably, &c.* Which words [*Possessions*] extendeth to a Lease for years, &c. And then the words [*Possessions*] being in the same *Statute*, we shall find that a *Statute* is to be expounded upon all the parts thereof together, and not upon one part alone by it self: To which purpose, see *Lincoln Colledg Case*, and Doctor *Bonham's Case*, in Sir *Ed. Cokes Reports*.

Co. 3. 59. b  
& 3. 116. But it seemed to those which held this last opinion, That if a Lessee for years, Tenant at will, or a Copyholder, be forceably put out, or held out by any stranger, if they will have restitution, their indictment must be made and preferred in the Lessor, or Lords name, and the Jury must find that the Lessor, or Lord of such Copyhold, is disseised, and the Lessee or Copyholder, is put out with force. And hereupon the Lessor or Lord shall have restitution; and so by their restitution, their Lessee or Copyholder is restored also; but such Lessee or Copyholder cannot (say they) prefer an Indictment in their own name, upon the *Statute* 8 H. 6. for that they have no freehold.

Crompt.  
161.

And to that purpose I find some Presidents of Indictments in this form, That is to say, Into one Messuage at, &c. then being the freehold of *M. D. Esq;* with force and arms, &c. with strong hand, and unlawfully upon the possession of *J. L.* then Fermor of the said *M. D.* the said Messuage did enter, and him the said *J. L.* with force and arms and strong hand, and unlawfully then did from thence expell and put out, and the said *M. D.* thereof did unjustly disseise, &c. See after *tit. Presidents*.

Cro. 249.  
2.

Also by this Opinion, if a Lessee for years, Tenant at will, or a Copyholder, be forceably put out by their Lessor or Lord, such Lessee, or Copyholder, hath no remedy at all by Indictment upon this *Statute*, for they have no freehold, and therefore can have no restitution upon this *Statute*.

Also by this opinion, if the Lessee for years be put out by his Lessor, and after the lessee putteth out the lessor again forceably, the lessee shall not be indicted; neither shall the lessor have restitution upon this *Statute*, for that the lessor is not ousted nor disseised of his freehold: for the possession of the lessee is such a seisin of the lessor of his freehold, that he may have an assise if his lessee be put out.

Crompt. 72

And so of a Copyholder, not having forfeited his estate, if his Lord notwithstanding shall enter upon him, and put him out, and the Copyholder shall re-enter upon his Lord with force, the Copyholder shall not be indicted, nor yet the Lord restored for the reason aforesaid.

And so by this last Opinion, the very mischief specified and intended to be helped by these *Statutes*, should seem still to remain in all cases between such Lessees and Copyholders, and their lessors or Lords, so as there can be no enquiry nor restitution in cases of forceable entry or detainer between them.

But howsoever the Law be taken for the Indictment or restitution thereupon, yet in case that Lessee for years, Tenant at will, or a Copyholder, be forceably put out or held out, either by a stranger or by their Lessor or Lord, the Justice of Peace or any one of them, by the Stat. 15 R. 2. cap. 2. *Cromp. 71* might safely remove the force, and upon view thereof commit the offenders to prison; and then the Lessee for years or Copyholder, might presently re-enter, if peaceably they could so do, and so might have his possession again, without any restitution made him by the Justices.

But now by the said Statute made *Anno 21 Jac. Regis, c. 15.* it is enacted, such Justices or Justice of Peace, as by reason of any Act of Parliament now in force, are authorized upon enquiry to give restitution of possession unto Tenants of any Estate of freehold, of their Lands, Tenements, which shall be entred upon with force, or from them with-holden by force, shall now have the like and same authority (upon indictment of such forceable entries, or forceable with-holdings before them duly found) to give like restitution of possession unto Tenant for term of years, Tenants by Copy of Court-Roll, Guardians by Knights service, Tenants by *Elegit*, Statute-Merchant, and Staple, of Lands or Tenements by them so holden, which shall be entred upon by force, or holden from them by force.

*weapons.* Now to shew something more, what the Law accounteth to be force, and what weapons be offensive, in these and the like cases.

Master *Bracton* saith, *Omnes illos dicimus armatos, qui habent cum quibus nocere possunt*; which have any thing about them, wherewithall they may strike or hurt. *Co. L. 162.*

And therefore to have Harnesse, Guns, Bows, and Arrows, Cross-bows, Halberts, Javelins, Bills, Clubs, Pikes, Pitchforks or Swords, not usually born by the parties, shall be said to be *vis armata*.

Again, *Si quis venerit cum armis, & dejecerit, vis tamen armata dicitur, sufficit enim terror armorum.*

*Si quis venerit sine armis, & in ipsa concertatione, ligna sumpserit, fustes aut lapides, vis dicitur armata.* *Ibid.*

And so to use casting stones, hot coals, scalding water, or lead, or any other thing wherewith one may hurt the person of another, shall be said to be *vis armata*, armed force, or force with arms.

### Lawfull Force. CHAP. XC.

**W**Here a force, or forcible defence is justifiable, and where not. Force being opposed against the Law, is utterly forbidden; but being used in the maintenance of the Law, and with the Warrant of Law, it is allowed, for that it maintaineth the peace of the Realm: and therefore force may lawfully be used by all the Kings Officers, Ministers, and Subjects thereunto deputed for the execution, or advancement of Justice, or of the Judgments of the Law. *P.R. 41.* And

And so first it is a lawful force, whereby all Offenders in Treason, Felony, and other great Crimes, be pursued, apprehended, carried to Prison, and receive their condigne Punishments.

It is a lawful force, whereby the Sheriff and his Officers do apprehend any person by vertue of the Kings Writ.

It is a lawful force, whereby Justices of Peace do remove unlawful Entries, or holdings of Possessions, and repress Rioters, and do arrest and send to Prison such Offenders.

3 H. 7.  
Br. Riots 3. And in these, and the like cases, the Kings Officers (*sc.* the Sheriff, Justice of Peace and Constable) may take the help of others (what number they shall think meet) to assist them, when need shall require. See hereof, *postea, in tit. Posse Comitatus.*

Also it is a lawful force, which Justices of Peace, Sheriffs, Coroners, and Constables shall use in apprehending, or committing to Prison such as within their several Jurisdictions, and in their presence shall in any sort break, or attempt to disturb or break the peace, and they may therein take the assistance of others, as aforesaid.

P. R. 14. Also in these cases following, it is lawful for the Kings Officers, by force to break open a mans house, to arrest Offenders being therein, if the doors shall be all shut, so as the Officer cannot otherwise enter the house, *viz.*

Co. 5. 91. 1. For the apprehending of any person for Treason, Felony, or suspicion of Felony, 13 E. 4. 9. Br. Coron. 159.

2. Where one hath dangerously wounded another, and then flying into an house, the Constable or other Officer upon fresh suit, may break open the door, and apprehend the Offender.

So may any other person besides the Officer, as it seemeth, 7 E. 3. 19. *Crompt.* 170.

3. Where there shall be an affray made in an house, and the doors shut, the Constable, &c. may break into the house to see the peace kept.

4. So upon a forceable Entry, or detainer found by inquisition, before Justices of peace, or viewed by the Justices themselves. See here *cap.* 22.

5. Upon a *Capias delictatum*, in any personal action, as also upon a *Capias profine*, directed to the Sheriff, the Sheriff may break open the doors, &c. 27 Aß. 35.

6. Upon a Warrant or Proceffe, for the apprehending of any Popish Recusant, being excommunicate, the Officer may break open the house, *Stat.* 3 Jac. 4. P. Rec. 52.

7. Upon a Warrant for the Peace, or good Behaviour, the Constables may break open the house, by the Opinions of *Popham* and *Clerk*, Justices of assise at *Cambridge Assises*, 3 Jac. Reg.

8. Lastly, in all cases where the King is Party, or hath interest in the business, the Officers may break open the doors, as aforesaid: For no mans house shall be Castle against the King, *Co.* 5. 91.

Co. 5. 91.  
13 E. 4. 9. And yet the Sheriff, nor his Officers may not break open any mans house, to execute the Kings Proceffe (upon the Body or Goods of any person) at the sute of any Subject, *Co.* 5. 02, 95.

But when a house is recovered by any real action, or by *Ejectione firme*, there the Sheriff may break open the house, and deliver Seisin or Possession to the Demandant or Plaintiff, &c. For after Judgment, it is no more (in the right

right or judgment of Law) the house of the Tenant or Defendant, *Co. 5.*

91.

But note, that the Officer before he break open the house or doors of any person, he must first signifie the cause of his coming, and desire that the doors may be opened unto him. *Co. 5. 91.*

Forceable  
defence  
lawful.

Note also, although no man may forcibly keep his house against the Kings Officers in the cases aforesaid, yet every mans house is (to him self, his Family, and his Goods) as his Castle, as well for his defence against injury and violence, as also for his repose and rest. And therefore the Law doth give to dwelling houses divers priviledges. *Co. 5. 91. & 81. 82. 2 H. 7. 39.*

1. First, that it is a mans Castle for his defence, as aforesaid. See *plus infra.*

2. Also a mans house hath a priviledge to protect him against any arrest by force of any Proceffe, at the suit of any Subject, as aforesaid.

3. A mans house (in some cases) hath a priviledge against the Kings Prerogative, for it hath been adjudged, that Salt-peeter-men cannot dig in the mansion-house of any Subject, without his assent, in regard of the danger that may happen thereby, in the night-time, to the Owner, his Family, and Goods, by Thieves and other Malefactors, *Co. 11. 82.*

4. If Thieves shall come to a mans house, to rob or murther him, he may lawfully assemble company to defend his house by force; and if he or any of his company shall kill any of them in defence of Himself, his Family, his Goods, or House; this is no Felony, neither shall they forfeit any thing therefore. *Co. 5. 91. & 11. 82.*

5. Also a man that is in possession of a house peaceably, and doubteth that another (who indeed hath more right to the Possession, and who may enter) will enter upon him, here he which is in possession, may defend and keep his possession of the house with his ordinary company, any may justifie to beat the other, which shall attempt to enter upon him: But if he kill him, it is Felony: nay, he in possession (in this former case) may not hire any strangers to aid him, neither may he have his own ordinary company in armour, nor otherwise be provided with Bows or Guns to shoot at the other, as it seemeth, *Cromp. 70. a. See after, tit. Homicide, cap. 98.* *Crom. 70.*

In defence  
of his per-  
son.

Also, if a man being in his house, do hear that another will come thither to beat him, he may lawfully assemble his Neighbours and Friends, &c. to assist and aid him there in defence of his person. *21 H. 7. 39. Br. Ryots 1 Co. 11. 82. & 5. 91.*

And yet if he, or any of his Company, shall kill the other (or any of the other company) in such defence of himself, or his, this seemeth to be Felony in all of them which be in the house, and in that action; so as they shall forfeit their Goods thereby. See hereof after, *tit. Homicide.*

But if a man be threatned, that if he come to such a place, that then he shall be beaten; in this case he may not assemble any company to go thither to saveguard his person; for there is no necessity of his going thither: besides, he may have surety of the Peace against such as threatned him. *21 H. 7. 39. Co. 11. 81. & 1. 91.*

And if another shall make any assault upon me, yet if I may escape with my life, it is not lawfull for me by the Law to beat the other who made the assault, *per Markham. Quod tota curia concessit. 2 Hen. 4. fol. 7. Fitz. Bar.*

72. *Vide hic before, tit. Surety for the Peace, cap. 72.*

In defence  
of others.

If there be an attempt made to beat a man, his Wife, Father, Mother, or any *9 E. 4. 28. 16 E. 3. 17.*

any of his Children (within age) he may lawfully use force to resist it, and may justify the beating of the other in such case.

21 H. 7. Also the Servant may justify to beat another in defence of his Master;  
39, 2. *Br. Tr. s. 217. hic cap. 72.*

But yet by the Opinion of *Eliot*, 12 H. 8. fol. 2. b. it is not lawful forceably to touch the person of a man, except that there be so great peril, that another is like to perish, if he have not help. And there I may beat one man (saith he) to save the life of another: so that where the life of another is in danger, there any man (though a stranger) may lawfully resist it, and that with force and beating of the other. See *cap. 72.*

Cro. 65. 69 Also a man may justify to beat another in defence of the possession of his Goods. And if another hath taken away my Goods, I may take them again from him with force. But a man cannot justify the wounding of another in defence of his Goods; and this was the Opinion of *Wray*, Chief Justice, *An. 25. El.* *In defence of my goods.*

“ And note, That every one may take and detain with force his own  
“ Goods: And the issue in an action of Trespass brought therefore shall  
“ be, Whether the Party hath interest or title to the Goods or no; And  
“ not whether he used any force in getting them: And if it be found for  
“ the Defendant, the force is excused: But the force used in an entry into  
“ Lands or Tenements is the material matter, and punishable, although the  
“ entry might have been lawful.

Also if there be an attempt made to disseise me of my Land, or to disturb me of my high-way, or to turn an ancient Water-course from my Mill, I may lawfully use force to resist it. See *tit. Surety for the Peace, cap. 72.*

Dyer 327. A Keeper doth enter and chase upon my Land, pretending this to be  
Crompt. 68. within his purlieu, where it is not; If I command my Servants to beat him off my Ground, this seemeth justifiable in the defence of my possession, against such unlawful Claim. Yet *quare.*

where forceable detainer of Possession is lawful. CHAP. XCI.

8 H. 6. c. 9. **T**He Statute of 8 H. 6. concludeth thus, Provided that such as keep  
31 El. 11. their Possession by force, after that they, or their Ancestors, or they  
P. Force 4. whose Estate they have in such Lands, &c. have continued their possession in the same three years, or more, shall not be indamaged by force of that Statute.

And by force of this Statute and Proviso, every Heir, and every Feoffee, may justify to keep their Houses and Possessions by force, in case that themselves, or their Ancestors, or their Feoffors, or they whose Estate they have, have been in peaceable possession thereof by the space of three years, or more, *Cro. 187.*

22 H. 6. 6. Yet this Proviso must (as it seemeth) be thus construed, *sc.* that where  
18. b. a man is seised (of a lawful Estate or Poss.) of an house or lands, and he or  
Br. Force 6. his Ancestors, or they whose Estate he hath therein, have continued the  
22. & 29. Poss. of the same peaceably by the space of three whole years together  
See the without interruption, (and his Estate not ended) there he may hold and  
stat. 31 El. keep

keep such Poss. with force, against all others : yea, it seemeth if he shall hire strangers to aid him, to keep such possession, or shall have his company in armour, he is not punishable by these *Statutes* : but he may not resist the Justices of Peace that shall come to view this.

And if he shall be indited for such his forceable holding (after three years, such quiet possession) he may plead such his lawful and peaceable possession by the space of three years next before such indictment, and thereby he shall avoid both the imprisonment and fine, and also shall debar the other party of his restitution. Neither may the Justices of Peace P. R. 371 remove him from his possession, though it be found by the Inquisition taken before them that he held that House or Land by force, after three years lawful and peaceable possession, as aforesaid.

But here it seemeth, that these four diversities are to be observed :

First, where the Party in possession did enter peaceably, and where 6 & 7 E. 6.  
22 H. 6. 8.  
Lamb. 65.  
Br. Rest. 12 forceably : for if a man enter forceably, and after continue his possession peaceably by the space of three years without interruption, yet (it seemeth) he shall not be aided by these *Statutes*.

Secondly, where the Party in possession hath continued his three years Br. Force  
22, & 39, possession peaceably, and where by force.

For if after a lawful and peaceable Entry, a man shall continue or hold his possession by force, this is a forceable holding or detainer, and punishable by the *Stat.* of 8 H. 6. And three years of such possession shall not aid him, as it seemeth.

Thirdly, where the Party in possession, is in by right, and of a lawful 21 H. 6. 18;  
b.  
Fi. Entry  
20.  
Br. Force 6  
Vid. 23 H.  
8. pag. seq. state, and where by wrong. And therefore if the Disseisor (or other person that cometh in by a wrongful and unlawful title) hath continued such his possession peaceably by the space of three years, without interruption ; It seemeth he shall not be aided by either of these *Statutes* of 8 H. 6. or 31 El.

For if a Disseisor hath continued his possession forceably by the space of 14 H. 7. 28  
Br. Force  
10. 20 years together, yet he may be indited upon the Statute of 8 H. 6. before a Justice of Peace, of the forceable detaining of the same ; and the same being found, the said Justice of Peace is to release the same, and to award restitution to the Party disseised, or so put out.

Fourthly, where the Party hath continued such his possession three years without interruption, and where his possession hath been interrupted or discontinued.

For if a man hath been in peaceable possession of Land, &c. by the space of three years, and above, by a good title, and then is disseised and expelled by force, and the Disseisee re-entereth peaceably ; or the Disseisor is therefore indicted upon the *Statute* of 8 H. 6. and the Disseisee is thereupon restored, and is in possession accordingly : yet in these cases the Disseisee cannot justify the detainer of the possession of those Lands by force, because his possession was once interrupted : but after, (such interruption and re-entry, or restitution) if he shall continue a peaceable possession again for three years together, then it seemeth he may justify the detainer of the possession thereof by force, by vertue of the Proviso in the *Stat.* of 8 H. 6.

If a Disseisor hath continued his possession peaceably three years, and 23 H. 8.  
Br. Fo. c. 22 after

Litt. 429. after the Disseisee doth re-enter, or doth make his Claim so near as he dareth, and then the Disseisor re-enters again, or continueth his possession (after such Claim) here the Disseisor cannot justify to hold the same with force; for by the re-entry or claim of the Disseisee, the first disseisin and possession of the Disseisor was determined, and the Disseisor is in of a new disseisin.

Dyer 141. Also if he that hath been a lawful Possessor of Lands by the space of twenty years together, be once clearly and wholly removed from the possession of the same Land, he cannot come with force, or multitude, to put himself in possession thereof again, and to detain the same with force, because his possession was once interrupted: and if he be indicted (upon the Statute of 8 H. 6.) for such forceable Entry, he shall not be relieved (touching the restitution) by the Stat. 31 El. for that he had not the occupation of the said Lands, nor had been in quiet possession thereof by the space of three years together, next before the day of such indictment found.

*How many several Remedies the Party hath, which forceably and actually is either put out or kept out of the Possession of his Houses or Lands, &c. contrary to these Statutes. CHAP. XCII.*

4 H. 4. c. 6. **F**irst, The Party so grieved (having an Estate for life, in Tail, or Fee) may have his assize, or action of Trespass of forceable Entry upon the Stat. of 8 H. 6. against such Disseisor: and therein if the Defendant be attainted of force, he shall fine to the King, and also answer to the Plaintiff his treble damages, and treble Costs of Suit, and also the Plaintiff shall thereupon have a Writ of Restitution, to restore him to his former Estate, *1. Action upon the statute of 8 H. 6.*  
1 R. 2. c. 9.  
8 H. 6. c. 9.  
P. 2.  
F. N. B.  
348. c. &  
210. a.  
Co. 10. 115  
P. R. 39. *Co. L. 257.*

9 H. 7. 17. But (this action being at the Suit of the Party, and only for the right) this remedy (by action) is only where the Entry of the Defendant was not lawful: for if a man entreats with force, where his Entry is lawful; as if a Disseisee shall enter upon the Disseisor with force, he shall not be punished by way of action: but yet he may be indicted upon the Stat. and upon such indictment found, the Party out (*sc.* the Disseisor) shall be restored; for the indictment is for the force, and for the King. And here the Offender (*sc.* the Disseisee) shall make fine to the King, although his right be never so good, *Br. forc. 11. 15 H. 7. 17.*  
Fitz. 2. 8. h.  
25 H. 7. 17  
Br. Forc. 29  
& 18.

Lamb. 178. 2. Also the Party so grieved, if he will lose the benefit of his treble Damages and Costs, he may be aided, and have the assistance of the Justices of Peace, and that after divers sorts: First, he may purchase a Writ out of the Chancery (directed to the Sheriff only, or to the Sheriff and Justices of Peace, and to every of them) for to remove the force; and this is upon the Statute of Northampton, 2 E. 3. cap. 3. the form of which Writ you may see, *F. N. B. 249. f.* *2. writ upon the stat. of Northamp.*

Lamb. 176. But upon this Writ, the Justice of Peace is to proceed only as a minister, and is to certify his doings herein: and that Justice of Peace to whom the Writ shall be delivered, ought for to execute it, *sc.* he may remove the force; but here he may not put the Party in possession again, who was put out.  
Crompt. 74.  
162.

For

For the manner of the Justices proceeding herein, see in the other title of *Forceable Entry* before, *cap. 22*.

3. Indictment in Sessions.

3. Also the Party grieved, may at the general Sessions of the Peace, within the same County, prefer his Bill of Indictment, upon the statute of 8 H. 6. for such forceable Entry, or Detainer; which being found there, the Complainant shall be restored to his Possession by a Writ of Restitution, granted out of the same Court to the Sheriff. Dyer 187.  
Crompt. 165.

4. By the Just. out of Sessions. Remedium plus Festivum.

Also the Party so grieved, for a more speedy remedy, may complain to any one or more Justices of the Peace of the same County, of the said force; and thereupon the said Justices of Peace may, *ex officio*, and without any Writ, either do execution of the Statute of *Norhampton*, as aforesaid; or else the said Justice of Peace, upon such Complaint, must go to the place where such force is, to see it, and to remove the force, and to arrest and commit the Offenders, and shall also keep a special Sessions to enquire of the said force: and if upon such inquiry, such force shall be found, then the said Justice shall restore the Party grieved to his Possession again; and here no other Justice of Peace can grant a *Supersedeas* to stay the same Restitution.

See more hereof before in the other title of *Forceable Entry*.

Also the Party grieved may remove such indictment, found either at such general or special Sessions, by a *Certiorari* into the Kings Bench, and the Judges of that Court may award a Writ of Restitution, to the Sheriff of the County, to restore possession to the Party. See here *cap. 22*.

Enquiry.

Now when the Justice of Peace shall make such inquiry, he shall direct his Precept or Warrant to the Sheriff, commanding him to cause to come before the said Justice of Peace at some good Town there near, 24 sufficient and indifferent persons dwelling near to the said Lands or Tenements (whereof every one shall have in freehold Lands, or Tenements, 40 s. by the year at the least) to inquire upon their Oaths of such force, &c. See before in the other title of *Forceable Entry*.

Upon default of appearance of those Jurors, the Justice of Peace may award an *Alias*, and after that *Pluries infinite*, till they come; but so that at the day of the second Precept, or Writ, the Sheriff must return 40 s. in issues, upon every one of them, and at the third Writ 5 li. and at every day after, the double. 8 H. 6. c. 9.  
Lamb. 168.

And although any of such Jurors shall not have 40 s. freehold Land *per annum*, yet their Presentment of such force is good for the King, so as the Offenders shall fine therefore to the King: but whether the Party shall have restitution upon such a Presentment, it being pleaded or shewed at the time of the Restitution to be made, seemeth a doubt. See here, *cap. 84*. Lamb. 155.

If the Sheriff shall return smaller issues upon the Enquirors than the Statute doth appoint, yet the Party indicted shall not impeach the enquiry therefore. Lamb. 156.

Neither is it cause to impeach the enquiry, though the Justice of Peace do not go to see the place where the force is. *Marow*.

And it is convenient, upon such enquiry, that the Evidence be given openly to the Jury, to the intent it may appear to the Justice of Peace, or Court, whether there shall be reasonable cause to stay Restitution, or no, after the indictment found. See *Dyer 122*.

Of



## Of Restitution to be made to the party put out. CHAP. XCIII.

I Will here shortly recite the words of the statute, which for this business of restitution will give the better light.

Restitution.

8 H. 5. ca. 9

And if upon such inquirie, it be found before the said Justices that any have done contrary to this stat. (*viz.* have entred, or held with force) the said Justices of peace, &c. shall reſeiſe the ſaid lands or tenements ſo entred upon, or holden, and put the party ſo put out, in full poſſeſſion of the ſame lands and tenements ſo entred upon and holden, as before.

P. R. 35.

Here we ſee, that after ſuch forceable entry, or holding, ſo found by enquiry, the ſaid Juſtices of peace, &c. ſhall reſeiſe the ſaid lands or tenements, and ſhall remove the force (*ſc.* all ſuch offenders as ſhall be found in the houſe, or upon the lands, that either entred or held with force) and upon the prayer of the party ſo put out, the ſaid Juſtices of peace ſhall reſtore him to his poſſeſſion again.

And herein the Juſtices of peace neede not ſtay, or ſtand upon the right and title of either of the parties. See hereof a little after.

But no reſtitution ſhall be made, but where the forceable entry, or detainer is firſt found by inquiſition. *Br. force.* 27.

Crompt.  
166.

Concerning the Inquiſition or indiſtment, the Juſtices of peace ſhall doe well to peruſe and regard the ſame, to ſee if it be ſufficient; for the Juſtices of peace ought not to award reſtitution, where the indiſtment ſhall appear to them to be any way inſufficient in the law, either in matter or form.

Indiſtment  
the form.Lamb. 156.  
257.

1 Firſt therefore to have reſtitution, the putting out (by expreſſe words) muſt be in the indiſtment, and found by the inquiſition: for another man may enter upon me, and yet not put me out, and then there needeth no reſtitution to be made by the Juſtices.

And this putting out is to be underſtood only of houſe or land, and not of a rent, common and advowſon, and ſuch like, into which an actual entry cannot be made: and therefore none ſhall have reſtitution but ſuch onely as are put out of houſe or land. See before under this title.

Lamb. 481  
Br. Force  
23.

2 Alſo the indiſtment ought to expreſſe the quality of the thing entred upon, &c. *ſc.* whether it be a meſſuage, cottage, meadow, paſture, wood, or land arable: for if the indiſtment be, that by ſtrong hand they did enter the tenement, &c. it is void for the incertainty, becauſe the word *tenement* may extend to either of them.

14 H. 6. 16  
Br. Force  
13.

3 Alſo the indiſtment muſt have theſe words, to wit, yet hold out, otherwiſe the party ſhall have no reſtitution; and yet theſe words be not in the *Statute*; but without theſe words in the indiſtment, it may be ſuppoſed and thought, that he which put me out, hath left the poſſeſſion again, or that I have gotten it again; and then the reſtitution is needleſſe.

So as in every ſuch indiſtment, theſe words are materiall, *ſc. expulerunt, & adhuc extra tenent*; and for lack of either of theſe words, no reſtitution ſhall be made or awarded.

4 Alſo one of theſe two words, with ſtrong hand, or with multitude, ſeem to be materiall in the indiſtment; unleſſe they be implied by reciting the ſtatute of 8 H. 6. & concluding, againſt the form of the ſtatute

or by some other words in the indictment. See the Presidents herein.

For the forme to be used in these Indictments See more after *tit. Indictments.*

If a man shall be restored upon an insufficient indictment taken before the Justices of peace, and this be removed into the Kings Bench, the Court there will cause the party to be restored that before was put out by the Justices of peace. Cromp. 162

5 Also if error or insufficiency be in the indictment, taken before the Justices of peace, and yet a precept or writ of restitution is awarded by them, any two of those Justices of peace, which were present at the taking of the said indictment, upon the prayer of the party, may (at another Sessions, or out of the Sessions) grant and award a *Supersedeas* to the Sheriff to stay the same restitution, if the Sheriff had not made restitution before the *Supersedeas* came to his hands. Cromp. 165. & 166.b.

But no other Justice of peace (besides those which were present at the taking and finding of the said indictment) can grant a *Supersedeas*, if the indictment were found at a special Sessions; And if it were found at the quarter Sessions, yet the *Supersedeas* shall be granted under the Teste of one of those Justices onely which were present at the finding of the force *ibidem.* Dyer 187.

A man is indicted that he entred with force, and held with force, and upon the traverse, it is found that he entred with force, but not that he held with force, yet this indictment seemeth good enough, and the party shall be restored. Cromp. 163.

So two are indicted of a forcible entrye and detainer, and upon the traverse, it is found that the one entred with force, and the other held or detained with force, yet the party shall be restored. *Br. Forc.* 15. Ibid.

If it be found by one Inquest that *A.* put me out by force, and by another Inquest that I did put out *A.* by force, either of us may pray to have restitution against the other: but he that is first restored is in the worst case; for the other may have restitution afterwards, and then he that had restitution first is without remedy, by the hands of the Justices of peace; saving that he may re-enter, if he can peaceably, or have his action. *Br. Forc.* 6. Cromp. 166. Br. Force 36.

Severall  
Indict-  
ment.

If it be found by one Inquest, that *A.* put me out by force, and by another Inquest taken at the same Sessions, that *B.* did put me out by force, I may chuse upon whether of these indictments I will be restored: and if I have restitution against *A.* and this be returned, I cannot have restitution upon the other. But if (upon the writ of restitution) it be not returned that I have restitution, then I may afterward have restitution against *B.* upon the other verdict if *B.* hath re-entred upon the first restitution made to me. *Marrow.* Cromp. 166.

*A.* is disseised, or put out with force by *B.* and after *B.* is put out with force by *C.* and all this is found by one and the same Inquisition: here *B.* may have restitution against *C.* (for *B.* hath more right to the possession than *C.*) and then may *A.* have restitution against *B.* But upon this Inquisition if *A.* have restitution first, then *B.* shall not have any restitution otherwise if these had been found by several Inquisitions.

*Who*

*Who shall award and make this Restitution.* CHAP. XCIV.

**A**fter the force is found by the inquest, the Just. of P. (before whom the said force shall be so found) may himself put the party in possession again: or he may make his Precept (under his own *teste* alone) to the Sheriff, to doe it *Dyer*. 187.

The form of the Precept to the Sheriff to make restitution See *postea*, tit. *Presidents*, cap. 129.

*Dyer* 187. But no other Justice of peace hath any authority (by the statute) to grant or award Restitution, but only he or they, before whom the force was found by inquisition. Nay the Just. of *Oyer* and *Terminer*, nor the Just. of Gaole-delivery cannot grant restitution, nor the Justices of peace at their general Sessions of the peace, cannot grant this restitution, except the indictment were found before them. And yet by some opinions, if it shall happen that the Justice of peace, before whom such an indictment shall be found, before restitution made shall happen to die or to be removed, then may the residue of the Justices of peace at their general Sessions of the peace grant a writ of Restitution.

Also the Justices of the Kings Bench (in regard of their supreme authority in all cases of the Crown) either upon Certificate, or delivery (to them made by the Justice of peace before whom such force was found) of the presentment of such force; or if the said presentment, or indictment shall be removed before them by *Certiorari*, in both these cases the Justices of the Kings Bench may award restitution. See *before*, in the other title *Forceable Entry*, *Fitz. Entry*. 39. & *Cro*. 157.

But neither the Justices of the Kings Bench, nor any other (besides him or them that made the inquiry, can personally restore the party, but only by way of precept to the Sheriff.

The Sheriff (if need be) may take the power of the County, to execute the Precept of the Justices of peace herein.

And if the Sheriff upon such a Precept, or upon a writ of restitution from the Sessions, &c. (shall return that he cannot make restitution, for resistance, &c. he shall be amerced for making such a return, because in such cases he might have taken the power of the County to assist him therein. See the like case, *Fitz. Execution* 147.

Note, that the same Justices or Justice of peace, before whom the force was found by Inquisition, and which have granted his or their warrant to the Sheriff, to make Restitution, may afterwards grant his or their *Supersedeas* to the Sheriff to stay the same restitution: But no other Justice or Justices of peace, hath or have authority to grant any *Supersedeas* in such case, &c. See *Dyer* 123. & 187. *hic cap.* 81.

*To whom Restitution shall be made.* CHAP. XVC.

*P. R.* 38. **T**his restitution ought to be made to him that was put out, and to none other; for so are the words of the statute.

Therefore if the father be out by force, and dyeth, his heir shall

not have restitution : yet here the Justices may imprison, and fine the offenders ; for by such forceable entry they have broken the peace. See *antea*, in the other Title of *Forceable Entry*.

Also, if after the death of the father, a stranger abateth, or entreth into his land by force, before the heir hath gotten actual possession indeed, the heir shall not have restitution, because he had but a possession in Law descended upon him. Lamb. 156

The disseisee doth put the disseisor out with force, the disseisor shall be restored ; for the right or title is not commonly disputable, or material ; but by words of the *Statute*, he that is in such sort (*sc.* forceably) put out, shall be restored. Fitz. 248. h.

Yet it seemeth in this case, That upon Traverse tendred by the disseisee, and his right appearing, the Justice of Peace may stay restitution. See hereof after under this title. Dyer 122.

Also if the disseisor be restored again, yet the disseisee may after re-enter peaceably, or have his assise, *Fitz. Entry* 20. Br. Force 6

But if the disseisee shall enter peaceably upon the disseisor, and so they both shall abide and continue there together for divers days, and after the disseisee doth put out the disseisor with force, and is thereof indicted, here it seemeth the Disseisor shall not be restored ; for the disseisor's possession was avoided in quiet manner at the first entry of the disseisee, and so the disseisor had no possession, in the eye of Law, when he was put out. Crompt. 163.

If the Disseisee shall enter peaceably, the Disseisor and his family being abroad, and after the Disseisee shall keep his possession with force, the disseisor shall not be restored, by reason of the cigne title of the Disseisee, and for that he entred peaceably. See *antea*, in the other title of *Forceable Entry*. Crompt. 162. & 164

But here the disseisee shall be imprisoned and fined, for keeping his possession with force ; for forceable keeping or detaining, is as well prohibited as forceable Entry.

And here note, That the being of a mans wife, children, or servants, in the house, or upon the land, do preserve his possession ; but his cattel being upon the ground, &c. do not preserve his possession. Crompt. 164. Fitz. h. Affise 418.

Also when two are in possession of an house, &c. and the one claimeth by one title, and the other by another title, here the Law shall adjudge him to be in possession, who hath the best right to the possession : so that if *A.* shall wrongfully enter upon *B.* and they both shall continue in the house, and after *B.* shall put out *A.* with force ; *A.* shall not be restored, for *A.* never gained any possession by his Entry. Lit. 140. Perk. 45.

Two Joyntenants, or Tenants in Common, and one of them doth forceably put the other out of his possession, he that is so expelled, may have an action of Trespas of forceable Entry against his companion, upon the *Statute* of 8 *H.* 6. and thereupon he shall have a Writ of Restitution to restore him to his former estate : but what the Justice of Peace can do herein, *quære* ; for that his Entry and possession is lawfull through the whole land, in respect of his own moiety and state. See 8 *E.* 4. Fitz. 249. d. P. R. 36.

Two Joynt-tenants be put out by force, and one of them only sueth to have restitution, restitution shall be made unto him.

Whether

Whether a Copyholder, Lessee for years, or Tenant at will, shall have restitution; See before, *cap.* 77.

“ And the Lessee for years or a Copyholder, &c. may pray, and shall have restitution, as well as he in the reversion, or the Lord.

P. R. 38. If Lessee for years be put out of his Term by force, and die, though after his death this force be found by Inquisition, taken by a Justice of Peace, yet his Executors shall not be restored to that land (by the Justice) for that they are not the same person that was put out.

*what causes there may be for staying the Justice of Peace, from granting Restitution.* CHAP. XCVI.

Lamb. 151  
Cromp.  
162.  
Br. Force  
11.

**A**Lthough the party thus being indicted for a force, shall not be heard nor suffered to give his Title in evidence, to excuse himself of his forceable entry, or detainer, to save his Fine due to the King for such force (which fine he shall make, though his right be never so good;) yet to the restitution (which the Complainant shall demand, if the force be found) the Defendant shall be heard to disprove the Title of the Complainant, or what he can say otherwise for the stay of restitution. *Quare*, and see before in the other title of *Forceable Entry*.

Dyer 122.

Now the Defendant (or party indicted) for the stay of restitution, may at the time of the restitution to be made, plead or alledg any of these things following:

1. His quiet possession by three years together.

2. He may deliver, to the Justices of Peace or Court, a *certiorari*, and this is a *Superfedeas* to them. See the *Statute 21 Jac. cap.* 8. here after.

Lamb. 162

3. He may tender his Traverse: but M. Lambert seemeth to doubt, whether the party may be admitted to his Traverse before the same Justices of Peace. And he thinks it safer for the Justices to make Restitution, notwithstanding the offer of Traverse; or rather wisheth the Justices to deliver, or certify the Presentment into the Kings Bench, and so to refer the further proceeding to them, &c. See here after.

4. He may plead the insufficiency of the Indictment. See *Paulo antea*, *cap.* 81.

5. He may plead the insufficiency of any of the Jurors, *sc.* for not having forty shillings free hold land *per annum*, and must not be antient Demesne or Copyhold, but Charter Lands: And in this case Master Marrow is of opinion, That the party shall have no restitution. Yet M. Lambert and Mr. Crompton seem to be of the contrary opinion. *Lamb.* 195. *Crompt.* 165. *Ideo quare.*

And it seemeth, (by the opinion of M. Lambert:) That the Justices of Peace ought to stay restitution, save only, either by alledging three years quiet possession, or by removing the Record and Presentment into the Kings Bench by a *Certiorari*. *Lamb.* 156.

31 Fitz. 11

For the first, there shall be no restitution awarded (upon any Indictment of forceable entry, or holding with force) where the party indicted hath been in quiet possession by the space of three whole years together, next before the day of such Indictment found, if his Estate be not

*Three years  
possession.*

ended ; and this the party indited may alledge to stay the restitution, and the restitution upon this shall be stayed by the Justice of peace untill it be tried, if the other party will deny or traverse the same. And if the same allegation be tried and found against the party indited, then shall he pay such costs and damages, to the other party, as shall be assessed by the Justices before whom the same shall be tried ; the said costs and damages to be recovered and levied notwithstanding by the course of the common law. 31 *Eliz. cap. 11.*

*Certiorari.*

Also if a man who hath made forcible entry or detainer, be in doubt that he shall be indicted thereof before the Justices of peace, (upon the statute of 8 *H.6.*) and that thereupon restitution will be awarded against him, he may have a writ of *Certiorari* out of the Kings Bench ready, and when the bill of indictment is found, he may presently deliver it to the Justice of peace or Court ; And this is *Supersedeas* to them for to stay the restitution ; for that upon this writ, the said inditement shall be removed from them into the Kings Bench. Cromp. 7  
164.  
P. R. 37.

And although the indictment be found after the *teste* of the *Certiorari*, it is not material, for they be both the Kings courts, &c.

But if a *Certiorari* commeth to the Justice to remove an indictment of forcible entrie taken before the Just. of P. in the countrey, and the party will not sue to remove it, but suffereth it to lye still, the Justice of peace may proceed to grant restitution, notwithstanding the writ, as *Hobart* the Kings attorney said in 6 *H.7.* But *Keble* held opinion against him ; and it seemeth rather, that the Just. of peace ought *ex officio*, to send the indictment away, because they are commanded so by the writ ; and this writ is a *Supersedeas* of it self to the Justices of peace, to stay their proceedings ; and if they shall proceed after, it is erroneous. *Br. Judges. 17.* 6 H.7.16.  
Lamb. 498  
Cromp. 166.

After restitution made by the Justice of peace, if the other party doth remove the indictment by a *Certiorari* of a more eigne date than is the indictment, the Justice of the Kings Bench may award restitution back again: for upon the matter the Justice of peace had no power to make restitution, for that the *Certiorari* hath relation from the date thereof.

After Restitution granted from the sessions, and delivered to the Sheriff, the other party having a *Certi.* delivereth it also unto the Sheriff after the Sessions, the Sheriff shall not surcease thereupon (for he hath no authority, to allow thereof.) But if the *Certiorari* were delivered to any Justice of peace he may thereupon grant a *Supersedeas* to the Sheriff. And if restitution were made by the Sheriff before the said *Supersedeas* came to his hands, then the other party shall have restitution back again, in the Kings Bench upon the indictment removed thither. Cromp. 162.

But for that bills of indictment of forcible entry, or riots, being found before the Justice of P. are oftentimes removed by writs of *Certiorari* out of the Chancery, or Kings Bench, by the means of the person indited by means whereof such offenders for the most part escape unprosecuted and unpunished ; (for that the party grieved will not undergoe the travell or charge, &c. (it is therefore enacted (by the statute made 21 *Jac. Regis. Cap. 8.*) that all such writs of *Certiorari* shall now be delivered at some Quarter Sessions of the peace, in open Court ; and that the parties indited, before the allowance of such *Certiorari*, shall be-

come

come bound unto such person which shall prosecute such Bill of indictment against them, in the sum of 10 li. with such sufficient Sureties, as the Justices of Peace, at their said Quarter-Sessions of the Peace, shall think fit, with Condition, to pay unto the said Prosecutors of such Bill of Indictment (within one month after the conviction of such Parties indicted) such Costs and Damages, as the said Justices of Peace in the said Sessions of the peace shall assess or allow. And in default thereof, it shall be lawful for the said Justices to proceed to trial of such indictments, any such Writ of *Certiorari*, to remove the same Indictment notwithstanding.

Dyer 122. The tender of a Traverse (to an indictment of Forceable Entry, upon the *Stat.* of 8 H. 6.) is no *Supersedeas*, but in discretion; so as the Justices of Peace, or Court (notwithstanding the Traverse tendred) may grant or may stay the Restitution at their discretion, according as the truth of the right or title shall appear to them: and so is the use of the Kings Bench, Dyer 122. pl. 34. Traverse.

Or else the Justices of Peace (before whom the indictment was found) may after Traverse tendred, certify or deliver the indictment into the Kings Bench, or to the Quarter-Sessions, and so refer the further proceedings therein to them.

Cromp. 165. But if the Party indicted shall tender a Traverse presently, whereupon Restitution is staid, and after he shall not pursue his Traverse with effect (but discontinueth it) and after doth tender another Traverse upon Restitution prayed at another time; the Justices of Peace, or Court, shall do well to proceed to grant Restitution, notwithstanding such Traverse tendred.

Cromp. 165. And it is the Course of the Kings Bench, that he that tendreth the Traverse there (upon such an Indictment) shall bear all the Charges of the Trial, and not the King, nor he at whose Suit the Indictment was found: And the same reason seemeth upon an Indictment traversed before Justices of Peace.

But upon a forceable Entry found, and a Traverse tendred, if the Justices of Peace will try the Traverse, it seemeth they ought to cause a new Jury to be returned (by the Sheriff before them, to try the same Traverse; The which may be done the next day, but not the same day, Cromp. 150: 152. See chap. 133.

“ Also after the Indictment or Force found, if a Traverse be tendred,  
 “ or whatsoever shall be alledged for the stay of Restitution, it ought to be  
 “ in writing (and not verbal only;) for upon the Traverse, &c. a *venire*  
 “ *facias* must be awarded, a Jury returned, the Issue tryed, a Verdict found,  
 “ and a Judgment given, and Costs and Damages awarded: And they  
 “ must have a Record, which must be in writing, to do all this, and not a  
 “ verball plea, *vid.* 14 H. 8. 16. Fitz. And all this must be done at the  
 “ same Session, if it be desired: or else Restitution is to be granted. *Sem-*  
 “ *ble auxi que pardon le Roy*, will discharge the forceable Entry or Detainer,  
 “ and bar Restitution.

## Riots. CHAP. XCVII.

**I**T may easily and manifestly appear to all such as have been conversant in our Chronicles, how pernicious and dangerous to this Kingdome, unlawful Assemblies have been in all precedent ages, yea, such as at the first were very small, and began upon very small occasion; yet not being repressed in time, grew to such greatness and height, that they afterwards put in hazzard the State and Government of this Land: And therefore it is behoovefull and good wisdom for all Justices of Peace to indeavour by all good means to quench the beginnings, and first sparks of such Assemblies, as knowing, that for want of timely restraint, they may soon grow to the like danger again.

Now for the better suppressing of such unlawful Assemblies, and partly for the better inabling of the Justices of Peace therein, there were three *Statutes* devised and provided specially by the wisdom of the Realm, and are remaining yet in force; that is to say, the *Statute* of 13 H. 4. 7. 2 H. 5. 8. and 19 H. 7. 13.

The *Stat.* of 13 H. 4. authorising, nay upon a great penalty injoyning <sup>13 H. 4.</sup> the Justices of Peace (together with the Sheriff) to arrest, remove, and <sup>c. 7.</sup> punish the Offenders.

But for that the aforefaid *Stat.* gave no remedy to the Party grieved, if the Justice of Peace, or Sheriff, should make default, as also for the better stirring up of the Justices in this business, the *Statute* of 2 H. 5. was made, <sup>2 H. 5. 8.</sup> authorising the Lord Chancellour of *England* (at the instance of the Party grieved) to grant a Commission, to enquire of the defaults of the two next Justices of Peace and Sheriff, in not executing of the aforefaid *Statute* of 13 H. 4. And withall providing, how the Charges of the Justices, spent about the suppressing, and enquiry of such Riots, should be born; and also limiting what punishment, as well the Offenders attainted of such Riots, as also all such as should not be ready to assise and aid the said Justice to repress such Rioters, should suffer.

And lastly, for that the two former *Stat.* did not expresse of what sufficiency the Jurors impanelled to inquire of Riots, should be; nor what issues they should lose, if they appeared not; nor any certain punishment was inflicted upon the maintainers or imbracers of such Jurors: Therefore the said *Stat.* of 19 H. 7. was made. But so much of these things as concern <sup>19 H. 7. 13.</sup> the Justices of Peace, do appear more particularly here before: And therefore now I will proceed in this business.

*First, what shall be said to be a Riot, Rout, or unlawful Assembly, within the meaning of these Statutes.*

“ **A**N unlawful Assembly, Riot, or Rout, is where three or more shall  
 “ gather together, come, or meet in one place, to do some unlaw- <sup>Br. Riot 5.</sup>  
 “ ful act with violence, and that unlawful act must be *Malum in se*, and not <sup>Crompt. 68.</sup>  
 “ *Malum prohibitum*. As when three persons, or more, shall come and <sup>P. R. 25.</sup>  
 assemble themselves together, to the intent, to do any unlawful act, with  
 force or violence, against the person of another, his Possessions, or Goods:



as to kill, beat, or otherways to hurt, or to imprison a man ; to pull down a house, wall, pale, hedge or ditch ; wrongfully to enter upon, or into another mans possession, house, or land, &c. or to cut or take away corn, grafs, wood, or other goods wrongfully ; or to hunt unlawfully in any Park or Warren, or to do any other unlawful act (with force or violence) against the peace, or to the manifest terrour of the People ; if they only meet to such a purpose or intent, although they shall after depart of their own accord, without doing any thing, yet this is an unlawful Assembly.

Br. Riot 4.  
5.  
Lamb. 172.  
181.

If after their first meeting, they shall ride, go, or move forward toward the execution of any such act (whether they put their intended purpose in execution, or not) this is a Rout.

Br. 4.

And if they execute any such thing indeed, then it is a Riot.

Riot.

Br. 4. 5.

And yet by the Opinion of some, a Rout is only where such a company (of three or more) are so assembled, for their own common or proper quarrel (and not in the quarrel of any other person.) As where the Inhabitants of a Town do assemble together to pull down a house, wall, pale, ditch, or other inclosure, pretending to have title of Common, or a way there ; or to beat a man that hath done them some publique offence. But yet the word *Rout*, seemeth to have a more large and ample meaning, as appeareth by the *Statute of 18 Ed. 3. Stat. 1.* speaking of Routs that are brought in the presence of the Justices : and the *Stat. of 7 R. 2. cap. 6.* treating of great Routs.

Br. 4. 5.  
Lamb. 180.

Master *Finch* described them shortly thus, *Fi. libro 2.*

An unlawfull Assembly is, when above the number of two shall assemble to do any unlawful act.

A Rout is, when they set forward to do it.

A Riot is, when they do it indeed.

But at the Common Law (before the making of these *Statutes*) these facts and unlawful assemblies committed or done, were of none other qualities in their natures, than other common Trespasses ; although some times by the discretion of the Justices, a greater fine was assessed in such cases, then was for other common Trespasses.

Now in Riots, Routs, and unlawful Assemblies, these four Circumstances are to be considered.

First, The number of the persons assembled.

Secondly, The intent and purpose of the meeting.

Thirdly, The lawfulness or unlawfulness of the act.

Fourthly, The manner and circumstance of doing it.

For the number, there must necessarily be three persons at the least, so gathered together, for else it can be no Riot, Rout, or unlawful Assembly, within the meaning of these *Statutes*.

The number.

By the *Stat. 1 Maria 12. & 1 Eliz. 16.* if above the number of two and under 12 assembled together, had gone about unlawfully to kill any Subject, or to cast open any Inclosure, destroy any Deer, Conies, Dove-house, or Fish, to pull down Houses, burn stacks of Corn, or abate Rents, or prices of Corn, or Victuals, if they had not departed upon Proclamation, but should after attempt to do any of those things, they were to be imprisoned by the space of one year, without Bail, *P. 20.*

P. 16. 17.

By

By the same *Stat.* of 1 *M.* 12. and 1 *El.* 16. if twelve persons, or more, assembled together, should have intended, or gone about to change any Laws, or to have done any of the former things, if they had not departed within one hour after Proclamation, it had been Felony in them all.

And by the same *Stat.* if the number had been 40, or above, that had assembled together, to the intent to have done any of the former things contrary to those *Statutes*, or any other felonious or rebellious act, if they had continued together three hours after Proclamation, it had been Felony; but these two last *Statutes* stand now discontinued. P. 31.

But an assembly of an hundred persons or more (yea, though they be in armour) yet if it be not in terrour or affright of the People, and were assembled without any intent to break the peace, it is not prohibited by any of these *Statutes*, nor unlawful. See *infra*.

*The intent.* For the intent: It seemeth it can be no Riot, &c. except there be an intent precedent, to do some unlawful act, and with violence or force. Cromp. 6.  
P. R. 25.

And therefore if divers be assembled, and none of them do know to what end or purpose they are met; this can make no Riot or Rout, till the intent be known. Lamb. 183.  
Cromp. 61.

If the Master (intending to make a Riot) taketh with him his ordinary Servants, and maketh an affray, or other outrage with them; this is no Riot in the Servant, except their Master had made them privy to his intent before, but the Master only shall be punished for this. Yet, *quare*, whether this shall be adjudged, or punished in the Master as a Riot.

And in this former case it is not material, though the number of his Servants that go with him are above his degree, so long as they be his Household Servants, *Lam.* 184. *P. R.* 25.

If divers being lawfully assembled, shall quarrel, or fall out upon the suddain, without any former such intent; this is no Riot, but a suddain affray. Cromp. 62

If divers be at an Ale-house, and without any any intention of affray they suddainly fall together by the Ears; this is no Riot, but a suddain affray, because they had no such intention before. Lamb. 184.

If a Jury being together, shall fall out and fight; this is no Riot, because they were lawfully assembled. Ibid.

Also where there be three or more gathered together, either to execute the Justice of the Law, or for the exercise of valour, and trial of activity, or for the increase of amity or neighbourly friendship, (and not being met with an intent to break or disturb the peace, or to offer violence or hurt to the person of any) such Assemblies be not prohibited by any of these *Statutes*, nor unlawful; as if the Sheriff, Under-Sheriff, or Bayliff, shall take Power (what number they shall think good) to execute the Kings Process, &c. it is lawful: So of other Officers. See more thereof *postea*, *tit.* *Posse Comitatus*. 3 H. 7. 1.  
Br. Riot 20

So it is a lawful Assembly, which is gathered together to run at Tilt, &c. by the Kings Commandment.

So the assembly of People, and their use of harness upon Midsummer-night in *London*, being only for disport, is lawful; and though it be with a great Assembly of People, and in armour: yet it being neither in affright of the People, nor *malum in se*, nor to do any act with force or violence against the Peace, it is lawful. Br. 2.  
Also

Also if divers do assemble and gather together, to drink at an Ale-house, or at a Christmas-Dinner, or at a match of shooting, or such lawful disport; or else to play at Foot-ball, Bucklers, Bear-baitings, Dancings, Bowls, Cards, or Dice, or such like unlawful Games or Disports; this is neither Riot, Rout, nor unlawfull assembly within these *Stat.* nor here prohibited; for these Meetings usually are not with any intent to offer or do violence or hurt to the Person, Possessions, or Goods of any other; neither are they *malum in se*, they are in themselves neither evil, nor unlawful, nor prohibited by the Common Law, though otherwise some of them are prohibited by *Statute*. See before, *tit. Games unlawful*.

But if any of the persons assembled together for any the Disports above mentioned (or for the like,) came with any intent or purpose to break or disturb the peace, or to offer violence or hurt to the person of any, and shall make an affray, or do other outrage, this seemeth to be a Riot, in so many as came with any such unlawful intent or purpose.

Lamb. 184  
P. R. 25.

And if any of the persons assembled together (to drink, or play) at an Ale-house, or for any the Disports above mentioned, or the like, shall fall out suddainly (without any former intention of an affray) and in that their falling out, they shall betake themselves to sundry parts, and shall make an affray, it seemeth (by the Opinions of some) that this shall be adjudged a Riot in so many of both sides, as shall be Parties to that affray or quarrel: But *quære* hereof, for that it was without any such intent before their said Assembly, and done only upon the suddain, and upon a suddain occasion hapning after their said Meeting; and again, their said assembly was at the first lawful, or at least not prohibited by any of these *Statutes*, nor yet the Common Law, *Co. 11.87*.

But otherwise, if by agreement they shall meet again, and fight afterwards, that maketh it a Riot, as being a new assembly upon the former quarrel, and so their second meeting was upon an intent precedent to do an unlawful act.

Where a great number shall assemble themselves, or come into a house, and there detain possession of the house with force (though this is neither a publick fact, or force, done in the open sight of the People; yet) this is a Riot, and by the Justices of Peace punishable, if they shall not remove such force, and suppress such Riots. See the case of *Drayton Bassett*, before, *tit. Forceable Entry*.

#### *Concerning the lawfulness or unlawfulness of the act.* CHAP. XCVIII.

**N**Ote, That the lawfulness or unlawfulness of the thing done or intended, doth not always excuse or accuse the parties to a Riot, &c. Lawfulness of the act. but so, that the manner and circumstances of the act, must also be considered.

For every man may assemble company to aid him in his house, against injury or violence: but if a man be threatned, that if he come to such a place he shall be beaten; in this case, if he shall assemble any company to go thither with him (though it be to safeguard his person) it seemeth to be with-

*Cromp. 6.6* in the compass of these *Statutes*, and unlawful, *Br. Riots 1.*

Every

Every man in peaceable manner, may assemble a meet company (and may come) to do any lawful thing ; or to remove, or cast down any common Nuisance done to them.

Every private man, to whose House or Land any Nuisance shall be erected, made, or done, may in peaceable manner, assemble a meet company, with necessary Tools, and may remove, pull, or cast down such Nuisance (and that before any prejudice received thereby) and for that purpose, if need be, may also enter into the other mans ground, *Co. 5. 121. & 9. 55. Br. Nuisance. 14. & 33.*

A man erects a Weare, crosse a common River (where People have a common passage with their Boats) and divers did assemble with Spades, Crows of Iron, and other things necessary for to remove the said Weare, and made a trench in his Land, that did erect the Weare, to turn the Water, so as they might the better take up the said Weare, and they did remove the same Nuisance ; this was holden neither any forceable entry, nor yet any Riot. *36 Eliz. Croimp. 66.*

But in the cases aforesaid, if in removing any such Nuisance, &c. the persons so assembled, shall use any threatening words (as to say, they will do it in spite of the other ; or they will do it, though they die for it, or such like words) or shall use any other behaviour, in apparent disturbance of the Peace, then it seemeth to be a Riot : and therefore where there is cause to remove any such Nuisance (or to do any like act) it is the safest not to assemble any multitude of People, but only to send one or two persons, or (if a greater number) yet no more than are needful, and only with meet Tools, to remove, pull, or cast down the same, and that such persons tend their businesse onely without disturbance of the Peace, or threatening Speeches.

For the manner of doing a lawful thing, may make it unlawful.

Also the manner of doing an unlawful act, by an assembly of People, may be such (and so handled) as that it shall not be punished as a Riot.

As if I shall assemble a meet company to carry away a peece of Timber, or other thing (whereto I pretend a right) that cannot be carried without a great number, if the number be not more than are needful for such purpose, although another man hath better right to the thing so carried away, and that this act be a wrong, and unlawfull ; yet is it of it self no Riot, except there be with all threatening words used, or other disturbance of Peace. *Lamb. 1817*

#### *For the Manner and Circumstances.* CHAP. XCIX.

**A**S there must necessarily be three persons at the least assembled together to make a Riot, &c. so their being together, and their demeanor must be such, as shall or may breed some apparent disturbance of the Peace ; either by threatening Speeches, turbulent Gesture, shew of Armour, or actual Force or Violence, (to the terror and fearing of the peaceable sort of People, or to the emboldning and stirring up of such as are busie-headed, and of evil disposition, by such fact ; ) or else it can be no Riot, &c. For, as I said before, the manner of doing a lawful thing, may make it unlawful, & *à converso*.

And

Lamb. 182. P. 1. mor. 1. And therefore if divers in one company, going to the Church, Fair, or Market, shall go armed; or one going to the Sessions, or other like assembly, shall go with his servants in harnesse (to the terror of the people) though he or they have no intent to fight, or to commit any Riot, yet this is a Rout by the manner of his or their going, being needlesse, disordered, and against the law. See the stat. 2 Ed. 3. cap. 3.

Cromp. 64. But in the former cases, if they had gone in privy coats of plate, shirts of maile, or the like, to the intent to defend themselves from some adversary; this seemeth not punishable within these Statutes, for that there is nothing openly done in terror of the people.

31. Eliz. Cromp. 64. One N. W. together with fourscore persons, came with spades, mattocks, pistols, swords, and daggers, in the night, to a piece of ground (where Sir Thom. St. had made a great Weare crosse over the river of Trent, in the County of Nottingham, to the great Nuisance of passengers there, &c.) and there they made one or two little trenches, to let out the water, &c. And though it were lawfull to make the trenches, and to debruse the Nuisance, yet for that they came with such number, and weapons, they were deeply fined in the Star-Chamber, 36 Eliz.

31. & 32. Eliz. Cromp. 64. Also one Kemp, Lord of a Copyhold, did enter with twenty persons, and cut his Copyholders corn with force, for that his Copyholder would not compound with him for his fine; and although the entry of the Lord was holden lawfull, yet punishable as a ryot in regard of his number and force.

Cromp. 64. In all cases where three (or more) shall enter into lands, &c. with force (upon the possession of another) where their entry is lawfull, yet it is a ryot, by reason of number and force; for the stat. of 5 R. 2. prohibeth the entry with force, or with multitude of people, although the entry be (otherwise) lawfull.

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*What persons may commit a Ryot, &c.* CHAP. C.

IF a number of women (or children under the age of discretion) do flock together for their own cause, this is no assembly punishable by these statutes, unlesse a man of discretion moved them to assemble for the doing of some unlawful act, as M. Marrow held.

Lamb. 184. Cromp. 62. Yet certain women, that had apparelled themselves in mens apparel, and had pulled pown ryotously a lawfull inclosure, were worthily punished for the same in the Star-Chamber, as M. Lamb. reporteth.

Also women and children may commit a force, may commit larceny, and may be bound to the peace, as breakers of the peace. See before, tit. Surety for the peace, and Forceable Entry, and Doct. and Stud. 147, 148.

Concerning children, and their punishments in such cases, See *hic cap.* 77. & 118.

Co. 3. 72 & 11. c. 1. Also women covert are holden to be within the stat. of Mert. cap. 6, for Ravishment of Wards; and within the stat. of Westmin. 1. cap. 20. de Malefactoribus in parvis: and within the stat. of 8 H. 6. of Forceable Entry: and

within the statutes of 1 *El. cap. 2*, and 23 *El.* for recusancy, although they be not named within any of these statutes.

Also if a woman covert shall commit any ryot, or doe any trespasse or other wrong, she is punishable for it; and for a trespasse done by the wife, or for a scandal published by her, the action lieth against both the husband and wife, *sc.* an action of trespasse, or of the case, shall be brought against the husband and wife, and there the husband is chargeable to the damages, or fine, because he is a party to the action and judgement, (See *paulo antea*, tit. *Forceable Entry*, cap. 77.) but if a woman covert without her husband be indicted of a Trespasse, Ryot, or any other wrong, there the wife shall answer, and the party to the judgment only; and in such case the fine set upon the wife shall not be levied upon the husband; yet after the husbands death it seemeth such damages or fine shall then be levied of the wife her self; And as for imprisonment, or other corporal pain, it shall be inflicted upon the wife only, and not upon the husband for his wives act or default.

Co. ibid.  
f. Br. 670.  
4. E. 4. 26

Co. 11. 61.  
b.

22. aff. 87.  
43 E. 3. 18.  
Br. Imp.  
100.

And note, that any subject of this Realm, for any injury done to his person, or done to him in his lands, or goods, may pursue, and have the Justice of the Law, against any other subject, be he bound or free, be it a woman or an infant, be they religious persons, or be they persons excommunicate, or outlawed, or other person whatsoever, without any exception, &c. for the King (by the statute of *Magna Charta*, ca 29.) saith, *Nulli vendemus, nulli negabimus, aut differemus justitiam, vel remedium.* Djer 104.

But if a Mayor and Alderman, or Bailiff and Burgeffes, or the Fellows of any other Society, do assemble in their common quarrell, and make a ryot, or rout, this shall be punished in their own private natural persons, and not in the body politic. *Br. impr. 95.*

Lamb. 185

### High Treason. CHAP. CI.

**H**igh Treason (called in Law, *Crimen laesæ Majestatis*) was alwayes esteemed a grievous offence, done or attempted against the estate legall, *viz.* against the King the head, life, and ruler of the commonwealth) in his person, the Queen his wife, his Children, Realm, or Authority; as.

Glanvill.

To compassse the death of King, the Queen his wife, or of their eldest sonne and heir. 25 *E. 3. cap. 2. Fi. 22.*

25 E. 3. 6.  
2. P. 1.

To compassse the death of the father or mother of the King or of any of the Kings Children, although that such compasssing be not brought to effect, yet it is Treason, by *Britton* in his title of *Appeals*, fol. 39. *Stamf. fol. 1. p.*

To compassse the death of an usurper of the Crown is Treason, for which the offender may be arraigned in the time of another King, as appeareth, *Br. Treas. 10.*

Stamf. 2. h.  
Co 8. 28.  
Br. 24. 29.

To intend or imagine the death of the King, or Queen, though they bring it not to effect, *sc.* if they shall declare this by an open act, whereby it

it

whereby it may be known, or to utter it by words or letters, is Treason.

To intend to deprive, depose, or dis-inherit the King, is high Treason, if it may appear by any open act; for no Crown can be taken from a Kings head, without loss of his head and Crown both, sooner or later, as his Majesty hath observed in his *just Defence of the right of Kings*. See *Bri. and Stamf. 1. p.*

“ And here the intent of the heart is enough, *sc.* if one shall intend, imagine, will, or seek any such thing, whether the deed follow, or not, if it may be discovered, it is high Treason in the King’s case.

So to say, That he will be King after the Kings death, is high Treason. See the Duke of *Buckingham’s* case, 13 H. 8. fol. 12.

M. *Glanvill* also, and M. *Bracton*, say thus, or to this effect: *Si quis machinatus fuerit, vel aliquid fecerit in mortem Domini Regis, vel ad seditionem Regis, vel exercitus sui, vel consenserit, consiliumve dederit, vel auxilium procuraverit, seu praestiterit, licet id quod in voluntate habuit, non produxerit ad effectum, tenetur tamen criminis laesa Majestatis reus*. See *Glanv. lib. 14 fo. 110.* & *Bracton lib. 3. fol. 118. Stamf. 1. v. x.*

And so note, That Treason may be committed by imagination, and a resolution to perform or do an act, although it be not brought to effect, as in these former cases. This was the case of *Bigtham* and *Terefb*, who were both hanged, only for that they had a will to kill King *Ahasuerosh*, and sought to lay hands on him, *Esther 2. 21, 22.*

Co. 4. 124. If one that is a mad-man do kill, or attempt to kill the King, it is in him High Treason; whereas Pety Treason, Homicide, or Larceny, shall not be imputed to such a person, *Vide Stat. 33 H. 8. cap. 20.*

Dyer 128. Abr. One Constable pointed to another, saying to his friends, *Behold King Edward*, (who was then dead) and for those words he had Judgment and Execution as a Traytor, *Dyer 128.* but *Co. 7. 10.* observeth, That the words were accompanied with other Circumstances, which appear not in our usual printed Books.

To intend the Bodily hurt of the King, or to affirm that the King is not King, or is an Heretick, Tyrant, or Usurper, &c. *Vide Stat. 13 Eliz. cap. 1.*

P. 1. Also to deflowr the Kings Wife, his eldest Daughter being unmarried, or his Eldest Son and Heirs wife, is High Treason, 25 El. 3. 2.

P. 1. So it is if any man shall deflower any other of the Kings Daughters, yea or the Nurfs of any of the Kings Children, as Mr. *Britton* writeth, fol. 43. *Stamf. fol. 1. b.*

To levy warr against the King, &c. in this Realm, is High Treason: Note, That to detain or hold a Castle, or Fortrefs, against the King, is to levy VVar against the King. See *Br. Treason, 24. 25 E. 3. cap. 2.*

So to conspire to levy War against the King, &c. is high Treason.

Dyer 98. Also to detain, keep, or with-hold from, or against the King, any of his Ships, or Ordnance, or maliciously to burn, or destroy any of the King’s Ships; or maliciously to barr any Haven within any of the Kings Dominions; all and every of these seem to be included within these words, [To

levie War against the King] and so to be high treason. See *Br. Treason* 24. & *stat. 14 Eliz. cap. 1. & quere.*

To sell any armour to the enemy, or to furnish the enemy with weapon or munition, have been accounted crimes treasonable. *W. Segar Norroy, of Honour Military and Civill. pag. 14.*

If any person having a charge, shall yield the same unto the enemy, this also is a crime treasonable, *ibid.*

So all explorators or spies, that bewray our secrets, and inform the enemy thereof, are to be accounted traitors. *ibid.*

To practice with a Governour of another Countrey to invade this Realm, is High Treason; although such practise be not put in ure, *Dyer* 289.

So to kill one that is sent in the Kings message, *Aff. Stamf. 1. 1. 21 E. 3. 23 Stamf. 1. 1. Br. 13.*

To encounter in fight and kill such as are assisting to the King in his warres, or such as come to help the King, is high treason. 45 *Ed. 3. 25. Br. Treas.*

These two last cases were holden to be high treason, before the stat. of 25 *Ed. 3.*

To succour the Kings enemies is treason. *Throp. 22 Ed. 3. fol. 42.*

To be adherent to the Kings enemies (aiding them, or giving them aid <sup>P. 1.</sup> or comfort, in his Realm, or elsewhere) is high treason. See *Br. Treason* 1. & 13. *Fitz. Triall. 54 E. 3. cap. 2.*

“ So to be of counsaile with another in levying seditious war,

If a subject shall goe beyond the sea, and there shall adhere, or joyn himself with the Kings enemies, and there (in such enmity) shall die, or be slain, this seemeth to be treason, and to be an attainder in law, without any more, &c. by the ancient Common Law of this land: as appeareth, 8 *E. 3. Fitz. Dower 106.*

So if a subject shall joyn in battel within the Realm to the Kings enemies, and shall be slain in the field; by the ancient Common law of this Realm he shall forfeit his lands, goods, and chattels, and his blood shall be corrupted, without any other judgement, for that he himself is the cause that he cannot come to the triall of law in his life time. *Pl. 262. a. & 263. a. Vide stat. 34 E. 3. cap. 12.*

But if an alien enemy come to invade this Realm, and be taken in warre, he cannot be indicted of treason, but he shall be put to death by martial law, *C. 7. 6. b.* Otherwise it is of an alien whose K. is in league or at peace with our King, or who is in this Realm in the time of peace, and hath the benefit of the Kings peace, he shall be indicted or arraigned of treason, and shall have judgement accordingly. An English traitor pleading that he is subject to a forein Prince, shall notwithstanding (upon a *Nihil dicit* Recorded) have judgement as a Traitor, *Dyer 300.*

If any person shall joyn the Armes of England with his own Armes, it seemeth to be high treason. See 38 *H. 8. Br. Treason 2.*

If any person shall counterfeit the Kings Armes, or the Armes of this Realm, it is high treason, as *M. Kitchin* hath it, *fol. 12.*

*Br. Treas. 32.*

*Dyer 145. vide*



To counterfeit the Kings great seal, signe manual, privy signet, or privy seal, is high treason. 23 *Ed. 3. cap. 2.* & 1. *Mar. 6.* But before the statute  
 P. 1. 2. 1 M 6  
 Br. 3. 17. 25 *E. 3.* these were petty treason by the common law. *Fi.*

So to take an old seal from another Patent, &c. and put it to a new Patent, &c. yet *quare* whether this be Treason, or but misprision. *M. Stamf. fol. 3. c.* saith, that it was adjudged to be Treason in his time. *Vide Ibidem.*

Also it is Treason in such, as without authority shall set the Kings seal upon any writing, *Speculum Just.* See *Bracton. lib. 3. fol. 119. b.*

*Quere*, of such as shall fraudulently thrust a writing (among others) to the seal, and so get it sealed.

To counterfeit the Kings money (*sc.* the coin of this Realm, or such as by the Kings authority is coined within this Realm, or within the Dominions thereof) is high treason. *Stamf. 3. c. 25 E. 3. cap. 2.*

And the Justices of peace may enquire thereof, & thereupon may make out proceſs, by *Capias* onely, against those which before them shall be hereof indicted. 3. *H. 5. cap. 7.*

So to counterfeit any other coyn of any other Realm, which (by the Kings Proclamation, or by act of Parliament, or permission) is made current within this Realm, is high Treason. 1 *Mar. Par. 1. cap. 6. Co. L. 208.*

So to forge or counterfeit such coyn, though he uttereth it not. *Stamf. 3. d.*

“ And these counterfeitings are where any Common person shall coyne  
 “ any such mony without the Kings warrant.

To forge or counterfeit any coyn which is not current in this Realm, is misprision of treason,

Br. 27.

P. 4.

14 El. 3.

5. El. 11.

18. El.

P. 5. 6.

To clip, wash, round, file, impair, diminish, lighten, or falsifie any coyne or money of this Realm, or any other Realm, allowed or suffered to be current within this Realm, is Treason. *Bracton. 119.*

1. & 2. P.

& M.P. 3.

25 E. 3. c. 2

Finch.

To bring from beyond the sea, into this Realm, any false or counterfeit coyn or money made in any other Realm, like to the coyn of this Realm (or like the coyn of any other Realm, being currant within this Realm) knowing it to be false, to the intent to merchandise therewith or to make payment thereof, in deceit of the King and his people, is high Treason: but to bring such money into England, out of Ireland is but misprision, though he knoweth it, and uttereth it, *Quia Hibernia est quasi membrum*

3 H. 7. f. 10

Br. 19.

3 H. 7. 10

*Anglia.*

If he which by the Kings warrant doth coyn money (either in England, Ireland, or elsewhere) making it much lesse in weight then the ancient ordinance; or coineth false metall, it is Treason. *Br. Treason. 19.*

So to coyn any money, not having authority or warrant to do it, is high treason. *Speculum Justic.*

To coyn farthing-tokens is no Treason, but is punishable: And so Sir Francis Harvey delivered it in his charge at Cambrige Summer Assises *An. 1631.*

To utter false money made within this Realm, or other the Kings Dominions, knowing thereof, is misprision of treason.

1 H. 7. f. 10  
 Dyer. 266.

The Book called the *Mirroure of Justices*, (or *Speculum Justiciariorum*, written by Mr. *Andrew Horne*) divides these former Treasons into two sorts, *sc. Le Crime de Majestie, & le Crime de Fausonnerrie*. See also *Br. fol. 118.*

<i>Le Crime de Majestie. 3. x.</i>	{	<p>Such as shall kill the King, or shall compass to do it.</p> <p>Such as shall do or procure any thing, <i>ad sediticnem Domini Regis, vel exercitus sui.</i></p> <p>Such as shall deflower the Kings Wife, his Daughter, or the Wife of the King's Heir.</p>
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*Le Crime de Fausonnerrie* is } Falsifying the Kings Seal,  
in two manners, *sc. by* } Falsifying his Money.

Also to kill the Kings Chancellor, Treasurer, Justices of either Bench, <sup>25 Ed. 3. 2. P. 1.</sup> Justices in *Eyre*, Justices of Assise, or Justices of *Oyer* and *Terminer*, being in his or their place doing his or their Office, is High Treason.

But because many other like cases of Treason might happen, &c. it was (by the Stat. 25 E. 3. cap. 2.) accorded, That if any other case supposed Treason, which is not in that Statute specified, doth happen before any Justices, the Justices are not to proceed thereupon, untill the cause be declared before the King and his Parliament, &c.

Also by the Stat. of 1 Mar. Parl. 1. & Sessio. 1. it is ordained, That no act, deed, or offence, made Treason, Petty Treason, or Misprision of Treason, by any Act of Parliament, or Statute, shall be taken, deemed, or adjudged to be High Treason, Petty Treason, or Misprision of Treason, but onely such as be declared to be Treason, Petty Treason, or Misprision of Treason, in or by the Statute made 25 E. 3. &c. any Statute made before or after the said Statute of 25 E. 3. or any other declaration or matter to the contrary notwithstanding.

Note, That the Counsellors, Procurers, Consenters, Abettors, and aiders to any of the forenamed Treasons, be all within the compass and danger of High Treason; for in Treason all the offenders be Principals. Stamf. 5. P. 23, 4, 5, 6. 19 H. 6. 476.

To conceal or keep secret any high Treason, is Misprision of Treason, <sup>P. 8. 1 & 2 P. & M. c. 10.</sup> 1 E. 6. c. 12. 5 & 6 Ed. 6. c. 11. & 1 El. cap. 6. *sc.* when a man shall conceal it, and not discover it to the King, or to some of the Kings Councill, or to some other Magistrate. What the ancient, &c. See *his postea*, out of *Br. lib. 3. & scribe hic*.

“ Also all receivers and accessaries (to high Treason) after the offence, seem to be in case of Misprision, yet by some they be all Principals, “ *Vide postea, tit. Accessorie, cap. 18.*

To set at large unlawfully, any person that is committed to prison, ward, or custody for Treason, is Treason by the Common Law. See 1 H. 6. fol. 5. *Br. Treason 11.*

If one that is in prison for Felony shall break the prison, whereby a Traytor being in the same prison shall escape, this is Treason (in him that broke the prison) by the Common Law. *Vide 1 H. 6. 5. hic cap.*

So voluntarily to suffer any person to escape, that is committed to Prison, or but under arrest for Treason; this is Treason by the Common Law, *Stamf. 32. 1.*

Dyer 58.  
Co. 1. 28.

If two or more do conspire to commit High Treason, and some or any one of them after do commit and execute it; this is High Treason in them all by the Common Law.

Co. 8. Præ.

Note also, that the aforesaid *Statute* of 25 E. 3. cap. 2. is but a declaration and explanation of the Common Law, before, for all the said Treasons in the said *Statute* mentioned, were Treason by the ancient Common Law of this Realm, before the making of the said *Statute*.

Since which time of King *Edw. 3.* divers other offences were made Treason, as appeareth by the *Statutes*, 22 Rich. 2. 2 H. 5. 6. 3 Hen. 5. 6. 8 H. 6. 4 H. 7. 18. 22 H. 8. 9. 26 H. 8. 13. 27 H. 8. 2. 28 H. 8. 10. & 18. 31 H. 8. 8. 32 H. 8. 25. 33 H. 8. 21. 35 Hen. 8. 1. and first Ed. 6. 12. all which were repealed again by the said *Statute* made 1 M. Parliament 1. or before, as is aforesaid. *Treason by Statute.*

Also since the foresaid *Statute* of Repeal, there have been divers other offences made or declared to be Treason, whereof some were but as an addition to, or an exposition of the Treasons before specified, and mentioned in the said *Statute* of 25 E. 3. c. 2. viz. the *Statutes* 1 M. 6. 1. & 2 P. & M. 11. 5 El. 11. 18 Eliz. 1. & 14 Eliz. 3. by which five several *Statutes* last mentioned the counterfeiting of the Kings Seal, or abusing his Coyn, and bringing in of false Coyn, &c. are in some particulars more fully prohibited than before, as may herein before, appear.

There are also divers other Offences made High Treason (by other *Stat.* made since the beginning of the Reign of Queen *Eli.*) and those specially made for the preservation of the said Queen, her Heirs and Successors, and of the dignity of the Imperial Crown of this Realm; and for the avoiding of the dishonors, inconveniences, and dangers growing to the whole State, by means of the jurisdiction of the See at *Rome*, heretofore usurped within this Realm, &c. as hereunder appeareth.

5 El. 1.  
P. Rome 1.

First, the maintaining or extolling the authority of the Bishop or See of *Rome*, within any the Kings Dominions; and the Procurers, Counsel- *The Bishop of Rome.* lers, Aiders, and Maintainers thereof, every of them.

For the first offence they shall incur the danger of a *Præmunire*; the second Offence is High Treason.

Also the Bringers over of any Books, that shall maintain, set forth, or defend any such authority; and the readers and hearers of such Books, that shall justify them;

And such as shall deliver any such Books to others, with allowance and liking of the same.

Dyer 282.  
Co. 7. præf.

And the Printers and Utterers of such Books within this Realm; all and every such Offenders are (by the Judges) resolved and construed to be within the meaning of the same *Stat.* of 5 El. ca. 1. and their first offence to be a *Præmunire*, the second is High Treason.

5 El. 1.  
P. Crown.  
6 & 8.

Again, the refusal of the Oath for the Kings Supremacy (in all Cases, and over all Persons, &c.) after lawful tender thereof made; the first refusal is a *Præmunire*, the second is High Treason.

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The second refusal of the Oath of Allegiance, being tendred according to the *Statute*, is a *Præmunire*, &c. 7 *Jac. c. 6*. 3 *Jac. 4.*  
P. *Recus.*

Again, to obtain or get from *Rome*, or from any claiming authority from thence, any Bull or writing, (the effect whereof is, to absolve and reconcile all those that will forsake their due obedience to the King, and yield themselves to the B. of *Rome*,) or to give or take absolution, by colour of any such Bull; or to grant or promise any such absolution or reconciliation; or to use, publish, or put in ure any such Bull; every such act shall be High Treason, as well in the Offenders, as in the Procurors, Abettors, and Counsellors to the fact. 45.  
13 *El. 5.*  
P. *Crown. 2.*  
P. *præm. 5.*

And all Aiders, Comforters, and Maintainers of any such Offender, after the Fact, shall incur a *Præmunire*. Ibid.

To conceal such Bull (or writing) or such absolution offered them, and not within six weeks to disclose it to some of the Kings Privy-Council, is misprision of Treason. 13 *El. 2.*  
P. *Rom. 4.*

To purchase or pursue (in the Court of *Rome*, or elsewhere) any Excommunication, Bull, or other Instrument, against the King, his Crown, or Realm; or to bring them within this Realm; or to receive them, or to make notification, or any other execution thereof, within this Realm, or without, every such Offender, their Procurers, Maintainers, Abettors, and Counsellors, shall incur the danger of a *Præmunire*, 16 *R. 2. cap. 5.*

To practise (beyond the Seas, or upon the Seas, or elsewhere within the Kings Dominions) to absolve, perswade, or withdraw any Subject, or any within any his Highness Dominions, from their Obedience to his Majesty; or to reconcile them to the Pope, or to draw them to the Romish Religion (by argument, Books, or otherwise) for that intent; or to move them to promise Obedience to the See of *Rome*, or to any other Prince, to be had or used within the Kings Dominions; every such Person, and their Procurers, Aiders, Counsellors, and Maintainers, knowing the same are all in case of High Treason. 34 *El. 1.*  
3 *Jac. 4.*  
P. *Rome 7.*

To be willingly absolved, perswaded, withdrawn, or reconciled, as aforesaid, or to promise any such Obedience, every such Person, and their Procurers, Counsellors, Aiders, and Maintainers (knowing the same) shall be adjudged Traytors, except they submit themselves, according to the *Statute*, within six days after their return into this Realm, &c. *Vide antea, tit. Recusants.* 23 *El. 1.*  
3 *Jac. 4.*  
F. *Recus.*  
49.  
P. *Rome 7.*  
P. *Rom. 8.*

To conceal any such Offence, and not with 20 dayes to disclose it to some Justice of Peace, or other higher Officer, is misprision of Treason by the *Stat. 23 El. 1. P. Rome 8.* 27 *El. 2.*  
P. *Jesuits 2.*

Again, for any Jesuit, Priest, or other Ecclesiastical person (born within any the Kings Dominions) and made by any authority from the Bishop of *Rome*, to come into, be, or remain, in any of the Kings Dominions, contrary to this *Statute*, is High Treason.

To receive, relieve, aid, or maintain any such Jesuit, &c. (being at liberty, and knowing him to be a Jesuit, &c.) is Felony, without benefit of Clergy, 27 *El. cap. 2.* P. *Jesuits 2. 101.*

To conceal such a Jesuit, &c. *sc.* not to discover them to some Justice of

of Peace, or other higher Officer, within twelve dayes, is punishable by Fine and Imprisonment.

And the Justice of Peace, or other such Officer, to whom such a person shall be discovered, if within 28 days they give not information thereof to some of the Kings Council, &c. they shall forfeit 200 marks. See *plus, ult.*

27 El. 2.  
P. Jesuits 4

*Recusants.*

The Popes Bulls, in Latine called *Bullæ*, are so called, *Quod Bullis plumbeis obfiguntur*; and in which *consilium & voluntas Papæ continentur*.

“ What the ancient Law was for concealing of High Treason, *Bract. lib. 3. fol. 418.* sheweth us, saying, *Si sit aliquis, qui alium noverit inde esse culpabilem, &c. statim & sine intervallo aliquo accedere debet ad ipsum Regem, si possit, vel mittere (si venire non possit) ad aliquem Regi familiarem, & omnia ei manifestare per ordinem*: And he must not stay in any one place by the space of two nights or dayes: And if he be negligent therein, he shall be taken as consenting. See more, *misprision, cap. seq.*

27 El. 2.  
P. Jesuits 4

If any of the Kings Subjects (not being a Jesuit or Ecclesiastical person) which are or shall be brought up in any Seminary or Colledge of Jesuits, or Seminary beyond the Sea, shall not (within six moneths after Proclamation in that behalf to be made in *London, &c.*) return into this Realm, and within two dayes after such return (before the Bishop of the Diocese, or two Justices of Peace of the County where he shall arrive) submit himself to the Kings Laws, and take the Oath of Supremacy, (set forth 1 *EL. 1.*) then every such Person which shall otherwayes return, or come into this Realm, or any other his Majesties Dominions, without such submission, shall be adjudged a Traytor.

For (as one saith) it may justly be feared, not only of all Jesuits and Seminary Priests, but also of all such other (Jesuited) persons whatsoever, that shall come into his Majesties Dominions, or return into this Realm, contrary to this *Statute*, That it is not Faith, but Faction; not Truth, but Treason; not Religion, but Rebellion, which is the cause of their coming.

21 El. 7.  
P. Jesuits 5

To convey, deliver, or send, yield, or give any relief, to or for any Jesuit, or Priest, &c. or other person abiding in any Seminary beyond the Seas, &c. is a *Premunire*.

13 El. 2.  
P. Rom. 5.

To bring into this Realm any *Agnus Dei*, Crosses, Pictures, Beads, or such like superstitious things, consecrated by authority from the Pope, and to deliver them, or to offer or cause them to be delivered, to any Subject of this Realm, is a *Premunire*, as well in such person, as also in them that shall receive any such thing, to the intent to use or wear it.

13 El. 2.  
P. Rom. 6.

The person to whom such *Agnus Dei, &c.* shall be offered, must apprehend the Party offering the same, and bring him to the next Justice of Peace; or else must within three days disclose his name and place of abode, to the Ordinary, or some Justice of Peace in that County: and if he received any thing, he must deliver the same within one day to a Justice of Peace of that County, where the Party so receiving the same, shall then be resident, or happen to be. And that the Justice of Peace within 14 dayes

dayes must disclose the same to one of the Kings Majesties Privy-Council, upon danger of a *Premunire*.

The former Offences against the *Stat. 5 Eliz. 1. & 13 Eliz. 2. & 23 El. 1.* may also be enquired of by the Justices of Peace in the Sessions. *Vide Eliz. cap. 1. & hic cap. 20.*

“ To compass, imagine, devise, or intend death or destruction, or any <sup>13 Car. 2. ca. 1.</sup>  
 “ bodily harm, tending to death or destruction, maiming or wounding,  
 “ imprisonment, or restraint of the Person of the King, or to depose him  
 “ from the Stile, Honour, or Kingly Name of this Realm, or any of his Do-  
 “ minions or Countries; or levy War against Him within this Realm or  
 “ without: Or stir any Forreigner with force to invade this Realm, or  
 “ any other his Dominions or Countries under his Obeysance: And such  
 “ compassings, imaginations, intentions, or any of them, shall expresse, ut-  
 “ ter, or declare by any Printing, Writing, Preaching, or malicious and  
 “ advised Speeches being convict thereof upon the Oaths of two credible  
 “ Witnesses, or attainted by Course of Law, is Treason; and forfeiture,  
 “ as in High Treason incurred hereby.

“ If any person (during the Kings life) shall maliciously and advisedly  
 “ publish or affirm the King to be an Heretick, or a Papist, or that he in-  
 “ tends to introduce Popery; or shall maliciously and advisedly by Wri-  
 “ ting, Printing, Preaching, or other Speeches, expresse, publish, or declare  
 “ any words, or other thing or things, to stir up the People to hatred, or  
 “ dislike of the Person of his Majesty, or his established Government;  
 “ such persons (upon Conviction) are disabled to have any Office, or pro-  
 “ motion Ecclesiastical, Civil, or Military, and liable to such other punish-  
 “ ments as by the Law may be inflicted.

If any person or persons shall maliciously and advisedly by Writing,  
 “ Printing, Preaching, or Speaking, publish, declare, or affirm, That the  
 “ Parliament begun at *Westm. 3. Novemb. 1640.* is not dissolved, or not  
 “ determined, or that it ought to be in being, or that there lies any Obli-  
 “ gation upon him, or any other person, from any Oath, Covenant, or  
 “ Engagement, to endeavour a Change of Government; or that both, or  
 “ either Houses of Parliament have a Legislative Power without the  
 “ King, or any words to the same effect: such Persons shall incur the  
 “ penalty of a *Premunire* mentioned in the *Stat. of 16 R. 2.*

“ For the manner and times of prosecution upon the said Offences and  
 “ *Statute.* See the Act at large.

### Misprision. CHAP. CII.

**M**isprision signifieth in our Law, neglect, negligence, or oversight, in not revealing a Treason, or Felony, when we know it to be committed, or about to be committed; so making a light account of such Capital Offences: See *infra*. And see High Treason, the *Stat. 13 Car. 2. cap. 1.*

There be certain Offences, which by the Common Law are Misprision of Treason, or at least punishable in the same degree, or in an higher degree. As To

To draw a Sword to strike a Justice sitting in the place of Judgment, is  
 22 E. 3. 19. Misprision of Treason. So

Stamf. 38. To strike a Juror in the presence of the Justices, sitting in place of Judgment, *Br. Contempts 9. Fitz. Judg. 174. Fi.*

b. P. R. 177. So to strike another in *Westminster Hall*, sitting on any of the Kings Courts  
 Ibid. there, *Dyer 188. Fitz. Cor. 280. Fi.*

Stamf. 38. c. So it seemeth to draw any weapons (therewithall to strike any person) in the presence of the Justices, or to make an affray in their presence, *Br. Pain 16. Stamf. 38.*

So to rescue any such Offender. *Ibid.*

So to strike any person in the Kings Court (Palace, or other House) the King being then in his Court. And Judgment was given accordingly in such case upon a Knight, *Ann. 33 Hen. 8.* for striking another at *Greenwich*, the King being there, *Br. Ibid.* Yet now see the Stat. of 33 H. 8. 12. That such an Offender in the Kings Palace (although he shall draw blood by striking there) he shall forfeit neither the Profits of his Lands, nor his Goods, but shall lose his right hand, be imprisoned during his life, and shall pay fine and ransom at the Kings pleasure: and so now such an offence done in the Kings Palace, shall not have so grievous a punishment, as if it be done in *West. Hall.* See *Stamf. 38. d.*

Ibid. But in the former cases, the Offender shall have Judgment as in Misprision of Treason, and besides shall have his right hand cut off. *Br. Peine 16. Fitz. Forf. 21. Dyer 188.*

Ibid. If one of the Kings Justices do arrest one, who made an affray before him sitting in place of Justice, and a stranger shall rescue the Prisoner, whereby he escapeth; this is misprision of Treason in them both, for that the arrest by the Justice was (in Law) the arrest of the King himself.

Stamf. 37. Note, that every Treason, or Felony, do include Misprision, so that  
 c. where any person hath committed Treason or Felony, the King may cause  
 Gromp. 41 the Offender to be indicted and arraigned but of Misprision.

Misprision is properly, when one knoweth that another hath committed, or is about for to commit any Treason or Felony, but was not, or is not, consenting thereto, and will not discover the Offender to the King, or his Council, or to some Magistrate, but conceals the Offence, *Stamf. 37. Stat. 5 E. 6. c. 11.*

Stamf. 37. "Compounding of Felonies, is also Misprision of Felony at the least, if it be not Felony. See *cap. 109.*

For Misprision of Treason, the Offender shall forfeit to the King his Goods and Chattels for ever, and the profits of his Lands during his life, and also shall be imprisoned during his life, *Br. Trea. 19. & Stamf. 38.*

For Misprision of Felony, the Offender shall be only fined (and ransomed) by the Justices, before whom he shall be attainted, and shall be committed to Prison untill he hath paid his Fine. See *Br. Trea. 35. & Finch. Lib. 2.*

3 H. 7. 10 For High Treason, the Offender being a man, shall be drawn upon a hurdle unto the place of execution, and there shall be hanged by the neck, cut down alive, and his intrails and privy-members shall be cut from his Body.

The Forfeiture.

Body, and be burnt within his view ; and then his head shall be cut off, and his Body quartered, and then to be disposed of at the Kings will.

Also he shall forfeit all his Lands and Goods to the King : yea, at this day (by the *Stat.* made 26 *H.* 8. *cap.* 13. & 5 *Ed.* 6. *cap.* 11.) his Lands entailed shall be forfeited, and his wife shall lose her Dower (saving in certain cases) *Vide Stamf.* 182. & 187. *Co.* 1. 103. 3. 10. & 7. 33. 34. & *Dyer* 289. & 332, *Pl.* 237. b. 249. b. 554. b. & 559. *Est enim tam grave crimen istud quod vix permittitur heredibus quod vivant : Et si aliquando fortè ad successionem admittuntur tales, hoc magis erit de gratia quam de jure, Br. lib. 3. fol. 118.* Vide *Co.* L. 13. 31. & 37.

But the Judgment and Sentence of condemnation upon a woman in case of Treason, is, That she shall be drawn upon a hurdle unto the place of execution, and there burned, *Stamf.* 182.

In case of *Præmunire*, the Offender (being attainted upon the *Statute* of 16 *Rich.* 2.) shall forfeit all his Lands which he hath in Fee for ever, and all his Goods and Chattels to the King ; but his Lands, whercof he hath an estate tail, he shall forfeit only during his life ; and shall be imprisoned during his life. But some do hold, That if the Offender be attainted upon the *Stat.* of 27 *Ed.* 3. *cap.* 1. there the Offender shall forfeit nothing, if he appeareth at the day of the *Præmunire* returned. See that *Stat.* & *Br. Præm.* 6. & *Crompt. Autor ders cots.* 97. Yet others do hold, That as upon the *Statute* of 16 *R.* 2. *cap.* 5. the Offenders shall forfeit their Lands and Goods if they be attainted ( *Br. Præm.* 6. & 20.) so upon the *Stat.* of 27 *E.* 3. if the Offender do appear and plead, and be found guilty, he shall have the Judgment of *Præmunire, sc.* to be put out of the Kings Protection, and shall forfeit his Lands, Goods, and Chattels to the King, and his Body shall be imprisoned during his life, (or untill he hath made fine and ransome at the Kings will.) See the *Stat.* and *Co.* 11. 34. and the old *Natur. Bre. fol.* 159. *Co. L.* 130. & 391. P. *Præm.* 15. 6. 19. *Co.* 7. *Præf.* & 11. 63. *Co.* 8. 130.

Now for the Offenders in High Treason, Misprision of Treason, and *Præmunire*, although the Justices of Peace (by their Commission, nor by *Stat.*) cannot meddle with them in the very point of their offences, saving in some particulars, and that by way of enquiry only, which you may see *hic antea, tit. Felony, cap.* 20. Yet for that all Treasons, and such other offences are against the peace of the King, and of the Realm, therefore upon complaint made to the Justice of Peace, or other knowledge had by him of any such Offenders, it shall be his part to cause such Offenders to be apprehended, and to joyn with some other Justice of Peace in taking their Examination, and the information upon Oath of such as bring them, or of others that can prove any thing material against them, and to put the same in writing (under the hands of the Informers) and then to commit the Offenders to the Gaol ; and also to bind over by Recognizance all such as do declare any thing material, to appear and give evidence against such Offenders, before the Lords of the Kings Majesties Privy-Council, or in the Kings Bench, or at the Assises and Gaol-delivery, or else-where, when they shall be called upon reasonable warning, and after to certify their doings therein to some of the Lords of his Majesties said Council. 9 *H.* 3. 1. *Br. Treas.* 9 *Fitz Just.* de peace 7.

Note,



Note that all Treasons, misprision of Treason, and concealment of Treason, done or committed out of the Realm, shall be inquired of, and tried within the Realm, *sc.* in the Kings Bench, or else before special Commissioners. See stat. 35 H. 8. cap. 2. & 5 E. 6. cap. 11. P. Treas. 18. & Dyer 287. 298. 132. 260. Co. 7. 23. et 11. 63.

## Pettie Treason. CHAP. CIII.

Petty Treason is, when willfull murther is committed (in the estate Oeconomical) upon any subject, by one that is in subjection, and oweth faith, duty, and private obedience to the party murdered, as in these cases following.

If a servant maliciously killeth his or her master or mistresse, this was *servant* Petty Treason by the Common law *Stamf* 10. 1. *Br.* 8. 12. et *Co.* 11. 34. et 25 E. 3. cap. 2.

A servant of the age of thirteen yeares killed her mistresse, it was adjudged in her Petty Treason. *Br. Treas.* 12.

A Servant that is departed out of service, and a year after killeth his master upon malice conceived when he was in the said service, it is Pettie treason *Br. Treas.* 1. 5. 33. *Aff.* p. 7. *Co.* 1. 99. b.

A servant doth procure another to kill his master, who killeth him in the servants presence; this is Pettie treason in the servant, and murder in the other. See *Plo* 100. a, et *Br. Coro.* 119. et *quare.*

But if the stranger doth kill the master in the servants absence, then the servant is onely accessary to the murder, but it is no Pettie treason in him.

A servant conspireth with a stranger to rob his master, and at a time appointed in the night, he letteth in the stranger into the house, and leads him to his masters chamber, and the stranger killeth his master, the servant standing by but saying nothing, this is pettie treason in the servant, and murder in the stranger: yet by some, this is but murder in the servant, *Ibid* et 40. *Aff.* *Br. Cor.* 119. For where the principall is but a felon, the accessary cannot be a traitor. See *Plo.* 100. a. that the servant is a principall in this case, and after, *tit. Accessary.*

A servant commands one to beat his master, and he killeth him, this is petty treason in the servant, if he be present.

A servant upon malice prepened, shooteth at a stranger, and misseth him and killeth his master being by; this is Pettie treason in the servant, (though he intended no hurt to his master, yet) because he intended murder thereby.

The wife maliciously killeth her husband, this is pettie treason. 25. *Ed.* 3. cap. 2.

*The wife.*

The husband maliciously killeth his wife, this is but murder.

The reason of this difference, is, for that the one is in subjection and oweth obedience, and not the other.

The wife and a servant doe conspire to kill the husband and the servant killeth him in the wives absence; this is pettie treason in them both.

A a

The

The wife and a stranger do conspire to kill her husband, and he killeth her husband in the wives absence ; this is no Pettie treason in the wife, but murder in the stranger, and she shall be hanged as accessary to the murder.

Also where the wife or servant procuring, conspiring, or practising such murder, at the time of such murder is in the same house, though they be not present thereat, but are in another room, yet it is Pettie treason in them, as it seemeth by two cases reported by Master *Crompton* in 4 et 5 Mar. Crompt. 20. a.

The wife poysoneth a thing, to the intent to poyson her husband therewith, the husband eateth of it, and becommeth very sick thereof, but recovereth, after a stranger eateth thereof, and dieth thereof, this is onely murder in the wife. Pl. 474. Co. 9. 81. See more in the title of Murder.

The wife poysoneth an Apple to the intent to poyson a stranger therewith, and laieth it to that purpose in a secret place, and the husband by chance eateth of it, and dieth thereof within a year and a day, this is Petty treason in the wife, for that she intended murder thereby. Crompt. 22

The wife poisoneth an apple, or other thing, and delivereth it to B. (knowing nothing of the poyson) to give to C. and B. giveth it to the Husband, (without the assent of the wife) who eateth thereof in the wives absence, and he dieth thereof, this is Petty treason in the Wife. Crompt. 2.

And yet if A. lay impoysoned fruit for a stranger, being his enemy, and his Father or Mother come and eat it, Sir *Fr. Bacon* maketh a *quare* whether this be petty treason, because it is not altogether *Crimen paris gradus*. But saith he, *in criminalibus sufficit generalis malicia intentionis cum facto paris gradus. Regula 15. pag. 65, 66.*

The Child.

The Child maliciously killeth his Father or Mother, this is Petty treason (although the Father or Mother at the same time gave neither meat, drink, nor wages to such Child:) But it is Treason in the Child, in respect of the duty of nature violated. *Vide Ba. 53.* 21. E. 3. 17 Co. 7. 13. b Br. Treas. 6.

A Bastard killeth his Mother, this seemeth petty treason, for the Mother, is certainly known. Crompt. 21.

“ By the law of God, he that only smiteth, or curseth his Father, or his Mother, shall die the death, *Ex. 21. 15. & 17.*

The Son or Daughter in law, killeth the Father or Mother in law, with whom they dwell and do service, and have meat and drink, it is Petty treason, although such Child take no wages ; but the Indictment shall be by the name of Servant. Dalifons Rep. 2. M. 1.

A Clerk.

A Clerk, or any Ecclesiastical person, maliciously kills his Ordinary, or superior, to whom he oweth obedience, this is petty treason. 19 H. 6. 25 [E. 3. ca. 2. Br. Treas. 7. 47.

Note, that unto the Bishop of every Diocefs, the Clerks within their Diocefs do owe faith and obedience, which is called Canonical obedience. *Finch 137.*

Note further, that whatsoever act will prove Murder between strangers, the same will make petty treason from the Servant to his Master, from the Wife to her Husband, from the Child to the Father or Mother, and from the Clerk to his Prelate or Ordinary, *Mutatis mutandis.*

Other-

Otherwise it is between these persons, where it is not wilful Murder : as if the Servant should kill his Master upon a suddain falling out, without any malice precedent, or by misadventure, or *se defendendo*, these are not Petty Treason, neither shall the Indictment be Proditory, &c. And so of the Wife or Child.

Stamf. 11. Breaking of prison, whereby prisoners that were therein for Treason do escape, this is also petty Treason, 1 H. 6. 5. Br. 11. Break prison.

A Norman being Captain of an English Ship, wherein also were certain English-men, and they robbed upon the Sea ; this was adjudged Felony in the Norman, and Treason in the English-men, and they were drawn and hanged, 40 Aff. p. 25. Br. Coron. 119. & Treason 16. Pirat.

But at this day all Felonies, Robberies, Murders, and Pyracies, done upon the high sea, are to be tryed before the Lord Admiral in the Court of the Admiralty, and according to the Civil law. Or they may be attainted before Commissioners, by force of the Stat. of 28 H. 8. 15. and then they shall forfeit their Lands, and their blood shall be corrupted, Co. L. 319. See *hic cap. 92.*

Stamf. 1. Also it hath been adjudged petty Treason in some Books, and Felony in some other, for an Indictor (in case of Treason or Felony) to discover the Kings Council and their Fellows (*sc.* to discover to others, what person they have indicted ; or if they have indicted any, then to shew to others what they have done therein, and by whose means, &c.) But now that offence is taken only to be finable to the King. Indictor.

36.  
Fit. Cor.  
207. 272.  
Br. Cor.  
123.

The punishment of petty Treason is this ; The man so offending shall be drawn and hanged ; the woman shall be burned alive, in case as well for petty Treason, as of high Treason, 1 R. 3. 4. But in case of Felonies, the Judgment both of man and woman is to be hanged. Punishment.

Also no person or persons ( be they Lay, or within Holy Orders, &c. ) which shall be attainted, or found guilty of any manner of petty Treason, nor any accessory thereto before the Fact, shall be admitted to have the benefit of his or their Clergy. See the Stat. 12 H. 7. c. 7. 23 H. 8. c. 1. 28 H. 8. c. 1. 32 H. 8. c. 3. 1 E. 6. c. 12. & 4 & 5 Ph. and Ma. cap. 4.

1 R. 3. 4.  
Br. Treas. 8  
c. 1. 15. &  
30.  
Flo. 86.

The Forfeiture for petty Treason, is, the King shall have his goods, and for his Lands the King shall have *annum, diem, & vastum*, and the Escheat thereof shall be to every Lord, of his own proper fee, 25 Ed. 3. cap. 2. But for petty Treason, or Felony, if the Offendor hath but an Estate-tail in his land, he shall forfeit them but during his life, Stamf. 186, 187. And for petty Treason, if the Husband be attainted, the Wife shall be barred of her Dower, Co. L. 37. Forfeiture.

The Justices of Peace may inquire of petty Treason, as of Felony : and out of their Sessions, every Justice of Peace may deal with the Offenders therein, as in case of Felony, by Examination of the Offenders, by taking Information against them, and binding over the Informers to the General Gaol-delivery, and committing the Offenders to the Gaol.

## Of Felonies by the Common Law. CHAP. CIV.

**F**elony, by some this word is derived, *Quasi felleo animo factum. L. & Co. 4. 124. Ideo dicta est feloniam, quia fieri debet felleo animo* (with a mind as bitter as gall.) *Minsh. verbo felon*, saith it cometh of the French word *felon*, id est *atrox, crudelis: vel à velando, cum celari & occultari semper velit. Felonia est omne crimen capitale infra laesam majestatem.*

So in the Law at this day, under the word *Felony*, is included Petty Treason, Murder, Homicide, Chance-medly, *Se defendendo*, Burglary, Robbery, Theft, Rape, Burning of houses, petty Larceny, Rescous and Escape, &c. *Co. L. 391.*

Homicide.

Homicide most properly is, *hominis occisio ab homine facta*; for if a man be killed by a Beast (as a Horse, or a Dog) or by any other thing or mischance, although that be *hominis cadum* (of which two words, Homicide is derived) yet in such cases it is not aptly nor usually said, that Homicide is committed, but only a man is said to be slain. *Bracton 120.*

Others do thus define or describe it, Homicide, is the felonious killing of one man by another within the Realm, and living under the Kings protection. Lamb. 235

But to kill a man beyond the Seas, or to strike and give one a mortall wound beyond the Seas, or upon the Sea, whereupon he dyeth upon the Land (within this Realm) these Homicides are not punishable as Felony by the Common Law; for that they cannot be inquired of, nor tryed here; for in criminal cases, the rule is, *ubi quis delinquit, ibi punietur.* So *Co. 2. 93. 6. 47.* But in Treason it is otherwise. See hereof, *Paulo antea, c. 89. & 91.* And yet all appeals to be made of things done out of the Realm, shall be tried before the Constable and Marshall of England, by the Statute 1 *H. 4. cap. 14.* So that if any of the Kings Subjects shall be killed by another of the Kings Subjects in Scotland, or in any forraign Realm, the wife or heir of him which is so slain, may have an appeal thereof in England, before the Constable and Marshall, &c. *Stamf. 65. b. Vide Co. L. 74.*

Also to kill a man upon the Sea, although it be not triable by the Common Law, yet it is felony, and is inquirable and triable in the Admiral Court; for those of the Admiralty have Jurisdiction, where both the stroke and dying is upon the Sea; otherwise not. And therefore in 25 *Eliz.* it was adjudged in one *Lacy's Case*, That where the said *Lacy* had stricken *Peacock*, and given him a mortal wound upon the Sea, whereof *Peacock* dyed at *Scarborough* (in *Yorkshire*,) the said *Lacy* was discharged thereof, for that those of the County of *York* could not enquire of the death without enquiry of the stroke; and the stroke they could not enquire, for that it was not given within any part of the County. See *Co. 2. 93. & 5. 106, 107. & Stat. 15 R. 2. cap. 3. & 2 H. 5. c. 6.* But yet by the Statutes made Anno 27 *H. 8. c. 4. & 28 H. 8. c. 5.* all offences of Pyracy, Robbery, Murther, or other felony done or committed upon the Sea, (or in any other Haven, River, or Creek, where the Admiral pretends to have Jurisdiction) shall be enquired of, heard, tryed, and determined in such Shires and places within the

the

Hic cap. 91

But whether he that is slain, be an Alien, or a Denizen, an English-man or stranger, it maketh no difference (if he live within this Realm under the Kings protection.)

To kill a man that is attainted (by Verdict, or by Outlawry, or otherwise) of any murder, felony, or treason, is felony : for none may kill or put to death any of these, but the Officer of Justice, and by lawful warrant. See *Doct. and Stud. fol. 133. Co. L. 128.b.*

Also to kill a man that hath abjured the Realm, is felony. See *Co.* 7.9.6. and the *Doct. & Student*, f. 133.

*Homicide* is  
threefold: { *Voluntate; et* } Murder, *scilicet*, of a malicious purpose.  
                  { *est duplex.* } Man-slaughter, or Chance-medly, of a sudden.  
*Casu*, or Misadventure: this also Lawfull,  
                  is considerable after two sorts, } or  
                  *scil.* whether it happen in doing } Unlawfull.  
                  a thing }  
  
                  { Commanded, *sc.* in execution of Justice:  
*Necessitate*; this } Tolerated } For advancement of Justice.  
                  is sometimes } *Se defendendo.*  
                  { Prohibited. See *post tit. Homicide, cap. 98.*

“ *Lingua, tribus* } *Præcepto*  
“ *modis.* } *Consilio* } *de his vid. cap. 108.*  
“ } *Tuizione*

*Felo de se.*

For the hainouſneſs thereof, it is to be obſerved, That it is an offence againſt God, againſt the King, and againſt Nature. Alſo it is within the degree of, or of the quality of murder, ſc. pretended and reſolved of (in

his mind) to be done, before it be done : yea it is holden to be a greater offence then to kill another man, *Plo. 261. & in hoc casu Christiana sepultura interdicitur.*

And yet the Civil Law maketh a difference of such offenders, and of their punishment, according to the quality of their minds, whereby they were moved to kill themselves ; for if they kill themselves through grief or impatience of some infirmity, no punishment followeth such their fact (by the Civil Law) but they are left to the Tribunal of the Almighty Judge of the Quick and the Dead ; But if they kill themselves upon any other cause, their goods are confiscated, and their dead bodies (for the terrour of others) are drawn out of the house, &c. with ropes, by a horse, unto a place appointment for punishment, or shame, where the dead body is hanged upon a Gibbet ; and none may take down the body but by the authority of the Magistrate, &c. *Vide Fulbeck 90. & Dr. Cowell, 249.*

But by the Common Law, if a man kill himself (either with a meditated hatred against his own life, or out of distraction, or other humour) he is called *Felo de se* ; and he shall forfeit to the King all his goods and chattels real and personal, and his debts due to him by specialty (but no debts due to him without specialty, or upon simple contract, *Dyer 262. 16 E. 4. 7.*)

And their goods are usually granted and allowed by the King to the Bishop Almoner, and in such sort as *Deodands* are, *Ba. 3. V.*

But he shall not forfeit his Lands, neither shall his Bloud be corrupt. See *Fi. Cor. 301. Plo. 261. Fitz. Coron. 362. & 426.*

“ Yet if a man be guilty of another mans death, or of a manifest Theft, &c. and be taken, and for fear thereof killeth himself : here he shall forfeit his Lands, *ac heredem non habebit*, *Bract. lib. 3. cap. 13.*

If a man do give himself a deadly wound, and dyeth thereof within a year and a day after, all his goods, &c. which he had at the time of the blow given, or any time after, shall be forfeited to the King, *Plo. 262. ab.*

Yet the goods of *Felo de se*, be not forfeited till his death be presented and found of Record, neither can these goods be claimed by prescription, (by Lords of Liberties, &c.) but by the King's grant. *Co. 5. 110. 21 H. 7. 33.*

And although he cannot be attainted of his own death, for that he is dead before that there is any time to attain him, yet the finding of his death by the Coroner (or other person thereto authorized) is by Law equivalent to an Attainder in deed, as to his goods, *Plo. 258. b.*

If *A.* do strike *B.* to the ground, and then draweth his knife to kill *B.* and *B.* lying upon the ground draweth his knife to defend himself, and *A.* is so hasty to kill *B.* that he falleth upon *B.* his knife, and so *A.* is slain ; here *A.* in a manner is *Felo de se*, and yet shall not *A.* forfeit his goods in this case, *Br. Co. 12. See 44 Ass. p. 17. Br. Cor. 12. & 14. that A. was adjudged not to be Felo de se in this case.* *44 E. 3. 44 Fit. Cor. 64.*

If *A.* of malice prepered dischargeth a Pistol at *B.* and misseth him, and throws down his pistol and flyeth, and *B.* pursueth him to kill him, whereupon *A.* turning, falleth down, his dagger drawn, and *B.* through hast falleth upon the dagger, here *B.* is *Felo de se*, and *A.* shall go quit, *44 E. 3. Sir Fr. Bacon, 4. 5.*

If

If a Caliver be discharged with a murtherous intent at J. S. and the piece breaks, and strikes into the eye of him that dischargeth it, and killeth him, he is *Felo de se*; and yet his intention was not to hurt himself: for *Felonia de se*, and Murther, are *Crimina paris gradus*. See *Ibid.* p. 65.

And in such case he shall forfeit his Lands, *quia convincitur*, *Brañ. lib. 13. cap. 31.*

Stamf. 19.

If one that wanteth discretion, killeth himself, (as an Infant, or a man *non compos mentis*) he shall not forfeit his goods, &c. *Brañ. ibid.*

If a Lunatick person killeth himself, he shall forfeit his goods, (*Fitz. Coron. 324.*) but this must be understood when he killeth himself out of his lunacy: otherwise it is if he killeth himself during his lunacy, for then he shall neither forfeit his goods, nor be counted *Felo de se*.

Co. 4. 129.

If one being of *Non sana memoria*, or a Lunatick, giveth himself a mortal wound, and after he becometh of sound memory, and then dyeth of the same wound, in this case, although he dyeth by reason of his own proper stroke, yet for that the original cause was committed when he was *de non sana memoria*, he shall not be accounted *Felo de se*, neither shall he forfeit any thing, for that the death hath relation to the original act, the which was the stroke or wound given when he was *de non sana memoria*, *Co. 1. 99. b. & 4. 42. a. Fitz. Coron. 244. Pl. 260.*

Co. 5. 110.

The Inquiry of such a felony belongeth to the Coroner: And yet if *Felo de se*, be cast into the Sea, or secretly buried, that the Coroner cannot have the sight of his body, and so cannot enquire thereof; then the Justices of Peace, or any other having authority to enquire of Felonies, may inquire thereof (for that is Felony:) and a presentment thereof found before them, intituleth the King in his goods.

## Murder. CHAP. CV.

OF old time every killing of one man by another, was called murder, (of the effect) because death ensued of it. Afterwards Murder was restrained to a secret killing onely; and therefore *Brañon* and *Britton* in their definition of Murder, calleth it *Occulta occisio nullo presente preter interfectorem & suos coadjutores, &c.* But since murder hath been, and is taken in a middle degree, neither so largely as it first was, nor so narrowly as Master *Brañon* and *Britton* speaketh of it. For Murder is now construed to be when one man upon malice prepenſed, (*ſc.* forethought) or precedent and with his will, doth kill another feloniously, *viz.* with a premeditate and malicious mind, whether it be openly or privily done, this is Felony of death, without any benefit of *Clergy*, 23 *H. 8. cap. 1. & 1 Ed. 6. cap. 12.* See *Exod. 21. 14.* he shall be taken from the Altar and put to death.

Stamf. 18.  
Plow. 261.Exod. 21.  
13.  
Numb. 35.  
20.  
Deut. 19.  
11.

This malice prepenſed or precedent, may be either apparent (as where there was a precedent falling out, or where there is a lying in wait, or a time and a place appointed, &c.) or it may be less apparent or manifest, and yet shall be implied, presumed, and taken to be out of malice precedent, by the manner and circumstances thereof.

Exod. 21.  
13, &c.  
Ibid.

As

As where one killeth another without any provocation, the Law implieth, and adjudged it to have proceeded of malice prepenſed: therefore if one ſuddainly, and without any ſhew of quarrel or offence offered, ſhall draw his weapon, and therewith kill another. Cro. 9.67

Or if One ſhall be reading of ſome Book, or otherwiſe buſied, ſo as he ſaw not the Party that ſhall ſtab or ſtrike him (and he dieth thereof;) or ſhall be going over a ſtile, &c. and another ſhall kill him; ſuch Offenders ſhall ſuffer death, as in caſe of willful Murder. Cro. 23.37.

And accordingly hath the *Statute 1 Jac.* well provided, That if one ſhall ſtab, ſtrike, or thruſt another, that hath not then a weapon drawn, or hath not then firſt ſtriken the other; and if the Party ſo ſtabbed, ſtriken, or thruſt, &c. ſhall die thereof within ſix months after, although it cannot be proved that the ſame was done of malice forethought; yet the Offender being thereof lawfully convicted, ſhall ſuffer death as a willful Murtherer, without benefit of Clergy. 1 Jac. ca. 8.

To kill the Sheriff or any of his Officers, in their execution of the Kings Proceſſe, or in doing their Office, is murder in him that killeth the Officer. Co. 4.40.  
& 9.66, 58

But if he be not an Officer known, he muſt ſhew his Warrant, before he arreſt the Party, or upon the arreſt (if the other ſhall demand to ſee it) or elſe it ſeemeth the arreſt is tortious; and where the arreſt is tortious (be it by an Officer known, or by another) there the killing of him that maketh ſuch an unlawfull arreſt, is no Murder, but Manſlaughter only, as it ſeemeth. Again, where an Officer hath the Kings Writ, or other lawful Warrant, though it be erroneous, yet in the executing thereof, if he be ſlain, this is Murder, Co. 9.69.  
Co. 9.65.  
Co. 9.68.

For the Officer is not to diſpute of the validity of his Warrant, or the authority of the Court (or of the Juſtice of Peace) that ſent the Warrant; but his Office is to execute the Writ or Warrant.

To kill any Magiſtrate, or miniſter of Juſtice, in the execution of their Office, or in keeping the Peace (according to the duty of their Office) is Murder in ſuch Offenders, for their contempt and diſobedience to the King and the Law; and the Law implieth it to be of malice prepenſed. And therefore if the Sheriff, Juſtice of Peace, high-Conſtable, petty-Conſtable, Watchmen, or any other miniſter of the King, or any that come in their aid, be killed in doing their Office, this is Murder. Co. 4.40.  
& 9.68.  
22 Eliz.  
Crompt. 25.

If the Sheriff, or Juſtice of Peace, come to ſuppreſs Riotors, and one of the Sheriff or Juſtices Company is ſlain by one of the Riotors; this is murder in all the Riotors that be there preſent.

A Conſtable, with others to aid him, do come to part an affray, if the Conſtable, or any of his Company ſhall be ſlain in doing this his Office, it is murder in him that killed him, although the affray were on the ſuddain, and though it were in the night: for when the Conſtable commands them in the Kings name to keep the peace, although they cannot know him to be a Conſtable, yet at their peril they ought to obey him upon ſuch Commandment. Co. 4.42.  
Co. 9.66.

And in theſe caſes, the killing of ſuch an Officer, or any of their Company, is in Law intended to be by malice prepenſed, ſc. that the Murderer had Co. 9.67.  
68.



had a malicious resolution in him, to oppose himself against the Law, the Officers thereof, and the Justices of the Realm.

Also a Thief that offereth to rob a true man, killing the true man in resisting him, it is murder of malice prepensed, *Plow. 474. Co. 9. 67.*

2 E. 3. 18. A man carried his Father (being sick, and against his will) in a frosty and cold time, from one Town to another, and the father died thereof; this was adjudged murder in the son.

2 Eliz. Cromp 24. A Harlot delivered of a Child, hid it in an Orchard (it being alive) and covered it with leaves, and a Kite struck at it, and the Child died thereof, and the Mother was arraigned, and executed for Murder.

Fit. Co. 311. Stamf. 17. Exod. 21. 29. A man hath a Beast that is accustomed to do hurt, and the Owner knowing thereof, doth not tie him, or otherwise keep him fast shut up, but suffereth him to go at liberty, and after the Beast killeth a man; this is Felony in the Owner of the Beast: for by such sufferance, the Owner seemeth to have a will to kill, *Exod. 21. 29.* See *hic* chap. 57.

So if a man hath a Horse of that property, that he will strike such as come near him, and his Master knowing this, rideth upon the same Horse amongst a multitude of People, &c. and the Horse killeth a man; this is Felony in the Master, *Leff. M. Cooke.*

And in these four last cases, *voluntas reputabitur pro facto*, death ensuing thereupon: For it may plainly appear, that they had a will and meaning of that harm which followed, which will in them, doth amount to malice, and so makes their offences to be murder, and in such cases where death ensueth, *Nihil interest, utrum quis occidat, an causam mortis præbeat.*

“ The same Law seems of an Officer, who being appointed and authorized to whip, or with an hot Iron to burn, or brand, or otherwise to punish an Offender, shall do it with such rigour, or in such extream manner, as that the Offender by reason and means thereof dyeth.

If a man perswades another to kill himself, and be present when he doth it, he is a Murtherer, *Ba. 65.*

The Book called *Speculum Justiciar.* speaking of *Homicida voluntate*, saith, it may be, either by striking, imprisonment, famine, or other pain.

1. By striking or stabbing, &c. as you may see by that already said.

2. By imprisonment; as if a man by imprisonment shall detain the Body of another (under colour of Law, or right) unto death, or so as he dyeth thereby. See *hic* cap. 107. *verbo, Gaoler.*

3. By famine; as if a man shall cast, or leave an Infant, or other person which cannot go, in a desert, or such other place, where no person usually resorts, by reason whereof such Infant, or other impotent person, dyeth for want of succour, &c.

4. By pain; as if a man by torture (or *Dunes*) causeth another to accuse himself mortally, where in truth he did not the thing, but to be rid of the pain (rather desiring death) he confesseth himself guilty of the Felony, when he is not guilty.

P. Cor. 163. Stamf. 16. If a man dyeth in the hand of a Physician or Chirurgion authorized to practise, this is no felony in the Physician or Chirurgion. And yet if a Physician bearing malice to one who is under his Cure, shall give him a Medicine contrary

contrary to his Disease, whereof the Patient dieth ; this is Felony in the Physician, *Lectur. M. Cooke.*

If a Chirurgion authoris'd, do through negligence in his Cure, cause the Party to die, the Chirurgion shall not be brought in question of his life ; and yet if he do only hurt the wound, whereby the Cure is cast back, and death ensues not, he is subject to an action upon the Case for his misfeasance, *Sir Fr. Ba. 37.*

And if One which is no Physician or Chirurgion (or which is not allowed to use or practise such faculty) will take a Cure upon him, and his Patient dyeth under his hand ; this hath been holden to be Felony : but *quare* of this last case, for it cannot be discerned whether the Patients death cometh by any willful default, in the Party taking such Cure upon him, or by the Patients infirmity : again, there appeareth in them no will to do harm, but rather to do good ; and then the *Stat. of 34 H. 8. 8.* leaveth so great a liberty of such practice to unskilful persons, that it will be hard now to make it Felony. But if a Smith, or other person (having skill only in dressing or curing the diseases of Horses, or other Cattel) shall take upon him the cutting or letting Bloud, or such like Cure of a man, who dyeth thereof, this seemeth to be Felony ; for the rule is, *Quod quisque norit, in hoc se exerceat.* *34 E. 2. 33. Lamb. 236.*

Two playing at Tables, fall out in their Game, and the one killeth the other with a Dagger suddenly ; this was holden Murder, in one *Emeryes Case*, before *Bromley*, at the Assises in *Cheshire*, about 27 *El.* as Master *Crompton* reporteth. *Crompt. 23.*

The Husband, upon words between him and his Wife, suddenly stroke his Wife with a pestel, whereon she died, and it was adjudged Murder at the Assises at *Strafford*, before *Walmesly*, 43 *Eliz.* *Crompt. 25*

*Quare*, the reason why it should be Murder in these two last cases, considering there appeareth no precedent malice, and that it was done upon the sudden, and upon provocation.

*A.* hath wounded *B.* in Fight, and after they meet suddenly, and fight again, and *B.* killeth *A.* ; this seemeth Murder, and malice shall be intended in *B.* upon the former hurt ; but now if *A.* had killed *B.*, this seemeth but Man-slaughter in *A.*, for his former malice shall be thought to be appeased by the hurt he first did to *B.* *Lamb. 147.*

Two were in Suit, and they meet suddenly, and quarrel about the Suit, and the Defendant killeth the Plaintiff ; this seemeth Murder. *Tamen quare.*

If *A.* of malice premeditated, discharge a Pistol at *B.*, and misseth him, and throws down his Pistol, and flies ; and *B.* pursueth him to kill him, whereupon *A.* turneth, and killeth *B.* with a Dagger : if the Law should consider the last impulsive cause, it should say that it was in his own defence : But the Law is otherwise, for it is but a pursuance and execution of the first murderous intent : and the first motive will be principally regarded, and not the last impulsion. Otherwise if there had been a full interruption, *Sir Fr. Bacon 4.*

Poysoning.

Also willfull killing of another by Poyson, was, and is, murder by the Common Law. See *Stamf. 21. & Br. Indictment 41.*

And

And the Offenders therein, their Aiders, Abettors, Procurers, and Counsellors shall suffer death, and forfeit in every behalf, as in other cases of willful Murder of malice prepensed, 1 E. 6. cap. 12. *Speculum Justic.* describeth these Offenders thus, *Qui donec aliter a manger, ou autrement chose envenom.*

Plo. 474. The Husband gave a poysoned Apple to his Wife, to the intent to kill her, and she not knowing of it, to be poysoned, gave it to her Child, who died thereof; this is Murder in the Husband, and yet he loved that Child dearly: and so had it been, if a stranger of his own accord had after eaten thereof, and died thereof: for the putting of poyson into the Apple, &c. upon an evil and felonious intent, maketh it Murder, whosoever be killed thereby.

Co. 9. 81. A. bringeth Drink that was poysoned (knowing of it) to B, and advised B. to drink of it, telling him, it would do him much good; by reason of which perswasion, B. drunk of it (in the absence of A.) and died thereof; this was adjudged Murder in A. although he were not present at the time of the taking of the poyson. If one giveth corrupt Victual to another, to the intent to poyson him, and he dieth thereof within the year and a day; this is Murder. One layeth corruption at another mans door, to the intent to poyson him with the savour thereof, and the other party taketh infection by the savour thereof, and dieth; this is Felony. *Leſ. M. Cooke.*

Cromp. 20 So if one giveth to another Spurge Comfets, or other such thing in sport, and not in malice, and he that so taketh them dieth thereof; this is Felony. *Ibid.*

Co. 9. 81. But if a man shall prepare Rats-bane, &c. to kill Rats, &c. and shall lay this in certain places to that purpose, without any evil intent, (*sc.* without any intent to kill any reasonable Creature) and another man finds and eats this, and dieth thereof, this is no Felony, Plo. 474.

Plo. 100. The Master upon malice precedent, goeth to kill another, and taketh his Servants with him, (but they knowing nothing of their Masters intent) and the Master and his Servants do meet the other, and the Master doth assault him, and the Servants taking their Masters parr, do also assault him and kill him; this is Murder in the Master, and but Man-slaughter in the Servants.

Plo. 474. 1. Note, that when a man hath malice to one, and intending and endeavouring to kill him, he killeth another man; this is Murder whomsoever he killeth, *vid. Plo. 101. Dyer 128. Fitz. Cro. 262. Stamf. 16.* For his intent was to Murder. *Rules in Murder.*

Lamb. 238 F. Coro. 262. Dyer 128. Nay, if two fight upon malice prepensed, and in their fight a stranger (that would part them) cometh between them, and is killed; this is murder in them both, ~~if~~ it may not be proved which of them did kill him.

Plo. 474. A man upon malice shooteth at one, or lieth in wait to kill one, and killeth another unwittingly, in both these cases it is murder.

2. Note also, that in all cases where a man cometh or goeth about to do any thing unlawful, as to kill, beat, or disseise another, or to do any other Trespas; and in doing this, he killeth any man, this is Murder. See *Cromp. 24. b.*

One stealing Peares in another mans Orchard, and the Owner came and rebuketh him, and the other killed him, this was adjudged Murder, Crompt. 24 Lamb. 237.

4 Maria.

Also where a man commandeth another to beat *A*, and he beateth him, Plo. 435. F. Cor. 314 so as *A*. dieth thereof; this is murder in him that gave the Commandment to beat him, for that he commanded him to do an unlawful act, by reason whereof the killing of a man ensued.

For (as that late reverend and learned Judge Sir John Dodderidge, pag. 138. sheweth) There is an efficient cause Casual; as if a man intend to do any unlawful act; and in doing thereof, another hurt ensueth, not intended, but by chance, clean beyond all expectation, or desire, yet shall he be said the author of that act not intended, (and so happening by chance) that did intend the first act.

3. Note also; that if divers persons come in one Company (and as Confederates in the fact, *Stamf. 40.*) to do any unlawful thing, as to kill, rob, or beat a man, or to commit any Riot, or Affray, or to do any other Treipasse, and one of them in doing thereof, killeth a man; this shall be adjudged murder in them all that are present of that Party abetting him, and consenting to the act, or ready to aid him, although they did but look on, Br. Cor. 172. F. Cor. 350. Co. II. 5. &c. See *Stamf. 40. Fitz. Indictment 22. Plo. 98.*

Nay, if they be not present, yet if they be in the same house, or upon the same ground, it is murder in them all. See the Lord Dacres Case, *Crompt. 25.*

“ Mr. *Bracton*, fol. 121. saith further, *Si plures rixati fuerint inter se in aliquo conflictu & aliquis sit interfectus, nec appareat ex quo, nec ex cujus vulnere, omnes dici possint homicidæ, &c. quare*, if their meeting were upon a lawful occasion, and if they suddenly fall out, and no former malice may appear.

4. Note also, that all that are present, and aiding, abetting, or comforting to another to do murder, are principal Murderers, although they shall give never a stroke. See more, 4 *H. 7. 18. 13 H. 7. 10. Fitz. Coron. 309. Co. 9. 67. 112. & 11. 5.* Plo. 100. See here.

As if *A.* and *B.* fall out, and appoint the Field, and they meet accordingly, each of them bringing Company with them, *A.* killeth *B.*; this is murder in all those that came with *A.* as his Second, or abetting, comforting, or ready to assist or aid him, for that the presence of these other that came with *A.* is a terror to *B.* and an encouragement to *A.* *Vide ibid. & Plo. 98.*

And yet if *B.* cometh in the Company of *C.*, who of his malice premeditated, doth go to kill *D.*, and then *B.* seeth them fighting together, he taketh part with *C.* suddenly (not having any former malice to *D.*) and striketh at *D.* with the other, and *D.* is thus slain amongst them; this is but Manslaughter in *B.* for that he had no malice precedent, *Plo. 100.* See the case of the Master and his Servants here before. But note, that the cause of the coming of *B.* being unknown to *D.* his presence might, and in likelihood did strike terror in *D.*, and so the presence of the Servants did or might strike terror in the Party murdered, and gave encouragement to the Master.

5. Note

5. Note also, That in case of murder, it is not material who giveth the first blow; for if he that is slain gave the first blow, yet if there were malice prepenſed in the other, it is murder in him that killeth him.

6. Also in case of poyſoning, the party poyſoned muſt die thereof, within a year and a day, after the poyſon received.

Cor. 303. Also if a man do beat or hurt another, whereof he dieth, to make it murder or other homicide, the party hurt muſt die within a year and a day next after the hurt done, or ſtroke given. But to have an appeal, it ſhall have relation to the death, and not to the ſtroke, ſo as the appeal muſt be brought within the year after the death, and not after the ſtroke.

F. Co. 146. 263. 21. 22, 23. It was death by the Law of God. Lamb. 229 Br. Cor. 68 91. 7. Note also; In murder, or other homicide, the party killed muſt be in eſſe, ſc. in rerum natura, and born into the World) For if a man hurteth a woman with child, whereby he killeth the Infant in its mothers womb, by our Law (at this day) this is no Felony, neither ſhall he forfeit any thing for ſuch offence: and whether (upon a blow or hurt given to a woman with child) the child die within her body, or ſhortly after her delivery, it maketh no difference: yet in ancient time it was holden to be Felony; and M. Bracton took it to be homicide, if the blow were given poſtquam puerperium animatum fuerit: But if the Mother of the child die within a year and a day after ſuch hurt done to her, and upon that hurt, this is Felony.

So if the Adulterer, &c. counſelleth the woman to murder the child when it ſhall be born, and ſhe doth accordingly, the adulterer is acceſſary to this Felony, by this his counſell given before the birth, Co. 7.

9.

Also if a man killeth a man unknown, yet it is Felony, Abr. d' Aff. 76.

8. Compulſion alſo is a good excuſe in our Law in ſome caſes, as if any mans Arms be drawn by compulſion, and the weapon in his hand by means thereof doth kill another, this is not Felony in him whoſe arms were ſo drawn, &c. Pl. 19. a.

9. Involuntary ignorance excuſeth alſo with us: ſo as if an Infant not having intelligence, or a man of non ſana memoria, ſhall kill another, this is no Felony in them. See hereof, hic poſtea.

10. Intent to do a Felony, or Murder, is not puniſhable by the Common Law of this Realm, untill the act be done: But in Treason, and in ſome other particular caſes by Statute, the intent may be puniſhed. Doct. and Stud. 132. hic.

In caſes of Murder or Poyſoning, the offenders ſhall not have the benefit of Clergy, 1 E. 6. c. 12. 23 H. 8. 1. & 26 H. 8. 12.

Note alſo, That by the Law of God no recompence was to be taken for the life of a murtherer, who purpoſely hath committed murther, but he ſhall be put to death: for murder defileth the Land; and the Land cannot be cleaſed of the blood that is ſhed therein (by wilful murder) but by the blood of him that ſhed it, Numb. 35. 31, 33.

13 R. 2. c. 1. P. Pardon 3 Plow. 502. And by divers old Statutes, no Charter of Pardon ought to be granted to any perſon in caſe of Murder or other Homicide, ſave onely where the King may do it by his Oath, that is to ſay, where a man killeth another in his own defence, or by miſfortune. See P. Pardon 1. Also the

Stat. of 6 Edw. 1. cap. 9. 2 Edw. 3. cap. 2. 4 Ed. 3. cap. 13. & 14 Ed. 3. cap. 15.

And by our Law at this day, a Pardon of all Felonies will not discharge murder, except the Pardon be with a *Non obstante*, &c. or that Murder be expressly mentioned in the Pardon. See Co. 6. 13. b. See the Stat. 2. 13 R. 2. c.

Neither will a Pardon of all Felonies discharge a man that is attainted of Felony, except also the attainder and the execution be pardoned. See 9 E. 4. 29. Co. 6. 13. b.

“ And this Pardon is twofold ; one, *ex gratia Regis*, which the King, in some special regard of the person, or other circumstance, sheweth and affordeth upon his Prerogative : The other by course of Law, which the Law in equity affordeth for lesser offences, as of Homicide by misadventure, or *Se defendendo*.

Note, That he which hath a Pardon for Felony, if he hath not found Sureties for his good abearing, or if afterwards during his life he shall break the peace ; such pardon shall be holden for none, but that he may be hanged notwithstanding his Pardon ; for by the Pardon, the offence *tegitur, non tollitur*. See the Stat. 10 E. 3. c. 3. P. Pardon 5. & 3 H. 7. 7. 3 H. 7. fo. 7. where one was executed upon this Statute, for making an affray after his Pardon. Br. Coron. 134.

None have authority to pardon any Treason, Murder, or other Felony, or any accessory to the same, save only the King ; it being one of his Royal Prerogatives. 27 H. 8. 24. P. Prerog. 17.

### Manslaughter. CHAP. CVI.

**M**anslaughter in right signification thereof implieth all manner of Homicide, and extends in the generall, as well to murder as to the rest: Nevertheless, for that in common speech it is restrained to Manslaughter by Chance-medly alone, in that sence I will here write of it.

Manslaughter, otherwise called Chance-medly, is the killing of a man Feloniously, *sc.* with a mans will, upon a sudden or present heat, and fury of mind, yet without any malice forethought ; as when two doe quarrel and fight together upon the sudden and by meer chance, without any malice precedent, and one of them doth kill the other, this also is Felony of death. Pl. 101. Br. Coron. 22.

And yet in case of Manslaughter (not being within the Stat. of 1 Jac.) the offender shall have the benefit of Clergy for the first time, and by the law of God there was a City of refuge appointed for such to flie unto, Exod. 21. 13. Deut. 4. 42. & 19. 4. Numb. 35. 11. 22. For in such cases of chance (as we term it) *sc.* where the offender hath not laid wait, nor hated in time past, the same Scripture saith, that God offered the party so slain into the hands of such Manslayer. Exod. 21. 13.

Two fall out upon the sudden, and fight, and the one breaketh his weapon, and a stranger standing by (yet being none of their company) lendeth him Cromp. 16

him a weapon, and therewith he killeth the other ; this is Manſlaughter as well in him that killed the other, as in the ſtranger, who lent him his weapon.

*A.* and *B.* fall out upon a ſudden, and fight, and *A.* is ſo fierce, that he runneth upon the others weapon, and is ſlain, yet this ſeemeth Manſlaughter in *B.* for he ſhould have fled to ſome wall or ſtraight, &c. *Quere.*

P.R. 122 b  
Stamf. 16. a

And if *B.* had fled to a wall; &c. and *A.* purſueth him, and *B.* perceiving that *A.* would aſſault him, holdeth his weapon between them, and *A.* runneth upon the weapon, and is ſlain, this is Homicide in his own defence, and for which *B.* ſhall forfeit only his goods : but otherwiſe it had been if *B.* had fallen, and lying upon the ground had drawn his knife or dagger, and *H.* falleth thereon, and ſo is ſlain ; for then *B.* could not flee, nor make any other defence for his ſafety, and therefore here *B.* ſhall not forfeit his goods, nor be culpable of his death, but be diſcharged : for *A.* in a manner killed himſelf. See hereof, *poſtea*, & *cap. 92.*

Two combat together upon the ſudden, and part, and preſently after meet and fight again; and the one killeth the other ; or the one preſently fetcheth a Weapon, and cometh and killeth the other ; theſe ſeem but Manſlaughter, for that it is done all in one continuing fury, which was at the firſt without malice, and could not in ſo ſhort time be appeaſed or aſſwaged, *Crompt. 23. b. 24. a. 26. a. l.*

Lamb. 240

So if two have born malice the one to the other, and be reconciled, and after meeting again, they fall out upon new occaſion, and by agreement immediatly they go into the field to fight, and the one killeth the other, this ſeemeth but Manſlaughter, (*cauſa qua ſupra*) unleſs the reſpite or diſtance of time had been ſuch, that by reaſonable conjecture their heart might be aſſwaged.

“ And yet by good Opinions it is lately holden, That in both theſe laſt caſes and the like, though it be in a continuing fury, yet if it be wilfully done, it is wilful Murder, for which the offender ſhall ſuffer death.

See more of *Manſlaughter* before in *Murder*, and after in *Miſadventure*.

*what perſons are chargeable with Homicide, and what not.* CHAP. CVII.

Fitz. N B.  
202.  
21 H. 7. 33.  
Plo. 19.  
Co. 4. 124.

**I**F one that is *Non compos mentis*, or an ideot, kill a man, this is no Felony ; for they have not knowledg of good and evil, nor can have a Felonious intent, nor a will or mind to do harm : And no Felony or Murder can be committed without a felonious intent and purpoſe ; for it is called *Felonia, quia fieri debet felleo animo*, *Co. 4. 247.*

*Non compos mentis.*

And again, *actus non facit reum, niſi mens ſit rea* ; and a mad-man is *Amens, id eſt, ſine mente*, without his mind or diſcretion, and is only, and enough puniſhed by his madneſs, *Co. L. 247.*

So it is, if a Lunatick perſon killeth another during his lunacy, it is no Felony ; (*Plo. 260.*) for all acts done by him in his lunacy, are as the acts of an Ideot, *Co. 4. 125.*

*Uncore tiels perſens ſerra puny in Treſpaſs, pur hurt fait al corps d'auter.*

Bb 2

If

If another man shall upon malice procure a mad-man to kill another, though the mad-man shall be excused; yet the inciter or procurer shall be punished as a principal. *Ba. 57. Vide hic cap. 108.*

Now there be three sorts of persons accounted *Non compos mentis*, to this purpose, and the like.

1. A fool natural, who is so (*à nativitate*) from his birth; and in such a one there is no hope of recovery.

2. He who was once of good and sound memory, and after (by sickness, *Co. 124.* hurt, or other accident, or visitation of God) loseth his memory.

3. A Lunatick, *qui gaudet lucidis intervallis*, and sometimes is of good understanding and memory, and sometimes is *non compos mentis*.

Infant.

An Infant of eight years of age, or above, may commit Homicide, and shall be hanged for it, *viz.* if it may appear (by hiding of the person slain, by excusing it, or by any other act) that he had knowledg of good and evil; and of the peril and danger of that offence. See *3 H. 7. 1. & 12. Stamf. 27. Fitz. Coron. 118. 129. & Br. Coron. 133, 136.*

And yet Sir *Edw. Coke* upon *Littleton*, fol. 247. saith, That it is of an Infant, untill he be of the age of 14 years (which in Law is accounted the age of discretion) as it is with a man *Non compos mentis*; and that in criminal causes (as Felony, &c.) his act and wrong shall not be imputed to him, for that *Actus non facit reum, nisi mens sit rea*, &c. Sir *Fr. Bacon* 38. accordeth.

But an Infant of such tender years, as that he hath no discretion or intelligence, if he kill a man, that is not felony in him, *3 H. 7. 1. b.*

If one that is dumb killeth a man, it is Felony: yet *quare* how he shall be arraigned. *Plow. 19.*

A man born deaf and dumb, killeth another, that is no Felony; for he cannot know whether he did evil or no; neither can he have a felonious intent, &c. See hereof, *tit. Surety for the Peace, antea, c. 68.* Otherwise if he were not so born, but becometh so afterwards. See *Br. Coron. 101. & 217.* That a man which can neither hear nor speak, may commit Felony, and shall be imprisoned, &c. *F. Coro. 193. Stamf. 16.*

Yet note, in these former cases of Homicide, committed by persons being *Non compos mentis*, or wanting discretion, such things happen by an involuntary ignorance, and therefore the Law accounteth such act of theirs to be no Felony.

But if a man that is drunk, killeth another, that is Felony of death; for it is a voluntary ignorance in him, in as much as such ignorance cometh to him by his own act and folly. Sir *Edw. Coke* L. 247. calleth a drunkard, *voluntarius Dæmon*, and saith, That such a one hath no priviledg thereby, but what hurt or ill soever he doth, his drunkenness doth aggravate it. *Plow. 9. Co. 4. 125.*

### Misadventure, or Case. CHAP. CVII.

**B**y the Statute of *Marl. cap. 25.* killing a man by misfortune or misadventure only, shall not be adjudged murder.

Misad-



Misadventure, in a general signification, is where is a man killed partly by negligence, and partly by chance, and against the mind of the killer; and when the killers ignorance or negligence is joyned with the chance: Or Homicide by misadventure or misfortune more legally, is when any person doing of a lawful thing, without any evil intent, hapneth to kill a man casually; by the Law of God there was a City of Refuge appointed for such person to fly unto, *Numb.* 35. 15. & 22. *Iosh.* 20. 3. for such an act happening in such sort, seemeth to be the work of God himself: See *Prov.* 16. 33. & *Exod.* 21. 13. And by our Law now, this is no Felony of death, neither shall there be any Judgment of death given upon him; but he shall have his Pardon of course, for his life and his Lands; yet he shall forfeit his Goods, in regard that a Subject is killed by his means. See *Stamf.* 16. a. b. *Fitz.* *Coron.* 69. 302. & 354. *Br. Forf.* 9. & *Co.* 5. 91. b.

See *Exod.*  
21. 20, 21.  
*Stamf.* 12.  
c.

As if a School-master in reasonable manner bearing his Scholar, for correction only, or a man correcting his Child, or Servant, in reasonable manner; and the Scholar, Child, or Servant happen to die thereof, this is Homicide by misadventure, *Cro.* 136. *Bract.* 121.

So if a man shooting at Butts, pricks, or other lawful Mark, and by the shaking of his hand, or otherwise against his will, he killeth one that standeth or passeth by, 21 *Hen.* 7. 29. *Rede.* 6 Ed. 4. 7. *Coron.* 59. & 148.

So if a Carpenter, Mason, or other person doth throw, or let fall a stone, Tyle, or piece of Timber from an House, or Wood, or other thing from a Cart, &c. (and giveth warning thereof) and another is killed thereby against his will, 21 *H.* 7. *Br. Coron.* 59. *Bract.* 121.

6 Ed. 4. 7.  
*F. Cor.* 398  
*Plo.* 19.

So if a Labourer that is felling, or cropping a Tree, and the same, or part thereof, falleth and killeth a man.

So if the head of his Hatchet, or other Tool falleth from him, and hapneth to kill one standing by, *Deut.* 19. 5, 6. & 10. accordeth, *sc.* that he is not worthy of death, but innocent.

11 *H.* 7. 23.  
See *Br.*  
*Cor.* 225.  
contra.

So if a man be (in due and convenient time) doing any other lawful thing, that may breed danger to such as pass by, and shall give warning thereof, so that such as passe by may hear and flie the peril, and yet another passing that way shall be killed therewith.

And so if men shall run at Tilt, Just, or fight at Barriers together by the Kings Commandment, and one of them doth kill another, in these former cases, and the like, it is misadventure, and no Felony of death.

*Co.* 5. 61.

And yet in such cases of misadventure, as also where one killeth another *se defendendo*, by the Common Law, these offences were Felony of death, and the offender should have dyed for the same; but now by the Stat. such offenders are to have pardon for their Life and Lands, yet their Goods remain forfeit as before (at the Common Law.) See the Stat. 6 *E.* 1. c. 9. & 2 *E.* 3. c. 2. 21 *E.* 3. fol. 17. *Br. Co.* 40. & *for.* 9, 13.

\* *Fitz.* 246.  
& 248. b.  
*Br. Cor.* 1.  
See Stat.  
6 *E.* 1. 9.  
4 *H.* 7. f. 22  
*Regif.* 309

\* Also in these cases of misadventure, and in the former cases of Homicide committed by Infants, and other persons, being *Non compos mentis*, as also where one killeth another in defence of his person; they shall

shall be discharged in this manner, *sc.* if they desire to purchase their pardon, they must upon their Triall plead *Not Guilty* ( and shall give in Evidence the special matter ) and then this speciall matter being found by Verdict, they shall be bailed, and then they must sue forth a *Certiorari*, to have this Record certified to the Lord Chancellor of *England*, who thereupon shall make them a Charter or Pardon of course under the Great Seal, without speaking of suing to the King for it. See *Stamf.* 15.

*Stamf.* 162. But if a man be doing of an unlawful act, though without any evil intent, and he hapneth by chance to kill a man, this is Felony, *viz.* Man-slaughter at the least, if not Murder, in regard the thing he was doing, was unlawful, *Finch*, fol. 75. *unlawful act.*

*Stamf.* 120. As shooting of Arrows, or casting of stones into an High-way, or other place, whither men do usually resort.

11 H. 7. So of fighting at Barriers, or running at Tilt or Justs, without the Kings  
Br. Cor. Commandement, whereby a man is slain; and although it were by the  
229. Kings Commandement, yet it was holden Felony by the Justices, *tempore*  
*H.* 8.

11 H. 7. 25. Playing at Hand-Sword, Bucklers, Foot-ball, Wrestling, and the like,  
Cromp. 26. whereby one of them receiveth a hurt, and dieth thereof within a year and  
& 29. a. a day; in these cases, some are of opinion, that this is Felony of death:  
Cor. 118. some others are of opinion, that this is no Felony of death, but that they  
236. shall have their pardon of course, as for misadventure, for that such their  
play was by consent; and again, there was no former intent to do  
P. R. 12. hurt, or any former malice, but done onely for Disport, and triall of  
Man-hood.

Fitz. Cor. A Man casting a stone at a Bird, or Beast, and another man passing by, is  
304. & 354 slain therewith, *quare*, whether this be Man-slaughter, or but misadventure.  
See Numb. The opinion of *Fineux* Chief Justice in 11 H. 7. fol. 23. is, that if  
35. 13. a man cast a stone over a House, and killeth a man, this is no Felony, but  
Br. Cro. misadventure: But Mr. *Brook* abridging this case, saith, it seemeth to  
125. be no Law, but where the casting of a stone is lawful, as where a Mason  
Cor. 128. is untyling of a House, &c. but to cast it for pleasure, and not in lawfull  
136. labour, seemeth to be Felony; and so was the opinion of Mr. *Bracton*,  
*lib.* 3. fol. 120, and 121. and Mr. *Stamford*, especially if the casting of  
*Stamf.* 122. the stone be in such place where men do use to pass by. Yet Mr. *Bracton*,  
16. c. *lib.* 3. c. 17. “ *De homicidio per infortunium & casualiter*, giveth these  
“ Rules, *Crimen non contrahitur nisi voluntas nocendi intercedat, & voluntas*  
“ *& propositum distinguunt maleficium, secundum quod dici poterit de infante*  
“ *& furioso, cum alterum innocentia consilij tueatur, & alterum facti imbecili-*  
“ *tas excuset.* Again, *In maleficiis spectatur voluntas non exitus, & nihil in-*  
“ *terfit, occidat quis, an causam mortis praebeat.*

## Casual Death. CHAP. CVIII.

**A**Lso a man may be slain by other casualty, then by hands or means of another man; as by the fall of a House, Pit, or Tree, &c. upon him; or be killed by a Bull, Bear, or other Beast, or by a Horse, or Cart, &c. or be killed by some fall, which he himself taketh.

And in these and the like cases, observe these Rules.

1. First, if a man be slain in any such manner, yet if it be by the means or procurement, or willful default of another man, this shall be Felony in the Party procuring or causing it.

2. The thing which is the cause of such casual death, shall be forfeit to the King, prayd, and taken for a *Deodand*, and the price of the thing shall be distributed in Alms to the Poor, by the Kings Almner, for *Deodand, est quasi Deodandum, id est, in Eleemosinas erogandum*. But the Almner hath no interest, as it seemeth, in such Goods, but hath only the disposition of the Kings Alms, *durante beneplacito*, so that the King may grant them to any other. See *Co. 1. 50. Dyer 77.*

The Office and duty of this Almner. See *Co. 1. 94.*

*Pl. 260.* 3. The forfeiture shall have relation from the stroke given; so as the Party or Owner selling thereof (*sc.* of such thing as was cause of such death) after the stroke given, taketh not away the Kings Right, but that he shall have it as forfeited, notwithstanding such Sale.

*Co. 5. 110.* 4. *Deodands* are not forfeited, untill the matter be found of Record, and therefore they cannot be claimed by prescription.

*Co. 5. 100. F. Cor. 298 Stamf. 121 P. Cor. 10.* 5. The Jury which find the death of the man, must also find and appraise the *Deodand*, and the Sheriff shall be charged with the price of such *Deodand*, and shall levy the same of the Town where it falleth, although it were not committed to the Town to keep: and therefore it behooveth the Town to see it forth-coming. See the *Stat. de officio Coronatoris, 4 Ed. 1.*

*P. Cor. 383 Stamf. 21.* 6. If he that is so slain be under 14 years of age, nothing shall be forfeit to the King as a *Deodand* for him, as it seemeth.

“ If a man dieth suddenly, or by misfortune, Mr. *Bracton, lib. 3.* saith,  
“ *Tunc attachiare debeat inventorem usq; ad adventum justiciariorum, & similiter omnes illos qui in societate illa interfuerint ubi tale accidit infortunium, fol. 122.*

*F. Indictment 27. Stamf. 21.* And if a man that is unknown be found dead in the Field, his Apparel and Money about him shall be given to the Poor, &c. And if he were known, then his Goods shall be delivered to his Executors or Administrators, or to the Ordinary; but shall not be taken as a *Deodand*, in either case (for they are not of the nature of a *Deodand*) they being no cause of his death.

*Dyer 77. Co. 5. 110.* Next what shall be forfeited and taken for a *Deodand*; The old Rule is, *Deodand, Omnia quæ movent ad mortem, sunt Deodanda*: And yet besides *Deodands quid.* may be of some things that a man shall move or fall from, though the thing it self moves not: as to fall from a Ship, Cart, Mow of Corn or Hay, &c. So as *Deodands* are any Goods which do cause, or are occasion of

of the death of a man by Misadventure, *Co. Ibid.* See more *Fitz. Cor.* 314. 326. 341. 342. 348. 388. 389. 398. 401. 409.

If a man killeth another with my Sword (or other Weapon of mine) my Weapon shall be forfeit, as a *Deodand*: for it shall be adjudged my fault, that I did not keep my Weapon from him, *Doct. & St. fol.* 156. b. Br. Fort. 112.

If I shall lend another man my Sword, or other Weapon, knowing him to be minded to go fight, or make an affray therewith, and he with my Weapon in such fight or affray, killeth one, *quare*, if this be not Felony in me: for you shall find that an Abbot that lent a Bow and Arrows to another, to the intent to kill the Kings Deer, was therefore fined and ransomed, *Crompt. Author des Courts, fol.* 191.

The inquiry of such casual death, belongeth also to the Coroner: but if the Coroner cannot have the sight of the Body, and so cannot inquire thereof, *quare*, how the King shall be intituled to the Goods. *Vide hic cap.* 92. *fine.*

“ The Office of Coroner in such cases, see *Bract. lib.* 3. and *Crompt.* 226.

### Homicide upon necessity. CHAP. CIX.

Justice  
commanded.

Sometime the Justice of Law commandeth a man to be put to death; As when the Judge hath pronounced Sentence of death against an Offender (attainted by due course of Law) there (in due execution of Justice) an Officer, or other person thereto lawfully deputed, may orderly execute such Judgment or Sentence according to his Warrant; and such Sentence or Judgment pronounced by the Judge, and after lawfully executed by the Officer, leaveth the name and nature of Murder or Homicide, and is called Justice, or rather Judgment, which is the lawful execution of Justice.

*Isud autem homicidium, si sit ex livore, vel delectatione effundendi humanum sanguinem, licet iuste occidatur iste, tamen peccat mortaliter propter intentionem corruptam.* *Bract.* 120.

But if the Officer, or other person, shall proceed therein upon his own Authority, without Warrant, or *Non observato ordine juris*; as where an Offender hath Judgment given upon him to be hanged, if the Sheriff or other Officer, &c. shall behead him, or by other means put him to death; this is Felony in such Officer, &c. *Co.* 7. 14. Stamf. 13.  
See Doct.  
& Stud.  
fol. 133.

Also if a stranger being not thereto lawfully deputed, shall (upon his own Authority) put to death an Offender that is condemned to die; this is Felony. See *Co.* 7. 14. a. Stamf. 15.

Nay if the Judge himself, who gave the Judgment of death upon an Offender, shall after put the same Offender to death, it is not justifiable by him.

If the Justices of Peace shall arraign a man of Treason before them at their Sessions, who is found guilty, &c. and thereupon is hanged; this is Felony, as well in the Justices, as in the Sheriff, or Officer which shall hang him; for that the Justices of Peace had no Authority therein, but it was

was *coram non Judice*. *Lecture, M. Cooke.* See also *Co. 10. fol. 76.*

If the Justices of Peace shall arraign a man of man of Felony, upon an Indictment of Trespas, whereupon he is hanged; this is Felony in the Justices, but not in the Sheriff or Officer, *Lecture, M. Cooke.* The difference between these two cases, appeareth in my Lord *Cooks Reports, lib. 10. f. 76. sc.* for that in this last case, the Justices of Peace had jurisdiction of the cause, and therefore although they proceeded *inverso ordine*, or erroneously, yet the Officer is excusable.

Sometimes also the Justice of the Law tolerateth and suffereth a man to be slain, *sc.* for the necessary execution and advancement of Justice, which *Tolerated* otherwise should be left undone. And in such case, the Law of the Land imputeth not it as any fault to him that shall so kill a man, but freely dischargeth him thereof, without the Kings Pardon.

F. Cor. 262  
Stamf. 12.

As a Sheriff, Bayliff, or any other person who hath a lawful Warrant to arrest a man indicted of Felony, may well justify the killing of him, if he will not suffer himself to be arrested, and yield himself, and that they cannot otherwise take him. See *22 Aff. 55. & Fit. Cor. 288. & 328.*

F. Cor. 363  
Stamf. 13.

And so every person whatsoever, without any Warrant, may apprehend a Felon upon Hue-and-Cry, or otherwise: and if he will not yield to be arrested, but shall resist or fly, the pursuer may kill him without blame. See *Fitz. Coron. 3. 8. & Co. 5. 109. b.*

Herewith also agreeth the Doctor and Student, *lib. 2. cap. 41.* saying, If any person that is no Officer would arrest a man that is outlawed, abjured, or attainted of Murder, or any other Felony, and such Offender shall disobey the arrest, and by reason of that disobedience he is slain, the other shall not be impeached for his death; for it is lawful unto every man to arrest and take such persons, and to bring them forth, that they may be ordered according to the Law.

F. Cor. 288  
& 328.

An Offender in Felony is led towards the Gaol, and breaketh away from those that conduct him, and maketh resistance, or flyeth; his Conductors may justify to kill him, if they cannot otherwise take him again.

22 Aff. 35.

A Prisoner in the Gaol attempteth to escape, and having broken his Irons, striketh the Gaoler (coming in the night to see his Prisoners) and the Gaoler slayeth such a Prisoner; this is no Felony.

Cro. 24. 61  
30. & 158.

Riotors, and such as shall make any Forcible Entry, or Detainer, against the Statutes, if they shall resist the Justices of Peace, or other the Kings Officer, or shall not yield themselves, but shall stand at their defence, when the Justices of Peace, or other Officer, shall come to arrest or remove them, if any of them happen to be slain; this is no Felony in the Justice of Peace, or Officer, or in any of their Company that killeth such Riotors, &c. *Lamb. 3. 10.*

Stam. præ-  
rog. tol. 46.  
Cro. 24. 30  
Doct. & St.  
133. b.  
Stamf. 13.  
e. f. g.

The Sheriff, Bayliff, or other Officer cometh (by vertue of the Kings Proceffe) to arrest another for Debt, or Trespas, who maketh resistance, and thereupon is slain by such Officer, or any of his Company, this hath been taken to be no Felony; *tamen quære*, what the Law is at this day; for although the Sheriff (being the Kings Officer) ought to see the Kings Com-  
mandment

mandment to be executed, yet that must be understood to be executed by all lawful means and wayes.

But in all these former cases there must be an inevitable necessity; *sc.* that the Offender could not be taken, &c. without killing of him.

*Se defen-  
dendo tol-  
erated.*

Also in an appeal of Felony, if the Appellant and Appellee do joyn <sup>37 H.6.21.</sup> to try it by Battel, and therein one doth kill the other; as the Law doth allow such trial, so doth it allow the event to be justifiable, as depending upon the Judgment of God, who giveth Victory according to Truth.

So a man as a Champion in triall upon a Writ of right, if he killeth the other; this is no Felony, *Plow. 9. b.*

“ Necessity of three sorts, *sc.*

“ 1. Of conservation of life, &c. whereof see *cap. 99. in fine.*

“ 2. Of obedience, as where the wife stealeth with her husband. See

“ *cap. 104.*

“ 3. Of the act of God, or of a stranger. See *cap. 93.*

“ Yet in these cases, necessity priviledgeth in cases of Homicide only  
“ when it is inevitable, *Braffon.*

And in cases of Theft only *quoad jura } Ba. 32.*  
*Privata, sed non valet contra Rempublicam }*

Also when one man killeth another in the necessary defence of himself, or his, thereby to deliver himself, his Possessions, or his Goods, or some other persons, which he is bound to defend from peril, and which cannot otherwise escape; this is Homicide tolerated upon necessity.

“ And here the Sword is (as one saith) a Weapon of defence to  
“ keep off violence, and the use of it made lawfull by the Law of na-  
“ ture, *vim vi, &c.* yet *cum moderamine inculpatæ tutelæ, & pro hac vice*  
“ *tantum.*

To kill an Offender, which shall attempt Feloniously to murder or rob me in my Dwelling-house, or in or near any High-way, Cart-way, Horse-way, or Foot-way, or that shall attempt Burglary, or Feloniously to break my Dwelling-house in the night; this is justifiable by my self, or by any of my Servants, or Company, whom the said evil doers shall so attempt to rob or murder; or by any person being in my Dwelling-house, which the same evil doers shall attempt so to break by night.

<sup>24 H.8.c.5</sup>  
<sup>P.Forf.1.</sup>  
<sup>24 P. 8. c.</sup>  
<sup>H. 5. P.</sup>  
<sup>For. 1.</sup>

<sup>Cor. 5. 19.</sup>  
<sup>& 11. 28.</sup>  
<sup>Exod. 22. 2.</sup>

And this being so found by Verdict upon Trial, we shall be all discharged without loss of Life, Land, or Goods, or Pardon, *24 H.8. cap. 5.*  
*Stamf. de Prærog. 46.*

To kill a Thief or Murderer, (*sc.* one which goeth about to Rob, or Murder me) in the defence of my Person, my House or Goods, was no Felony, but justifiable by the Common Law, before the *Stat.* of *24 H.8. c. 5.* (which *Statute* doth also declare the Law to be so, and doth enact it) *Stamf. 14.* See *Co. 5. 91. & 11. 82. Br. Coron. 100. 102.* And yet at the Common Law there was this difference, *sc.* that he which killed a Thief which would have robbed him upon the High-way, should forfeit Goods; but he which killed one who would have robbed or murdered him in his House, should forfeit nothing, *Co. 11. 82.* See *Exod. cap. 22, 23.*

<sup>26 Aff. 12.</sup>  
<sup>F. Cor. 261</sup>  
<sup>305. &</sup>  
<sup>330.</sup>

And

20 ff. 22.  
Finch.

And if one or more come to burn my House, I, or any of my Servants may justifie to shoot forth of my House at them, or may issue forth, and kill them; for such intent of theirs is Felonious, *Br. Coron.* 100.

If a Woman kill him that assaileth her to Ravish her; this is justifiable by the Woman, without any Pardon, *Sir Fr. Ba.* 34.

“ And in these Cases, *se defendendo* is a plea for him or her that is charged with the death of another, saying, That they were driven to that they did, in their own defence, the other so assaulting them, &c.

If divers be in danger of Drowning, by the casting away of a Boat or Barge, and one of them gets to a Planck, or on the Boats side, to keep himself above the Water, and another to save his life, thrust him from it, whereby he is drowned; this is neither *se defendendo*, nor by misadventure, yet justifiable. *Idem* 30.

“ And for this inevitable necessity *Bracton* giveth this Rule, *Si autem inevitabilis, quia occidit hominem sine odii meditatione, in metu & dolore animi se & sua liberando, cum aliter evadere non posset, non tenetur ad poenam homicidii. f. 120.*

But if a man shall forceably get, and keep possession of a House, and the other shall come in the night and fire this House, they within cannot justifie to shoot and kill him, or any of his Company, for that they in the House were there unlawfully. See *Crompt.* 26. *Prohibited.*

F. Cor. 305  
Co. 5. 91.

If One cometh (in the day time) to my House, to beat me, and doth make an assault upon me in my House, and fighteth with me, and I kill him in defence of my person; yet in this case I shall forfeit my Goods, and must have the Kings pardon, except it be found, that the assailant came with a felonious intent to kill or rob me.

And if One cometh (in the day time, or in the night) to enter into my House, pretending title thereto, and to put me out of my possession, and I kill him; this seemeth to be Man-slaughter in me.

Stamf. 15.  
a.  
Speculum  
Justic.

Note, if One kill a true Man, in defence of his person, there ought to be so great a necessity, that it must be esteemed to be inevitable, or otherwise it will not excuse, but that it is Felony, although that the other pursues him: and therefore he that shall be assaulted by a true man, must first fly as far as he can, and till he be letted by some Wall, Hedge, Ditch, press of People, or other Impediment; so as he can fly no further without danger of his life, or of being wounded or maimed: and yet in such case if he kill the other, he shall be committed till the time of his Triall, and must then get his Pardon for his life and his Lands, (which Pardon notwithstanding he shall have of course) but he shall lose and forfeit his Goods and Chattels, for the great regard which the Law hath of a Mans life, *Fitz. Coron.* 116. *Co. 5. 91. b.* See hereof *paulo antea, tit. Felony by Misadventure.* *The penalty.*

Co. 5. 91.

4 H. 7. 2.

6 E. 1. c. 9.

P. Pardon.

1.

Stamf. 15.

*A.* maketh an affray upon *B.* and striketh *B.* and *B.* flyeth so far as he can for saving his life, before any stroke given by *B.* and *A.* continueth his assault; whereupon *B.* doth also strike *A.* and killeth him, this is Homicide in his own defence; otherwise it seemeth to some, if *B.* had stricken the first blow, or had stricken before he had fled: and yet by other

other good opinions, the first stroke, or who began the affray, is not material, but the whole matter will consist upon the inevitable necessity (*sc.* whether the said *B.* who killeth *A.* could not have escaped with his life, &c. without killing *A.*) for otherwise it will not excuse *B.* for *cuncta prius tentanda*; and as it is a charitable, so it is a safe principle (in these cases) not to use an extremity, till thou hast tried all means.

Also it is holden in the former case, if *B.* (before he had fled) had stricken *A.*, and given him divers wounds, that yet if he fly to a streight before he give *A.* the mortal wound, and then he giveth his deaths wound; this is Homicide in his own defence. F. Cor. 284 & 286. Stamp. 15.

But in the former case, if *B.* upon malice premeditated had first stricken *A.* and then *B.* flyeth to a streight or wall, and *A.* pursueth him, and striketh him, and *B.* killeth *A.* thereupon; this is Murder in *B.* for the malice premeditated was the ground and beginner hereof. F. Co. 387. Cromp. 22. 28.

Yet if there had been former malice between *A.* and *B.*, and they meet suddenly, and *A.* assaulteth *B.*, and *B.* before any stroke by him given, flyeth so far as he can, and *A.* pursueth him, and then *B.* killeth *A.*; this seemeth to be Homicide in his own defence, notwithstanding the former malice.

*Copstones Case*: There was malice between *Copstone* and one *S.*, and they had fought divers times, and after met suddenly in *London Street*, and *C.* told *S.*, that he would fight with him, and *S.* answered, that he had nothing to say unto him; and *S.* went to the Wall, and after *C.* assaulted *S.*, and then *S.* struck and killed *C.*; and it was found that *C.* began the affray, and *S.* was thereupon discharged, without forfeiting any thing: But that was by force of the Stat. 24 H. 8. cap. 5. 15 El. Cromp. 27.

A man in fight falleth to the ground, there his flying, &c. is not necessary, &c. See hereof before.

Also if a Thief assaults me to rob or kill me, I am not bound to fly to a Wall, &c. as I must in case a true man assaults me. Stamp. 14.

If an Officer of Justice, or Minister of the Law, in the execution of his Office, be assaulted, he is not bound to fly to a Wall, &c. as other Subjects are. Co. 9. 98.

Also the Servant may justify the killing of another, in defence of his Masters Person or House, if the hurt cannot be otherwise avoided, *Br. Coron. 63.*

Also the Servant may justify the killing of him, who robbed and killed his Master, so that it be done presently. 21 H. 7. 39.

In the defence of the possession of my Goods, I may justify to beat him that shall wrongfully take them from me; but I cannot justify to kill him, except he be a Thief.

So then, to kill a true man in defence of my person, in case where there is an inevitable necessity, (*sc.* that I first shall fly so far as I can for saving my life, &c.) this is no Felony of death, &c. But otherwise it is to kill a true man in defence of the possession of my House, Lands, or Goods, that is Man-slaughter (at least) as it seemeth. 23 Ed. 1. P. Forcsts 4. Stamp. 13, 14.

“ Sir Francis Bacon taketh this difference in these former cases of *Se defendendo*, *sc.* when the Law doth intend some fault or wrong in the Party



“ party that hath brought himself in the necessity ; this he calleth *necessitas*  
 “ *culpabilis*, and saith this to be the chief reason, why *Se ipsum defendendo*  
 “ is not matter of justification, but he must sue out his Pardon, and shall  
 “ forfeit his goods, because the Law intends it hath a beginning upon an  
 “ unlawful cause ; for Quarrels are not presumed to grow without some  
 “ wrongs in words or deeds, and so malice on either part ; And it is hard-  
 “ ly triable in whose default the quarrel began : But where I kill a Thief  
 “ that assails to rob me, (and the like) and I kill him, here there can be no  
 “ malice or wrong presumed on my part, *Ba. 33.*

**Cromp. 30** If any Forester, Park-keeper, or Warrener, or any in their company, shall kill an offender in their Forest, Park or Warren, which (after Hue-and-Cry levied to keep the Peace, and to obey the Law) will not yield themselves, but will flie, or defend themselves by violence, this is no Felony : Yet *Quare*, if there were any former malice, in such Keeper. But if any such Keeper by reason of any former malice, will lay to any mans charge, that he came to do hurt, whereas he did not, neither was found wandring nor offending, and so kill him, this is Felony in such Keeper.

And so in the former cases, where a man is slain for the execution of Justice, *sc.* when the offender shall disobey the Arrest, resisteth, or flieth, and so is slain : as also where any man shall be slain by an Officer, or other person, in keeping or preserving the peace ; yet if such Man-slaughter, or killing of such an Offender, be committed wittingly, willingly, and of purpose, under colour of execution of Justice, or keeping of the peace, this is Felony. See the Stat. 1 Jac. Regis, cap. 8.

## Burglary: CHAP. CX.

20 E. 3.  
18 El. 6.

**B**urglary is composed of two French words, *Burg* (a Village, or a Farm house) and *Larron* (a Thief;) and so in the natural signification, is nothing but the robbing of a House ; but in our Law it is taken to be, when one or more in the night time, do break or enter into anothers dwelling-house feloniously, wherein some person is, or a Church, or the Walls or Gates of a City or walled Town, with an intent to rob, or to do any other Felony, although he or they do not execute the same, or do take or carry away nothing, yet it is Felony of death, and the offenders shall not have the benefit of their Clergy. *Dyer 99. Stamf. 30. Fitz. Coron. 185. 264. West. 56.*

And if the intent or fact of this offender be to steal, this is like Robbery ; if to murder, it differeth not much from Murder ; and so of other Felonies. *West.*

Br. Cor.  
185.  
Stamf. 130  
Co. II. 36.  
21 H. 7.  
See the Title Watch.

First for the time : Burglary cannot be committed in the day-time, but onely in the night ; for all Indictments of Burglary be, *Quod nocturnus fecit* : And the night (to this purpose) beginneth at the Sun-setting, and continueth to the Sun-rising : And therefore to break a house, &c. after the Sun-setting, and before it be dark ; or after day-light in Summer, and before the Sun riseth, is Burglary.

The time

Cc

Next,

The manner

Next, for the manner : It is holden (by some good Opinions) That if a man break the House to do Felony, and yet entreth not, it is no Burglary; and that the Indictment must be, *fregit & intravit*. And yet by the Opinion of *Shard. 2, 7 Aff. 38*. And by the Opinions of Sir *Aeth. Brown*, Sir *Edm. Montague*, and Sir *Rob. Brooke*, late Chief Justices of the Common-Pleas, and others, (as *M. Crompton* reporteth) if a man do but attempt or enterprize to break or enter into a dwelling House by night, to the intent to rob, or kill any person there, though he make no actual entry, yet it is a full and compleat Burglary : for in such cases *Voluntas reputabitur pro facto*.

Stamf. 30.  
Dyer 99.  
Br. Cor.  
106.

Crompt. 21  
32. 33.

As to put back the leaf of a Window with his Dagger.

To draw the Latch of the Door.

To turn but the Key, being on the inner side of the Door.

So to break the Glass-window, and to draw out any Goods there with an Hook, &c. 26 El. at Staff. Assizes.

So to break a hole in the Wall, and to shoot in thereby at any within the House.

So (the Door being opened by some of the House) if any the attempters shall discharge a Dagg against any in the House, and in discharging his Dagg, shall hold his hand over the threshold, though he set no foot over. 26 Eliz.

So if upon an attempt of Burglary, they within the house shall cast out their money for fear, and the attempters take it away.

And yet there is no actual entry made, in any of these cases.

But if a Thief setteth but his foot over the threshold, or into any part of the House, to commit Felony, or shall for that purpose but put his hand in at the Window, or at any hole in the Wall, this much more shall convict him of Burglary.

Also one being let down the chimney in the night, to commit Felony, it was adjudged Burglary by Sir *R. Manwood*, Chief Baron, and yet he broke not the House. Crompt. 32

So it is to come into the house by the help of a Key.

So if suddenly one come into the house by night, the doors being open, and the owner flieth to his Chamber, and the offender is taken shoving at the Chamber-door.

So is it, if Thieves pretending that they be robbed, &c. shall come to the Constable, and pray him to make search for the Felons, and going with the Constable into a Man's house to search, they rob the good man of the house, this is Burglary.

So if a Servant conspiring with another to rob his Master, shall open his Masters door or window in the night, and the other entreth thereat, this is Burglary in the stranger, by the Opinion of Sir *Roger Manwood*; and the servant is but a Thief and no Burglar. 21 Eliz. Terms 34

And yet the house was not broken in any of these cases.

If a Thief find the door open, and cometh in by night, and robs the house, and be taken with the manner, and breaks a door to escape, this is burglary; yet the breaking of the door was without any felonious intent; but it is one entire act. Sir *Fr. Ba. 65*.

If

If a man in the night entreth into the house by a hole, or at a wall broken before, and taketh away any thing, or to the intent to do any felony, it is Burglary.

But if one cometh into my house in the day, and there hideth himself till night, and then robbeth me; or if I shall lodge one in my house, and in the night he robbeth me (*sc.* goeth out of my house, and taketh away some of my goods with him,) yet this is no Burglary, for that he broke not my house. For the first Case it was so holden at *Derby*, *Aß. 32. El. Cromp. 34.* See *hic postea*. *Quare* of his opening the door to go out and escape, if that shall not make it Burglary:

51 H. 4. 13. Also if divers come to commit Burglary, and but one of them entreth, and commit it, the rest standing about the House, or not far off, to watch that no help shall come; this is Burglary in all that Company.

But Mr. *Finch* (*lib. 2.*) describeth Burglary to be the breaking and entry of a house in the night, with a felonious intent to kill or steal, although no man be killed, nor any thing stoln.

Now concerning the place, it may be either publick or private; publick, *The Place.* as the Church or walls, or gates of a City, or walled Town; private, as a dwelling-house: and here commonly it is no Burglary, unless some person be at that time within the house.

And yet *An. 36. El. termino Pasch.* at an Assembly of all the Justices at *Sergeants-Inne*, it was resolved, That the breaking of an house in the night, with an intent to commit Felony, is Burglary, although that no person be within the house; for the Law is, That every man ought to be in security or safety in the night; as well for their goods, as for their person; and that the ancient Presidents are, *Quod domum nocturne felonice & burg. fregit*, without saying *domum mansionale*, or that any person was in the house; and that the reason why of late times these words have been put into the Indictment (*sc.* that some person was in the house) was, for that in such cases the benefit of Clergy was taken away: but now by the Statute 18. *Eliz. cap. 6.* Clergy is taken away in all cases of Burglary; and therefore the Judges then all agreed from thenceforth to put the same in execution accordingly. I have seen this thus reported out of a Book of *Pophams*, late Lord Chief Justice of the Kings Bench.

Co. 4. 40. And if a man hath a dwelling house, and he and all his Family (upon some occasion) are part of the night out of the house, and in the mean time one cometh and breaketh the house to commit Felony, this is Burglary.

Co. 4. 40. So if a man hath two dwelling houses, and sometimes dwelleth in the one, and sometimes at the other, and hath a family of Servants in both, and in the night, when his servants are out of the house, the house is broken by Thieves, this is Burglary. Adjudged 38 *Eliz.*

I have also seen a report of Judge *Pophams*, that *termino trin. 36 Eliz.* it was resolved by the Judges, that if a man had two houses, and dwelt sometimes in one, and sometimes in the other, if that house wherein he neither then was, nor had any servants, were broken, &c. that this was Burglary, although no person then dwelt or were therein.

Cromp. 33 If one breaketh a Chamber in *Lincolns Inn*, (or in any other House of Court or Chancery, or in any Colledg in *Cambridg* or *Oxford*, &c.) in the night,

night, to the intent to commit Felony there, this is Burglary, although there were no person in the same Chamber; for the Colledges and Houses of Court and Chancery be intire Houses, whereof such Chamber is parcel; so that if any person shall be in any other Chamber within the same House or Colledg at the same time, it is Burglary.

One *P.* was arraigned of Burglary, *Anno 22 Eliz.* for that he assaulted one of his companions of the Inner-Temple, *London*, in his Chamber, there to have killed him in the evening, &c. but had his pardon.

Crompt. 32  
2 E. 6.

A servant who lieth continually within his Masters house, openeth the doors of his Masters house in the night to rob him, this is Burglary, *Leff. Mr. Cock, tempore H. 8.* See *hic antea*.

A man cometh as a guest to eat and drink in the day time, and there stayeth till night, and in the night-time breaketh his Chamber or any part of the house to rob his Host, this is Burglary, *Ibid.*

A guest cometh to a common Inne, &c. and the host appointeth him his Chamber, and in the night the host breaketh into his guests Chamber to rob him, this is Burglary, *Ibid.*

Also the breaking (in the night) of a stable, barn, or other out-house adjoining to, or parcel of, or near to the dwelling-house, to the intent to steal, is Burglary, though he take nothing, *Fi. libro. 2.*

Br. Cor.  
180.  
Lamb. 256

At Summer Assizes at *Cambridg*, *An. Dom. 1616.* two men were arraigned and condemned for Burglary before Sir *James Altham* Knight, for robbing a back-house of *Robert Castle* Esquire, in the night, which back-house was some 8 or 9 yards, distant from his dwelling house, and onely a pale reaching between them: so that although this offence be not committed in the very body of the dwelling house, but in some other house near unto it, and being parcel of or belonging to the dwelling house, it is Burglary.

Co. II. 37.

But a Booth or Tent in a Fair or Market, are not esteemed in Law for a dwelling house, nor the breaking thereof in the night time to be Burglary; although the robbing of them be made as penal as Burglary, if the owner, his wife, children or servants were within the same.

22 Aff. 95.  
Stamf. 30.  
126.  
Co. II. 41.

*The intent.* Lastly, (to make it Burglary) the purpose and intent for which the offender cometh, must of necessity be to kill or rob some person, (or to commit some other Felony) otherwise it is neither Burglary nor Felony.

And therefore to break a house in the night, to the intent to kill any person therein, it is Burglary, although he never toucht him.

13 H. 4. 7.  
F. C. I. 267.

So it is, if the purpose were to rob, although the offender taketh away nothing.

Fitz. Cor.  
185. &  
264.  
Stamf. 10.  
Co. II. 13.

But if a man break and enter an house by night, of purpose only to beat a man, this is but trespass, *Abr. d'ass. 75.*

Lamb. 260  
Crompt. 32

Rape, See  
after here,  
cap. 107.

And if the intent were to commit a Rape, which some think to be no felony by the Common Law, but only a Trespass, then there is some doubt, saith *M. Lambert*. And *M. Crompton* saith, That if a man breaketh another mans house in the night, and ravisheth a woman there, this is no Burglary; for (saith he) Ravishment is no Felony by the Common Law, as Burglary is, although it be felony at this day by the Statute: But it may seem by *M. Braſton*, *Glanvil*, and *Stamford*, That by the ancient Common Law it

was

Stamf. 21, 22, 23. was Felony. The words of M. Bracton lib. 2. are thus, *Olim quidem corruptores virginitatis & castitatis suspendebantur, &c. modernis tamen temporibus aliter observatur, quia pro corruptione virginis amittuntur membra, &c.* And a little after, *Adelstanus; raptus mulierum ne fiat, defendit tam lex humana quam divina: Et sic fuit antiquitus observatum, quod si quis obviaverit solam, cum pace dimittat eam, &c. Si autem contra voluntatem suam, &c. jactat eam ad terram, foris facit gratiam suam, &c. Quod si concubuerit cum ea de vita & membris suis incurrat damnum, &c.* And with this M. Glanvil also agreeth, fol. 112. & Co. L. Sect. 190. Note, That the words, *de vita & membris suis incurrat damnum*, do imply the offence to have been Felony of death. Br. Cor. 204. Vid. Co. L. 391.

Also amongst the Laws of S. Edmond, sometimes King of this Realm, you shall find this Law, *Qui cum Nanna vel sanctimoniali fornicetur, emendetur sicut homicida; A multo fortiori*, then saith M. Stamford. shall he be punished if he had ravished her. So as Rape at the first, (saith Stamford) was grievously punished, until the time of King Ed. the first, who seemed to mitigate the pain thereof by the stat. of Westminster, 1. ca. 13. which gave two years imprisonment and fine: but spying the mischiefs ensuing upon the said Law, at his next Parliament holden at Westminster, called Westm. 2. cap. 34. he made the offence of Rape to be Felony again, Br. Coron. 204.

Note also by Britton, fol. 17. It is no Burglary in an Infant under 14. years of age, nor in poor persons, that upon hunger shall enter a house for victual under the value of twelve pence, nor in natural fools, or other persons that be *Non compos mentis*; but for poor entering for victuall at this day, it is felony in them.

*Unc' si pur conservatione de vie, home emble viands de satisfie son present hunger, ceo nest felony, nec larceny. Car necessitas inducit privilegium quoad jura privata.* Stamf. Sir Fr. Ba. 29. & hic cap. 98.

And as for Infants, see hic cap. 95, & 104.

### Theft. CHAP. CXI.

**T**Heft is the fraudulent taking away of another mans moveable personal goods, with an intent to steal them, against (or without) the will of him whose goods they be: And this is of two sorts, Robbery and Larceny. See Larceny post. cap. 101.

Note, That *le torcions prisell de biens, oue probable pretence de title ne que trespass.*

*Et nota, quod leges civiles furtum manifestum judicant per redditionem quadrupli; Et furtum non manifestum per dupli compensationem.* Dr. Com. 199. Et vid. Ex. 22. where if the party were not able to make satisfaction, he was to be sold for the Theft.

## Robbery.

**R**obbery (in Latine called *Rapina*) is properly the Felonious taking of any thing from the person of another, or in his presence, against his will, by assault in the high way or elsewhere, and putting him in fear thereby: and here although the thing taken, be but to the value of an half-penny, yet it is felony, for which the offender shall suffer death, without benefit of Clergy.

Dyer 824.  
Stamf. 17  
co. Finch.

As if one by the High-way assaulteth me, and taketh away my purse, money or other goods.

But if a thief assaulteth me to rob me, and biddeth me deliver my purse but taketh nothing from me (in regard that I being too good for him shall apprehend him, or shall levy Hue and Cry, whereby he is taken) this is taken to be no Robbery nor Felony at this day: for although intent may make a man guilty of Treason (as you may see here before, title *Treason*) yet in case of Felony there must be an execution of that which was formerly intended, and resolved to be done, viz. to kill the party, or to steal or take away the thing &c. And therefore in *M. Flo. fo. 259. b. Wallhe* (*Serjeant saith, Que l'intent de faire tort, sans del' act fait nest punishable in n're Ley, nec le Resolution, &c. mez le fessans del' act est le sole pain. que nostre Ley respect.*)

9 Ed. 4. 28  
Stamf. 29

And yet the assault (yea to die in wait) only to rob me, hath been in former times holden to be Felony, as appeareth by the books, 27. *Aff. p. 38.* & 13 *H. 4. 7.* 25 *H. 3. 42.* *Brit. Cor. 132.* & 267. *Brit. Coron. 106.* 2 *R. 5.*

Stamf. 17

And so the intent to commit Burglary (or murder) hath been holden to be Felony; for the will was reputed for the deed, *Vi. 27. Aff. 38. Fit. Cor. 383.* & *Stamf. fo. 17. a.* but the Law is otherwise at this day.

In this former discription of Robbery, the word (taking) is largely to be extended against the offender; so that although the thief taketh nothing from my person, yet if he assaulteth me, and upon his assault he threatneth to kill me if I deliver him not my purse and thereupon I cast my purse downe, and he taketh it away, this is Robbery.

20 El.  
Cromp.  
341.

So if one draws his sword upon me, and biddeth me deliver my purse, and I refuse, and after he prayes me to give him a penny, and I doe so, yet it seemes this is robbery; for, by the assault I was put in fear, and out of that I gave him this money to be rid of him.

Cromp. 34

So if a thief do only assault me to rob me, and I deliver him my purse with mine own hand; yet this is robbery, in regard this fact of mine proceeded from fear, or by his menacing. &c.

Cromp. 34

So in flying from the thief, I cast my purse into a bush to save it, and the thief seeth me, and taketh it away, this is Robbery; for in this case had they not put me in fear, I should not have cast my money from me.

Stamf. 37  
c.

So if one assaults me to rob me, and I flying away from him my hat falleth off, and the thief taketh it up, and carrieth it away, this is Robbery

Crom. 35

So if a thief commeth, and biddeth me deliver my purse (without drawing any Weapon, or other force used) and I deliver him my purse, and he finding but two shillings therein, delivereth it me all again, yet this is Robbery.

20 El.  
Cromp. 34

So

So if Thieves do take a man; and by threats compel him to swear to bring them money to such a place (at another time) or else that they will kill him, by force wherof he bringeth the money accordingly; this is Robbery; *Term. Rasch. 36 Eliz.* it was adjudged accordingly.

*Cromp. 35.* One came to a Fisherman, going in the high-way to Market with Fish to sell, and desired to buy some Fish of him, and he refused; whereupon the other took away some of the Fishermans Fishes against his will, and gave him more money for them then they were worth; but the Fisherman was thereby put in fear; whereupon the other was indicted, and arraigned at *York* about 26 *El.* but Judgment was respited, for that the Court doubted whether it were Felony or no.

Also, in the former description of Robbery, the words, from the person, are not so nicely to be construed that (to make up Robbery) the Goods must needs be annexed to the body of the person; for in some Cases it may be Robbery, notwithstanding the Thief doth neither take the Goods from the person of the Owner, nor yet assault him.

*Stamf. 27.* As if in my presence a Felon taketh away my Goods openly against my will; this is Robbery, though he neither taketh them from my person, nor assaulteth me: for the loss is the same, and the fear alike, as though it had been from my person.

*P. R. 13.* And if one or more do take a Horse out of my Pasture, or drive my Cattel out of my ground, I standing by, and looking on at the same time; this is Robbery, if so be that the Felon doth either make an assault upon me, or doth put me in fear.

Note, to make it Robbery, the person must be put in fear: for if a Felon doth take money from me in the High-way, and shall not put me in fear; this is no Robbery, *Lam. 266. Crom. 35. P. R. 131.*

*Dyer 2. 24* And you shall find a Case in my Lord *Dyer*, how a Felon did take money, to the value of 40 s. or above, from the person of another in the High-way, and yet for that he did not put his person in fear, by assault and violence; this was holden no Robbery, and the Offender was allowed his Clergy for the same Felony, *Anno 5. El. Finch. lib. 2.*

*Cromp. 84.* Note also, if two Thieves shall attempt to rob me, and I fly from them, and one of the Thieves follow me, and the other espying another true man (but out of the sight of his fellow) rides towards him, and robbed him; this was adjudged Robbery in both the Thieves; and yet the one was neither in sight, or knowing of this Robbery: But because they both came to rob, and at the same time, this fact committed by the one, shall be imputed to the other also. It was one *Pudseys Case*, 28 *El.*

*8 El. 4.* If One shall cut my Purse, or take or pick my Purse out of my Pocket *Cut-purse.* secretly, or privily and fraudulently; it is Felony of death, without benefit of Clergy, if it be above the value of 12 d. *Qu.* if it be under 12 d. because it is taken from the person of a man, and the form of the Indictments are *insultum fecit.* (*Vide Lamb. Cromp. & West.*) Also the words of the *Stat. 8 Eliz. 4.* are, That no person taking any money, or Goods (generally) from the person of another, &c. shall have his Clergy; and yet by the Opinion of Mr. *Lamb.* and Mr. *Cromp.* this is no Felony of death, unless the

the thing taken be of more value then 12 d. but petty Larceny, for which the Offender is not to have Judgment of death, and therefore needeth not his Clergy.

So if One shall take any Money or other Goods from my person, secretly without my knowledge, or by sleight onely, I neither being made affraid, nor witting of it (if it be above 12 d. in value) it is Felony of death. P. Clerg. 1.  
Lamb. 166.

A man cutteth my Girdle privily, my purse hanging thereat, and the Purse and Girdle falleth to the ground, but he did not take them up (for that he was espied,) this is no Felony; for that the Thief never had an actual possession thereof, severed from my person: But if he had holden the Purse in his hand, and then cut the Girdle (although it had fallen to the ground, and that he took it up no more) then had it been Felony if there had been above 12 d. in the purse) for he had it once in his possession: But these secret and privy-takings from my person, are no Robbery; for he neither assaulted me, nor put me in any fear, *Dyer* 224. 26 El.  
Crom. 353

And in ancient time, the Offender only lost his right Thumb. See *Fitz. Cor.* 434.

### Larceny. CHAP. CXII.

**L** Arceny (being fetched from the Latine word, *Latrocinium*) is properly a fraudulent and felonious taking away of another Mans personal Goods, removed from his body or person, in the absence of the Owner, and without his knowledge or will, *Bracton, lib. 3. cap. 17.* & 32. saith, *Furtum omnino non committitur, sine affectu & animo furendi.*

And Mr. *Finch* (*tit. Felonies*) saith, That Larceny is the secret taking of the Goods of another, above the value of 12 d. without pretence of Title.

*“ Ce le tortious prisel de biens, orve pretence de tit. n'est que trespasss.”*

Grand  
Larceny.

Grand Larceny is, when the Goods stoln be above the value of 12 d. and this is Felony of death, *sc.* wherein Judgment of death shall be given upon the Offender, except he be saved by his Book.

And yet if the Goods stoln be to the value of 10 s. if the Jury that passeth upon his Arraignment, shall find, that the Goods did not exceed the value of 12 d. then that Offence shall be taken but for petty Larceny. F. Cor. 451

Petty Lar-  
ceny.

Petty Larceny, is, when the Goods stoln do not exceed the value of 12 d. and for this the Offender shall be imprisoned for some certain time, and after shall be whipped, or otherwise punished by the discretion of the Justices before whom he is arraigned; but it is not felony of death at this day, *Stamf.* 24. And yet by good opinions, the stealing of Goods to the value only of 12 d. hath been holden to be Felony of death. See *Fitz. Coron.* 178. & *Br. Coron.* 84, 85. & *forf. 1. Doct. & Stud.*

17.

Yet



Yet may not the Justice of Peace, before whom such an Offender shall be brought (out of the Sessions) punish by his discretion the said Offender for petty Larceny, and so let him go, but must commit him to Prison, or Bail him, to the intent he may come to his Trial, as in case of other Felonies; and if upon his Trial, the Jury shall find the Goods stolen, to exceed, or to be but 12 d. in value, the Offender shall have Judgment to die for the fault.

But if the Indictment be layed 20 d. and the Offender arraigned thereof; yet upon his Trial, if the Jury shall find the Goods to be but of the value of 10 d. here the Offender shall have Judgment but as for petty Larceny, 41 E. 3. *Abr. d' Ass.* 70.

27 H. 8. 22.  
F. Cor. 218  
Br. Cor. 2.  
54. 88. &  
219.

Also, although petty Larceny be not Felony of death, nor punishable by death, yet it is a felonious act, and a felonious taking; for the Indictment of petty Larceny must be *Felonice cepit*: and he shall forfeit all his Goods and Chattels for such a Felony; and there is no difference either in the nature of the Offence, or in the mind of the Offender, but only in the value of the thing stolen, which also maketh the difference of punishment.

And yet by some late Opinions, petty Larceny is but in the nature of a Trespass, and, then where the principal is convicted but of petty Larceny, there can be no Accessories; and the Procurers, or Receivers, knowing of the Goods to be stolen, are not to be dealt withall, as for Felony; But to be sent to the house of Correction, or to receive some other punishment, by the discretion of the Justices at the Quarter-Sessions. *Quære inde.*

F. Cor. 415  
Stamf. 24.  
Crom. 36. c

If One shall steal Goods to the value of 4 d. at one time, and 6 d. at another time, and of 3 d. at another time, which together do exceed the value of 12 d. and that these several Goods be all stolen from one and the same person, then may they be put together in one Indictment; and the Offender being thereupon arraigned and found guilty, shall have Judgment of death therefore.

F. Cor. 404  
Stam. 24. l.

Again, if two, or more together, do steal Goods above the value of 12 d. this is Felony of death in them all; for the felony in them is several, though the stealing be jointly done.

“ By the Law of God, for Theft the Offender was to yield at least the double value to the Party robbed: and if he were not able to make full restitution, then he was to be sold for the Theft, *Exod.* 22.

“ *Leges etiam Civiles furtum manifestum judicant per redditionem quadrupli; & furtum non manifestum per dupli compensationem expiari. Cow.*  
“ 199.

### Now first for the manner. CHAP. CXIII.

**I**N Larceny, two things must concur, *sc.* to take, and to carry away, *The manner* or to remove the thing taken, with a purpose to steal the same; for the Indictment must be, *Cepit & asportavit*, or *cepit & abduxit*; and yet in these words, the letter is not so much to be insisted upon, as the meaning;

Delivery.

ing, and that for the better suppressing of Offenders in this kind.

For although by the Law in M. Glanvils time *à furto omnimodo excusatur, qui initium habuerit suæ detentionis per dominum illius rei*; yet at this day it may be Felony, though the Offender take not the thing, but comes first unto it by delivery from the Owners own hand, and so cometh lawfully to the Possession.

If a Taverner do set a peece of Plate before his Guest to drink in, and the Guest carrieth it away, this is Felony; for the Taverner gave him no possession thereof, but only the use to drink in it for the time. 13 E. 4. 9.  
Stamf. 25.

If I deliver Goods to a Carrier (or other person) and bargain with him to carry them to a certain place appointed; if he carrieth them to the place, and then conveyeth them away fraudulently, this is Felony: for the privity of bailment was determined when they came at the place appointed. *Ibid.*

So if the Carrier shall take out parcel of the Goods, this is Felony. *Ibidem.*

Also if the Carrier shall carry them to another place, and there breaketh them up, and converteth part, or all, to his own use, this is Felony. *Ibid.*

But if the Carrier shall sell, or give away, or otherwise imbecil the whole as he received them; this is holden to be Felony, because it was delivered him, *Stamf. 25. a. Crom. 36. a.*

And yet in this last case there is besides the delivery, a bargain and agreement to carry the Goods, and the delivery was only to that intent, so that the property of those Goods did alwayes remain in the first Owner. *Ideo quare.*

But if A. lendeth his Horse to B, being a stranger, who rideth quite away with the Horse; this is no Felony in B, by reason of the delivery. And so did Sir John Dodderidge Knight, give direction at Cambridge Assises, 1617. upon an Indictment of Felony preferred in such a case; *Quare* if the Horse had been delivered to a Servant, who rideth away therewith. *Vide postea, sub hoc tit.*

If a Clothier shall deliver any Wooll or Yarn to his Carder, Spinster, or Weaver, &c. to dress, and they shall convey away, imbecil, or sell any part thereof; this seemeth to be no Felony, by reason of the delivery, but they shall be punished by the discretion of two Justices of Peace, by whipping, or stocking, &c. *Vide antea, tit. Cloth.* 7 Jac. ca. 7.

So if I deliver my Goods to another to keep, and he fraudulently consumeth them, or otherwise converteth them to his own profit; this is no Felony, because of the delivery. 13 E. 4. 9.

And so (it seemeth) if I deliver money or Goods to A, to deliver to B, and A. flyeth away with them, consumeth them, or converteth them to his own use; this is no Felony, by reason of the delivery.

Servants.

If a man delivers money to his Servant to keep, or Plate to his Butler, or Vessel to his Cook, or Horse to his Horse-Keeper, or Sheep to his Shepherd, and such Servant doth go away with them; this is Felony by the Common Law in that Servant (for these Goods were alwayes in the Masters possession, and kept and used by the Servant to the Masters behoof.) 21 H. 4. 14.  
13 E. 4. 10.  
7 H. 7. 12.  
21 H. 7. 15.

behoof.) But yet there was much difference of Opinions herein; for the clearing whereof in some part, the Statute 21 H. 8. cap. 7. (which was made perpetual, by the Statute of 5 EL. c. 10.) provided, that all and singular Servants of the age of 18 years, other then an Apprentice, (which must be understood of such as be bound by Indenture, and by the name of an Apprentice) to whom any Money, Goods, or Chattels, &c. by his or their Master or Mistress shall be delivered to keep, of the value of 40 s. or above, if such Servant shall go away with, or shall imbezil, or shall convert to his own use, any such Money, Goods, or Chattels of the said value, to the intent to steal the same, or to defraud his Master, or Mistress thereof, it shall be Felony: but this must be prosecuted within one year after the Offence.

*Apprentice, and Servant wants under eighteen shall be in case as they were before the making of this Statute.*

And now upon the construction of this Statute of 21 H. 8. divers new questions and cases have since arose: As,

Dyer 5. If a man deliver an Obligation to his Servant, to go and receive the money thereupon due; and the Servant receiveth the money, and then goeth away therewith, or doth convert it to his own use: this is holden to be no felony within the meaning of this Statute, for the Master did not deliver the money to his Servant.

Ibid. So if a man delivers to his Servant Wares or Cattel to sell at a Fair or Market, and he selleth them there, and receiveth the money, and then goeth away with the money, or converteth it to his own use, this is no felony within this Statute: for he had not the money by his Masters delivery, neither went he away with the Goods of his Master delivered him.

28 El. Cromp. 35 But if the Servant received of his Master 20 li. in Gold to keep, which he changed into Silver, and then ran away with that; this is felony, for that Gold and Silver are both of the same nature, sc. money.

21 H. 7. 15 And if a man delivers to his Servant a Horse to ride to Market, or Money to carry to a Fair, or to buy Cattel, or other things, or to pay to another man, and the Servant goeth away therewith; this was no felony by the Common Law, by reason of the delivery thereof to him by his Master: But *quære* if it be not felony by this Statute, for that he went away with the thing delivered him.

If the Goods delivered to the Servant to keep, be under the value of forty shillings, and the Servant goeth away therewith, this is holden to be no felony at this day (*mez tantum un breach del trust que le Mr. repose in son serwant.*) But if the Servant shall imbezil, or go away with any Goods of his Masters, which were not delivered to him; this is felony, although they be under the value of forty shillings, &c.

If a man appoint his Servant to take and carry Corn to Market, and to take his Horse to carry the same upon, and the Servant goeth away with the Corn or Horse; this is felony in the Servant, if the Goods he so goeth away with, be all to the value of forty shillings.

But if a Servant wastfully consumeth the Goods, and returneth again to his Master, this is no felony. And these were the directions of Sir Nicholas Hide to a Jury of Life and Death, upon the arraignment of a Servant in such a Case, at Cambridge Lent Assises, Anno 2 Caroli Regis.

And

And if one of my Servants doth deliver to another of my Servants Goods of mine (to the value of 40 s.) and he doth go away therewith, or converteth them to his own use; this is Felony within this Statute, for this shall be said my delivery. Dyer 5.

If a man delivers to his Servant a peece of Cloth to keep, and the Servant maketh himself a Garment thereof, and after goeth away therewith, this is Felony within this Statute; for that the property is not altered by the making a Garment thereof, because the Cloth may be known still. Otherwise it is of Barley turned into Malt, or of money melted and turned into a wedge or peece of Metal, or the like; for that in these cases the Barley, or Money, cannot be known again, but are altered in their nature and kind: but *quare*, and see the words of the Statute. 5.H.7. 16.  
Br. property 23.  
Crompt. 50

If a man delivers Goods to one to keep, and after retains the same person into his Service, who after goeth away with those Goods; this is no Felony by the Stat. of 21 H. 8. because he was no servant at the time the Goods were delivered to him. *Vide Sir Fr. Ba. 39, 40.*

If I deliver Goods to the servant of A. to keep, and after I die, and make A. mine Executor; and before any new Commandment of A. to his servant for the custody of the same Goods, his servant goeth away with them, this is out of the Stat. of 21 H. 8. *ibid.*

If my Receiver of my Rents receive 10 li. of my Tenants, and run away therewith, it is no felony; for the Statute is, where the Master delivereth to keep, &c. Crompt. 50

If a man delivers to his servant the key of the Chamber-door, and the servant taketh away his Masters Goods in the Chamber (above the value of 12 d.) this is felony at the Common Law, for the Goods were not delivered. 13.E.4.9.

A man laid and hid a purse of money in his Corn-mow within his barn, and after his servant finding the same, took part of the money out of the purse, &c. and the servant was therefore indicted and arraigned of felony at Cambridge Summer Assizes, Anno Dom. 1621. before Sir John Dodderidge.

If an Apprentice, or Servant, under the age of 18 years, shall imbezil their Masters Goods, which were not delivered to them, nor committed to their Charge, if the Goods so imbezeled be above the value of 12 d. it is felony. But if the Goods be under that value, it seems such Apprentice, or Servant, may be sent to the House of Correction. *Vide hic cap. 31.*

Another felony there is by the Statute 33 H. 6. cap. 1. in the servant that shall take away or spoil the Goods of their deceased Master: but this Felony groweth upon their default of appearance in the Kings Bench, after Proclamation; and therefore neither the trial nor hearing thereof belongeth to the Justices of Peace, because they cannot well take knowledge of such default in the Kings Bench. P.Felon. 11.  
P.Exec. 51.

The second thing which must concur (in Larceny) to make it Felony, is, the carrying away of the thing so taken; and yet it is not of necessity that it be clean carried out of the House, or place where it was,

was; but sufficeth that it be so far removed, that the evil and felonious intent of the Taker may plainly appear, As,

27 Aff. 36. If a Guest will feloniously take the Sheets, or other Goods of the Inn-  
See Stamf. keepers, out of the Chamber where he lodgeth, and then (going to the Sta-  
26. b. ble for his Horse) is taken with them, or they be found in some other room  
Br. Cor. of the house where he had laid them; it is Felony in both cases, although  
107. the possession of those Goods continued in the Owner.

So is it, if one taketh a Horse in another mans Close, with an intent to the steal him, and he be apprehended before he hath gotten the Horse out of the same Close; this is Felony. *Lamb. 277. & Cromp. 36. a.*

“If one takes a Sheep in my Pasture or Fold, or a Calf in my Pen, &c.  
“and killeth the same, and be found or taken doing it, and then begins to  
“fly; this is Felony, though he hath not carried the same away out of the  
“place where he first took it.

*Next, of what things Larceny may be committed, and of what not*

#### CHAP. CXIV.

**N**Ote, that all felonious taking of any thing whereof another hath property, is Felony. *22 H. 6. Br. Coron. 190.*

Anc therefore Larceny may be committed by taking any of the moveable goods of any person, as Money, Plate, Apparel, Household-stuff, or Corn, <sup>Move-able goods.</sup> Hay, Trees, or Fruit, (that are severed from the ground) or the like; the stealing of them is Felony.

It is also Felony to steal any Horses, Mares, Colts, Oxen, Kine, Sheep, <sup>Domestic- cal.</sup> Lambs, Swine, Piggs, Hens or Geese, Ducks, Turkies, Peacocks, and other domestical Birds or Beasts of tame nature. *18 H. 8. 2.* For the nature of these things being tame, (and not savage) if they shall run or flie away, though out of sight of the Owner, yet in what place soever they be found, they cease not to be his, so as whosoever detaineth them from the Owner is punishable by way of Action.

It is Felony also to take some things that be of wild nature: as to take <sup>wild.</sup> young Pigeons, which cannot flie, out of another mans Dove-house or other house; or to take young Hawks, or young Herons, out of their Nests (or Airies) and breaking in a Park, or other several ground; so to take Fishes that be kept in a Trunk or several Pond: for that the property of such things shall be always adjudged in the Owner of the Dove-house, Ground, Trunk, or Pond, inasmuch as such things cannot (of themselves) go or get out thereof, but that the Owner of such Dove-house, Ground or Pond, may take them at all times at his pleasure. *10 E. 4. 17. a. Bingham, & 18 E. 4. fol. 8. a.*

Br. Cor. 93 So of old Doves taken in the Dove-court (in the night time especially:)  
22 Aff. 95. and so it seemeth of any other wild Beast or Fowl (being of value) and taken  
Kit. 9. b. within a mans house.  
27. b.

22 H. 8. 9. b. At Cambridge Summer Assizes Anno 1627. there were two indicted and  
16 E. 4. 7. 2 arraigned of Felony, before Sir Francis Harvey, for taking Fish out of a Net lying in the River, being the several Fishing of Sir Ed. P.

Also it is Felony to take any Swans that be lawfully marked, though they be at large; for a man hath property in such. See *Co. lib. 16. b. 17. a. Quere* if they be flying Swans, and not pinioned.

Also for Swans unmarked, if they be Domestical or tame, *sc.* kept in a Moat, or in Ponds near to a Dwelling-house, and so be *Domui* or *Manui assueti*, to steal such is Felony. See *Co. 7. 17. b. hic. postea.*

So it seemeth of Swans unmarked, so long as they keep within a mans Mannor, or within his private Rivers: or if they happen to escape out of a mans Mannor, or private Rivers, yet if they shall be pursued and taken, and brought in again. See *Co. 7. 17. 16. b.*

But if Swans that be unmarked shall be abroad, and shall attain to their natural liberty, then the property of them is lost, and so long Felony cannot be committed by taking of them.

And yet such unmarked and wild Swans, the Kings Officers may seize them (being abroad) for and to the use of the King, by his Prerogative, they being *Volatilia Regalia*: also the King may grant them, and by consequence another man may prescribe to have them, within a certain precinct or place; for it may be intended to have a lawful beginning by the Kings Grant. *Co. lib. 7. f. 16. a. b. & 18. a. b.*

Also young Swans or Cygnets, they do belong to both the Owners in common equality, *sc.* to the Owner of the old Cock, and to the Owner of the old Hen, and the Cygnets or young Swans shall be divided between them. *Co. 7. 17.* And to steal such Cygnets is Felony; for they shall be of the same nature with the old Cock or Hen.

Also it is Felony to take a tame Deer which is marked and domestical especially if the Taker knows it to be tame and domestical, or that it wear-<sup>10 E. 4. 15. Stamp. 25c</sup> eth a Bell,

If a Hart, Bull or other Beast which hath been wild by nature, and made tame, and hath at his neck a little Collar of Leather, or any other notorious sign, and doth go abroad, and returneth again to the house (of his Master or Owner) at his pleasure, if he be taken by a stranger and killed by night, or in other secret manner, this is Felony by the Common Law. *Crompt. Author des Corts, 167.*

But by the Common Law, Larceny cannot be committed by taking of savage or wild Beasts, Fowls or Fish, found in their Wilderness and abroad, or at large; as Deer, Conies, Hawks, Doves, Pheasants, Partridges, Herons, Swans unmarked, or Fish that are at liberty, &c. for no persons can claim propertie in them. *Fitz. 87. a. Fi. 45.*

“By the Stat. *de Foresta c. 10. Nullus de cetero amittat vitam vel membrum pro Venatione nostra (sc. pur tuer Deere le Roy:)* which branch is but an affirmance of the Common Law. *Crompt. Author des Corts, 166.*

Howbeit by Stat. it is now made Felony to hunt Deer or Conies (after some sort) in a Forrest, Park, or Warren; or to take a tame Beast or other thing in a Park, by manner of Robbery. See the Stat. made 3 Ed. 1. 20. & 1 H. 7. c. 7. *Vide postea Felony by Stat. tit. Hunting.*

Also by Statute it is Felony to steal, take away, or conceal a Hawk. *Ibidem.*

But for the better understanding what the Law is in things that be *feræ naturæ*, observe these differences.

In some things that be *feræ naturæ* a man hath a right and property, and in some of them a right of privileged.

There be three manner of rights of Property: *sc.*

1. Ab-

1. Absolute. This property a man cannot have in any thing which is *fera natura*, but onely in such things as are *domita natura*.

2. Qualified. } These properties a man may have in things *fera natura*; and to such properties a man may attain by two

3. Possessory. } means: *sc.*

1. By Industry: and this may be either by taking them only, (and yet such things be his no longer then they be and remain in his possession or custody; ) or by making them tame, (*sc. mansueta, id est, manui assueta, or domestica, id est, domui assueta.*) But in these last a man also hath but a qualified property, *sc.* so long as they remain in his possession, and so long Felony may be committed by taking of them away; but if they attain to their natural liberty, and have not *animum revertendi*, then the property of them is lost.

2. *Ratione impotentia & loci*: As where a man hath young Goshawks, or Herons, or the like, which are *fera natura*, and do breed (or air) in his Ground, he hath a possessory property in them; so as if one takes them when they cannot flie, the Owner of the soil may have an Action of Trespass, *Quare boscum suum fregit, & tres pullos Esperworum suorum, or Ardearum suarum, pretii tanti, nuper in eodem bosco nidificantium cepit & asportavit.* And to take these away, is Felony, as is aforesaid. 18 E. 4. fol. 8. Stamf. 25. c. Fitz. 86. l. & 89. k.

Also note, That my Hawk which is flying at a Fowl, and my Deer that is chased out of my Park, so long as my Servant or Keeper maketh fresh sute after them, they still remain in my possession, and the property is still in me: But if they stray, it is lawfull for any man to take them. *Fi.*

45.

Co. 8. 138.  
b.  
See Doct.  
& Stnd.  
f. 10.

But when a man hath Beasts or Fowls (that be savage, and in their wildernes) *ratione Privilegii, sc.* by reason of a Park or Warren, &c. (as Deer, Hares, Conies, Pheasants, or Partridges, or the like, which be things of Warren) he hath no property in them: And therefore in an Action *Quare Parcum, or Warrenum, &c. fregit & intravit, & 3. damas, lepores, cuniculos, phasianos, perdices, &c. ibidem invent. cepit, & asportavit,* he shall not say *suos*, for that he hath no property in them, but they belong unto him *ratione Privilegii*, (for his Game and Pleasure) so long as they remain in the place privileged. And if the Owner of the Park die, his Heir shall have them, and not his Executors or Administrators; for that without them the Park (which is an Inheritance) is not compleat: neither can Felony be committed by taking of them. *Fit. 86. m.*

Lamb. 270

Neither can Larceny be committed by taking of Dogs of any kind, Apes, Parrats, Squirrels, singing Birds, or such like thing, (kept onely for pleasure, and not for any profit) though they be in the House, and made tame.

Co. 7. 18. 7  
12 H. 8. 3.  
Br. Tresp.  
407.

No not by taking a Bloud-hound or Mastiff, although there is good use of them, and that a man may be said to have a property in them, so as an Action of Trespass lieth for taking them; yet in regard they are things of so base a nature, no Felony can be committed by taking them.

But yet to take a Dog of any kind, or other thing of pleasure, from

the person of another, or out of the possession of another, and in his presence, if it be done with force, or violence, it amounteth to a breach of the Peace. And if it be done with force, and by the number of three persons or more, it will amount to a Riot, as it seemeth.

Also it is Felony to steal the flesh of any tame or wild Fowl, or of any Deer or other Beast that is dead, out of the possession of another man. Stamf. 25. a

So it is to pull the wool from the Sheeps back, or to kill them, and to take the Skin, and leave the Body behind.

“ So it is to clip or shear another mans Sheep, and to carry away the Wool; and to brand or mark with his own Brand or Mark another mans Sheep.

But note, that in all these cases of Felony aforesaid, the thing so taken or stollen must exceed the value of 12 d. though some opinions have been otherwise; also it must be of a thing personal, and not real. Cramp. 36

For the taking of any real Chattel or thing is no Felony: as,

Things  
real.

If one cuts down my Tree, or my Corn, and carrieth it away, or pulleth and stealeth my Apples hanging on the Tree, and carrieth them away; these are no Felonies for these things be part of my Free-hold, till they be severed. Stamf. 25. c  
10 E. 4. 17  
Co. 4. 19.

But if I gather mine Apples, or cut down a Tree or Corn of mine own, then it is Felony, if another man shall carry them away feloniously.

And by the opinion of *Mar.* if a stranger cuts down my Tree or Corn without Title, and another time after he fetches it away, that will prove Felony, because it was a Chattel severed when he took it. See 12 *Aff. p.* 32. *Br. Coron.* 76. Lam. 27. 2  
Cramp. 26.

Also to take Lead from off a House, or Church, will not amount to Felony, for it is parcel of the House or Free-hold. Cramp. 37  
Stamf. 25.

Also to take away the Evidence of a mans Land, or any Indenture of Lease, or any Obligation, Deed, Specialty, or other Writings, (be they in or without a Box) it is no Felony, because they cannot be valued; and again, because they concern Inheritance, Chattels real, or things in action: yet if they be in a Box unsealed, it seemeth that the taking of the Box feloniously is Larceny; but if the Box be sealed, and have Writings within it, the Box shall be of the same nature as the Writings that be therein. Lamb. 27. 1  
10 Ed. 4. 6.  
Br. Cor. 152.  
Co. 8. 33.  
10 Ed. 4. fol. 16.

So to take away an Infant in Ward is no Felony.

The Owner  
not known.

Also the taking and carrying away of such things whereof the Owner is unknown, in some cases is no Felony: as the taking away of Treasure that was hidden or lost, (be it Money, Bullion, or Plate) or of Wreck of the Sea, or Goods that be waived, or Strays (before they be lawfully seized, &c.) it is no Felony; but the takers away of such Treasure, Wreck and Wain, shall be punished by Fine and Imprisonment. 22 *Aff. p.* 99. Stamf. 25.  
Stamf. 25.  
Br. Cor. H.  
87. 265.  
Br. Cor. 176.  
*Br. Coron.* 96. *Fil. Coram.* 187, & 165. *Vide Bract. lib.* 3. fol. 119, & 120. 31. 7. 00  
1. 3. H. 1  
1. 1. T. 11  
1. 1. 1. 1

And yet where the Goods be *bona cuiusdam hominis ignoti*, or *bona cuiusdam mortui & ignoti*, or *bona Parochianorum*, or the Goods of a Church or Chappel, (as Bells, Books, Chalices, Surplices, Bell-ropes, &c.) or the Goods Dyer 99.  
Lamb. 172  
& 476, 478  
7 Ed. 4. 14  
15.



Br. Indict-  
ment 33. Goods of any Corporation in time of Vacation ; in these cases there be owners of them to some purpose, and therefore it is Felony to steal such Goods. *Vide Cro. 25.*

One *Nottingham* digged a dead body out of his Grave, and took away his Winding-sheet ; this was holden to be no Felony, but punishable as a Misdemeanor, and the Offender was adjudged to be whipped, &c. for it : this was at *Cambridge* Summer Assizes, *Anno 1617.*

Note also, That a man may commit Felony by taking his own Goods : as, *His own Goods.*  
7 H.6.43. If *A.* do lend or deliver Goods to *B.* to keep, and after *A.* doth take them  
5 H.7.18. away feloniously, or privily and fraudulently, (to the intent to charge *B.* or  
Stamf.26. to recover Damages for the same against *B.* by an Action of *Detinue*) this is Felony in *A.* and yet the property of the Goods was in him : yet *M. Brook*, *Coron. 142.* maketh a *Quære* thereof.

Mar. leet.  
12. But if I lend my Plate, or deliver my Goods to another to keep, and he  
Crompt.  
37. melteth my Plate, or changeth the fashion of my Goods ; now if I should take that Metal or those Goods feloniously, it were Felony in me, because the property is altered by altering of the Fashion. *See a little before,*

If the party robbed taketh his Goods again from the Thief, and suffereth him to escape, *Vide postea, tit. Accessories.*

Crompt.  
37. A man findeth my Purse in the High-way, and being asked thereof, deny-  
P.R. 129. eth it ; this seemeth to be no Felony, for he came not thereby at the first feloniously : but by the Levitical Law he was to restore the thing found, with an addition of the fifth part more thereto. *Levit. 6. 3, 5. Numb. 5. 7.*

A man hath two Chains, the one of Gold, the other of Copper, and he selleth the Gold Chain, and delivereth it, and presently after he secretly conveys away his Gold Chain, and puts the Copper Chain in the place thereof : this is Felony. *Leet. M. Cock.*

So if one taketh away my Horse, and leaveth another of his (which is like unto mine) instead thereof, this is Felony. *Ibidem.*

Crompt.  
37. A man cometh to my Wife, or to my Servant, with a false Message, To-  
P. Just. 4. ken, or Letter made in my name, and thereby getteth my Goods : yet this is no Felony, but it shall be punished by the Stat. of 33 H.8. cap. 1. *See antea, tit. Counterfeiters.*

*What Persons are chargeable in Larceny.* CHAP. CXV.

27 Aff.40. **A** Feme Covert doth steal Goods by the compulsion or constraint of her wife.  
Stamf.16. Husband ; this is no Felony in her. *F. Coron. 160. & Fitz. Coron. 199.*  
142. *Br. Coron. 108.* For where the words of the Law are broken by compulsion,  
Fi. 12. there the Law is not offended, neither shall any person be damnified for doing a thing, whereto he is enforced or compelled, but such Compulsion shall be a good Excuse in our Law. *Pl. 19. a. b.*

Mar. leet.  
12. But yet if by the compulsion of her husband, she committeth Murther, this is Felony in them both.

27 Aff.40. If a Feme Covert doth steal Goods by the commandment or pro-  
See Stamf.  
142. 26, curement of her Husband, (without any constraint) this hath been  
27. holden to be Felony in her, *scil.* that the Wife in such case is a Principal

pal, and the Husband but an Accessary. M. Bracton also saith it is Felony; *ibid.* for *Licet uxor obedire debeat viro, in atrocioribus tamen non est ei obediendum*: but M. Stamford and others seem to be of another opinion. *Stamf. 26. P.R. 130. Br. Coron. 108.*

If the Husband and the Wife joyn in committing of Treason, the necessity of Obedience doth not excuse the Wives Offence, as it doth in Felony, because it is against the Commonwealth; for, *Privilegium non valet contra Rempublicam. Ba. 32.* F. Cor. 160  
Lamb. 257

But if the Husband and the Wife joynly together do steal Goods, this shall be taken to be the only act of the Husband, and such Felony shall be imputed onely to the Husband, and not to be Felony in the Wife, by some Opinions. *Vide Stamf. 26. & Lamb. Fitz. Coron. 160. & Ba. 31, & 37.* that the Wife can neither be Principal nor Accessary, in regard of the Subjection and Obedience she oweth to her Husband.

And yet Mr. Bracton seems to be of another opinion herein, saying, *Quid erit si uxor cum viro conjuncta fuerit, vel confessâ fuerit, quod viro suo consilium præstiterit & auxilium? nunquid tenebuntur ambo? imo, ut videtur.* (And a little after he saith,) *Alter eorum potest esse malus per se, & alter bonus; ita uterque eorum possit simul & conjunctim esse malus.*

And again, *Sicut sunt participes in crimine, ita debent esse participes in pœna. Ibidem.*

And M. Bracton seemeth to make this difference, That although the wife may conceal her husband's Offence in case of Felony, (as also she may relieve and keep company with him, knowing him to be a Felon) *Consentire tamen non debet Feloniæ viri sui, neque esse coadjutrix, sed Feloniæ & nequitiam viri impedire quantum possit.* And accordingly at Cambridge, at Lent Assizes, Anno 1619. the Wife was in such case indicted and arraigned with the husband for robbing of a Wind-Mill.

Again at Cambridge, Lent Assizes, 1620. one William Houghton, and Katharine his Wife, were together indicted and arraigned for stealing certain Apparel: and the husband and wife were indicted for the like at Lent Assizes, Anno Dom. 1624.

Also the wife is chargeable for Trespas done by her and her husband together; and therefore (howsoever) it shall be safe for the Justice of Peace, in such cases, to commit the wife to the Gaol as well as the husband.

And yet for this case of a Trespas committed by the husband and wife, Sir Fr. Bacon giveth this Rule, *Excusat aut extenuat delictum in Capitalibus. quod non operatur idem in Civilibus: sc. In capital Causes, in favorem vitæ,* the Law will not punish in so high a degree, except the malice of the will and intention appear. *pag. 36, 37.*

But a Woman covert alone by her self (the husband not knowing *Stamf. 6.* thereof) may commit Larceny, and may be either Principal, or Accessary: as if she steal another man's Goods, or receive the Thief that stealeth them; or shall receive stolen Goods into her house, knowing them so to be; or shall lock them up in her Chest or Chamber, her Husband not knowing thereof: and in such cases, if her husband, so soon as he knoweth thereof, do forthwith forsake his house and her company, and make his abode elsewhere, he shall not be charged for her

F. Cor. 383. See her Offence ; whereas otherwise the Law will impute the fault to him and not to her. *P. R. 130. See Bracton, lib. 3. c. 32.*

Stamf. 26.

“ *M. Bracton saith farther, In certis casibus de furto tenebitur uxor, si fur-  
tum inveniatur sub clavibus suis, quas quidem claves habere debet uxor sub  
custodia & cura sua; Claves viz. dispensæ suæ, arcæ suæ, & scrinii sui: & si  
aliquando furtum sub clavibus istis inveniatur, uxor cum viro culpabilis erit,  
sc. vir si consenserit, vel rem ei warrantizabit. Ibid.*

Goods are delivered to the Husband to keep, and his Wife stealeth them, it is no Felony. Otherwise it is if the Husband had delivered them to a stranger, and then the Wife had taken them feloniously out of the possession of the stranger, this had been Felony in the Wife. *Mar. Lect. 12.*

F. Cor.

455. Br.

Cor. 142.

Stamf. 27.

Also the Wife shall not be accounted a Felon for taking or stealing the Goods of her Husband : and if the Wife do take her Husbonds Goods secretly, and deliver them to a stranger knowing thereof, yet this is no Felony in the stranger. See *Abr. d. Ass. fol. 71.*

Br. Cor. 77

Cromp. 35

P. R. 130.

But if a man do take away another mans Wife with her Husbonds Goods against the Wives will, this is Felony by the Statute *westm. 2. ca. 34.* as it seemeth : and so if any man takes away another mans Wife with her Husbonds Goods against the Husbonds will, this also is Felony.

If a Married woman shall deliver to her Adulterer, her Husbonds Goods, this is Felony in the Adulterer. *Lectur Mr. Cock.*

And if the Husband commits Larceny, and the Wife, knowing thereof, do receive or releive him, &c. she is not thereby Accessary to the Felony. *Vide postea, tit. Accessary*

Note, that a woman convicted of or for the felonious taking of any Money, Goods or Chartels above the value of 12. d. and under 10. s. or as Accessary to any such Offences, (the said Offences being no Burglary nor Robbery in or near the High-way, nor the felonious taking of any Goods from the person of another privily) shall for the first Offence be branded in the hand, and farther punished by Imprisonment or Whipping, at the discretion of the Judge, or Justice, before whom she shall be so convicted, *21 Jac. cap. 6.*

If a Servant by the compulsion of his Master stealeth another mans Goods, this is Felony in them both, notwithstanding such compulsion. See more of Servants here before, *sub hoc tit.*

Lamb. 273

An Idiot, Lunatick, Dumb and Deaf person, and an Infant, are chargeable in Larceny, after the same sort as they are chargeable in Homicide, saith Mr. Lambert ; yet *quære inde*, and see here before in *Man slaughter*, And yet if an Infant shall commit Larceny, and shall be found guilty thereof before the Justice of Peace, it shall not be amiss to respite the Judgment; and so hath it often been done by the Judges. See *Stamf. 27. 3 H. 7. fo. 1. b. & 12. b. & 35 H. 6. 11. Br. Covert. 80.*

At Cambridge Assizes in Lent 1619. before Sir Henry Mountague and Sir John Dodderidge, Judges of Assize there, they sitting together upon the Prisoners, an Infant about 14 years of age was arraigned before them of Larceny, and was found guilty, and upon demand of his Clergy had the same allowed him, and was burnt in the hand.

The

The like was done there at Lent Assizes, 1624. before Sir *Randal Crew*, Lord Chief Justice. See *Doct. & Stud. fol. 148.*

A Bailiff, &c. distraineth secretly for Rent, and after selleth the Distress, and when the Owner demandeth his Goods which were so distrained, the Bailiff denieth them; this is Felony. *Leſt. M. Cock.*

If an Escheator or other Officer cometh to a man, and telleth him that he is Outlawed, when he knoweth he is not Outlawed, and by colour thereof he taketh his Goods; this is Felony. But if the party be indeed Outlawed, and the Officer cometh to take his Goods, and the other party sheweth him a *Supersedeas*, and notwithstanding the Officer taketh away his Goods; this is no Felony. *Ibid.*

If an Officer shall levy any Duty for the King without Warrant, this is Felony. *Leſtur. M. Cock. Vide my Officer of Sheriff, cap. 126.*

So where any Officer shall levy any Duty without sufficient Warrant or Authority, and shall after convert the same to his own proper use, it seems to be Felony.

“ Of Thefts and Rapines committed upon the Borders of the Counties <sup>14 Car. 2.</sup>  
 “ of *Northumberland* and *Cumberland*, and Power of the Justices of the said <sup>cap. 22.</sup>  
 “ Counties to secure the same against the Spoils and Rapines of *Moss-Troopers*,  
 “ pers, see the said Act at large: the same being to continue in force five  
 “ years, and no longer.

#### Other Felonies by the Common Law. CHAP. CXVI.

Burning  
Houses.

**B**urning of a Barn (which is adjoyning to a dwelling-House) in the night <sup>11 H. 7. 1.</sup>  
 feloniously, is Felony by the Common Law. <sup>Co. 4. 20.</sup>

So is it to burn a Barn (in the day-time) having Corn in it, and though it <sup>Lamb. 262</sup>  
 adjoyned not to the dwelling-house. <sup>Co. 4. 20.</sup>

Burning of any dwelling-House, or other House parcel thereof, willingly <sup>3 H. 7. 10.</sup>  
 and feloniously done, is Felony by the Common Law, whether it be done <sup>8.</sup>  
 by night or by day. *Br. Coron. 135. 155. 226.* <sup>Co. 11. 19.</sup>  
<sup>Stamf. 36.</sup>

Burning of any other House, or of a Stack of Corn, feloniously, seemeth  
 also to be Felony by the Common Law: for the words of the *Statute of Westm.* <sup>Fit. 169. b.</sup>  
 1. cap. 15. (which *Statute* seemeth to be but a rehearsal of the Common <sup>Co. 11. 19.</sup>  
 Law, *Br. Mainpr. 78.*) ordaineth, That such as be taken for House-burning <sup>Stamf. 36.</sup>  
 (generally) feloniously done, be not bailed: and of that Opinion seemeth  
 Maſt. *Britton*, who wrote presently after the making of the same *Statute*;  
*Britton fol. 16.* See *Stat. Wincheſt. 13 E. 1. cap. 1. & 28 E. 1. cap. 17.* And it  
 appeareth also by *Britton, lib. 1. cap. 17.* that such Offenders were by the Com-  
 mon Law to have been burned. *Fitz. 269. b.*

The Book called the *Mirroure of Justices*, among other capital Offences hath  
 this, *Le crime de Arſon*: And he describeth the Offenders in this sort, *Ardours*  
*ſont qui ardent Citie, Ville, Meaſon, Home, Beaſt, ou auters Chattels de lour Felony*  
*in temps de Peace, pur pain ou vengeance.*

If a man will burn his own House willingly, this is no Felony. But if by  
 ſuch Burning he burneth his Neighbour's House, this seemeth to be Fe-  
 lony.

A man

A man intending to burn another mans House, casteth Fire thereupon, and after that it is kindled and burnt in part, it is quenched; this is Felony, although the whole House were not burnt down.

So it seemeth, if a man shooteth unlawfully in an Hand-gun, and the fire thereof sets another mans House on fire and burneth it down, this is Felony, *Quare.*

If an Indictor (or Juror) in case of Treason, or Felony, shall discover the Kings Council and his fellows, it hath been adjudged Felony. *Vide antea, tit. Petty Treason.*

1 H. 7. 6. Rescuing, or taking away from an Officer, any Offender, who is attain-  
Br. Co. ted, imprisoned, or but arrested for Felony, such *Rescous* is Felony, as well  
127. 130. in him that made the *Rescous*, as in him that is rescued. See more here, pag.  
Stamf. 31. b. *sequent.*

9 H. 4. 12. Also when a man hath arrested another for Felony, and after letteth him  
go at liberty, this is a wilfull Escape, and shall be adjudged Felony in him  
that did so let him escape. And in case of Treason such Escape is Treason.  
See *paulo postea.*

Stamf. 30. Breaking of Prison (before the Stat. *De frangentibus Prisonam*, made 1 E. Breaking  
38. See the 2.) was Felony by the Common Law, for what cause soever he were in of Prison,  
Stat. 1 E. 2. Prison, yea, though he had been imprisoned but for a Trespasse. But  
& P. Prif. 5. now that Stat. hath changed the Common Law therein: so that now, if  
a man be imprisoned, or arrested, or taken for a Trespasse, and do make  
an Escape, or be rescued by a Stranger, this but a fineable at this day. *Vide*  
*Fi. libro 2. & Stat. 10. E. 2. hic cap. 106.*

If an Offender which is adjudged, or otherwise by Law is to abjure the Realm, shall depart; and after such departure shall return again without the Kings Licence; then if the cause for which he did abjure were Felony, the Offender so returning shall have Judgment of life and of member by the Common Law. But if the cause were not for Felony, then the Offender by the Common Law shall be taken, and onely make a Fine to the King. But now see the Statute of 35 Eliz. 1 & 2. where it is made Felony also for Popish Recusants, or other Sectaries, which are to abjure, if after Abjuration they shall return without the Kings special Licence. See *hic postea.*

## Felonies by Statute CHAP. CXVII.

3 H. 7. c. 11. IF any man, being the Kings sworn Servant, &c. shall confederate, ima-  
P. Felon. gine, compasse, or conspire with another to destroy the King, or any Lord  
13. of this Realm, or any other sworn to the Kings Council, or the Steward,  
Treasurer, or Controller of the Kings House, it is Felony: but what the  
Justice of Peace may doe herein, see *antea, tit. Felony.*

1 E. 2. P. Breaking of Prison by one being therein for Felony, or by one being a  
Felon. 15. Prisoner for Felony, is Felony. Breaking of Prison.

And yet by the Common Law, if the Prison had been broken by the party himself, it had been Felony, whatsoever the cause of his Imprisonment were, yea although it were but for a Trespass. *Vide Stamf. 30. c. & M. Finch lib. 2.*

But

But now by the Statute 1 Ed. 2. it is no Felony, except the Prisoners were there committed for Felony. *Vide Co. Inst. 2. Part, 589. upon the Statute de frangentibus Prisonam. Fitz. Coron. 248. Escape non adjudicabitur vers. ipsum qui commiss. est pro transgress.*

Now every one who is under Arrest for Felony is a Prisoner, and that as Dyer 99, well without the Prison as within, or in the Stocks in the High-street, or in the possession of any that hath arrested him, or that hath the keeping of him being arrested for Felony. *Vi. libro 2. M. Finch.*

And therefore if any person who is under Arrest for Felony, or suspicion thereof, (whether he be in the Gaol or out, or but in the Stocks, or but in the possession of any that hath arrested him) if he shall make an Escape, this is a breaking of Prison in such Prisoner, and is Felony. <sup>1 E. 3. 17. P. R. 147.</sup>

And yet one committed to the Constable (by the Justice) for suspicion of Felony, making an escape from the Constable, was after taken again, and indicted and arraigned for that Felony, and by the Jury of Life and Death was found not guilty of that Felony; and after was indicted for the Escape: But here, considering the Prisoner was found not guilty for the first Felony, therefore his Escape from the Constable was holden not to be Felony; and so I have known the Jury directed by the Judge of Assise.

Before the Statute of 1 Ed. 2. if it had not been the Kings Prison which had been broken, it had been no Felony, as it appeareth by *Britt. fol. 17.* And with him also agreeth the Book called the *Mirroure of Justices, lib. 2.* who saith thus, *Gaole nest autre chose que common Prison, & nul avera tiels forsq; le Roy: Private prison est dauter, dont a chescun list de scaper que poet, si non que il face autre trespass que lescape.*

But note, that at this day there is no difference whose Prison the Offender doth break, whether it be the Kings Prison, the Lords of a Franchise, or any other persons; for the Letter of the Statute is, *Prisonam frangentibus*, and not *Prisonam nostram*: so that whose Prison soever it be which is broken, it is within the compass of this Statute. *Stamf. 31.* <sup>2 Ed. 3. 1. Stamf. 31.</sup>

Also whether it be a common Gaol, or a private Gaol or Prison, yea or but the Constables house, or the house of any other person who hath the custody of him for Felony, there is no difference; for these are Prisons for the time, and so within both the words and meaning of this Statute.

Also by this Statute the breaking of Prison is Felony in the Prisoner himself. And yet if the Prison shall be on fire by casualty, and they within shall break the Prison for saving of themselves; this is no Felony, but excusable by the Law of Nature. *Plo. fol. 13. b. 14 Hen. 7. 29. Read 15 H. 7. 2.*

*Rescous by a Stranger.* And if a Stranger doth break the Prison, or open the Stocks, or make a Rescous, whereby one imprisoned or arrested for Felony escapeth; this is Felony both in the Prisoner and in the Stranger, although the Prisoner was never indicted of the Felony. <sup>1 H. 7. 6. 1 Ed. 3. 17. Dyer 99.</sup>

By some Opinions, if a stranger shall disturb the arresting of a Felon, it is no Felony, except the Felon were taken and arrested, and after rescued: Yet *Fitz. Just. P. fol. 114.* saith, That such disturbance before Arrest is Felony. <sup>9 H. 4. 1. F. Co. 333. Stamf. 33. 2.</sup>

1 H. 7. 6. If a Prisoner be rescued at the Gallows, or as he is going to Execution, this is a breaking of Prison, and Felony within this Statute. And yet note this difference : *sc.* That if a Felon, in going to his Execution, &c. be rescued from the Sheriff, this is Felony, if it be presented before the Justices, &c. and so found by Enquest : but otherwise it is, if it cometh in by the Return of the Sheriff, there it is no Felony. 1 H. 7. fol. 6. Fitz. Indictment 30.

P. R. 147. If a Gaoler, a Constable, or any other which hath a Prisoner under Arrest for Felony, or suspicion thereof, voluntarily letteth or suffereth him to go at liberty ; (though this be no breaking of Prison, yet) this is Felony in the Gaoler, Constable, or him that letteth such Prisoner escape, but it is no Felony in the Prisoner ; but if such a Prisoner shall escape by the negligence of his Keeper, then the Felony resteth in the Prisoner only, and not in the Gaoler, &c.

If any man arrest another, and after voluntarily lets him go at large, if the Arrest were for Felony, it is Felony in him that so lets his Prisoner go, if the Arrest were for Treason, it is Treason, and if for Trespass, it is Trespass, & sic de similibus.

If the Gaoler or Keeper shall marry a Felon which is in his Gaol, this is an Escape; but *quare* whether it be Felony in the Gaoler or no.

If a Gaoler shall let a Felon to Mainprise which is not mainpernable orailable, *dicitur* that this is no Felony, but finable : for although it were voluntary, yet it was *per ignorance del Ley*. But *quare* hereof, for that the Gaoler hath no Authority to let any Prisoner to Bail ; and the Prisoner being in for Felony, the Sheriff himself at this day hath no Authority to Bail such a Prisoner, except it be by virtue of the Kings Writ, &c.

If the Constable (or other Officer) shall voluntarily suffer a Thief, being in his custody, to go into the water to drown himself, this Escape is Felony in the Constable, and the drowning is Felony in the Thief, *quia Felo de se*.

Otherwise, if the Thief shall suddenly (without the assent of the Constable) kill, hang, or drown himself, this is but a negligent Escape in the Constable.

P. R. 149. The voluntary letting of a Felon to escape who is not arrested for Felony, though he knoweth of the Felony, yet it is no Felony ; neither can it be an Escape without an Arrest : and yet such an Offender (being an Officer) may for such his negligence or default be indicted and fined, as it seemeth by the words of the Commission. *Quare* if he be not accessory to the Felony. Se *Br. Escape* 43.

Dyer 440. Note, that a man is alwayes said to be in Prison, so long as he is within the sight of the Gaoler, or of him that hath him in custody, though he do break away or escape.

Stamf. 33. For an Escape is properly, when a Prisoner shall escape or get out of the view of his Gaoler or Keeper, and shall be taken again by fresh sure.

Br. Esc. 4. And if a Prisoner shall make an Escape, (of his own wrong, and without the consent of the Gaoler, or other person that hath him in custody) though he Escape out of their sight, and into another Countrey, yet if he be

be taken again upon fresh sute, before the Gaoler, &c. be sued, or hath fined for the Escape, (though it be seven years after) yet this is no Escape, as it seemeth, for which the Officer shall be charged; for there is no prejudice to the King by the Escape, though it be Felony in the Prisoner as aforesaid, and a breaking of Prison in him. *Co. 3. 44. & 52.* accordeth in case of a Prisoner taken in Execution, that shall make an Escape of his own wrong.

If a Gaoler, or other Officer, &c. shall licence his Prisoner to go abroad for a time, and to come again; this is an Escape, because the Prisoner is found out of the bounds of his Prison, though the Prisoner return again, according as he shall be prescribed; and so is it, if the Officer shall suffer his Prisoner to go abroad for a time by Bail or Baston, this is an Escape: yet they are holden in both cases to be but negligent Escapes in the Officer, and so but finable. But *quare*, for the Gaoler, and other Officers, ought to keep their Prisoners in *Salva & arcta custodia*. *Vide post, tit. Imprisonment.* *Co. 3. 44. Stam. 33. c. Fitz. Cor. 243. & 431*

Note, that the Sheriff of every County shall have the keeping of, and shall be chargeable and charged with the common Gaol and Prison of the same County, and with all the Prisoners therein; and must put in such Gaolers or keepers for whom they will answer, as appeareth by the Statutes, *14 E. 3. c. 10. & 19 H. 7. c. 10.* which also seemeth to have been the Common Law before, as you may see by the Preamble of the Stat. of *14 Ed. 3. & Co. 4. 34.* And therefore the High-Sheriff himself shall be answerable for an Escape of a Felon, suffered by his Gaoler, and may be indicted for the same, (see the Precedents in *Lambert, West. Crompton*;) And so the High-Sheriff, as he hath an Office of great Antiquity, and of great trust and Authority (for the time,) so withall it is a place of great perill and charge; and if the rigour of Law should be laid upon them, then should they have a warm Office, and be well rewarded. But in such cases I have observed the favourable exposition and dealing of the Learned and Reverend Judges. First, you shall find in *Sir Edward Cokes Reports, lib. 9. f. 98.* that the Gaolers who have the actual possession shall be answerable for Escapes, if they have wherewith: also *Popham* Chief Justice did cause one *Starver* (a Gaoler at *Cambridge*) to be indicted, arraigned, hanged, for an Escape of a Felon suffered by him. *6 H. 7. 11. Co. 4. 33. West. M. 1. Co. 4. 98. Lamb. 11. 5*

In the *Doct. & Stud. cap. 42.* this difference is taken: *sc.* that if the Escape were by default (*sc.* a negligent Escape) of the Gaoler, that the King may charge the Gaoler if he will, or the Sheriff may be charged by reason of the Statute *14 E. 3. c. 9.* *Temp. Eli.*

But if it be a wilfull Escape in the Gaoler (which is Felony in him) the Sheriff shall not be bound to answer to the Felony, (See there *fol. 135. & 137.*) But there the Sheriff may be fined to the value of his Goods. *Stamf. 35. b.*

Escape is  
of two  
sorts.

Now an Escape is of two sorts: voluntary, and negligent.

Voluntary Escape is, where one doth arrest or hath imprisoned another for Felony (or other Offence,) and after voluntarily letteth him go at liberty where he will. *Stamf. 32.*

Negligent Escape is, when the party arrested or imprisoned doth escape *Stamf. 33.*



escape against the will of him that arrested or imprisoned him, and is not freshly pursued and taken again before he hath lost the sight of him which escaped; the penalty whereof seemeth to be onely a Fine at the discretion of the Judges or Justices: Yet See *Stamf.* 35. k. a difference of the Fine: where the Prisoner is attainted, *le Fine serra C. li.* where but indicted, C. s. and where onely taken upon suspicion, *semble dispunishable. Quere & vide F. Coron.* 224. 316. 454. & *hic infra*, that in case of a Trespass a negligent Escape is finable.

But for voluntary Escape, if the Arrest or Imprisonment were for Felony, it shall be adjudged Felony in him which did voluntarily suffer the Prisoner to Escape; and if the Arrest, &c. were for Treason, it shall be adjudged Treason; and if the Arrest or Imprisonment were for a Trespass, it shall be adjudged a Trespass: And in case of Felony there is no difference, whether the Felon be arrested by an Officer, or by another. See *Br. Cor.* 112.

Also in case of a Trespass, or other Offence of what kind soever, (being neither Treason nor Felony) there seemeth no difference, whether the Escape suffered by the Officer be voluntary, or negligent; but that the Officer in both cases shall be fined for such an Escape, according to the quantity of his fault, by the discretion of those that shall be Judges of it.

One *Nichols* assaulted *Cholmely* to rob him, and killed him; after *Q. Eliz.* granted *Nichols* his Pardon: but *Cholmely* his wife having commenced her Appeal against *Nichols*, he was still detained in prison at the womans Suit: after the Gaoler suffered *Nichols* voluntarily to go at large, and so to escape. By the opinion of *M. Plowden*, this was Felony in the Gaoler, although *N.* the prisoner were now no Felon to the Queen, in regard he had obtained his Pardon. *Plow.* 476. b.

*P. Co.* 430. & 431. *P. R.* 150. A prisoner found guilty of petty Larceny is adjudged to be imprisoned by the space of a moneth, (for his punishment) and after the moneth he breaketh prison, and escapeth: *quare* what this is in the Prisoner, and what in the Gaoler. It is holden that the Gaoler shall be charged with this Escape. But if a Prisoner be discharged (by Judgment) paying his Fees, if he escape, here the Gaoler is not chargeable. The difference is, the prisoner in the first case was by Judgment committed to prison; and in the last case he is adjudged to be acquit of his imprisonment, paying, &c. and yet he is a prisoner until he hath paid his Fees. 21 *H.* 7. 17. a. *Br.* Escape 16. *Plow.* 465.

*11 H.* 4. 12. *Plow.* 258. 263. & 401. *Br. Esc.* 17. Note, that a voluntary Escape is no Felony, if the act done were not Felony at the time of the Escape made. As if *A.* do strike *B.* and hurt him mortally, whereupon the Constables do arrest *A.* and after willingly suffer him to escape, and after *B.* dieth of that stroke: this Escape is no Felony either in the Constables or in the Prisoner; yet the Constables shall make a great Fine, yea, shall (or may, at the discretion of the Judges) be fined to the value of their goods (as it seemeth) by 11 *H.* 4. 12. and *Stamf.* 35. h. because this Escape was voluntary.

If a man be wounded, and the percussor is voluntarily let go at large by the Gaoler, and after death ensueth of the hurt; yet this is no felonious Escape in the Gaoler. 11 *H.* 4. 12. *Ba.* 38.

*Crompt.* 39. The voluntary suffering him to escape who hath killed another *se defendo*  
E c

*dendo*, or by misadventure, or of him that hath committed petty Larceny, seemeth not to be Felony; for that these Offences are no Felony of death; but he that suffereth such an Escape shall be fined onely. *Cromp.* 39. Yet *Quare*, for they that suffered this Escape, are not to Judge whether these Offences be Felony or no. See hereof *postea*, *tit. Evidence against Felons*.

A man was taken for suspicion of Felony, and was delivered to the Constable of G. and after Escaped for want of good keeping, and the Constable was therefore taken and arraigned; and pleaded, That forasmuch as the Felon was not taken with the manner, nor at the Suit of the party, nor indicted of Felony, therefore it was no Escape, &c. And so was the Opinion of the Court then. See 42. *Aff. P.* 5. *Br. Escape* 39.

But the contrary was after holden in case where the Escape was voluntary, although the prisoner were taken onely upon suspicion, 44. *Aff. p.* 12. *Br. Escape* 31. & *Dyer* 99. that it is Felony, although the prisoner were not indicted of Felony.

Note also, where one is a prisoner by Arrest onely, and he doth Escape, there the Escape shall be presented before the Justices of Peace, or other Justices having Authority to enquire of the Escape, before he that suffered the Escape shall answer it, *sc.* before any thing shall be taken or levied by the Sheriff or other Officer. *Vide Co.* 11. 64. 65. & *Stat. Westm.* 1. c. 4.

Note also, if a man be arrested for suspicion of Felony by the Constable or other person, and after they shall have intelligence that there is no such Felony committed, here they may set the party arrested at liberty again, and they shall not be charged with the Escape; for there can be no Felon where there is no Felony committed. 11 H. 7. 7.  
Cromp. 40  
1 R. 151,  
152.  
Cro. 34.

But if a man be slain, or that there be any other Felony committed, and one is arrested for the same Felony, or for suspicion thereof, though he that made the Arrest shall after have intelligence and certain knowledge that the party arrested is not guilty of that Offence, yet he or any other may not set the party so arrested at liberty; for now he must not be delivered by any mans discretion, but by course of Law: otherwise it will prove a voluntary Escape, and so Felony, or at least finable. 44 Aff. 12.  
Cromp. 40.  
Cro. 14.

And yet if a Watchman shall take any man for suspicion of Felony, he may enquire of his good name and fame; and if he finds him to be of good name and fame, he may let him go. See the *Old Justice of Peace*, imprinted Anno 1559. fol. 13. But it were more safe for the Watchman to deliver such suspected person to the Constable, Justice of Peace, or to the Sheriff, according to the Statute of *Winchester*. See *hic antea*, *tit. watch*.

If a Justice of Peace shall send for a Felon out of the Gaol, and shall deliver him without Bail, this seemeth to be a voluntary Escape, and so Felony in the Justice; otherwise, where the Justice erreth *pro defectu scientiæ*, as to bail one that is notailable, this is but a negligent Escape. 25. E. 4. 3  
36.

If the Justice of Peace or Sheriff shall bail one who is notailable, this

this is an Escape, *Fitz. Escape 4. & Cor. 246.* (sc. a negligent Escape, if it be in ignorance, *ut supra.*)

But if one that is brought before a Justice of Peace for suspicion of Felony, shall confess the Felony before the Justice, and yet he shall suffer the Prisoner to go at large without Bail, this is a voluntary Escape, &c. *Vide Cro. 39.*

Now to proceed with Felonies by Statute. CHAP. CXVIII.

P. Fel. 9.  
Exod. 22.  
19.  
Lev. 18. 22.  
23.

**B**uggery committed with Mankind or Beast is Felony (without benefit of Clergy) 25 H. 8. 6. 5 Eliz. 17. it being a sin against God, Nature, and the Law: and in ancient times such Offenders were to be burned by the Common Law, *Fitz. 269. b. Fi. lib. 2.*

One describeth this Offence to be *Carnalis copula contra naturam:*

& hac per confusionem } *Specierum; sc. home ou feme ove brute beast.*  
Sexum; sc. home ove home, feme ove feme.

*Et ceo poet estre sans penetration: Car le use del corps despend le seede in tiel cases, fait ceo Buggery deins ceo Stat. sans penetration: Et issint fuit tenuis in le case le Seign' A. come ieo oye.*

Burning of Houses and Stacks of Corn: *Vide postea.*

If a man maketh a Bill or Writing, and layeth or casteth the same at another mans door, therein threatening to burn his house if he giveth not some money, &c. this hath been taken to be Felony. See 6 H. 7. f. 13. a. And quare what Statute it is that the Book meaneth. Note, By the Stat. of 8 H. 6. cap. 6. such Offence was made Treason, if after the Offender did burn the house; but that Stat. of 8 H. 6. standeth now repealed.

Br. Cor.  
213.

P. Fel. 22.

Congregations and confederacies holden by Masons, it is Felony in the causers thereof, and finable in the Masons that come to such Congregations. 3 H. 6. cap. 1.

P. Fel. 19.

Cutting out of any the Kings Subjects Tongues, or putting out their Eyes, of malice pretended, is Felony. 5 H. 4. 5. And for these the Offender shall lose his Life, Lands and Goods.

22 H. 8. 11.

P. Fel. 36.

Cutting or breaking down of Powdike or other Banks in Marsh-land maliciously, is Felony. 2 & 3 Ph. & M. cap. 19.

1 Jac. 12.

P. Fel. 6.

75 1.

1. Conjuratation, or Invocation of any evil Spirit, for any intent, &c. or to be counselling or aiding thereto, is Felony without benefit of Clergy. See *Exod. 22. 18. Deut. 18. 11. & Lev. 20. 27.*

2. To consult, covenant with, entertain, imploy, feed, or reward any evil Spirit, to or for any intent or purpose, is Felony in such Offenders, their Aiders and Counsellors.

3. To take up any dead body or any part thereof, to be imployed or used in any manner of Witchcraft, is Felony in such Offenders, their Aiders and Counsellors.

4. Also to use or practise Witchcrafts, Enchantment, Charm or Sorcery, whereby any person shall be killed, pined, or lamed in any part of their body, or to be counselling or aiding thereto, is Felony: By the ancient Common Law such Offenders were to be burned. *Fit. 269. b.* See

the Law of God against Witches, *Exod. 22. 18.* and against such as seek to VVitches and VVizzards, *Levit. 19. 31. & 20. 6.*

5. Also the second time to practise Witchcraft, &c. thereby to declare where any Treasure may be found, is Felony.

6. Or where any Goods lost or stollen may be found.

7. Or where any Cattel or Goods shall be destroyed or impaired.

8. Or to the intent to provoke any person to love.

9. Or to the intent to hurt any person in their body, though it be not effected. All these are Felony, *sc.* the second Offence, and without benefit of Clergy.

*Witches.* Now against these Witches (being the most cruel, revengeful and bloody of all the rest) the Justices of Peace may not alwaies expect direct Evidence, seeing all their works are the works of darknes, and no VVitnesse present with them to accuse them; and therefore for their better discovery, I thought good here to insert certain Observations, partly out of the Book of Discovery of the VVitches that were arraigned at *Lancaster, Anno 1612.* before Sir *James Altham*, and Sir *Edw. Bromley*, Judges of Assize there, and partly out of Mr. *Bernard's* Guide to Grand-Jury-men.

1. These Witches have ordinarily a Familiar or Spirit, which appeareth <sup>1 Sam. 28.</sup> to them sometimes in one shape, sometimes in another; as in the shape of a <sup>7.</sup> Man, Woman, Boy, Dog, Cat, Foal, Fowl, Hare, Rat, Toad, &c. And <sup>1 Chro. 10.</sup> to these their Spirits they give names, and they meet together to christen them, (as they speak.) *Ber. 107, 113.*

2. Their said Familiar hath some big or little Tear upon their body, and in some secret place, where he sucketh them. And besides their sucking, the Devil leaveth other marks upon their body, sometimes like a blew spot or red spot, like a flea-biting; sometimes the flesh sunk in and hollow, (all which for a time may be covered, yea taken away, but will come again to their old form.) And these the Devils marks be insensible, and being pricked will not bleed, and be often in their secretest parts, and therefore require diligent and careful search. *Ber. 112. 219.*

These first two are main points to discover and convict these Witches; for they prove fully that those Witches have a Familiar, and made a League with the Devil. *Ber. 60.*

So likewise if the suspected be proved to have been heard to call upon their Spirits, or to talk to them or of them, or have offered them to others.

So if they have been seen with their Spirit, or seen to feed some thing secretly; these are proofs they have a Familiar, &c.

3. They have often Pictures of Clay or Wax (like a man, &c. made of such as they would bewitch) found in their house, or which they roast, or bury in the Earth, that as the Picture consumes, so may the parties bewitched consume.

4. Other presumptions against these Witches; as, if they be given to usual Cursing and bitter imprecations, and withal use Threatnings to be revenged, and their Imprecations or some other mischief presently followeth, *Ber. 61. 205.*

5. Their

5. Their implicate Confession: as, when any man shall accuse them for hurting them or their Cattel, if they shall answer, *You should have let me alone then; or, I have not hurt you as yet*: These and the like speeches are in manner of a Confession of their power of hurting. *Br. 206.*

6. Their diligent Enquiry after the sick party, or coming to visit him or her unsent for; but especially being forbidden the house.

7. Their apparition to the sick party in his fits.

8. The Sick party in his fits naming the parties suspected, and where they be or have been, or what they do, if truly.

9. The common report of their Neighbours, especially if the party suspected be of kin, or servant to, or familiar with a convicted Witch.

10. The Testimony of other Witches, confessing their own Witchcrafts, and witnessing against the suspected, that they have Spirits or Marks; that they have been at their Meetings; that they have told them what harm they have done, &c. *Br. 212. 223.*

11. If the dead Body bleed upon the Witches touching it.

12. The Testimony of the person hurt, upon his death.

13. The Examination and Confession of the Children (able and fit to answer) or Servants of the Witch, especially concerning these six Observations: *sc.* If the party suspected have a Familiar, or any Teat, or Pictures; her Threatnings and Cursings of the sick party; her Enquiry after the sick party; Her boasting or rejoicing at the sick parties trouble: Also, whether they have seen her call upon, speak to, or feed any Spirit, or such like; or have heard her foretell of this Mis-hap, or speak of her power to hurt, or of her Transportation to this or that place, &c.

14. Their own voluntary Confession, (which exceeds all other Evidence) *sc.* of the Hurt they have done, or of the giving of their Souls to the Devil, and of the Spirits which they have, how many, how they call them, and how they came by them.

15. Besides, upon the Apprehension of any suspected; to search also their houses diligently for Pictures of Clay or Wax, &c. Hair cut, Bones, Powders, Books of Witchcraft, Charms, and for Pots or places where their Spirits may be kept, the smell of which place will stink detestably.

Now to shew you farther some signs to know whether the sick party be bewitched.

1. When a healthful body shall be suddenly taken, &c. without probable reason, or natural cause appearing, &c. *Br. 169.*

2. When two or more are taken in the like strange fits in many things.

3. When the afflicted party in his fits doth tell truly many things, what the Witch, or other parties absent, are doing or saying, and the like.

4. When the parties shall do many things strangely, or speak many things to purpose, and yet out of their fits know not any thing thereof.

5. When there is a strength supernatural, as that a strong man or two shall not be able to keep down a Child, or weak person, upon a Bed.

6. When the party doth vomit up crooked Pins, Needles, Nails, Coals, Lead, Straw, Hair, or the like.

7. When the party shall see visibly some Apparition, and shortly after some mischief shall befall him. *Ber.* 173.

“ But withall observe, with *M. Bernard, cap. 2.* that divers strange Diseases may happen only from Natural causes, where he sheweth eight such several Diseases : therefore, unless the Compact with the Devil be proved or evinced by evident marks or tokens as abovesaid, it is not to be supposed that the Devil is the Agent.

And note, for the better riddance of these Witches, being duly proved to be such, there must good care be had as well in their Examinations taken by the Justices, as also in the drawing of their Indictments, that the same be both of them set down directly in the material points, &c. As,

That the Witch (or party suspected) hath used Invocation of some Spirit.

Or, That they have consulted or covenanted with their Spirit.

Or, That they imployed their Spirit, &c.

Or, That they have fed or rewarded their Spirit.

Or, That they have killed or lamed, &c. some person, &c.

And not to indict them generally for being Witches, &c.

The difference between Conjuration, Witchcraft and Inchantment, &c. is this: *scil.* Conjurers and Witches have personal Conference with the Devil, or evil Spirit, to effect their purpose. See *1 Sam.* 28. 7, &c. The Conjurers believe by certain terrible words that they can raise the Devil, and make him to tremble; and by impaling themselves in a Circle, (which, as one saith, cannot keep out a Mouse) they believe that they are therein insconced, and safe from the Devil whom they are about to raise: and having raised the Devil, they seem by Prayers and Invocation of Gods powerful Names to compel the Devil to say or do what the Conjuror commandeth him.

The Witch dealeth rather by a friendly and voluntary Conference, or Agreement between him (or her) and the Devil or Familiar, to have his or her turn served; and in lieu thereof, the Witch giveth (or offereth) his or her Soul, Bloud, or other gift unto the Devil.

Also the Conjuror compacts for Curiosity, to know Secrets, or work Miracles: and the Witch of meer malice, to do mischief, and to be revenged.

The Inchanter, Charmer, or Sorcerer, these have no personal Conference with the Devil, but (without any Apparition) work and perform things (seemingly at the least) by certain Superstitious and Ceremonial forms of words (called Charms) by them pronounced; or by Medicines, Herbs, or other things applied, above the course of Nature, and by the Devil's help, and Covenants made with him.

Of this last sort likewise are Sooth-sayers, or Wizards, which divine and foretel things to come by the flying, singing, or feeding of Birds, and unto such Questions as be demanded of them they do answer by the Devil, (or by his help) *scil.* they do either answer by Voice, or else do set before their eyes in Glasses, Crystal Stones, or Rings, the Pictures or Images of the persons or things sought for.

Imbezilling

P. Fel. 33. Imbezilling of the Kings Majesties Ordnance, Armour, Shot, Powder, or other Habiliments for War, or Victuals provided for Souldiers, &c. if it be by any person having the Charge or Custody thereof, and to the value of 20 s. though at several times, it is Felony. 31 EL. 4.

8 H. 6. 12.  
P. Fel. 18. Imbezilling of any Record, or parcel thereof, Writ, Return, Pannel, Process, or Warrant of Atturney in the Chancery, Exchequer, Kings-Bench, Common-Pleas, or Treasury, (by reason whereof any Judgment shall be reversed) it is Felony in the parties, and in their Counsellors, Procurers or Abettors.

1 R. 3. f. 10  
Co. 11. 34.  
See 8 R. 2.  
cap. 4.  
Lamb. 529 So the razing of such Record is Felony (within the said Statute of 8 H. 6.) Yet if a Judge do imbezil or raze a Record, this is but Misprision in the Judge. 2 R. 3. Br. Cor. 174. & Treason 31.

But it seemeth the Justices of Peace have not to do with these two last sorts of Felonies, (sc. with imbezilling or razing of Records) for that these Felonies are committed to other Judges to deal with by the same Stat. of 8 H. 6. P. Records 4. See before, tit. Felony.

5 Eliz. 14.  
P. Fel. 26. Egyptian, sc. if any person of the age of 14 years, or above, shall call himself an Egyptian, or shall be in the company of such, or shall disguise himself in Apparrel, Speech, or otherwise, like such, and shall be or continue in England one moneth, at one or several times, it is Felony without benefit of Clergy, Stat. 1 & 2 P. & M. 4.

Note, That these manner of persons are besides all of them for the most part Thieves, Cut-purses, Cozeners, or the like; and therefore the Justice of Peace shall do well to be careful, not only in the Examining of them, but also to cause them to be well searched for Counterfeit Passes, stoln Goods, and the like.

Every person which shall acknowledg any Fine, Recovery, Deed inrolled, Statute, Recognizance, Bail or Judgment, in the name of any other person not privy or consenting to the same, being thereof lawfully convicted, shall be adjudged a Felon without benefit of Clergy, &c. 21 Jac. Regis, cap. 26.

Forestalling or buying any Merchandize before they come to the Staple, &c. was made Felony by the Stat. 27 Ed. 3. cap. 11.

5 Eliz. 14.  
P. Fel. 26. Forgiving of Evidences, sc. of any Deed, Charter, Obligation, Bill, Release, or other Writing sealed, or of any Court-Roll, or Will, or of any Acquittance; or to cause or assent to be made any such Forged Writing, or publishing any such Writing, knowing the same to be false; the second Offence is Felony without benefit of Clergy. But it seemeth also that the Justices of the Peace have not to deal with this, for that they cannot well take notice of the former Conviction. See Co. 9. 118. b. & hic antea, tit. Felony.

P. Fel. 17.  
Stamf. 36. c. Gaolers (by duress of Imprisonment and pain) inforcing their Prisoner to become an Approver, (that is, an Accuser of others as Coadjutors with him in Felony) this is Felony in such Gaoler, although the Appellee or party so accused be acquit, or shall happen to die before he be arrested upon the Appeal, &c. Stamf. 36. 14 E. 3. 10.

If a Gaoler shall onely procure his Prisoner to appeal or accuse another of felony, this is Felony, by Scrope. An. 18 Ed. 3. Abr. d' Ass. 75. & Fit. Coron. 272. And yet the Stat. of 14 Ed. 3. seemeth to extend only where the Gaoler shall do this by great Duress or pain.

Also

Also by *Britt. fol. 18.* if the Gaoler shall keep his Prisoner more straight then he ought of right to do, by reason whereof the Prisoner dyeth, this is Felony by the Common Law in the Gaoler. And herein the Book called *Speculum Justiciar.* agreeth with *Britton.* And yet by the Statute of *Westm. 1. cap. 12.* notorious Felons, and such as be openly of evil name, or which be Rebellious, they shall have strong and hard Imprisonment.

Hawks: whosoever findeth any Hawk that is lost, if he shall not immediately bring the same to the Sheriff of the same County to be proclaimed, &c. but doth imbezil and carry away the Hawk, it is Felony. 34 E. 3. 22.  
37 E. 3. 19.  
P. Felon.  
20.

So it is in him whosoever taketh up any Hawk, and concealeth the same from the Owner or his Falkner; or that taketh away any Hawk from the Owner, or stealeth any Hawk and carrieth it away, not observing the afore-said Ordinance. P. Hawks  
2. Vide.

Hunting of any Deer or Conies in any Park, Forrest or Warren unlawfully in the night-time, or with Vizards or other disguises, and (upon Examination by a Justice of Peace, &c.) to conceal the Offence, or any Offender therein, is Felony in such Concealer: but if such Offender (upon his Examination) shall confess all the truth, then he is but fineable. See hereof, *antea, tit. Hunting.* 1 H. 7. 7.  
P. Felon.  
24.  
Lamb. 27.  
Dyer 50

If any person to be arrested for such Offence shall disobey the Arrest, or if any person shall make Rescous, so that the Warrant (of the Justice of Peace) &c. for arresting them be not executed, it is Felony.

*Quare*, If such Hunting and Concealment, or Resistance, be Felony where the Offenders killed no Deer, &c. It seemeth not, for all the Precedents do run, *Occiderunt & asportaverunt, &c.* See *Lambert, Crompt. & West.*

Also *Quare*, If all such Hunting disguised, or any other unlawful Hunting in the night-time, be not Felony, although the Offender be never examined thereof, nor conceal the same, as above said. See the Statute 1 H. 7. cap. 7. *in fine*, where it seemeth that all unlawful Hunting in the night (generally) is Felony.

If any person shall take a tame Beast or other thing in a Park by manner of Robbery, it is Felony; and the Statute seemeth to be but an affirmance of the Common Law in this point. 3 Ed. 1. 20  
P. Fel. 24.

Imprisoning, or taking against their wills (without lawfull Authority) any Subject in *Cumberland, Northumberland, Westmerland*, and the Bishoprick of *Duresm*, and carrying them away to make a prey of them: 43 El. 13.

Or, to be privy, consenting, procuring, aiding or assisting thereto:

Or, to receive, carry or give any Consideration (called *Blackmail*) for Protection therein:

Or, to burn any Barn or Stack of Corn there; or to be ayding, procuring, or consenting thereto.

Every of these Offences is Felony without benefit of Clergy, 43 *Eliz. cap. 13.*

Marriage: *sc.* If any person being married shall marry a second Husband or Wife, the first being alive, &c. it is Felony: except notwithstanding where the Husband or Wife have been absent seven years, and the one not know:  
1 Jac. 1.  
P. Fel. 4.



knowing the other to be living within that time; except also persons Divorced, &c. by sentence in the Ecclesiastical Court; and except persons marrying within the age of consent.

P. Fel. 21. Multiplication of Gold or Silver, or to practise that Art, is Felony. 5 H. 4. 4. *Vide Dyer 88. Pl. 105.*

Money called Galley-Half-pence, Suskin or Dotkin, and all Scottish money of Silver, to bring and put in payment any such, was made Felony by the Stat. 3 H. 5. 1. & 2 H. 6. 9. but they are now out of use.

Piracie: concerning this Offence, see the Stat. 28 H. 8. cap. 15. & *hic antea, tit. Petty Treason.*

1 Jac. 31. Plague: *sc.* If any person being infected with the Plague, and being  
P. Fel. 3. commanded by any Officer to keep his house, shall notwithstanding go abroad, and converse in company, having an infectious Sore upon him, it is Felony.

P. Fel. 37. Poisoning, *sc.* wilfull killing of any person by Poison, is wilful Mur-  
P. Murd. 5. ther in the Offenders, their Aiders, Abettors, Procurers and Counsellors. 1 Edm. 6. 12. Co. 11. 31. But the party poisoned must die thereof within a year and a day after the Poison received. See *antea*, in the Title *Mur-ther*.

P. Jesuits 2 Popish Priests: to receive, relieve, aid or maintain any such, &c. is Felony. here *antea, tit. High-Treason.*

P. Fel. 5. Popish Recusants, and such other Recusants or Sectaries which (by the Statutes of 35 Eliz. 1. & 2.) are to abjure, if they shall refuse to abjure, or after Abjuration shall not depart the Realm according as they shall be appointed, or after such departure shall return again without the Kings special Licence in that behalf first obtained, it is Felony without benefit of Clergy.

P. Fel. 25. Purveyors: *sc.* If any Purveyor, Taker, or other person, their Deputies,  
P. Purv. 30. or Servants, shall make any Purveyance, Takings, (or Prises) for the Kings  
Lamb. 406 Majesties House, of any thing above the value of 12 d. (2 & 3 Ph. & M. c. 6.)  
Crom. 48. in any of the six sorts following:

P. Purv. 1. 4 1. Without Warrant or Commission under the Great Seal, and do carry  
23 H. 6. 1. the same away against the will of the owner, it is Felony. 28 E. 1. c. 2. 4 E.  
2. 3. c. 4. 36 E. 3. c. 2. (which Warrant also they shall shew to the parties, before they do take any thing from them.)

And note, That no such Commission shall continue good, or be in force, above six moneths; and they must be written in the English tongue, so that every man may understand them. See the Statutes, 36 E. 3. c. 2. 23 H. 6. c. 1. & 2 & 3 Ph. & M. c. 6.

36 Ed. 3. 2. 2. Or having a Commission, shall buy or take (any thing) in other manner  
23 H. 6. 12 then is contained in their Warrant or Commission. P. Purv. 19. Fel. 25. Rast. 350. 36 Ed. 3. cap. 2.

P. Fel. 15. 3. Or shall take any Carriage in other manner then is comprised in their  
P. Purv. 29 Commission, Stat. 36 Ed. 3. 2. P. 19. 23 H. 6. 1, 2.

26 E. 3. c. 2. 4. Or having a Commission, shall take and carry away any thing  
Rast. 351. (above the value of 12 d.) against the Owners will, or not paying  
Crom. 48. for the same presently according as they can agree; or if the Buyer and Seller cannot agree, then to take any thing without being prized by the Constable and four Towns-men sworn, and by Indentures sealed

sealed by the Purveyor, &c. of the things so taken, &c. See the Statutes, 5 E. 3. 2. 10 E. 3. 1. 25 E. 3. 1. 36 E. 3. cap. 2. 2 H. 4. 14. & 20 H. 6. cap. 8.

And yet, if it be but of the value of 40 s. or under, some do hold, That in this last case the Purveyor shall only lose to the party grieved the treble value of his goods so taken, and his costs, and treble damages: and that it shall be at the election of the Owner of the Goods to recover his said damages and costs, &c. either against the Purveyor, or against the Neighbours, Apprisors, and Towns adjoining; which being required, shall not resist the Purveyor or Taker, doing contrary to the Statute. See the Statutes, 2 H. 4. 14. 20 H. 6. 8. & 23 H. 6. c. 1 & 2. But *quare*, for all those former Statutes do stand still in force, and be confirmed by these later Statutes, and by the Statutes made 2 & 3 Ph. & M. cap. 6.

P. Fel. 25. 5. Or shall take more Victuals or Carriages for the Kings House then he  
P. Purv. 18 shall deliver to the same House, 36 E. 3. cap. 4. Fitz. Just. of P. 114.

P. Fel. 25. 6. Or shall take any Sheep with their wools between Easter and Mid-  
P. Purv. 9. summer at small prices, or more then be sufficient for the Kings House, and  
25 E. 3. 15 carry them to his own house and shear them, Fitz. *ibid*.

In every of these cases it seemeth to be Felony in such Purveyor, their Deputies and Servants. And yet a Purveyor or Taker, &c. may take Victual, or any such thing, according to his Commission, at reasonable prices, to the use of the Kings Majestic, and according to the Statutes, although it be against the will of the Owner, Br. Purv. 1. But then he must take it by the Apprisement of the Constable and four Neighbours, &c. *ut supra*.

And yet *quare* whether the Apprisement shall be made by the Constables and four Neighbours, or by the Lords of the Towns, or their Bailiffs; and also whether the said Indentures shall be made and sealed between the Purveyors and Owners, or between the Purveyors and Apprisors, &c. for therein the said Statutes do somewhat differ.

Co. 3. 146. But if a Purveyor shall take any Provision for the Kings House by force of his Commission, and shall after sell away the same; now his first taking is become tortious, and he punishable as a Trespasser, if not as a Felon, *ab initio*.

If the Kings Hunters, or Falkners, shall take any thing against the owners will, without paying for the same presently, it seemeth to be Felony. 36 E. 3. cap. 5.

If the Kings Purveyors, or Takers of Carriage, shall take any thing to spare another, they shall be imprisoned by the space of two years, forswear the Court, and pay treble damages to the party grieved. 36 Ed. 3. cap. 3.

34 E. 3. 2. If any subjects Caterer, or other Officer, shall take any Victuals, Corn,  
36 E. 3. 6. Hay, Carriage, or other thing against the Owners consent, or do not pay  
7 R. 2. 8. for it presently, it is Felony, P. Purv. 1. See the Stat. 23 H. 6. cap. 14. here before, *tit. Purveyors*. And *quare*, if the Felony of such Caterer be not altered herein by that Statute.

1 M. c. 12. Rebellious and unlawful Assemblies of any persons, to the number of  
P. Fel. 27. twelve or above, &c. their Procurers or Relievers, it was Felony in them all.

39 El. 4. 3. Rogues being by the Justices of Peace, at their Quarter Sessions, adjudged incorrigible and dangerous, and therefore by them banisht this Realm, if they shall return again into any part of this Realm without Licence, it is Felony.

1 Jac. 7. Rogues, adjudged (as aforesaid) incorrigible or dangerous, shall by the judgment of the same Justices, in their open Sessions of the Peace, be branded in the left shoulder, &c. And after such punishment, if any so punished shall offend again in begging or wandring, contrary to the Stat. of 36 El. 4. or 1. Jac. 7. it is Felony.

Robbing in the day-time of any Dwelling-house, or of any Out-house belonging and used to and with any Dwelling-house, or a \* Barn or Stable, &c. if it be to the value of .5. s. or above, although no person be therein; or to rob any house by day or by night, any person being therein, and thereby put in fear; or to any person in any part of his dwelling-place, or house, the Owner or dweller, his Wife, Children, or Servants, being therein, or in any place within the precinct of the same house or dwelling-place, (sleeping or awaking :) or to rob any Booth or Tent in a Fair or Market, the Owner, his Wife, Children, or any Servant being there within the same sleeping or waking :) every of these Offences are now by Statute made Felony, and as penal as Burglary, by the losse of the benefit of Clergy. But to break a house in the day-time, although he hath a felonious intent, yet if he carrieth away nothing, this is no Felony: for there must be actual Felony done, besides the breaking of the house in the day. And by the report of M. Dalison, these \* Statutes shall be strictly construed (in favour of life) and according to the bare letter; so that if the Robbery be done by day, and there be in the house but one Servant onely, or be in the house, booth, or tent, but a stranger or sojourner onely, the Fact shall not be adjudged an Offence against these Statutes, *Crompt. 118. Co. 11. 36.* But now by the \* Statute he shall not have his Clergy.

Servants imbezilling their Masters goods: See hereof *antea, tit. Theft.*

3 Jac. 7. 4. Souldiers: *sc.* If any Subject shall pass out of this Realm, to serve any forein Prince, &c. not having before their passing taken the Oath of Allegiance, &c. before the Officer thereunto appointed, it is Felony.

If any Gentleman, or person of higher degree, or any Captain, or other Officer in Camp, shall pass out of this Realm to serve any Forein Prince, &c. or shall voluntarily serve any Forein Prince, &c. before they shall become bound to the Kings Majesty with two Sureties (before the Officer thereto appointed) with condition to this effect, *viz.* not to be reconciled to the Pope, &c. nor to make or consent unto any Conspiracy against the King, &c. but to disclose all Conspiracies upon knowledge thereof, &c. it is Felony. *Ibidem.*

18 H. 6. 10 Souldiers entred of Record, and having taken Prest-mony, or parcel of their Wages of their Captain, if they shall not pass the Sea, or go with their Captain, or being in the Kings Service shall depart without licence, it was made Felony by the Statute 18 H. 6. c. 19. But see *Co. 6. 27.* that this Stat. of 18 H. 6. 19. is now of little force, for that the ancient manner of retaining of Souldiers, to which this Statute hath reference, is now altogether changed, &c. And yet if a Souldier who is retained, or hath taken

taken any Preft-money, fhall at this day depart out of the Kings ſervice without licence, it is Felony by the Statutes 7 H. 7. 1. & 3 H. 8. 5. which two laſt-mentioned Statutes are yet in force, and are Acts perpetual, *Co. ibtd.* And by the ſaid Stat. of 3 H. 8. c. 5. ſuch licence of departure muſt be made by the Kings Lieutenant.

Souldiers if they ſhall depart without licence, after they have ſerved in the Kings Wars, it is Felony without benefit of Clergy; none but the Lieutenant ſhall give a Souldier licence to depart. 2 E. 6. c. 2. Co. 6. 27. See 4 & 5 P. & M. c. 3. Raft. 50.

If any Mariner or Gunner, having taken Preſt-wages to ſerve the King on the Sea, ſhall not come unto, or ſhall depart from his Captain, without licence, it is Felony: yet *quære*, and ſee the Stat. of 5 El. c. 5. at large, for that it doth relate to the aforeſaid Statute of 18 H. 6. 19. which (as appeareth before) is now of little force. 5 El. 5.  
P. Fel. 23.

Souldiers and Mariners, and all idle perſons wandring as Souldiers or Mariners, which ſhal not ſettle themſelves to ſome lawful courſe of life, but ſhal wander up and down idly, or beg up and down, it is Felony in them without benefit of Clergy. 39. El. 17.

2. So it is if any idle or wandring Souldier or Mariner, coming from beyond the Seas, or from the Seas, ſhall not have a lawful Teſtimonial under the hand of ſome one Juſtice of Peace near the place of his landing, ſetting down therein the place and time of his landing, and the place unto which he is to paſſe, and a convenient time for his paſſage. 39. El. 17.

3. Or having ſuch Teſtimonial, if they ſhall wilfully exceed the time therein limited above 14 days. *Ibid.*

4. Or if they ſhall forge or counterfeit any ſuch Teſtimonial; or ſhall have any ſuch forged Teſtimonial, knowing the ſame to be forged, &c. *Ibid.*

5. Or being retained into ſervice after his Arraignment, &c. if he ſhall depart within the year without licence of his Maſter: In all theſe former caſes it is Felony in ſuch Souldier, &c. without any benefit of Clergy.

And yet ſee the Statute of 43 El. 3. that Souldiers and Mariners begging, or counterfeiting a Certificate from their Captain, ſhall be adjudged and puniſhed but as Rogues. See *hic antea, tit. Rogues.*

Transporting or ſending any live Sheep out of the Kings dominions, the ſecond offence is Felony. 8 El. 3.  
P. Fel. 22

It was made Felony for any man to carry or to transport any Wools, Leather, Woolfels, or Lead, out of *England or Ireland*; but ſee other Statutes ſince made concerning the ſame, *Ann.* 38 Ed. 3. c. 6, 7. & 14 R. 2. c. 1. & 5. 27 E. 3. c. 3  
7. 12. & 18

Witches. See *Conjuration.*

Women: *ſc.* to raviſh a woman where ſhe doth neither conſent before nor after; or to raviſh any woman with force, though ſhe do conſent after, it is Felony: and the Offender ſhall have no benefit of Clergy. 18 El. c. 6, Br. Cor. 204. *Vide Dyer* 202. That man ſhall die, by the Law of God, *Deut.* 22. 25. 13 E. 1. 34.  
P. Fel. 14.  
6 R. 2. c. 6

If a man take away a Maid by force and raviſh her, and after ſhe giveth her conſent, and marrieth him, yet it is a Rape.

Now

Now Ravishment is here taken in one and the same signification with Rape, which is a violent deflowring of a Woman, or a carnall knowledge had of the body of a Woman against her will. 9 Ed. 4. 36. Fl. l. 2. & Co. <sup>Rape. See ante, cap. 89.</sup>

L. 123.

Stamf. 22. A Woman that is ravished ought presently to levy open Hue and Cry, or to complain thereof presently to some credible persons, as it seemeth. Crom. 100. Glanville 115. See the Stat. de Officio Coronatoris, 4 E. 1.

Fleta saith, That the complaint must be made within forty days, or else the Woman may not be heard, lib. 3. cap. 5. But in Scotland, and some other Countries, this ought to be complained of the same day or night that the Crime is committed, (ut dicitur:) the reason is, quia lapsu diei hoc crimen praescribitur. Minsh. and Dr. Comel.

And yet in an Indictment of Rape there is no time of prosecution necessary, for Nullum tempus occurrit Regi. But in case of an Appeal of Rape, if the Woman doth not prosecute it in convenient time, she shall be barred.

Britton 45. If a Woman at the time of the supposed Rape do conceive with child by the Ravisher, this is no Rape; for a Woman cannot conceive with child except she doth consent. Finch. lib. 2. Stamf. 24.

5 E. 4. 6. And yet if a Man ravish a Woman, who consenteth for fear of death or Br. Parl. 55 duress, this is Ravishment against her will, for that consent ought to be voluntary and free.

All such as are present, abetting, aiding, or procuring another to commit a Rape, are principal Felons.

If a Man and a Woman be present, with purpose that the Man shall by Violence carnally know the body of another Woman there also present, against her will, and the Man doth the Fact in the presence of the other Woman, she so present (as well as the Man) shall be a principal Ravisher; the Man the Agent, and the other Coadjutant: And so one Woman may be a Principal to the Ravishment of another. Dod. 138.

Stamf. 24. It is a good Plea in an Appeal of Rape, to say, That before the Ravishment supposed, she was his Concubine, as M. Bracton saith.

Crom. 47. And yet to ravish an Harlot, against her will, is Felony; for licet Meretrice fuerit ante, certè tunc temporis non fuit, cum nequitia ejus reclamando consentire voluit Bract. l. 2.

3 H. 7. 2. Also to take any Maid, Widow, or Wife (having Lands or Goods, or being Heir apparent to her Ancestor) against her will unlawfully, is Felony; P. Fel. 16. and to receive any such Woman so taken, knowing thereof, or to procure and abet the same, is Felony; and they shall all be reputed as Principals: and as well the Principals as Accessories before the Offence shall all lose the benefit of Clergy, 39 El. c. 9.

But this Act doth not extend to any person taking any Woman, only claiming her as his Ward or Bond-woman.

4 & 5 Ph. & M. The taking away of a Maid under sixteen years of age, without the consent of her Parents or Governours, or contracting Marriage with her, or deflowring her, is no Felony; but yet shall be punished with long Imprisonment without Bail, or with grievous Fine. P. Women 7. 8. See Co. 3. 37, & c.

18 El. 7. But unlawfully and carnally to know and abuse any Woman-child P. Fel. 14. F f under

under the age of ten years is Felony, although such Child consents before, *Crompt. 47.* and the Offender shall have no benefit of Clergy.

Also to take away a mans Wife with the goods of her Husband, whether it be against her will, or against her Husbands will, seemeth to be Felony by the Stat. of West. 2. cap. 34. the words thereof are, *De mulieribus abductis cum bonis Virorum suorum, habeat Rex sedam de bonis sic asportatis.* 13 Aff. 6.  
Br. Cor. 77  
Stamf. 94.  
Crompt. 39

But if the Wife take her Husbands goods, and so goeth away voluntarily with another man, and with those goods, or delivereth those goods to another man, these two last cases seem not to be Felony. 2 Cor. 4.  
35.  
Stamf. 27.

If any Woman be delivered of any issue of her body, male or female, which, if it were born alive, should by the Laws of this Realm be a Bastard, and that she endeavour (privately, either by drowning, or secret burying thereof, or any other way) so to conceal the death thereof, that it may not come to light whether it were born alive or not, but be concealed; in every such case the said Mother so offending shall suffer death as in case of Murther, except she can prove that the Child was born dead, 21 Jac. Regis, cap. 27.

Now the Mothers proof that her Child was born dead, must be by Witnesses: And therefore if the Mother will call for no help at the time of her Labour, but secretly be delivered, and then the Child be found dead, it is a strong presumption against her, that she murdered it; and the rather, for that it is a received Opinion, That if the Child were dead in her body, she could not then be delivered without the help of some others. "Which Opinion notwithstanding some worshipful and grave Matrons have denied, and that of their own knowledg.

### Accessaries. CHAP. CXIX.

One describeth an Accessary, *Accessarius, quasi accedens ad culpam, & particeps culpa*, as witting or knowing of it; another, *Accessarius etiam in Treason. Secundarius dicitur.*

In High Treason there be no Accessaries, for the Advisers, Counsellors, Perswaders and Assistants therein, as also the Receivers knowing thereof, be Principals, and as much as if they were Actors or Doers: yea, all that shall advise, counsel, perswade, command, procure, or hire another to do any Treason or Felony, (they being indeed the very cause of the Fact) may well seem as culpable, if not more, then the principal Actor; for the rule is, *Plus peccat author quam actor.* Examples also we have hereof in the Book of God, Gen. 3. The Serpent, the procurer of the first sin, by Gods own Judgment, had a greater punishment then the Woman or Man. Again, 2 Sam. 12. 9. David is told (from God) that he had killed Uriah, whereas he only commanded Joab to kill him, &c. Yet in case of Felony our Law is otherwise.

Note, Whatever offence doth make a man Accessary in Felony, the same, or like Offence, maketh him a Principal in high Treason. Stamf. 40.

But yet it seemeth this is to be understood of Accessaries before the Treason; for receiving, aiding and comforting a Traytor after the offence (knowing the same) was holden to be but Misprision of Treason, Br. Cor.  
135.  
Brian.  
12

Dyer 296. & 13 El. Dyer 296. And yet by some other Authorities, the receiving of Traitors after the Offence, knowing thereof, is holden to be Treason. See 3 H. 7. 10. Br. Treason 19. Hussey Chief Justice; and Cromp. 42. b. who alledgeth the Book called *The Exposition of the Terms of the Law*, tit. *Accessaries*.

Sir Edw. Coke, l. 57. telleth us, that in the highest and lowest Offences there be no Accessaries, but all are Principals: As in the highest Offence, which is *Crimen lesæ Majestatis*, there be no Accessaries; and so in the lowest, as in Riots, Routs, Forcible Entries, and other Trespases *vi & armis*.

In cases of *Premunire* there may be Principal and Accessary, by some Opinions, 44 E. 3. & 8 H. 4. 6. b. Huls; Br. *Premunire* 4. 6. *Tamen quare*, for these Offences seem more like a Trespass than a Felony, &c. And upon the Stat. of 27 E. 3. the Offenders shall forfeit nothing if they appear at the first day; but if they appear not at the first day, then (for their contumacy) they shall be out of the Kings protection, and shall forfeit their Lands and Goods to the King, which are as a pain given by the Statute, but it is no Attainder: also if the Principal appear not, or happen to be dead, yet the other shall answer; and therefore it seemeth that they be all Principals in cases of *Premunire*. Br. *ibid.* 4.

In petty Treason there is a Principal, and there may be Accessaries, as there is in Felonies.

In Felony there be two sorts of Accessaries.

The one is Accessary before the Felony committed.

The other is Accessary after the Offence done.

in Felony.

But he that is present at the time of the Felony committed (be it in case of Murther, Robbery, Burglary, or Larceny) is a Principal at this day, if he were either a Procurer, or Mover, or Aider, Comforter, or Consenter thereto, although at that present he doth nothing. See before c. *Pl.* 100. a. 11 H. 4. Br. *Coron.* 188. & 228. & *Indictment* 5.

And yet concerning Murther, note, that in every Appeal the count is, that every Principal *lay comp'a. & ferust mortalment*, &c. But those words are but words of form, and the striking of him which killeth the party shall be adjudged the striking of all those which command, procure, move, aid, or consent thereto, when they be present; and they which give the stroke or wound may be termed Principals in Fact, and the other being present, Principals in Law. See *Pl.* fol. 97. b. & 100. a.

If one being present at the killing or robbing of a man doth nothing, yet *Stamf.* 40 b would have aided his Companion if there had been need, he shall be adjudged a Principal. *Fitz. Coron.* 309.

But if one be present by chance, and seeth when another is slain or robbed, or when any other Felony is committed, and doth not come in company with the Felons, nor is of their confederacy, although he doth not make any resistance, or disturb the Felon, or levie Hue and Cry, nor discovereth the same, but concealeth it, yet it is no Felony in him, but misprision of Felony, and finable as a Trespass. *F. Cor.* 325 *Stamf.* 37. 40. b. *Cromp.* 44 *H. 7.* 31. *Misprision*

“And he may be imprisoned by the Justice of Peace until he shall find  
“Sureties to pay such Fine as shall be assessed upon him by the Justices before whom the Cause shall be heard. See *Fitz. Cor.* 395.

Also in some cases a man may be a Principal, although he be not present at the time of the Felony committed: as if *A.* knowing drink to be poisoned, perswades *B.* to drink it, and after *B.* (in the absence of *A.*) doth drink it, and dieth thereof, *A.* is here a principal Murtherer *ca. 4. 34.* See other like cases of Poisoning, *antea, tit. Murder, & postea, sub hoc tit. Accessaries.*

Note, that the Accessary in Fact in Felony, whether before or after, though it be another Offence, and distinct from the principal Fact, yet it is also Felony, and they shall have the same punishment which the Principal shall have.

Note also, when a Statute maketh or ordaineth an act or Offence to be Treason or Felony, which was not so before by the Common Law, and yet the Statute saith not that the Abettors, Aiders, Comforters, or Consenters to the doing thereof shall be also Felons, yet it shall be Felony in them, for that they were the causes of the doing or committing of the Offence, which (it may be) otherwise had not been committed. See *Lamb. pag. 279, 280. 19 H. 6. fol. 47. & 11 H. 4. fol. 13. Fitz. Coron. 228.*

And so it seemeth of Receivers, &c. after the Offence, *Lamb. 281.* for where a Statute maketh any thing Felony, it is made as Felony to all intents and purposes.

The Book called the *Mirror of Justices* maketh divers manner of Accessaries: *sc.*

<p>{ Those which command. Those which counsel. Those which consent. Those which are partakers in the gain. Those which know thereof, and do not disturb or hinder the same. Receivers knowing thereof. And those which are present at the Fact. But these last (at this day) are Principals, as afore said.</p>	}	<p>And so Murther and other Felonies may be committed as well in words and in heart, as by outward act.</p>
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And now our Books do devide them into two sorts: *sc.* Accessaries before the Felony (or Fact,) and Accessaries after the Fact.

Before  
the Fact.

Accessaries before the Felony are such as shall will, command, hire, procure, move, conspire, counsel, abet, *sc.* encourage or set on, or consent to commit any petty Treason, Murther, Robbery, Rape, Burglary or Larceny, but are not present thereat; yet all such are thereby Felons, when the Felony is committed.

Præcipi-  
endo, Per-  
suadendo,  
Consulen-  
do, Con-  
sentiendo.

But here note some differences are to be observed, when the Principal and chief Offender or Actor doth not accomplish the Fact altogether in the self-same sort as it was before-hand agreed and plotted between him and the Accessary: and therefore if *A.* command *B.* to lay hold upon *C.* and *B.* goeth and robbeth *C.* this is no Felony in *A.* (if he be absent when the Robbery is done) for this Commandment might have been performed without any Robbery.

But if the Commandment had been to beat *C.* and the party commanded doth kill *C.* or beat him so that he dieth thereof, *A.* shall be accessory to his Felony and Murther; for it is hazzard in beating a man that he may die thereof.

F. Cor. 314

*A.* commandeth *B.* to rob *C.* and in attempting this *B.* killeth *C.* *A.* shall be

Plo. 475.



be Accessary to this Murther ; for in attempting to rob *C.* the Commandment of *A.* was pursued, and then when the Commandment is pursued, and in the Execution thereof another thing falleth out, he which gave the Commandment shall be adjudged a party thereto, for that his Commandment was the cause thereof. *Plow. 475.*

He that commandeth or counselleth any evil or unlawful act to be done, shall be adjudged Accessary to all that shall ensue upon the same evil act, but not to any other distinct thing. *Ibid.* As if

*Plow. 475.* *A.* commandeth *B.* to steal a Horse, and he stealeth an Oxe ; or to steal a white Horse, and he stealeth a black ; or to rob a man by the High-way of his Money, and he robs him in his House of his Plate ; or to burn the house of *B.* and he burneth the house of *C.* these be other Acts and Felonies then *A.* commanded to be done, and therefore *A.* shall not be adjudged Accessary to them.

But if *B.* shall commit the same Felony which *A.* did command or counsel to be done, though he doth it at another time, or in another place, or in another sort then *A.* did command or counsel, yet here *A.* shall be Accessary thereto ; for *Mandata illicita recipiunt latam & extensam interpretationem. Vide Pa. 66. 67.*

*Plow. 475.* As if *A.* doth counsel *B.* to kill *C.* by Poison, and he killeth him with his Dagger, or by other violence ; or to kill *C.* by the High-way, and he killeth him in his House ; or to kill him one day, and he killeth him upon another day : in these and the like cases *A.* shall be Accessary to the Murther.

*Lamb. 283.* *A.* counselleth *B.* to poison *C.* and to that end *A.* buieth Poison, and delivereth it to *B.* who tempereth it in an Apple, and delivereth it to *C.* with intent to poison him, and *C.* knowing nothing, giveth the Apple to *E.* who eateth it, and dieth thereof ; here *A.* is not Accessary to the Murther of *E.* yet it is Murther in *B.* *Plow. 475. 476.*

*A.* counselleth or commandeth *B.* to kill *C.* and after, and before he hath killed him, *A.* doth repent him, and countermands it, charging *B.* not to kill *C.* and yet after it, *B.* doth kill *C.* here *A.* shall not be adjudged Accessary to the Death of *C.* for the Law adjudgeth no man Accessary to a Felony before the Fact, but such as continue in that mind at the time that the same Felony is done and executed. *Plow. 475.*

*Dyer. 186. Co. 7. 5. a.* But if *A.* counselleth a Woman to murther the Child in her body (when it shall be born,) and after the Child is born, and then the Midwife or other person, in the presence of the Mother, and by her commandment, killeth the Child, although it be done in the absence of *A.* yet he is Accessary by his counselling it before the Birth, and not countermanding it. *Dyer 186.*

*Lamb. 285. 14 H. 7. 31.* A man fore-knoweth of a Felony intended to be done, and doth conceal it, and so suffereth it to be effected ; this maketh him no Accessary to the Felony, except he consenteth thereto ; but such Concealment seemeth to be onely Misprision of Felony, and finable : And yet the Rule is, *Qui non prohibet, quod prohibere potest, consentit. Ideo quare.* And *Bracton fol. 121.* speaking of Murther saith thus ; *Ille, qui cum posset hominem à morte liberare, non liberabit, immunis esse non debet à pœna.*

Note, that in Man-slaughter there can be no Accessary before the Fact, for Man-slaughter is upon a sudden falling out.

Note also, that none shall have Clergy who maliciously commandeth, *Co. 4 44.* hireth, or counselleth any person to commit any petty Treason, or wilful Murther, or to do any Robbery 4 & 5 P. & M. c. 4. See *Dyer* 183. 186. & *Co. 11. 35.*

Also none which is Accessary before the Fact to any felonious Burning of any Dwelling-house, or any part thereof, or Barn with Corn, shall have any benefit of Clergy. 1 E. 6. cap. 17. 4 & 5 P. & M. cap. 4. See *Co. 11. Poulter's Case.*

No Horse-stealer, nor Accessary thereto, either before or after such Felony done, shall have any benefit of Clergy. 2 E. 6. cap. 33. & 31. *El. 12.*

After the  
Fact.

Accessaries after the Offence, are they, who knowing that another hath committed a Felony, do feloniously or voluntarily receive or harbour him, or relieve, assist, comfort or aid him, whether it be before the Attainder of the Felon, or after his Attainder. *Br. Indictment 4.* *Stamf. 41.*

As to comfort or relieve a Felon (before he is attainted) with money, meat, drink, or lodging, knowing of the Felony, maketh one Accessary. 26 *Aff. Pl. 47.*

So to lend him a Horse to goe his way withall, or otherwise to be a means of his Escape. *Fitz. Coron. 427.* *Stamf. 41.*

But to relieve him being in Prison, maketh not a man Accessary: Also to aid him by his good word, or sue for his Deliverance, or to send a Letter for his Inlargement, this maketh not a man Accessary to the Felony. *Br. Cor. 103.* *Finch.*

A Felon that goeth under Bail, and stands bound to appear for his Trial; to receive, harbour, or relieve such a one with money or victual, breedeth no danger of being an Accessary, because the Felony in these last cases cannot be concealed, nor the Trial hindered by it. *Lamb. 286.* *Crompt. 42.*

A Felon getteth his Pardon; such as shall receive or relieve him after shall not be accounted Accessary; but to receive or relieve him before his Pardon obtained, is Felony. See *Pl. 476.* Yet it seemeth upon this Pardon, such Accessary before shall be discharged.

A Felon is attainted by Verdict, Confession or by Utlary; to receive, harbour, or relieve such a one, by any person dwelling in the same County where the Felon is attainted, it maketh such Receiver, or Aider an Accessary to the Felony, although such Receiver, &c. did not know of the Felony; because by the Attainder of the Felon he is a Felon of Record, whereof every person dwelling in the same County is to take notice. Yet *Mast. Bracton* requireth a more direct knowledge in the parties to make them Accessaries: for albeit a Record (and specially the pronouncing of an Utlary in the County-Court) be so notorious, that every man may easily come to know the same: yet were it an over-great extremity, that every man should (upon the peril of his own life) take certain knowledge thereof. Which Opinion of *M. Bracton*, *M. Lambert* also holdeth to be very reasonable. *F. Cor. 377.* *Stamf. 96.* *Dyer 355.* *Lamb. 285.*

But a Felon attainted by Verdict, Confession, or Utlary, in one County, if another doth receive or aid him in another County, this maketh such Receiver or Aider no Accessary to the Felony, unless he did also know of the Felony. *F. Cor. 377.* *Vi. Stamf. 41.*

If a Feme covert shall relieve, or receive and keep company with her Husband, *F. Cor. 383.* *Stamf. 26.* & 43. f.

Husband, knowing him to be a Felon, she is no Accessary thereby: for a woman covert cannot be Accessary in Felony to her Husband, for she ought to relieve him, and not to discover his counsel. But *quare* if this be not to be understood of Accessary after the Fact: for if the Wife shall procure, counsel, or conspire with her Husband to commit any Felony, and the Husband thereupon shall execute the same, although the Wife be not present thereat, yet the Wife may seem to be Accessary to her Husband in such case; for M. *Braſſon* saith *Uxor virum accusare non debet, nec detegere Furtum suum neque Feloniam; consentire tamen non debet Felonia viri sui, neque esse coadjutrix. Stamf. 26.*

Also if the Wife receiveth, &c. another Felon, she is an Accessary.

A Servant may be Accessary to a Felony committed by his Master or Mistress, *ſc.* by relieving or aiding them, or otherwise by being a means of their Escape, as it seemeth: for M. *Braſſon* saith *Concubina & famula domus non sunt in eodem casu quo uxor; ipse enim accusare tenentur, aut recedere à servitio, alioquin videntur consentire. Stamf 27. a.*

A Servant knowing his Master to be a Felon, continueth to doe him Service; the Servant is thereby an Accessary. *Leſt. M. Cock.*

The Master knowing his Servant to be a Felon, still keepeth him in his Service; the Master is thereby an Accessary. *Ibid.*

A Felon fled to the house of his natural Brother, and the Brother shut the fore-door against the Pursuers, and conveyed the Felon out of his house at a back-door, whereby he gat to the Church; this Brother was adjudged an Accessary for it, for he was a means of the Escape.

See Stamf.  
42. c.  
such a  
matter.

*Quare*, if a Felon flieth and cometh to his Friends house, and his Friend shutteth the door against him, and yet maketh the Pursuers believe that he is in the house, whereas he escapeth, if this make not the Friend an Accessary.

A man hath a Felon in his house, and (knowing of the Felony) suffereth him to go his way, and so to escape; yet this is no Felony, for that he had not arrested him of the Felony before: neither can such an Escape make him an Accessary, except he were any means of the Escape.

9 H. 4. 1.  
Br. Cqr. 26  
See Br.  
Eſc. 43.

If one do rescue him that is arrested for the Felony, he is a Principal Felon, and not an Accessary.

Receiving or buying of stolen Goods knowing they were stolen, maketh not a man Accessary to the Felony, unless he receiveth also (or aideth) the Felon himself: yet M. *Crompt.* maketh a *quare* thereof, and alledgeth some cases to the contrary See *Crompt. fol. 41, 42, 43.*

Stamf. 43 c  
12 Aff. 69.  
9 H. 4. 41.  
Stamf. 43. b

But herein there seems a difference between a Buier being a stranger to the Felon, and who for valuable consideration shall buy such Goods; and a Receiver or Buier who is an adherent or companion to the Felon, or that by Covin shall receive or buy such Goods. See the Preamble to the Stat. 2 & 3 Ed. 6. cap. 24.

A man buieth stolen Goods for 5. s. which are worth 20. s. this maketh the Buier an Accessary, by the Opinions of M. *Crompt. fol. 43.* and of Sir *Nich. Hyde* in his Charge at Lent Assizes at *Cambr. 1629.* for it may well appear by the price, that the Seller came not truly by them, and therefore it is safe to lay hold upon such Sellers as shall sell any thing at any great undervalue.

A man

Rescous  
Buying  
stolen  
Goods

Taking  
again  
stollen  
Goods.

A man pursueth and taketh a Felon that hath stollen his Goods, and then taketh his Goods again, and suffereth the Thief to escape: he is no Accessary thereby, (by some Opinions) for he may *in initio agere civiliter*, or *criminaliter*; at his pleasure, as M. Bracton writeth, *Stamf.* 28. 41, 42, *Quere tamen*: For M. *Stamf.* fol. 40. and M. *Finch*, li. 2. say, that if he take his Goods again from the Felon to favour him, this is Theft-boot, (the punishment whereof in ancient time was of Life and Member, though at this day it be punishable onely by Ransom and Imprisonment:) And yet by some it is holden to be Felony at this day. The like seemeth to be if he take his Goods again from the Felon, and then favoureth him, and letteth him go. See *the Mirror of Justices*, lib. 2. & *Fleta*, lib. 1. cap. 27.

But if the party robbed take Money or other Goods, &c. of the Thief, to the end he shall favour him, or shall not give Evidence against him, whereby the Thief escapeth; now is he an Accessary to the Felony of his own Goods, by Good Opinion: though some other seem to take this for Theft-boot, and so to be punishable at this day onely by Ransom and Imprisonment, as aforesaid.

If the party robbed, or if he that shall have any Goods stollen from him, after Complaint by him made of the Felony (to a Justice of Peace, or to the Constable) shall then take his Goods again, or otherwise be compounded withall, and will not prosecute this matter agninst the Felon any farther, but will suffer him to escape after he was once so charged, and perhaps arrested for the same; *quere* if this maketh not him an Accessary, for that he did once *agere criminaliter*, by Complaint made to the Officer against the Felon.

I think in such case the Justice of Peace shall doe well (at least) to bind over both the one and the other to the next Quarter-Sessions, or to the next Gaol-delivery, and then to acquaint the Court with the whole matter.

But if upon Hue and Cry a man do arrest a Thief that hath stollen another mans Goods, and do the take the Goods from the Felon, and so let him go, this maketh him an Accessary to the Felony, if not a Principal Felon.

*Nota que pur biens embles, ou imports, la party poit aver son Action de Trespas, & apres Appel de Robbery.* Co. 4. 43.

Also note, in all cases of an Accessary after the Fact, it is requisite that the Fact (to which he is an Accessary) be a Felony at the very time in which he becometh an Accessary to it: For if A. giveth a mortal wound to B. upon the first of March, and C. knowing thereof, receiveth, &c. A. two or three daies together, and letteth him go, and after B. dieth of the wound within the year; yet this Receipt, &c. maketh C. no Accessary, because the principal Fact was no Felony at the time either of the Receipt or of the letting him go.

By the Stat. 2 Ed. 6. ca. 24. Accessaries may be to a Felony done in another County: whereas before the Stat. the Common Law laid no hold of such Accessaries, for that those in another County, upon the Trial, could not have Cognisance of the principal Offence, &c.

But now by the said Statute there shall be a Certificate from the *Custos Rotulorum*

*Rotulorum* of the County where the Principal shall be attainted or convicted, &c. See *antea*, tit. Felony.

**Note**, that if an Offence be made Felony by Statute, although the same Stat. doth not expressly make mention of Procurers, Counsellors, Abettors, Receivers, Consenters, and Aiders, &c. yet they shall be taken as Accessaries (within the compass of the same Statute) even in the same manner as if it were Felony at the Common Law.

A man may be an Accessary to an Accessary; as if he shall receive, relieve, or comfort him who is Accessary to a Felon, knowing the same. *Br. Cor. 104.*

Although the Accessary shall be punished; and shall have Judgement of life and member, as well as the Principal which did the Felony; yet the Principal, (yea all the Principals) ought first to be attainted (by Verdict, Confession, or Utlary) before the Accessary can be charged or put to answer (as an Accessary;) and the acquittal of the Principal is the acquittal of the Accessary; for *ubi non est Principalis, non potest esse Accessarius*: but yet the Accessary shall be attached and surely kept (and be committed by the Justice of Peace, &c.) untill the Principal be attached and attainted. See *Stat. West. 1. c. 14.*

But though the Accessary in Felony cannot be proceeded against untill the Principal be tried, yet if a man upon subtilty and malice set a Mad-man by some device to kill another, and he doth so, now forasmuch as the Mad-man is excused, because he can have no will or malice, the Law accounteth the Inciter as Principal, though he be absent, rather then the Crime shall go unpunished. *33 Eliz. Ba. 57.*

And if the Principal be attainted, though erroneously, that shall not avail the Accessary, but he must answer, &c. *Co. 9. 68. b. & 119.*

If the Principal die before he be attainted, or if the Principal be found not guilty by Verdict, or be found by Verdict that he slew the other in his own defence, or if after Conviction by Verdict, Confession, or Utlary, and before Judgement, he hath his Clergy, or getteth his pardon, the Accessary in all these cases shall be discharged: but it is not safe for the Justice of Peace to discharge such Accessary out of Sessions.

A man killeth another *se defendendo*, or by misadventure, and it is so found upon his Trial; the Accessary shall be discharged: for that in these cases the Principal shall not have judgement of death. *Et omne Accessar. sequitur suum Principale.* See *Br. Forf. 13.*

### Rules concerning Felony. CHAP. CXX.

**I**F a man committeth Felony in the time of one King, he may be charged and arraigned for it after, in the time of another King.

If a man do commit Murther, steal Goods, or do any other Felony in one County, and then flieth into another County, and is taken there, and brought before a Justice of Peace there, he shall be (by the Justice) imprisoned in the Gaol of the County where he is taken; and after shall be removed by the Kings Writ into the Gaol of the County where he committed

mitted the Felony. But for those that do inform against such Felons, the said Justice shall bind such Informers over to appear, and to give Evidence against such Felons, at the next general Gaol-delivery to be holden in that County where the Trial of such Murther or Felony shall be; whither also the said Justice must certifie such Information taken by him.

If a man committeth a Robbery, or stealeth a Horse, Beast, or other goods <sup>4 H. 7. 5.</sup> in one County, and doth carry, lead, or drive the goods into another County, it is Felony in every County whither he doth carry or drive those goods, and the Offender may be indicted or appealed of Felony or Theft and arraigned, and have his Judgement in any of those Counties: but the Offender cannot be appealed or indicted of Robbery, but only in the County where the Robbery was done; for it is not Robbery in any other County; for Robbery must be done to the person of a man. *Br. Cor. 140.*  
*& Indictment 26.*

If a man do steal another mans goods, and after another stealeth the same <sup>13 E. 4. 3.</sup> from him, the Owner of the goods may charge the first or second Felony at <sup>4 H. 7. 5.</sup> his choice.

Also if a man shall deliver Cloth to a Tailor to make a Garment, if <sup>Pr. 130.</sup> the Cloth be stolen from the Tailor, the Offender may be charged and <sup>Cro. 70.</sup> indicted for stealing the same, either at the Owners Suit, or at the Tailors.

Also an Indictment may be, *Quod bona & catalla cujusdam hominis ignotifelonice cepit.* See here before And any man may in such case both inform the Court, and by their direction may perfer an Indictment against the Felon, and give Evidence to the Enquest therein. <sup>Dyer 99.</sup>

And so if the Owner be known, but will not charge the Felon therewith, any other person (especially after Proclamation made in the Court, <sup>35 H. 6. 15.</sup> that if any will informe or give in Evidence for the King, he shall be heard) <sup>Fitz. Co. 5.</sup> may safely come in, and may inform the Court, perfer an Indictment <sup>Fit. 115. 2.</sup> and give in Evidence for the King, against the Felon, without any danger <sup>Stamf. 163.</sup> of Conspiracy, because it is for the Kings advantage to have the forfeiture of the Felons goods: Yea, in the two former cases, if the Justice of Peace shall hear of any person that can inform any material thing against such a Felon, or against any Felon, the Justice in his discretion may send for him, take his Information, and may bind him to give Evidence against such Felon: for every one shall be admitted to give Evidence for the King. *Stamf. 163.*

Also if any Robbery or Theft be committed, and the party robbed, or other Owner of the goods, will not charge the Felon therewith, yet it seemeth every Justice of Peace may cause such Felon (or any person suspected for such Felony) to be apprehended, and may Examine him thereof; and also may send as well for the party robbed, &c. as for all such other persons as can inform any thing material concerning the said Felony, and may take their Informations (upon Oath:) and if upon such Examination he shall find cause, the said Justice may commit the Offenders, and bind over the Informer. See *antea* in the other title of Felony.

Note also (for the better prevention and apprehending of Felons) that <sup>3 E. 2. c. 9.</sup> upon <sup>P. Fel. 38.</sup> Cry <sup>Hue and Cry.</sup>

upon all Homicides, Burglaries, Robberies, and other Felonies, and when men are put in great danger, Hue and Cry shall be levied, and every man shall follow the Hue and Cry, and whosoever doth not, and is thereof convicted, shall be attached to appear before the Justices of Gaol-Delivery. Also it seemeth any Justice of Peace may bind them over to appear before the Justices of Gaol-Delivery, and that by force of the Commission in the first Assize.

3 Ed. 1. c. 9. Yea, upon any Felony committed, all men generally shall be ready (at the commandment of the Sheriff, and at the Cry of the Country) to pursue and arrest Felons, upon pain to be grievously fined.

12 E. 1. c. 13. 27 El. 13. 28 E. 3. c. 11. And such Hue and Cry and pursuit shall be made from Town to Town, and from Country to Country; and shall be made by Horse-men and Foot-men: and in case of Robbery, if (after notice thereof given to some dwelling near) none of the Felons be taken within forty dayes after the Felony committed, then the whole Hundred where the Robbery was done, shall answer for the Robbery done, and the damages: but yet the Inhabitants of any other Hundred, wherein negligence, fault or defect of pursuit and fresh suit shall happen to be, shall answer and satisfy the one moyety, and half of all and every such sums of money and damages. See more here before, *tit. Hue and Cry, and Robbery.*

3 H. 7. c. 1. c. 7. 6. b. And if a man shall be slain in the day-time, (sc. so long as it is full daylight) in a Town not walled, and the Murtherer escape, the whole Town where the Murther was done shall be amerced for this Escape. But if it be in a City or Town walled, then if the Murther, &c. were by night or by day, they shall be amerced for the Escape. *Fit. Co.* 238, 293, 299, 302. *Stamf.* 33. l. 3 H. 7. 1. P. Coroners 13.

And if a man be slain in the day-time out of any Town, then the Hundred shall be charged therewith; and for the insufficiency of the Hundred, shall all the County be charged, &c. *Stamf.* 34. f. Yet see *Dyer* 210. b. that the Township shall be amerced for the Escape, although the Murther were committed in the Field of the Town, or in a Lane, &c. And the Justices of Peace are to enquire of such Escapes, and to certify the same into the Kings Bench. *P. Just.* 19.

P. R. 156. Also, every man is a sufficient Bayliff and Officer to apprehend him that is pursued by Hue and Cry: and if he be taken with the thing supposed to be stolen, though he neither be of evil name, nor a stranger, yet every man may commit as well such suspected person, as also such goods, to the Town where they be apprehended, to answer to the King according to the Law; and the Constables of the Town are to carry before some Justice of Peace, as well such Prisoners, as also the Bringers, that the Justice may take their Information against such Prisoner, and may examine and commit such Offender, or person so suspected.

But if a man do levy Hue and Cry upon another without cause, both the one and the other shall be attached, and carried before a Justice of Peace to answer it, as disturbers of the Peace, and be bound to their Good Behaviour.

9 Ed. 4. 9. Co. 5. 92. Note also, That the Kings Officer may break open any mans house, to apprehend any Felon, or any person that is suspected of Felony, being

ing in the said house. See hereof *antea*, tit. *Forcible Entry*.

Also the High-ways are to be enlarged, and to be cleansed of all Bushes, Woods and Trees, &c. whereby such Offenders may lurk or escape. See *antea*, tit. *High-ways, and Robbery*.

And for the better detecting and apprehending of such Offenders in great Towns being walled, the Gates are to be shut from the Sun-setting untill the Sun-rising: and no man shall be lodged in the Suburbs from nine of the clock untill day, unless his Host will answer for him. And in all other Towns Watch shall be kept, from the Feast of the *Ascension* untill *Michaelmas*, from the Sun-setting untill Sun-rising; and if any stranger do passe by them, he shall be arrested untill the morning, &c. And if they will not obey the Arrest, then all men shall be ready to follow with Hue and Cry, untill such Night-walkers shall be taken: And for such Arrest none shall be punished. And the Constables ought to see these Watches duly set and kept: and as well the Constables of Hundreds and of Franchises, as also the petty Constables of Towns, ought to make Presentment to the Justices of Peace at their Sessions, (and to all other Justices thereto assigned) of the defaults of Watches, and of such as lodge strangers for whom they will not answer: and the Justices of Peace at their Sessions shall punish such as be found in default. *P. Watch 2*. See *antea*, tit. *Watch*, that every Justice of Peace may cause these Watches to be duly kept.

18 E. 1. 4.  
P. Watch.  
1.

5 H. 7. 5. a.  
Lamb. Office of the  
Constable.

### The Forfeiture for Felony. CHAP. CXXI.

THE punishment of every person attainted of Felony, is four-fold. *Co 4. 124. Co. L. 41.*  
*scil.*

1. The Offender shall lose his life, and be hanged between Heaven and Earth, as unworthy of both.

2. He shall lose his Blood, as well in regard of his Ancestry, as of his Posterity; for his blood is corrupted, so as he hath neither Ancestor, Heir, nor Posterity. See *Co. 11, 1. b. & Lit. 745. &c. Co. L. 391, 392.*

3. He shall forfeit his Fee-simple Lands, (from the time of the Offence, &c.) wherein the King shall have *Annum, diem, & vastum*, to the intent that the Offenders wife and children shall be cast out thereof, his houses razed, his Trees rooted up, his Meadows plowed up, and all his Land wasted and destroyed. And after the year, day and wast, the Land shall go by Escheat to the chief Lord of the Fee: (But yet the Lord may fine with the King for all, *sc.* for the year, day, and the wast, and so have the Land presently.) *Quare* if the Lord may enter: it seemeth he cannot. See the Stat. 17 E. 2. c. 16. *& Stams. de Præ. 49. Fitz. Tra. 48. & Releif. 36.*

*Ibid.*  
Stat. Præ.  
Reg. c. 16.

4. The Offender shall forfeit and lose all his Goods and Chattels from the time of his Attainder only.

The King shall have all the Goods of Felons which be condemned, and which be fugitive, wheresoever the said goods be found; *scil.* all their Goods moveable and unmoveable, their Corn growing, and the profits of



of their Fee-simple Lands, for a year and a day, and the issues and profits of their other Lands during their lives, and all their Debts due to them by Statute, Recognisance, Obligation, or simple Contract, and Money due upon accounts. And the King, or he to whom the King shall give such Debt, shall have an Action therefore in his own name; and yet the King shall not pay such Debts as the said Felons did owe.

*Uncore le Offender ne forfeitera ses Terres pur Manslaughter; nec in cases de Homicide per Misadventure (in fessans chose loyal,) nec pur Homicide sur Necessity, ou se defendendo. Vide Ba. 2, 3. & Co. L. 391.*

By the Common Law, after a Felon is found guilty before the Coroner, or that it be found before the Coroner that he did flee for the Felony, there the Coroner, Sheriff, Under-Sheriff, or Escheator, &c. may (for the King) seize the Goods of the Felon, and praise them by an Enquest, &c. before his Attainder; for by such thing found before the Coroner, the Goods of the Felon are forfeited without further inquiry, or Trial of the Felon: and yet the Officer may not in such case carry the Felons Goods away, but (after appraisement as aforesaid) must leave them in the custody of the Felons Neighbours where he dwelt, or in the custody of the Town where the Goods were, to be answered to the King: and if he were indicted of Felony, yet his Goods should not be removed out of his house untill he were attainted, but the Officer was to seize and praise them, and to take Surety of the party that they should not be imbezilled; and if the party would not find Surety, then the Officer was to deliver them to the Neighbours, and the said Goods should be kept by his Neighbours all the time of his Imprisonment: and the Felon must have had reasonable maintenance of his Goods for himself and his Family, untill he were convicted and found guilty of the Felony; and then the remainder was the Kings. See 25 E. 4. c. 14. P. Ind. 5. & Bract. fo. 123. & 136. b.

And now by the Statute made 1 R. 3. c. 3. it is ordained, That if any Sheriff, &c. or other person, do take or seize the Goods of any person arrested and imprisoned for Felony, or suspicion thereof, before the same person be convicted or attainted of such Felony, or that the same Goods be otherwise lawfully forfeited; he shall pay to the party grieved the double value of the Goods so taken or seized, &c. Which Statute seemeth to be but a confirmation of the Common Law, saith M. Stamsf. fol. 193. save that it giveth the party grieved a more ample recompence, and more speedy remedy, then the Common Law before did: so that before Attainder or Conviction, the Goods of the Felon that is in prison ought not to be seized, nor committed to the Town, nor taken out of the Felons house or possession. For a man attainted of Felony shall forfeit such Goods as he hath at the time of the Attainder, and not at the time of the Felony committed: and a Felon or Traytor, after the Felony or Treason committed, and before Attainder or Conviction, and Judgment given upon him, may sell (*bonâ fide*) for his sustenance, &c. his Goods or Chattels, be they real or personal; but yet they may not disorderly sell or waste their Goods. Therefore it seemeth, that the Officer may still take Surety that the Goods be not imbezilled; and for want of Sureties may seize them, and praise or value them, and then deliver them to the Town

safely to be kept, untill the Offender be convict or acquitted. See *Br. Forf.* 44. where M. *Brook* delivers his opinion, that this order ought to be observed of every one which committeth Felony, untill he be attainted.

Nay, after Attainder, if they shall grant their Goods or Lands, it shall bind all persons, except the King and Lord by Escheat; but against them such Grant is void. And as to their Lands, relation is to be had to the day of the Felony committed, by the Attainder, by Verdict, Utlary, or otherwise.

*Stam. de Prærog.* 48.

After the Conviction of a Felon, (if the Goods were in the Felon's possession at the time of his Conviction) the Town presently stands charged therewith, and shall answer for the loss or impairing of them, though the

Goods were never seized by the Officer, nor delivered to the Town, (except they can shew what other person hath detained those Goods, and that they could never have possession of them; which Exception is by *Stat.* of

31 E. 3. 3. *P. Estreats* 3.) So that it shall be safe for the Town to seize such Goods (in whose hands soever they be found) presently after the Conviction of any Felon; and then shall it be safe for them to do it by Inventory, taken in the presence and by the testimony of some other honest men. Yet

*quare*; for, by the Opinion of *Prisot*, none may seize any Goods for the King but an Officer who is accountable to the King, 49 H. 6. 1. *Br. Re-*

*seis.* 15.

Conviction.

Conviction in Felony is, where a man (being indicted of Felony) upon his Arraignment, submitteth himself to be tryed by the Country, and then is found guilty by the Verdict of twelve other Jurors; or shall confess the

Offence upon his Triall, or is Outlawed for the same, (*scil.* is pronounced Outlawed of the Felony at the County-Court.) Also Conviction in all other Offences (by the Common Law) is, where the Offender is indicted, or the Offence presented by a Jury, whereto the Offender pleadeth *Not guilty*, and is found guilty by the Verdict of twelve other Jurors, or by a second Jury, &c.

And yet a Popish Recufant indicted thereof (at the General Gaol-delivery, or Quarter-Sessions for the Peace) and Proclamation there made, commanding the Offender to render his body to the Sheriff of the same County, &c. if at the next Gaol-delivery or Sessions the same Offender so proclaimed shall not make appearance of record, such default recorded shall be a sufficient Conviction in Law of the said Offence. 29 El. cap. 6. & 3 Jac. 4. *P. Recufants* 13. 42.

And sometimes (in other cases) upon Proclamation made, if the party shall not appear and yield himself, he shall be thereby convicted or attainted of the Fact, &c. See the Stat. 5 H. 4. cap. 6. 11 H. 6. cap. 11. 13 H. 6. cap. 7.

And (by divers *Statutes*) you shall find that an Offender may be convicted (out of Court,) either upon the View and Record of the Justice of Peace, or by the Confession of the Offender, or upon Examination of Witnesses before one or two Justices of Peace, and that out of the Sessions. See here *antea*.

And sometimes Conviction may be in the Sessions, upon the Certificate or Presentment of the Justice of Peace. See *tit. Ale-houses, and High-ways.*

And

And sometimes by Confession, or Examination of Witnesses in Court, without any Verdict taken. See *Crom.* 130, 131. *B. Confess.* 32.

And in some cases Conviction shall be taken for Attainder. See *Co.* 11. 59; 60.

*Cor.* 11. 58 The difference between Attainder and Conviction in case of Felony, is; *Stamf.* 138 The person Attainted hath Judgment of death given upon him: the person *& 185. b.* Convict, before Judgment, prayeth his Clergy, and hath it, and so preventeth the Judgment, &c. Or after Verdict, Confession, or Uttery, the Felon is said to be convicted, till Judgment be given.

And so a man is properly said to be Indicted, when the Offence is first found by the great Enquest, or other Jury of Enquiry.

2. Convicted, when the Offender, having put himself upon his Triall, is found guilty by a second Jury; here he is convicted, before he hath Judgment.

3. Attainted, when (after such such Conviction) Judgment is given against the Offender, and thereby his Lands are forfeited, and his blood corrupted; *Co. l.* 391.

#### *Examination of Felons, and Evidence against them.* CHAP. CXXII.

*1 & 3 Ph.*  
*& M. 10.*  
*P. Just. 108*

**W**hen any person shall be brought before a Justice of Peace for Murder, Manlaughter, or any other Felony (wherewith the Justice of Peace may deal,) or for suspicion thereof; before the Justice shall commit or send such Offender to Prison, he shall take

1. The Examination of such Offender.

2. The Information of such as bring him; viz. he shall take their Examination and Information of the Fact, and the circumstances thereof: And so much thereof as shall be material to prove the Felony, he shall put in writing within two days after the said Examination.

3. Also the same Justice of Peace shall bind all such by Recognisance as do declare any thing material to prove the Felony, to appear at the next General Gaol-Delivery, (to be holden where the Triall of the said Felony shall be) then and there to give in Evidence against such Offenders. See *antea, tit. Felony, cap. 24.*

4. And then the same Justice shall make his *Mittimus*, to carry the Offender to the Gaol.

*1 & 2 Ph.*  
*& M. 13.*  
*P. Just. 107*

Or if such Offender beailable, (and that there be two Justices of Peace present together, the one of them being of the *Quorum*) after such Examination and Information taken, and put in writing, the said Justices of Peace may bail such Prisoner.

5. And the said Justice or Justices of Peace shall certify at the next General Gaol-delivery such Examination, Information, Recognisance, and Bailment.

And if any Justice of Peace shall offend in any thing contrary to the true intent and meaning of either of these Statutes of 1 & 2, & 2 & 3 *Ph. & M.* the Justices of Gaol-delivery, in their discretions, shall fine every such Justice of Peace.

And yet for petty Larcenies, and small Felonies, the Offenders may be

tried at the Quarter Sessions, and the Examinations and Informations may be certified thither, and the Informers bound thither. See hereof *antea*, tit. *Fel. cap. 24. & Stat. 3 H. 7. cap. 3. & Fit. 251. f.*

The form of the Recognisance, see *postea*, tit. *Recognisance*, cap. 134.

The form of the *Mittimus*, see *postea*, tit. *Mittimus*, cap. 136.

The form of the Bailment, see *postea*, tit. *Bailments*, cap. 138.

If the Offender upon his Examination before the Justice of Peace shall confess the matter, it shall not be amiss that the Offender subscribe his name or mark under such Confession made by him.

If the Offender confesseth the Felony before the Justice of Peace, and notwithstanding he letteth him go, without committing or bailing of him; this seemeth to be a voluntary Escape, and so Felony in the Justice. *Crom. 39. 44.*

Also if any person shall be brought before a Justice of Peace, and charged with any manner of Homicide, (other then that which shall be done in the orderly execution of Judgment) as it were done *se defendendo*, or by casualty, (which are not Felonies of death) or done by an Infant, a Lunatick, or the like; yet it is the Justices part, and safest for him, to commit the Offender to Prison, or at least to joyn with some other in the Bailment of him, (if the Cause will suffer it) to the end the party may be discharged by a lawful Trial. See *antea*, tit. *Homicide*, Lamb. 229

The like is to be done where any Felony is committed, and one brought before the Justice of Peace upon suspicion thereof, though it shall appear to the Justice that the Prisoner is not guilty thereof: For it is not fit that a man once arrested and charged with Felony (or Suspicion thereof) should be delivered upon any mans discretion, without farther trial. *Vide Crom. 34. & hic. cap. 117. in fine.*

Evidence  
by the  
-ife.

The Justices of Peace have authority (by the words of the Stat.) to bind <sup>1 & 2 Ph.</sup> by Recognisance all such as do declare any thing material to prove the Felony, & M. 13. to give Evidence against the Offender: And yet the Wife is not to be bound to give Evidence, nor to be examined against her Husband; for, by the Laws of God and of this Land, she ought not to discover his Counsel or his Offence, in case of Theft, (or other Felony, as it seemeth.) See *Stamf. 26. b.* Nay, I have known the Judge of Assize greatly to disallow that the Wife should be examined, or bound to give in any Evidence against others in the case of Theft, wherein her Husband was a party; and yet her Evidence was pregnant and material to have proved the Felony against others that were parties to the same Felony, and not directly against the Husband. See *antea*, tit. *Accessarie*.

And Sir *Ed Coke l. 6. b.* saith, that it hath been resolved by the Justices, *Termino Pasch. 10. fac.* that the Wife cannot be produced either against or for her Husband; *quia sunt duæ animæ in Carne una.*

And yet it was resolved by the Judges (in the case of the Lord *A.*) that in Criminal Causes the Wife may be a Witness against her Husband, especially where she is the party grieved: But that in Civil Causes she cannot. *7. Caroli Regis.*

But for Children, I find in the Book of the Discovery of Witches at <sup>E 3. b. 4. 2.</sup> Lancaster Assizes, *Anno Dom 1612.* that the Son and Daughter of *Elizabeth Device*, a Witch, were not onely examined by the Justices of Peace <sup>G. 2, 3, 4.</sup> against

The  
child.

against their said Mother, and the said Examinations certified and openly read upon the Arraignment and Triall; but the Daughter also was commanded, and did give open Evidence against her Mother then Prisoner at the Barre.

I find farther in the said Book of the Discovery of Witches, that two Children, the one about nine years of age, the other of fourteen, did upon their Oaths give Evidence against the Prisoners upon their Arraignment.

“ See the Book, fo. 4. *I. a. b. R. 4. a. b.* The like was done at *Cambridg*, at Lent

“ Affizes, *Anno Dom. 1619.* before Sir *Henry Mountague* Lord Chief Justice

“ of the Kings Bench. And herewith agreeth in some sort, *M. Bract, f. 118. b.*

“ that *Minor infra etatem* may be a Witnes or Accuser, *cum tamen accusatus*

“ *attachietur usque ad etatem accusantis.*

Accusation or Information by one that is decrepit or unable to travel, is good, and may be taken by the Justice of Peace upon Oath, and certified at the next General Gaol-delivery, or Sessions of the Peace, as the Cause shall require.

If one be an Accuser upon his own knowldg, sight or hearing, and he shall utter the same to another, that other may be an Accuser. *Dyer 99.*

Accusation by an Approver: See hereof *tit. Bailment, cap. 125.*

And note, That an Offender confessing any Felony (upon Indictment or otherwise) against himself, may also accuse others of the same Felony; and such Accusation may be taken by the Justice of Peace, &c.

Two inform against another in matter of Felony, and they vary in their tales, (*viz.* in the day and place, when and where the Felony was committed) such Information is not much to be credited: See the Story of *Susanna*.

*Crom. 100* He that is examined, if part of that he speaketh be proved to be false, he is not to be credited in the residue of his Information; and therefore shall find in *16 Ed. 4.* that a man who was produced as a Witnes in the Chancery, in his Deposition he was found to swear falsely in part, and thereupon his Testimony was utterly rejected.

“ *M. Bracton, lib. 3. fol. 118.* saith, That an Accuser, or Witnes, must be  
“ *integra fame, & non criminofus, quia criminofi ab omni Accusatione repellun-*  
“ *tur: ut si Accusans fuerit Latro cognitus vel Utlagatus, vel aliquo genere Felo-*  
“ *nie convictus vel convincendus. Vide Pl. Co. L. 6.*

A man attainted of Perjury, and the King pardons and restores him, &c. *Quere* whether such a person's Information shall be allowed against a Prisoner; for the old Saying is, *Once forsworn, ever forlorn.*

A man attainted of Conspiracy or Forgery shall not be received to give Evidence, or to be a Witnes. See *Cromp. 127. b.*

But if one be brought before a Justice of Peace upon suspicion of Felony, although the Information against the Prisoner shall be by such Witneses, yet it seemeth safest for the Justice of Peace to take their Information for the King, and to bind them over to give Evidence, &c. and to commit the party suspected, and upon the Triall to inform the Justices of Gaol-delivery concerning the credit of those Witneses.

Concerning these Accusers or Witneses, I have farther seen two old Verses, in these words:

*Conditio, sexus, atas, discretio, fama,  
Et fortuna, fides; in Testibus ista requires.*

And yet in case of Felony any man (though of no worth) may be allowed for a Witness or proof.

By God's Law one Witness shall not be sufficient against an Offender, for any Sin, Trespas, or Fault, *Numb. 35. 30. Deut. 19. 15.* And to the same purpose was the Stat. 25 *Hen. 8. cap. 14.* And yet now by our Law one Witness is sufficient, where the Trial is by a Jury: for they are all sworn to try the particular matter wherewith the Defendant is charged. So also one Witness is sufficient to convict an Offender before the Justice of Peace in divers cases, the Justice of Peace being so expressly therein enabled by Statute.

“ And yet in other cases where the matter is to be tried by Witnesses onely, it is meet that there be two Witnesses.

“ But no man is to be condemned without an Accuser, *John 8. 10.*

When a Prisoner shall be brought before the Justice of Peace for Felony, or suspicion thereof, but they that bring him, or first complained of him, will not or cannot inform any material thing against the Prisoner; see what the Justice of Peace shall or may do.

And it seemeth fit, that the parties grieved be bound, not only to give in Evidence, but also to prefer a Bill of Indictment against the Prisoner; and the other persons which can inform any material thing to prove the Felony, may be bound to give in Evidence onely.

And for that men should be the readier and more willing to give Evidence against Felons, the Statute made 21 *H. 8. cap. 11.* hath Enacted, That if any man hath any Goods stolen from him, if the Felon be thereof indicted, and after in any sort attainted or arraigned, and thereof found guilty, by reason of Evidence given by the party robbed, or Owner of the same Goods, or by any other by his procurement, (though the Thief be not hanged, nor have Judgment of Death) then the party robbed (or Owner of the Goods) shall be restored to his said Goods by a Writ of Restitution, though he never made any fresh Suite or Hue and Cry. Before which Statute the party robbed could have no Restitution, without suing of an Appeal against a Felon, and fresh Suite made. P. Restit. 1.  
Br. Estra. 8.  
Doct. &  
Stud. 64.  
Stamf.  
165. 166.

Also if the Felon shall be Outlawed upon the Indictment by means of the party robbed, or Owner of the Goods stolen, he shall have Restitution of his Goods by a Writ of Restitution, *ut supra. Ba. 2. 76.*

And note, That the Justices before whom any such Felon shall be found guilty (or otherwise attainted by reason of Evidence given by the party robbed, or Owner, or by any other by their procurement) have power to award a Writ of Restitution for the Money or Goods stolen, directed to the party in whose hands the same Goods are, &c. 21 *H. 8. cap. 11. Br. Restit. 22.*

Also the Executors of the party robbed shall have Restitution by force of this Statute, *viz.* upon Evidence given by them or by their procurement against the Felon, whereby the Felon is attainted or found guilty. Co. 6. 80.  
Benl. 3 El.

If a Thief do rob or steal Goods from three men severally, and he be indicted of the Robbing or stealing from one of them, and arraigned thereupon; in this case, though the other two would give Evidence against the Offender, yet shall nor they have Restitution of their Goods, by the meaning Stamf. 166  
P. R. 162.]

meaning of that Statute: for the Felon is not attainted of any other Felony, saving of that whereof he was indicted. . But if he be indicted of all the three Robberies or Felonies severally, and arraigned upon one of them, and found guilty by the Evidence given by one of the parties robbed, &c. yet shall he be after arraigned upon the other two Indictments, to the intent he also may be guilty by the Evidence of the other two persons robbed, and that so they may have Restitution of their Goods stolen, according to the meaning of the said Statute.

44 Ed. 3.  
44.

And if a man do steal Goods at divers times from severall men, and he is after attainted at the Suit of one of them onely, for the Goods stolen from him, but is not attainted at the Suit of the others; by this Arrainder the Felon shall forfeit to the King not onely his own Goods, but also the Goods stolen from those others at whose Suit he was not attainted, though the Felon had no property, but only a possession of those Goods; and the property of the Goods which remaineth in the right Owner in this case is forfeited (by the Owner) to the King, for default of the Owner pursuing the Felon.

Also if there be divers of the Thieves, and but one of the Principals attainted, (as before) yet it seemeth the party robbed shall have Restitution.

But in these and the like cases of Restitution, if the Felon hath sold the Goods in a Fair or Market-overt, and after be attainted of the Felony, (upon Evidence given by the party robbed) here the Owner shall not have Restitution: For by Alienation in a Fair or Market overt, the property of the Goods stolen is altered, 12 H. 8. 10. b. Yet if he that bought the Goods in Market were privy to the Felony, such Sale shall not alter the property, *quia particeps criminis*. See 33 H. 6. 7. Co. 3. 78. Vide antea, tit. *Horses*.

A man shall have Restitution of Money stolen, &c. though it cannot be known. *Br. Restit.* 22.

But if a man hath a Horse or other Goods stolen from him, and knoweth not by whom; if the Felon waiveth the Goods, flieth, and escapeth, and the Kings Officer, or the Lord of the Mannor, &c. seiseth them, the party robbed shall have no Restitution, for that he cannot indict and attain the Felon. And yet if the Felon had not the Goods in his possession, and with him at the time when he fled, (but had formerly left them elsewhere, *sc.* in the Thiefs own house, or in any other mans house, or in the custody of any other, or had hid them) then are they no waived Goods, nor forfeit, but the Owner may take them again wheresoever he findeth them, without any Restitution awarded. *Co.* 5. 109.

Also in the foresaid Book of Discovery of Witches, I observe one other thing, *viz.*

That Examinations taken by Justices of Peace in one County, may be (by them) certified in another County, and there read and given in Evidence against the Prisoner, *r. 2. 3.* And in such cases the Examinations would be taken upon Oath.

Crem.  
193.

The Offender himself shall not be examined upon Oath: for by the Common Law, *Nullus tenetur seipsum prodere*. Neither was a mans fault  
Examina-  
tion certi-  
fied.

to be wrung out of himself, (no not by Examination only) but to be proved by others; untill the *Stat. 2 & 3 P. & M. cap. 10.* gave Authority to the Justices of Peace to examine the Felon himself.

*upon Oath.* But it seemeth convenient, in cases of Felony especially, that the Information (of the Bringers and others) which the Justices of Peace do take against the Prisoner be upon Oath: otherwise upon the Trial of the Prisoner, such Information or Examination taken by the Justice of Peace shall not be read or delivered to the Jury, nor given in Evidence against the Prisoner upon his Trial. And so was the Direction of Sir *Ed. Coke*, late Lord Chief Justice, (5 *Jacobi*, at *Cambridge Summer Assizes*) upon the Trial of a Felon: but (saith he) in case of a Trespass to the value of two-pence, no Evidence shall be given to the Jury but upon Oath, much less where the life of a man is in question. See *Lamb. pag. 210.* that he hath heard the Opinions of other Justices of Assize delivered accordingly. Crompt. 194.

Also if the Informers be examined upon Oath, then though it happen they should die before the Prisoner have his Trial, or if they shall not appear upon the Recognizance, and give Evidence against the Prisoner, (being laboured, perhaps, to absent themselves) yet may their Information be given in Evidence, as a matter of good credit.

Also it is found by experience, that without Oath many Informers will speak coldly against a Felon before the face of the Justice of Peace; yea, and will also speak very sparingly and coldly upon their Evidence given before the Judges of Assize; as I have observed in some, had they not been urged with their former Information taken upon Oath. For the labouring (by the Offender and his Friends) to such as are to inform and give Evidence (both before the matter cometh before the Justice of Peace and after) is now grown over-common and usual.

Also *M. Brook* (*tit. Examination 32.*) is of opinion, That every Examination ought to be upon Oath: And so also is the practice of the Justices in the higher Courts at *Westminster*, in all the Examinations of Summoners, Viewers, Sheriffs, Clerks, or other Officers, &c. Lamb. 209

And here let me admonish all such as are to inform or bear witness against a Prisoner, or any Offender, before a Justice of Peace, or other Magistrate, that they be well advised what they testify upon their Oaths; knowing that in such cases, if either they should not speak the truth, or should conceal any part of the truth, they should offend against God, the Magistrate, the Innocent, the Commonwealth, and their own Souls. *sc.* Against

God, in despising of him, taking his Name in vain, and belying the truth.

Magistrate, in misleading and deceiving him, and causing him to doe Injustice.

Innocent, in spoiling him of his Name, Goods, or Life.

Commonwealth, *sc.* if the party be nocent or guilty, and he clears him by false Witnesses.

His own Soul; for it is Perjury in him, at least in the presence of God and good men.

And though he be not presently sensible of the sore, yet, as one well saith,



- “ faith, it will fester, and he shall then feel it most when no Plaister shall be  
 “ found to cure it : yea, a Hell will come to them, before they come to Hell;  
 “ for a Conscience is,  
 “ } 1. *Testis*, a Witness accusing them.  
 “ } 2. *Judex*, a Judge judging and condemning them.  
 “ } 3. *Carcer*, a Prison.  
 “ } 4. *Tortor*, an Executioner ; yea, no tongue can express the Torture of  
 “ a troubled Conscience.

*Whether Information, Evidence or Proof of Witnesses shall be taken against  
 the King.* CHAP. CXXIII.

It seemeth just and right, that the Justices of Peace, who take Information against a Felon or person suspect of Felony, should take and certify as well such Information, Proof and Evidence, as goeth to the Acquittal of the Prisoner, as such as makes for the King, and against the Prisoner : for such Information, Evidence, or Proof taken, and the certifying thereof by the Justice of Peace, is only to inform the King and his Justices of Gaol-delivery, &c. of the truth of the matter.

And Sir *Ed. Coke* (at Lent Assizes at *Bury*, 5 *Jac.*) advised a Coroner, that he ought to have done accordingly, (as I have heard.)

But *quare* if the Justices of Peace, or Coroner, may take upon Oath such Information, Evidence, or Proof, as maketh against the King. It seemeth no.

Crompt.  
110.b.

Upon Trial of Felons before the Justices of Gaol-delivery, the said Justices will often hear Witnesses and Evidence which goeth to the clearing and acquittal of the Prisoner, yet they will not take upon Oath, but do leave such Testimony and Evidence to the Jury to give credit or to think thereof, as they shall see and find cause.

*Popham*, Chief Justice (at *Cambridge Assizes tempore Eliz.*) committed one to prison, who, upon the Trial of a Felon, called out, That he could give Evidence for the Queen ; and when he was sworn, he gave Evidence to acquit the Offender.

P. Armour.

But by the Statute of 31 *Eliz. cap.4.* it was enacted, That such persons as shall be impeached for any Offence made Felony by that Statute (being against imbezilling of Armour, &c.) shall be admitted to make any lawful proof that they can, by Witnesses or otherwise, for their discharge and defence.

Stamf. 141  
b.

In 7 *H. 4.* we shall find, that one of the Serjeants, as *amicus Curie*, and to inform the Court, (that they should not erre) did shew his Opinion to the benefit of a Prisoner, upon the insufficiency of the Indictment. The like is to be seen in *Brook's Case*, 28 *Eliz. in Banco Regis*, Co. 4. 39.

Co. 4. 39.

## Causes of Suspition. CHAP. CXXIV.

**N**ow upon the Examination of Felons, and other like Offenders, these Circumstances following are to be considered.

1. His Name ; *sc.* if he be called by divers names.

His Parents; if they were wicked, and given to the same kind of fault.

His Education; whether brought up idly, or in any honest occupation.

His Ability of body; *sc.* if strong and swift, or weak or sickly, not likely to do the act.

His Nature; if civil or hasty, witty and subtil, a Quarreller, Pilferer, or Bloudy-minded, &c.

His Means; if he hath whereon to live, or not, or *Si solito ditius se habuerit in vestibus & in aliis ornamentis, cibis, & potibus, & hujusmodi. Br. fol. 120, 122.*

2 Quality, His Trade; for if a man liveth idly or vagrant, (*nullam exercens artem nec laborem*) it is a good cause to arrest him upon suspicion, if there have been any Felony committed, 7 E. 4. 20. *Br. Faux. imp. 22.*

His Company; if Ruffians, suspected persons, or his being in company with any the Offenders, 7 E. 4. 20.

His Course of life; *sc.* if a common Ale-house-hunter, or riotous in Diet, Play, or Apparel.

Whether he be of evil Fame or Report.

Whether he hath committed the like Offence before, or if he hath had a Pardon, or been acquitted for Felony before: *Nam qui semel est malus, semper presumitur esse malus in eodem genere mali.*

So if he hath formerly abjured the Realm, or been Outlawed for Felony, although he hath his Pardon.

If he hath any Bloud about him or his apparel, or that his Weapon be bloudy.

If any of the Goods stolen be in his possession.

If any of the Apparel of the party murdered be in his possession.

3 Marks  
or  
Signs.

The change of his Countenance, his blushing, looking downwards, silence, trembling.

His Answers doubtful or repugnant.

If he offered Agreement or Composition.

If he hath laboured his Neighbours not to speak thereof.

The measure of his foot, or his horses foot.

The bleeding of the dead body in his presence.

If, being charged with the Felony, or called Thief, he saith nothing. *F. Cor. 24.*

If

If he fled : *Fatetur facinus, qui judicium fugit. Co. II. 60.*

If he hides himself, or takes Sanctuary.

If he lies lurking in a place where he hath nothing to do.

If he were the first that found the party murdered.

Place; *sc.* if convenient for such act, as in a House, in a Wood, Dale, &c.

Time; the year, day, hour, early or late.

4 The Fact

Where the Offender was at the time of the Fact, and where the day or night before; his business and company there: and Witnesses to prove all these.

Manner; if willingly, by chance, or necessity.

5 The Cause.

If former malice.

If to his benefit, or what hope of gain.

If for the eschewing of any hurt or danger:

6 The Person

*Agens*: if Principal or Accessary, Infant, Lunatick, &c.

*Patiens*: if against the King, Magistrate, Master, &c.

“Note, That a man accusing another but upon suspicion is not to be reproved, though the party accused be proved to be innocent. *Numb. 5. 28;*

31.

A Felon brought before a Justice of Peace accuseth others; it is sufficient cause for the Justice to grant out his Warrant for the rest. See *Postea*.

F. Cor. 212

A man going to Execution accuseth another of Felony; it is sufficient cause to arrest him.

Br. Faux

Imprif. 16.

*Communis vox & fama*, that he did the Offence, is sufficient cause of suspicion, *sc.* where such a Felony is done: otherwise not.

But yet for the better conceiving what may breed or give just cause of suspicion, mark some of M. *Bracton's Rules*.

Stamf. 97.

*Oritur suspicio ex fama: Fama vero quæ suspicionem inducet, oriri debet apud bonas & graves, (non quidem malevolas & maledicas, sed providas & fide dignas) personas idque non semel, sed sæpius: Vana autem voces populi non sunt audiendæ.*

Fama.

And therefore where the common Proverb is, *Vox populi est vox Dei*, it should be, *Vox populi Dei est vox Dei*.

Stamf. 29.

*Si Furtum in manu alicujus inveniatur, vel sub potestate alicujus, tunc ille in cujus domo vel potestate res furtiva inventa fuerit, tenebitur, (nisi warrantum invenerit quod eum inde defendere possit):* for, as another saith, *Cum adsunt testimonia rerum, quid opus est verbis?*

Stamf. 179.

*Si quis noctu cubaverit in domo solus cum aliquo qui interfectus sit, vel si duo aut plures ibi fuere, & Hutesium non levare, nec plagam à latronibus vel interfecto-ribus in defensione facienda acceperit, nec ostendunt quis de se vel de aliis hominem interfecerit; his casibus mortem deducere non possunt.*

Ibid.

*Si quis in domum suam notum vel ignotum acceperit, qui vivus ingredi visus est, vero postea nunquam nisi mortuus, dominus domus, si tunc domi sit, vel alii de familia qui tunc interfuerunt, pœnam capitalem subibunt, nisi forte per patriam fuerint liberati. Vide Pl. hic, cap. 97. Reg. 7.*

Sunt

*Sunt etiam quedam presumptiones ita violentæ, ut probationem non admittunt in contrarium; ut si quis cum cultello cruentato captus sit super mortuum, vel fugiendo à mortuo, vel mortem confitetur: quibus casibus non admittitur mortem deducere, nec alià opus est probatione.* Stamf. 97. & 179. Co. l. 6.

Sir Ed. Coke, l. 6. maketh three sorts of Presumptions: viz.

1. *Violenta*, (as in this last former case) which he saith is *plena probatio*.

2. *Probabilis*, which (saith he) moveth little.

3. *Presumptio levis, seu temeraria*, which moveth not at all.

And yet in cases of Felony, &c. the Confession of the Offender, upon his Examination before the Justice of Peace, shall be no Conviction of the Offender, except he shall after \* confess the same again upon his Trial or Arraignment, or be found guilty by Verdict of twelve men, &c. \* Co. 11. 302. vide.

To the like purpose also is the Rule of the Civil Law, *Si quis in Judicio sponte de seipso confiteatur, & postea maneat in Confessione, satis est*: If any man in Judgment do confess of himself, of his own accord, and doth persevere in his Confession, it is enough, and such Confession shall be taken for an Evidence of the crime.

But yet at Lent Assizes at Cambridge, Anno quarto Caroli Regis, before Sir Francis Harvey, upon the Arraignment of a Prisoner for Felony, his Examination, which was taken before the Justice of Peace, wherein he had confessed the Felony, was only given in Evidence, no other Evidence then coming in upon his Trial; and the prisoner upon his own Confession before the Justice of Peace was found guilty by the Jury of life and death, and had Judgment, &c.

Also in cases of secret Murthers, and in cases of Poisoning, Witchcraft, and the like secret Offences, where open and evident Proofs are seldom to be had, there (it seemeth) half proofs or probable Presumptions are to be allowed, and are good causes of suspicion, and are sufficient for the Justice of Peace to commit the party so suspected.

But note, (by the Common Law) That in an Action of False Imprisonment brought against the Constable (or other person that shall arrest another upon suspicion of Felony) it is no plea for them to say, that the Plaintiff was suspected of Felony: but they must alledge, That there was such a Felony committed, and that the Plaintiff was suspected for the same: for Suspicion onely, without a Felony committed, is no cause to arrest another. Yet see the Statute of 5 E. 3. cap. 14. that if any man have any evill suspicion of any persons for Felony, &c. be it by day or night, they shall be incontinently arrested by the Constables of the Towns, &c. and kept in prison till they be delivered by the Justices, &c. 8 E. 4. 4. 5 H. 7. 4. Br. fx. imp. 4. 10. 17 E. 4. 5. 22 H. 7. 29

Also the Defendant must alledge some special matter (in fact) to prove that he, who was arrested, was suspected of Felony, (as to say, that the party arrested is a man of an evil fame, or a vagrant person, &c.) otherwise one man may arrest any other, yea every man in the Town may be arrested, when any Felony is committed.

*Mes quel est sufficient cause de suspicion, & quel nemy, serra trie per les Justices.* 7 E. 4. 20. Br. Exem. 8. 14. 16.

Fi. 127.

Also 25.

Also the Defendant must plead, That he himself had a suspicion of the Plaintiff: for if the Constable (or other person that shall arrest one that is suspected) doth not suspect him himself, it seemeth he may not arrest him upon his own Authority: and yet by the Opinions of *Keble*, *Varvafor*, and *Townsend*, as well the Constable, as others in his aid, may arrest one that is suspected of Felony, upon the suspicion and complaint (made to the Constable) of the party robbed, 2 *H. 7. 15, 16. Br. Faux Imprif. 14.* yet *alii è contra, ibid. sc.* that the suspicion can extend to none other, but onely to him that hath the suspicion, and *Br. 14 H. 8. 16. a.* accordeth: *tamen quære.* For if Felons may not be arrested or stayed but only by those that shall suspect them, and that others may not aid and assist the party that shall suspect another to have robbed him, many Felons shall escape, and Felons shall often go unpunished. See *Plo. 46. a. & Finch 127.*

But now by the *Stat. 7 Jac. 5.* the Constable, &c. in the former cases may plead the General Issue (Not guilty,) and give the said special matters in Evidence.

Also if the Constable, or other person, shall arrest another upon suspicion of Felony, by virtue of a Warrant from a Justice of Peace, such Warrant shall excuse him, it being given in Evidence, &c. *Vid. postea, tit. Warrants.*

#### Bailment and Mainprise. CHAP. CXXV.

**B**ailment, Mainprise or Replevin, is the saving or delivery of a man out of Prison, or the freeing or setting at liberty of one arrested before that he hath satisfied the Law; *sc.* by finding Sureties to appear at a certain day, and to answer, and be justified by the Law.

And to this purpose these three terms (Bailment, Main-prise, and Replevin) be indifferently used in our Statutes and Books.

*Stamf. 65.  
F. Mainp.  
18.*

He that is bailed is taken or kept out of prison, and delivered (as it were) into the hands of his Sureties, who are reputed his Guardians, and who may keep him with them, and may imprison him, by some Opinions. See 22 *H. 6. Br. Surety 8. & Mainp. 89.*

*Crompt.  
157.*

If the Mainpernors or Sureties do at any time, or in any case, doubt that their Prisoner, or the party by them bailed, will flee, they may take him, and bring him before any Justice of Peace; and upon their prayer the said Justice of Peace may and ought to discharge such Sureties, and to commit the party to prison, except he shall find new Sureties, &c.

So if a Prisoner be bailed by insufficient persons, the Justice of Peace (*ex Officio*) may cause him to find better Sureties, and may commit him till he shall so do; for the *Stat. of Westm. 1. cap. 15.* requireth, That such as be bailed be let out by sufficient Surety. *P. Mainp. 2. Vide antea, tit. Surety for the Peace.*

If the Prisoner cannot find sufficient Sureties, the Justice of Peace is

H h

not

not bound (nay ought not, knowing their insufficiency) to let the Prisoner to Bail. See *Co. 10. 101.*

And therefore, although the number of such Sureties, their sufficiency, and the sum wherein they shall be found, resteth (in some sort) in the discretion of the Justices; yet it is safe for them to take two Sureties (at the least,) and those to be Subsidy-men, and to be bound in good sums, especially if the Prisoner be in for Felony, or suspicion thereof: for the more and the more able that the Sureties are, the rather they will cause him that is bailed to appear. And again, for want of taking sufficient Bail, the Justices of Peace are finable. And at *Cambridge Assizes, Anno Dom. 1613.* Judge *Warburton* threatened to have set 40 *li.* Fine upon two Justices of Peace who had bailed a Prisoner (that was committed for suspicion of Felony, and appeared not) for that the Sureties were not Subsidy-men.

And it seemeth that the Justices of Peace may examine upon their Oaths the Sureties, concerning their sufficiency, or whether they be Subsidy-men. The Justices of the Common Pleas (*7 H. 6. 25.*) did examine the ability of the Sureties upon their Oaths, &c. And that which the Higher Courts do, may be a good rule for others. *Vide 2 H. 7. fol. 1.*

Now Bailment by the Justices of Peace (in case of Felony, or for any other matter) is always upon a certain sum of money, (as upon 40 *li.* &c.) the which sum, the Sureties, &c. shall forfeit to the King, if the Prisoner appeareth not at his day. *Stamf. 77. 21 H. 7. 20.*

Also the Bailment in Felony is, *Ad standum rectum de Latrocinio predicto secundum Legem, &c.* Which seemeth to imply, That they which have taken him to Bail shall not only cause him to appear, but also to answer to the Felony, *Stamf. 77. d.*

And in this business of Bailment (being a matter of much weight) it becometh the Justices of Peace to be very circumspect, as well for fear of wrong, by denying it to him that isailable; as also for fear of danger to the service it self, by yielding it where it is not grantable; and for fear of danger to themselves in both cases.

For whosoever do detain Prisoners who areailable; after they have offered sufficient Sureties, shall be grievously amerced to the King; and he that doth take any reward for the deliverance of such, shall be amerced to the King, and pay double to the Prisoner. *3 E. 1. 15. P. Mainp. 6. See 23 H. 6. 100. P. She. 8.*

So on the other side, if one who by the Law is notailable, shall be let to Main-prise, this shall be adjudged a negligent escape in him or them that do let him to Main-prise; and for such an Escape or Offence they shall be fined and punished as followeth. *11. 25 E. 3. f. 39. Stamf. 33. 77.*

If the Sheriffs, Constable, or any Bailiff of Fee, who hath the keeping of Prisoners, shall bail any person which is notailable, and be thereof attained, they shall lose their Fee and Office for ever: and if the Under-Sheriff, Constable or Bailiff of such as have Fee for keeping of Prisoners do it contrary to their Masters will, or any other Bailiff being not of Fee; they shall have three years imprisonment, and make Fine at the Kings pleasure. *Doct. & Stud. 135. 3 E. 1. 15. P. Mainp. 34.*

Note, That the Sheriffs and other Officers which do let to Bail any persons *27 E. 1. c. 3. P. Mainp. 4*

persons forbidden (by the Statute of *westm.* 1. made 3 E. 1. cap. 15.) to be bailed, shall be punished by the Justices of Gaol-delivery, according to the form of the same Statute; or else by the said Justices they may be put to their Fine, as for an Escape punishable at the Common Law. 25 E. 3. 39.

*Quare* if it be not Felony for them to bail Felons, or persons suspected for Felony, for that these Officers have no authority at this day to bail such Prisoners: & vide *hic*. cap. 117.

“ Bre. de Manucaptione est, l’ou homme est prise sur suspicion de Felony, (ou est endite de Felony) pur que chose il est mainpernable per Ley, & il offer suffic. Sureties al un q’ ad authority de luy lesser al mainprise, & il refuse de ceo faire. Fitz. 249.

Now what persons be forbidden to be bailed by the said Statute of *westm.* 1. see *postea*, sub hoc tit.

Note also, that the Sheriff or Constable might at the Common Law have bailed a suspect of Felony, (because they were Conservators of the Peace;) but now that power seemeth to be transferred to the Justices of Peace onely. See the Stat. 1 R. 3. c. 3. & 3 H. 7. 3.

1 & 2 P. & M. cap. 13. P. Just. 108. R. Mainp. 4. If any Justices of Peace do let to Bail or mainprise any person who (for any Offence by him committed) is declared not to be bailable, or forbidden to be bailed by the afore said Statute of 3 Ed. 1. the said Justices of Peace so offending shall pay such Fines as shall be assessed by the Justices of Gaol-delivery where the Offence shall be committed. Fitz. 251. 2. See *hic* cap. 117. in fine.

1 & 2 P. & M. See Co. 10. 100. b. 107. But the Justices of Peace and Coroners within London and Middlesex, and in all other Cities, Boroughs and Towns Corporate, have authority to let to Bail Felons and Prisoners, as they have formerly accustomed. P. Just.

If the Sheriff, Justices of Peace, or other Officer, shall bail one that is not bailable, such Bailment being against Law, *quare* if the Recognisance or Bond taken upon such Bailment (for the appearance of the Prisoner) be not void. See the Opinion of *Moile*, 37 H. 6. 1. and of the Court there, that such a Bond taken by the Sheriff is void.

Now to shew farther the Authority of the Justices of Peace in this behalf.

1 & 2 P. & M. cap. 13. P. Just. 107. No person arrested for Man-slaughter, or Felony, or suspicion thereof, (being bailable by the Law) shall be let to Bail or Main-prise by any Justice of Peace but in open Sessions, or by two Justices of Peace at the least, whereof one to be of the *Quorum*, and the same Justices to be present together at the time of the said Bailment. *The manner*

*Ibid*. And this Bailment the said Justices shall certify in writing (subscribed with their hands) at the next general Gaol-delivery, &c. *Vide antea*, tit. Examination of Felons, cap. 122.

*Ibid*. Also before the Bailment of such Prisoner, the same Justices, or one of them, shall take the Examination of the Prisoner, and Information of them that bring him, of the Fact and Circumstances thereof; and so much thereof as shall be material to prove the Felony shall be put in writing, before they make the Bailment: which Examination, Information and Bailment, they shall certify at the next general Gaol-delivery; *ut supra*.

But if any Justice of Peace hath taken the Examination of a Felon, and Information against him, and after hath sent him to the Gaol; now upon Bailment of him by other Justices, they need not take any new Examination of the Prisoner or Information against him, but under their Recognisance (or together therewith) to certify by what Justice of Peace the Felon was committed, to the end that at his hands those Examinations and Informations may be required, if he have not certified them.

By the Opinion of M. *Crompt.* a Prisoner (taken for Felony,) before his Commitment, ought to be examined and bailed by two Justices of Peace being together, (as before :) but after that the Prisoner is examined and once committed, then he may be bailed by any one Justice of Peace. *Quære* thereof.

*Mittimus, the from.*

The Justices of Peace which shall send any Prisoner to the Gaol, ought to shew in their *Mittimus* the cause of the Commitment, to the end it may appear whether such Prisoner be bailable or no.

And if the Justices of Peace shall commit one to the Gaol, with these words in the *Mittimus*, *sc.* without Bail or Mainprise, (shewing a certain cause in their *Mittimus*,) yet if such Prisoner be bailable by Law, other Justices of Peace may bail him; (yet *quære*, seeing their Authority is equal :) but if the Prisoner were committed without Bail or Mainprise, and without shewing cause in the *Mittimus*, then other Justices of Peace cannot (or at least shall not doe well to) bail him, without making the other Justices who committed him privy thereto; for he might be committed for such cause as that he is not bailable, (as for Treason, &c.)

I have seen a Report of a Case, *Term. Trin. 37 El.* That upon an Assembly of all the Judges and Barons at Serjeants Inn, It was resolved and agreed by them to be put in ure in their Circuits, That if a Justice of Peace should commit a man to the Gaol for Felony, for which by the Law he is not bailable, but by his *Mittimus* he commits him generally, not shewing any cause, if any other Justices of the Peace shall bail him, not knowing of the matter, &c. they shall be fined for the same; for they at their perils ought to inform themselves of the truth of the matter, before they bail him.

Note, where a man is bailable, yet when he cometh before the Justices he must offer Surety to the Justices, otherwise they may commit him to prison. *Br. Peace 7.*

Next, it followeth that I shew what persons be bailable, and what not.

*Persons not bailable.*

It appeareth by the Statute of *westm. 1. cap. 15.* that in these four cases following a man was not bailable at the Common Law. *Br. Mainp. 47. F. N. B. 66. e.*

1. No person taken for the death of a man, *sc.* for Murther, or any other Homicide, was bailable by the Common Law.

And yet the Justices of the Kings Bench do use to bail them; yea, although it be for Murther, *Br. Mainp. 60, 63, 78, 47.* See the Statute 3 *H. 7. c. 1.*

Also the Stat. 1 & 2 *P. & M. cap. 13.* seemeth to admit that for Man-slaughter, *Br. Mainp. 11, 47, 57, 60, 63, 38. F. Cor. 361. P. Just. 107. Lamb. 336*



slaughter, and all other Homicides (except Murther onely) the Slayer may be bailed by the Justices of Peace; which also I take to be the common practice at this day. But let the Justices of Peace be sparing and well advised herein, viz. that the Offence be but Man-slaughter, and not Murther.

**P. Mainp. 4** Also it seemeth the Justices of Peace cannot bail him that hath committed Man-slaughter, if either he hath confessed the Offence upon his Examination (*vide postea, tit. Bailment*);

Or that he be taken with the manner:

Or that it be apparently known that he killed the other. *Vide pag. sequent.*

He that hath dangerously hurt another may go under Bail, &c. See before, *cap. 8. & Stat. H. 7. cap. 1.*

2. Secondly, no person taken by the Kings Commandment was bailable by the Common Law: but this must be intended of the Kings Commandment by his own mouth, (when upon his meer motion he commandeth a man to Prison) or by his Privy Councel, which are incorporate to him. See *Stamf. 72. e. Br. Mainp. 37. 47.*

**Stamf. 73.** 3. Thirdly no person taken by the Commandment of the Kings Justices was bailable by the Common Law: but this must be intended of their absolute Commandment; as if the Justice commands one to Prison without shewing cause why he doth so command, or for Misdemeanor done in his presence, or for some other cause which lieth in the discretion of the Justice (more then in his ordinary power, &c.) and that such Imprisonment be for a punishment.

See *pa. preced.*

And therefore if the Lord Chancellor of *England*, or Lord Keeper of the Great Seal, (who have power to commit one to Prison wheresoever they are in *England*) shall command or commit one to Prison (by such their absolute Authority,) such person shall not be bailed.

And so if the Justices of the Kings Bench shall command one to Prison.

And so if the Justices of the Court of Common Pleas sitting in their Court.

Or Justices of Assize in their places; if these shall commit any to Prison, they are not bailable.

But where any Justice or Justices shall commit one, rather to be safely kept, then for a punishment, such Commitment may be said to be by an ordinary Commandment; and the party so committed is bailable. *Terms de Ley.*

4. Fourthly, Trespassers in the Forrest were not bailable by the Common Law: but that was remedied by the Stat. 1 *E. 3. c. 8. & 7 R. 2. cap. 4. F. N. B. 67. c.*

**P. Just. 107** But now, for that by the Statute 1 & 2 *Ph. & M. c. 13.* it is provided, *By Stat. tute.* that no Justice or Justices of Peace shall let to Bail any person contrary to the aforesaid Statute of *Westm. 1.* (made 3 *E. 1.*) *cap. 15.* and so the said Statute of *Westm. 1.* is now as a line, whereby the Justices of Peace are to guide themselves in cases of Bailment; I will shew here what persons are

**3 Ed. 1. 15.** bailable by that Statute of *Westm. 1.* and what not.

**P. Mainp. 1**  
**F. N. B. 66.**  
**c.**

By this Statute of *West. 1.* no Prisoner shall be let to Bail which is taken in any of these 13 cases following.

H h 3

1. Such

1. Such as have abjured the Realm shall not be bailed.
2. Nor any Approver or Appellor, for that he confesseth the Felony, and himself guilty, before he can burthen or accuse another, as Coadjutor or helper with him in doing the same. Stamf. 144 b.  
Lamb. 337
3. Nor he which is appealed by an Approver, so long as the Approver doth live, except he be of good name, or that the Approver doth waive his Appeal; see *Stamf.* 74. or that the Approver be vanquished, 25 E. 3. 42. Fitz. 250. d  
Br. Main. 9
4. Nor he which is taken for burning a house, &c. feloniously. *Vide antea, Felony by the Common Law, cap. 116.*
5. Nor any Excommunicate person, taken (at the Bishops request, *sc.* upon his Certificate into the Chancery) by the Writ of *Excom. capiend.* *F. N. B.* 66. c.
6. Nor any Felon taken with the manner.
7. Nor a Thief openly defamed and known.
8. Nor he which is Outlawed in case of Felony; and yet in some cases such as be Outlawed may be bailed by the Court, &c. See *Stamf.* 74.
9. Nor he who hath broken the Kings Prison. *Vide antea, Felony by Statute, cap. 117.*
10. Nor he which is taken for Treason touching the King himself.
11. Nor he which is taken for falsifying the Kings Money.
12. Nor he which counterfeiteth the Kings Seal. *Br. Mainpr.* 59.

In all these former cases, if the cause for which the party is imprisoned be Treason or Felony, or otherwise toucheth Life or Member, then shall he not be bailable; otherwise it seemeth he may be bailed.

13. Nor he which is taken for a manifest Offence; as if a man be indicted and imprisoned for a Riot, or other great Offence, before Justices, by force of the Kings Commission of Oyer and Terminer, this (and the like) are the manifest Offences whereof the Statute speaketh. See *Fitz.* 250. f.

But by the same Statute of *West.* 1. such persons are bailable, which be taken in any of these six cases following,

Persons  
bailable.

First, he that is taken (or indicted) for light suspicion of Felony, is bailable. See *Lamb.* 335. *F. N. B.* 249. g. 250. c. 251. f.

1 Persons  
suspected.

He that is taken upon suspicion of Burglary, Robbery or Theft, if he be not of evil fame, nor that there be any strong presumption against him, it seemeth he is bailable. Stamf. 74. c

A man had stolen certain Hogs and (for that he was of evil fame) he was committed without Bail; yet if he could have brought proof or witness that he bought them, he should have been bailed. 16 F. 4. 7.  
Br. Mainp. 75.

A man is arrested for suspicion of Felony, and brought before the Justice; if it shall appear that there is no such Felony committed, the party may be set at liberty without Bail: but if there be a Felony committed, though the Prisoner can clear himself, yet the Justices must either commit him or bail him. *Vide antea, tit. Felony by Statute.* Crompt. 154.

Secondly,

P. Mainp. 2  
Fitz. 250.6

Secondly, he that is taken (or indicted) for petty Larceny, (that amounteth not to 12. d. or above the value of 12. d.) if he were not guilty of some Larceny before, he is bailable.

P. Mainp. 2

Thirdly, such as be indicted of Larceny by Inquest of Office before the Sheriff, or before Coroners, or Bailiffs, &c. or in any base Court, they shall be set at liberty upon sufficient Surety.

Stamf. 74.

Fitz. 247,  
& 250. c.

Br. Mainp. 97.

And yet they shall not be bailed, if they be not also of good fame; but if they be of good fame they are to be bailed, although they be indicted as afore said (before Sheriffs, Bailiffs, Coroners, or before any other such Officers, by their Office, or in any base Court :) yet *quare* if the Justices of Peace out of their Sessions may safely bail such persons; for being indicted, they are more then vehemently suspected, &c. *Vide pag. sequente.*

One that was indicted before the Coroner, that he had killed another *se defendendo*, was (by the Justices of Gaol-delivery) bailed till the next Assizes, to purchase his Pardon. 26 *El. Cromp.* 153. See *antea*, tit. *Misadventure.*

One that is indicted before the Sheriff for stealing of a Horse (which seemeth to have been in his Torn) may be bailed by the Sheriff (if he be of good fame) by the *Writ de Marucaptione. F. N. B.* 249. g.

Also one that was indicted of Burglary, as Principal, pleaded Not guilty, and was after bailed. 29 *Lib. Ass. Fitz. Mainp.* 9. See *infra*.

Another that was indicted of Robbery was bailed. 41 *Lib. Ass.* 30. *Br. Mainp.* 61.

If any Murtherer being indicted, and after arraigned at the Kings Suit, shall be thereof acquitted within the year and day, the Justices before whom he is acquitted shall not suffer him to go at large, but either shall remit him again to Prison, or else may bail him (at their discretion) till that the year and day be passed, to the end that the Wife, or next Heir to the party murthered, may have their Appeal of the same Murther within the year and day after the same Murther done, &c. 3 *H. 7. cap.* 1. *Fitz.* 251. g.

Stamf.

74. d.

F. Cor.

297. 354.

But such as are attainted or convicted of Felony are not bailable. For although it doth not appear by any words of the said Statute of *West.* 1. that it doth prohibit the Bailment of such as be attainted by Verdict, yet it is to be intended, that the Statute doth as well prohibit the Bailment of those attainted by Verdict, as it doth of them who be attainted by Outlawry: and therefore if a Prisoner, after he hath pleaded Not guilty, be attainted by Verdict, That he killed a man *se defendendo*, or by misfortune, yet he shall be bailed by the Justice of Peace. *Tamen vide antea*, tit. *Felonies by Casualty*, & *Stamf.* 15. c. *Fitz. N. Br.* 246. c. *que ilz serra bail per les Justices (de Gaol-delivery) devant queux il serra trye, &c.*

Dyer 179.

See Br.

Mainp. 94.

And if a man that is arraigned of Homicide doth plead Not guilty, and is found guilty, and doth pray his Clergy, and is reprieved without Judgment, he is not bailable; for being convicted of the Felony, he is more now then vehemently suspected, and the intendment of the Law in cases of Bailment is, that it resteth indifferent whether he be guilty or not, until Trial.

The same reason seemeth to hold, if a man be found guilty of Homicide

cide before the Coroner : yet see 22 *Aff. p.* 94. *Br. Cor.* 90. that such are bailable as are found (before the Coroner) but suspicious.

Also a man convicted of Felony remaineth in Prison, and after obtaineth the Kings Pardon; the Justice of Gaol-delivery may bail him till the next Gaol-delivery, that he may then come with his Pardon and plead it. 2 *E.* 6.

*Br. Mainp.* 94.

4. Those that be charged with the receipt of Thieves or Felons, or of com- *P. Mainp.* 2  
mandment, or force, or of Aid (in Felony done,) be bailable. *Stamf.* 71.

*F. 4. Access- garies.* And it seemeth that Abettors, Consenters and Procurers, and all other Accessaries to Felonies, are within the equiry of this Statute, and are bailable: yea, Accessaries (as well in case of the death of a man, although it be Murther, as in case of other Felonies) are bailable (if they be of good fame) untill the Principal be convict or attaint; but after the Principal is attainted, the Accessary shall not be bailed, but kept in Prison: and yet if (after the Attainder of the Principal) the Accessary shall appear, and plead Not guilty, or other Plea, it seemeth he shall be bailed. The reason is, for that when the Accessary shall make default, then is it as a *fugam fecit*, and a great cause of suspicion of the thing; but when he appeareth, by that the suspicion is now taken away, and so he is bailable. See more in *Br. Mainp.* 6, 9, 22, 54, 64, & 97.

If a man be Accessary to two, and the one Principal is attainted, though the other be not, yet the Accessary shall not be bailed.

In Felony, if the Principal die in Prison, or be attainted of another Felony, the Accessary shall be bailed. *F. Cor.* 378. *Br. Mainp.* 91.

But note, that in case of Treason neither the Principal nor Accessary shall be bailed.

*Principals.* Also the said Statute of *West. 1. cap. 15.* doth no more restrain the Principals (to be bailed) then the Accessaries, in those cases where the same Statute doth not prohibit to let to Main-prise; and therefore if a man be indicted of Burglary as Principal, yet he may be bailed. *Stamf.* 24. *Br.* 56. 29. *Aff. Pl.* 44.

Also the Principal in an Appeal of Robbery may be bailed; and so may he be bailed upon an Indictment of Robbery. *Br.* 61, 75, & 97. yet in an Appeal of Robbery the Book 6 *H. 7. f. 1. b.* seems to the contrary.

But the Principal in the death of a man is not bailable, either by the Common Law, or by the Statute of *Westm. 1.* yet see hereof before in this Title, that the Justices of the Kings Bench do use to bail them. Also see there for what Homicides the Justices of Peace may bail one that is a Principal.

*5. Trespass.* 5. Fifthly, those that be charged with (or guilty of) any Trespass that toucheth not loss of Life nor Member, be bailable by the Statute of *Westm. 1. 15.* But yet let the Justice of Peace have a care, that Bail be not prohibited by any other later Statute in such cases of Trespass:

If any person be committed to Prison by Procefs from the Sessions made upon an Indictment upon any penal Statute (not prohibiting Bail, or for any Trespass) he may be bailed (out of Sessions) by two Justices of Peace, the one being of the *Quorum*.

Or

Or he may have a Writ out of the Chancery directed to the Justice of Peace, or to the Sheriff, to take Surety of him for his appearance before the Justices at their Sessions, &c. Or he may have a *Certiorari* to the Justice of Peace, to remove the Record into the Kings Bench; and a *Habeas Corpus* to the Sheriff, to remove the body thither also. *Fitz. 250. g. b. i. & 251. c.*

*Crompt. 197. 234.* If Proceſſes from the Sessions ſhall go forth upon any Indiſtment of Treſpaſſe, &c. it ſeemeth that any one Juſtice of Peace may take Bail of the party to appear at the day, &c. to answer to the Indiſtment: and the ſame Juſtice may thereupon make his *Superſedeas de cap. Indiſtat.* (and ſo of the Exigent;) for otherwiſe, beſides the miſchief of imprifonment, the party may be outlawed before the Sessions. See ſome precedents therein, *poſtea, tit. Precedents.*

Note, that the Juſtices of Peace are not to Bail any priſoners except the priſoner be committed for ſuch cauſe whereof the ſaid Juſtices of Peace be competent Judges, ſc. ſuch Cauſes as they may hear and determine.

*Lamb. 337 Crompt. 152.* And therefore if a man be taken upon Proceſſe of Rebellion iſſuing out of the Chancery, the Juſtices of Peace are not to bail him. And M. *Crompt.* reporteth of two Juſtices of Peace who were fined for bailing one in ſuch a caſe.

If a man be arreſted by force of any Proceſſe, Writ, Bill, or Warrant, in any action perſonal, the Juſtices of Peace are not to bail him.

Perſons condemned in any of the Kings Courts, and by virtue thereof committed to priſon, and perſons being in Execution upon any Statute or Recogniſance, &c. at the Suit of any perſon, the Juſtices of Peace are not to bail any ſuch.

*P. Mainp. 2. Fitz. 250. d.* 6. Sixthly, he that is appealed by an Approver, (being no common Thief, nor defamed after the death of the Approver) isailable by the ſaid Statute of *weſt. 1.*

“An Approver or Appellor is he who hath committed ſome Felony, which he confeſſeth, and then appealeth others, accuſing them that they were Coadjutors or helpers with him in doing the ſame. *Et ſic dicti, quia ad hoc probandum, quod in Appello allegarunt tenentur, idque vel Duello, vel per Patriam, ſc. Jurat. legalium hominum, juxta reorum electionem. Com,*

“And this Accuſation by the Approver muſt be done before the Coroner, either aſſigned to the Felon by the Court, to take and record what he ſaith; or elſe may be called by the Felon himſelf, and required for the good of the King and the State. to record his Accuſation, and what he ſaith. *Ibid. Exceptiones contra Appellum. Vide Braſ. li. 3. c. 20, &c.*

*Stam. 144. a. Br. Peace 1. Abr. D. aff. 72. 76.* Note, that a man cannot become an Approver (or an Accuſer of others) before Juſtices of Peace, (for that the Juſtices of Peace have no authority to aſſign him a Coroner :) nevertheſſe it ſeemeth both reaſonable and ſerviceable, that if a Felon will become an Approver, that is, will confeſſe his Felony, and alſo accuſe others that were Coadjutors with him in doing the ſame Felony, (or other Felonies) before a Juſtice of Peace, that ſuch Juſtice may take his Confeſſion, and commit him to the Gaol, and may alſo

also grant out his Warrants for the apprehending of the others that are so accused.

Concerning an Approver observe these Rules.

1. One cannot be an Approver, but in Felony or Treason. 9 H. 6.
2. One cannot be an Approver, but upon Indictment only. 1 H. 7. 5. Stamf. Finch.
3. An Approver must accuse the other of such an Offence as he himself did together with the other. *Stamf.* 143.

Again, the Stat. of 23 H. 6. c. 10. taketh away Bail from all such as be in prison by Condemnation, Execution, *Capias utlagatum*, Excommunication, Surety for the Peace, or by the special commandment of any Justice, prohibiting that such be not bailed either by the Sheriff or other Officer or Minister.

There be divers other Statutes which do take away Bail from the Offenders thereof, and that not onely upon their solemn Conviction after public hearing, Trial, and Judgement, but also upon the Record of one or two Justices of Peace, or by private Examination and Confession of the Offender, or proof of Witneses, or such other private Trial had before the Justices of Peace out of their Sessions; most of which I have here set down, leaving the rest to the Readers better search.

*where Bailment is taken away by Statute.* CHAP. CXXVI.

**N**O person being imprisoned or taken for any of the Offences or causes hereunder mentioned, shall be bailed, or let to Main-prise, otherwise then as hereafter followeth, &c.

Such as have abjured the Realm shall not be bailed, *Westm. 1. c.* 13 E. 1. c. 11. 2

15. Accomptants found in Arrerages before Auditors shall be imprisoned (without Bail) until they have satisfied their Master all Arrerages.

Ale-house-keeper without Licence shall be committed to prison for three dayes without Bail: and before his delivery shall enter Recognisance with two Sureties, that he shall not keep any common Ale-house, &c. *Vide antea, tit. Ale-houses, p. 4.*

Ale-house-keeper prohibited by two Justices of Peace, and notwithstanding continuing his selling, &c. he shall be committed for three dayes as aforefaid. *Ibid.*

Ale-house-keepers without Licence, for their second Offence shall be committed to the House of Correction for one moneth: and for every such their Offence after, shall be committed to the House of Correction, there to remain till they be delivered by Order from the General Sessions. *Ibid.*

Ale-house-keepers, Inn-keepers and Victuallers, which shall suffer Towns-men to continue drinking in their houses contrary to the Statute of See antea, tit. Ale-houses.

1 Jac. cap. 9.

Or which shall sell lesse then one full Ale-quart of their best Beer or Ale for 1. d. and of the small, two quarts for 1. d.

Such

*where  
Bail is  
taken  
away.*

Such Offenders, not having sufficient whereby to be distrained for the Forfeiture, shall be committed to prison until they have payed the penalty.

Aliens conveying Bows or Arrows into any parts beyond the Seas, without license, shall be committed until they have made Fine, (by the discretion of the Justices of Peace in their Sessions) and given Surety for the payment thereof. 33 H.8. cap. 9. P. Arch. 6.

Appellers, or Approvers, shall not be bailed. West. 1. cap. 15.

Nor he which is appelled by an Approver. Ibid.

*Armour.* Persons going or riding armed, contrary to the Statute of Northampton, and being thereof convicted, shall be imprisoned until they have payed such Fine as shall be therefore imposed upon them. See *postea*, *sub hoc tit.*

§ El. cap. 2. P. Dam. 3. *Arrest.* If any person shall procure one to be arrested in another man's name, he not knowing thereof, or without his consent, such Offender being convicted thereof, shall suffer six moneths imprisonment without Bail; and before his delivery shall pay to the party so arrested treble costs, damages, and expences; and also shall pay unto the person in whose name he procurereth such Arrest, ten pound for every such Offence.

If any of a petty Jury in London shall be attainted by the Verdict of a Grand Jury, and therefore committed to prison; or if any of a petty Jury in London shall receive any money, or reward, or promise thereof, of the Defendants in the Attaint, for the intent to give such his or their Verdict.

As also the Defendants giving or promising such reward, &c. every such Offender being therefore committed to Prison, shall there remain without Bail, &c. 12 H. 7. cap. 21.

*Bastard.* The mother or reputed father of a Bastard-child, that shall not perform the Justices order, after notice thereof, shall be imprisoned until they shall put in Sureties according to the Statute. See before, *tit. Bastardy*, *where Bail is taken away.* P. Bast. 1.

The Mother of a Bastard-child, committed to the House of Correction for her first Offence, shall there remain for one whole year; and for her second Offence for one whole year, and farther, until she can put in good Sureties for her good Behaviour, not to offend so again. See *ibid.*

Breakers of Prison are not bailable, West. 1. c. 15.

*Bridges.* Surveyors and Collectors appointed for the repairing of Bridges, if they refuse to account for the money by them received, they shall be imprisoned until they have truly accounted, 22 Hen. 8. cap. 5. P. *where Bail is taken away.*

*Bridges 4.*

Burners of Houses feloniously are not bailable, West. 1. c. 15.

Persons conspiring to indict another of Felony, are not mainpernable or bailable, 27 Ass. Pl. 12. Fit. Mainp. 7.

Constables and Church-wardens, neglecting to levy the Forfeitures for Abuses in Ale-houses, &c. not having sufficient whereby to be distrained for their Forfeiture of forty shillings, they shall be committed to prison until they have paid the same Forfeiture. See *antea*, *tit. Ale-houses*, 1 Jac. cap. 9.

Constables

Constables neglecting to execute the Justices Warrant concerning Ale-houses unlicensed, the Constable shall be committed to the County Gaol, there to remain without Bail, untill he hath punished the Ale-house-keeper, or untill the said Constable shall pay forty shillings to the use of the Poor,  
*3 Caroli Regis.*

Constables neglecting to whip Trespassers in Corn, Wood, Orchards, See 23 H. &c. (at the Justices commandment) shall be imprisoned untill they have caused the Offender to be whipped. See *tit. Trespas.* 6. cap. 10.

Persons condemned in any of the Kings Courts, and by virtue thereof committed to Prison, they shall not be bailed untill they have agreed with the Plaintiff. 1 R. 2. c. 12. 2 H. 5. c. 2. Fitz. N. B. 121. a.

Conjurers: *Vide* Witches.

Counterfeiters of the Kings Seal or Money are notailable. *Westm. 1. cap.*

15.

*Cloth.* Refusers to be Overseers of Cloth shall be imprisoned untill they have paid the Forfeiture. See *antea, tit. Cloth.*

Such persons as shall be convicted for making of deceiveable Cloth, if two Justices of Peace shall make Certificates thereof, and make their Warrant to the Church-wardens, &c. for the levying of the Forfeitures, and the said Offenders shall not have whereby they may be distrained for the same Forfeitures, the said two Justices of Peace may commit the Offenders to the common Gaol, there to remain without Bail, untill payment shall be made of the sums so forfeited, &c. *hic antea, Cloth.*

*Deer.* Persons committed to prison for committing any Offence prohibited by the Stat. 5 Eliz. cap. 21. concerning unlawfull hunting or killing of Deer, shall remain there three moneths and farther, untill they shall find sufficient Sureties for their Good Behaviour for seven years, &c. See *hic postea, Hunting.*

*Diers* using Logwood, and being thereof convicted, they shall remain in Prison without Bail, untill they have satisfied the Forfeiture, 23 Eliz. cap. 9. P. Dying 1. & 39 El. cap. 11.

Also such Offence (of using Logwood) being found by the Examination of any Justice of Peace, if the Offender shall refuse to be bound (by the Justice of Peace) to appear at the next Gaol-delivery or Quarter-Sessions, &c. then the said Justice of Peace may commit such Offender to the Gaol, there to remain untill such Offender shall be bound accordingly. See *antea, tit. Dying. 39 El. cap. 11.*

where Bail  
is taken  
away.

Excommunicated persons, taken by a Writ *de Excommunicato capiendo*, or yielding their bodies to the Sheriff or other Officer, upon any Writ of *Capias* awarded, and Proclamation thereupon made, according to the Stat. of 5 El. cap. 23. provided for the due execution of the said Writ *de Excom. capiendo*, such persons shall not be bailed. West. 1. 15  
El. 23.  
See 23 H. 6  
c. 10.

*Execution.* Such persons as are in Execution upon any Statute or Recognizance, or upon Judgment given in the Kings Court at the suit of any person, they shall not be Bailed untill they have agreed with the Plaintiff, 1 R. 2. c. 12. 23 H. 6. c. 10. Fitz. Na. Br. fol. 93. c. & 121. a. And yet then the Justices of Peace are not to bail them.

*Fesants.* See *Partridges.*

Felons



Felons taken for the death of a man are notailable; and yet if it be not Murther, and their Offence not apparent, it seemeth they may be bailed. See *hic antea*, cap. 125.

2. Felons taken with the manner are notailable. *Westm. 1. cap. 15.*
3. Nor if it be apparently known that they did the Felony. *Ibid.*
4. Nor if they confes the Felony upon their Examination before the Justices of Peace. *Cromp. 152. b.*
5. Nor if it be a Thief openly known, *Westm. 1. 15.*
6. Nor if he be of evil fame, by credible report, *Br. Mainp. 75.*

Yet in these former cases of Felony, if the Theft be not twelve pence, or above the value of twelve pence, the Justice of Peace may bail the Prisoner, it being no Felony of death.

7. Nor is he which is convict or attain of Felonyailable. See before, *sub hoc tit.*

5 El. c. 21. P. Fish. 7. Accessories in Felony shall not be bailed, after that the Principal (or any one Principal) is attainted. But before the Principal is attainted, the Accessary isailable by the Common Law. *Stamf. 71.*

*Fish.* Destroyers of Ponds, Pools or Moats wherein any Fish are, or unlawfully to fish in any several Pond, Pool or Moat, to the intent to take, kill, or destroy any Fish there; every such Offender, being thereof lawfully convicted, shall have three moneths Imprisonment, and then shall find sufficient Sureties for their Good Behaviour for seven years after, or else shall remain in Prison without Bail, untill they shall have found Sureties accordingly.

11 H. 7. c. 23. P. Fish. 12. 2. Gagers, Packers, or Searchers of Fish, that shall take any extortion for doing their Office, shall have forty days Imprisonment without Bail.

25 El. c. 9. P. Fish. d. 1. 3. Eaters of Flesh upon any Fish-day shall forfeit and pay for every time twenty shillings, or else suffer one moneths Imprisonment without Bail (after any lawful Conviction in that behalf.) 5 El. cap. 5.

Forcible Entry, or Detainer; persons convict thereof shall not be bailed untill they have paid their Fine, or have found Sureties by Recognizance for payment thereof. See *antea*, tit. *Forcible Entry*.

Fore-stallers, Regrators and Engrossers, being thereof convicted, shall be imprisoned for two moneths without Bail, 5 Ed. 6. c. 14. P. 4.

Forgers of any Deed, Writing sealed, Will, or Court-Roll:

2. And the Assenters thereto:

3. And the Publishers thereof, knowing the same, &c.

5 El. c. 14. P. 1, 2. Every of the Offenders aforesaid, (in cases of Forgery) being thereof convicted, shall suffer perpetual Imprisonment during their lives, where any mans Estate of Inheritance, Free-hold, or Copy-hold, shall be defeated, charged, or molested thereby: otherwise the Offenders shall suffer one years Imprisonment without Bail.

*Fowl.* Destroyers of any Pheasant, Partridge, Pigeon or House-dove, or (of any Heron, Mallard, Duck, Teal, or such other Fowl;) or shooters at any such Fowl, and the Offence proved before any two Justices of Peace; every such Offender shall be committed for three moneths without Bail, unless the Offender shall forthwith pay to the use of the Poor there 20 s. for every such Fowl so destroyed, &c. See *antea*, tit. *Partridge*.

*Fraudulent Conveyances, Gifts, Bonds, or Suits, &c.*

1. The parties thereto.
  2. The Defenders or Justifiers thereof, or putters thereof in ure, know-<sup>13 El. c. 5. P. 1. 2.</sup> ing the same.
  3. And those who shall assign over any Lands, Leases, or Goods, so to them conveyed, knowing the same.
- Every person being of any of these last Offences lawfully convicted, shall suffer Imprisonment one half year without Bail. See more, *Stat. 14 Eliz. 11. & 27 El. cap. 4.*

*Games unlawfull.*

1. The maintainers of houses or places for any unlawful Game: <sup>33 H. 8. 5.</sup>
2. Players in common houses or places at any such Game.
3. Players (elsewhere) at any unlawful Game.

Every Justice of Peace, seeing or finding any such Offence, may imprison the Offenders, till they find Sureties by Recognisance no more to offend in the premisses, &c. See *antea, tit. Games unlawfull.*

*Gaols.* Collectors or Surveyors for Gaols (in certain Shires) refusing to make Account shall be committed to Prison, there to remain untill they have made true Account, *23 H. 8. 25 El. c. 24. & 13 El. c. 25.* But these *Statutes* are herein now expired.

*Guns.* Such persons as shall shoot in, keep, carry or use any Gun, Dag, Cross-bow, or Stone-bow, contrary to the *Statute* of *33 Hen. 8. cap. 6.* (upon proof thereof made before any Justice of Peace) shall be imprisoned untill they have paid ten pound for every such Offence. See *antea, tit. Guns.*

No person under the degree of a Lord shall shoot in any Hand-gun within any City or Town at any Fowl, or other Mark upon any Church, House, or Dove-Court: Neither shall any person shoot in any place any Hail-shot, or any more Pellets then one, at one thing, upon pain to forfeit ten pounds, and to have three moneths Imprisonment, *2 & 3 Ed. 6. cap. 14.*

*Hares.* Every person which shall shoot at, kill, or destroy, with any Gun, or Bow, any Hare:

2. Or shall trace or course any Hare in the Snow:

3. Or shall take or destroy any Hare with Cords, or any other Engine:

where Bail  
is taken  
away.

Any of these last Offences being proved before any two Justices of Peace, the Offender shall be committed for three moneths without Bail, unless the Offender shall forthwith pay to the use of the Poor there 20 s. for every Hare so destroyed or taken. See *antea, tit. Partridges.*

*Hatters,* which shall take above two Apprentices:

2. Or which shall take an Apprentice for less time then 7 years:

The Offenders in either of the same cases shall suffer one moneths Imprisonment without Bail. *8 El. c. 11. P. Hats 3.*

*Hawks.* Takers (unlawfully) of any Hawks, or of their Eggs, out of an-<sup>5 El. 21. P. Hawks 1</sup> other mans ground, and being thereof lawfully convicted, shall have three<sup>See 11 H. 7. cap. 7. hic postea Partridges.</sup> moneths Imprisonment, and then shall find Sureties for their Good Behaviour for seven years after; or else shall remain in prison without Bail, untill they find Sureties accordingly.

*Hawkers* between the 1. of July, and the 31 of August, the Offence

fence being proved before any two Justices of Peace, the Offenders shall be committed to the common Gaol for one moneth without Bail, unless they pay forthwith 40 s. for every such Hawking, and 20 s. for every Pheasant or Partridge that they shall so kill or take, 7 Jac. 11. See *antea*, tit. *Partridges*.

*High-ways*. Bailiffs and High-Constables, who shall not pay the Forfeitures by them collected, shall be imprisoned until they have paid the same. See before, tit. *High-ways*, 2 Ph. & M. cap. 8. P. 11.

*Honey*. See *Wax*.

Hostlers, or Inn-holders, which shall make any Horse-bread, (contrary to the Statute 21 Jac. cap. 21.) or which shall not sell their Horse-bread, Hay, Oats, Beans, Pease, Provender, or other kind of Victual (for Man or Beast) for reasonable gain, and be thereof lawfully convicted, &c. the second time, shall be imprisoned by the space of one moneth without Bail, 21 Jac. Regis, cap. 21.

So such Hostlers and Inn-holders as are allowed by the said Statute to make Horse-bread within their houses, if the Horse-bread which any of them shall make be not sufficient, lawful, and of due assize, &c. and that they be thereof lawfully convicted the second time, they shall be imprisoned one moneth without Bail. *Ibid*.

*Hunting*. If any Lay-man, not having in Land 40 s. per ann. or if any Priest or Clerk, not having 10 l. Living per ann. shall have or keep any Hound, Grey-hound, or other Dog for to hunt, or any Ferrets, Hays, Hare-pipes, Cords, Nets, or other Engines, to take or Destroy Deer, Hares, Conies, or other Gentlemens Game, and shall be thereof convicted at the Sessions of Peace, every such Offender shall be imprisoned for one whole year. 13 R. 2. c. 13. P. 1.

If any person shall keep any Grey-hound for Deer or Hare, not having sufficient living, and shall be thereof convicted before any two Justices of Peace, he shall be committed for three moneths without Bail, unless he forthwith pay forty shillings for having such Grey-hound. See before, tit. *Partridge*, 1 Jac. cap. 27.

*Hunters*, and Takers of the Kings Deer: See the Statute of *Charta de Foresta*, cap. 10.

Hunters or killers of any Deer or Conies (in the night or day-time) in any Park or Warren, or in any other enclosed Grounds, being thereof lawfully convicted, every such Offender shall suffer three moneths imprisonment, and find sufficient Sureties for his Good Behaviour for the space of seven years after, or else continue still in prison without Bail, until he shall find Sureties accordingly, 5 El. cap. 21. 3 Jac. cap. 13. P. Forest 9. & 7 Jac. 13.

The Statute of *westm.* 1. 20. provideth, That Trespassers in Parks and Ponds, being thereof attainted, shall yield to the party wronged great damages, and shall have three years imprisonment, making Fine at the Kings pleasure, and at the end of three years find good Sureties not to commit the like Trespas afterwards, or for want of such Sureties shall abjure the Realm, or be Outlawed. See *Fit.* 67. d. & *Dyer* 238. 5 H. 5. fol. 1. *Fit. Judgment* 62.

But note, That this Statute *de malefactoribus in Parc* extendeth onely

to hunting or killing of Beasts there, and not to other Trespas, 34 E. 3. fol. 11. *Fitz. Judgment* 144. And if a man hunts there, or shall but come into a Park for that purpose, yet he shall be punished according to this *Stat. Fitz. Judgment* 62.

The *Statute* 19 H. 7. 11. ordaineth, That if any person having no Park, &c. of his own, shall keep any Deer-hays or Buck-stalls, or if any person shall stalk at any Deer without licence, the Offenders, being thereof convicted, shall be committed to Prison, till they have found Surety for the payment of the Forfeiture of the *Statute*.

*King.* Speakers of false News, which may cause discord between the King and his People, &c.

And speakers of false news or lies of any of the Peers or great Officers of the Realm.

The Offenders in either of the former cases shall be imprisoned untill they have brought him into the Court who was first Author of the Tale, 3 Ed. 1. cap. 33. 2 R. 2. c. 5. *P. News* 1. See *Dyer* 155, & 285. and the *Statutes* of 1 & 2 Ph. & M. cap. 3. 1 El. c. 6. & 23 El. c. 2.

3. No person committed by the special commandment of the King, or by the commandment of any of his Privy Council, shall be bailed. See *antea*, *sub hoc tit.*

4. No person committed by the special commandment of any of the Kings Justices shall be bailed. *P. Mainp.* 1. & 23 H. 6. c. 10. See *Ibid.*

5. So in all cases where a *Statute* ordaineth, That an Offender shall be imprisoned at the Kings will or pleasure, there the prisoner cannot be bailed or delivered, until the King hath signified his pleasure of him: (as if one be imprisoned for going or riding armed, contrary to the *Statute* of Northampton, made An. 2 E. 3. c. 3.) 24 E. 3. f. 3. *Br. Contempts* 6. Stamf. 77. b. Br. Mainp. 40.

And in such cases, the Prisoner is to redeem his liberty with some portion of money, as he can best agree with the King or his Justice for the same: and the Justices before whom such an Offender shall be convicted may affix such Fine or Ransome according to their discretions, and upon payment thereof may bail the Prisoner; for the King therein signifieth his pleasure by the mouths of his Justices. See the first title of *Forcible Entry*. Lamb. 556

Inn-keepers, or Inn-holders: See *hic antea*, *tit. Ale-house-keeper and Hosteler*.

*where Bail is taken away.* Labourers and Artificers, departing from their Work before it be finished, 5 Eliz. 4. shall have one moneths imprisonment without Bail, 5 Eliz. cap. 4. *P. Labour* 10.

2. Servants departing before their term be ended, (unless it be for some cause to be allowed by some Justice of Peace.)

3. Servants departing at the end of their term, without any Quarters warning given before two lawful Witnesses.

4. Persons (compellable to serve) that upon request made shall refuse to serve for the Wages rated and appointed by Proclamation, &c.

5. Persons (compellable to serve) that have promised or covenanted to serve, and do not serve accordingly.

Every of these four last recited Offenders (upon proof of the Offence 5 Eliz. 4. before any two Justices of Peace, &c.) shall be committed to Ward, *P. Lab.* 6. there

there to remain without Bail, until he shall be bound (to the party offended) to serve and continue with him according to the Statute.

P. Lab. 24. 6. Persons refusing to be bound Apprentices, (according to the Statute) upon complaint thereof made to any Justice of Peace, he may commit such Offenders to Ward, who shall there remain until they will be bound to serve according to the Statute, 5. Eliz. 4.

P. Lab. 14. 7. Women (of the age of 12. years, and under 40. and unmarried) that shall refuse to serve, shall be committed to Ward, there to remain until they shall be bound to serve according to the Statute, 5 Eliz. 4.

8. Masters giving Wages, and Servants, (Workmen or Labourers, taking Wages (or other Commodity) contrary to the Rates assessed by Proclamation, &c. every such Master shall have ten daies Imprisonment without Bail; and every such Servant Workman or Labourer, shall have 21 daies Imprisonment without Bail. 5 Eliz. 4. P. Lab. 4.

8 H. 6. 4. Liveries. Such persons as at their proper costs shall buy or wear any P. Liver. 2. Livery, Cloaths or Hats, to have maintenance, and be thereof convicted, shall have one whole years Imprisonment without Bail. But this Statute is now repealed by the Statute 3 Car. 4.

In an Appeal of *Mayhem*, where upon Evidence the act shall appear to be hainous, the Offender or Defendant shall not be bailed. 6 H. 7. f. 1. fi. 70.

30 Eliz. 16 *Mauling*. If any person shall disobey the Restraint of Mauling, or any other Order made in Sessions touching the same, and be thereof convicted (before any two Justices of Peace,) he shall be committed to the Gaol for 3 daies, (without Bail) and after there to remain until he shall become bound in 40. l. to perform and obey such Order or Restraint. See *antea*, tit. *Mault*.

If any person shall buy any Barley to Mault after such a Restraint, he shall be imprisoned as aforesaid. *Ibid*.

*Money*. Persons taken for falsifying the Kings Money shall not be bailed. *Westm. 1. cap. 15.*

*Musters*. Persons absenting themselves from Musters, being commanded to muster before any having authority for the same, and having no lawful impediment:

2. And persons (being commanded to Muster as aforesaid) that shall not bring with them their best Furniture and Armour, which they have for their own person:

4 & 5 Ph. The Offender in either of the former cases shall for every such Offence where  
& M. 3. 2 suffer ten daies Imprisonment without Bail, unless they agree with two of Bail is  
the said Commissioners to pay to the Kings use 40. s. a fine for every such taken a-  
Offence. P. Captains 12. way.

To Muster is to make a shew of Souldiers well armed and trained before the Kings Commissioners in some open field, *ubi se ostendentes præludent prælio. Co. 1. 71.*

And it is worthy of observation, that by the Law before the Conquest, the Musters and shewing of Armour should be *uno eodemque die per universum regnum, ne aliqui possint arma familiaribus & notis accommodare, &c. Ibid.*

3 H. 4. 1. News. See before King.  
7 Ja. 6.

*Oath.* Refusers to take the *Oath* of Allegiance (being lawfully rendered to them) shall be committed to the common Gaol, there to remain without Bail until the next Assizes or Quarter Sessions. See before *tit. Oath*, and *Recusants*.

*Parliament*, and Knights of the Parliament. See *hic postea*, *Sheriff*.

*Park.* Hunting therein: See *hic Hunting and Hunters*.

*Partridges.* If any person shall shoot at, kill, or destroy (with any Gun or Bow) any Partridge, Pheasant, or other Fowl, &c.

2. Or shall take, kill, or destroy any Partridge, Pheasant or Pigeon, with Setting-dogs and Nets, or with any manner of Nets, Engines, or Instruments;

3. Or shall take out of their Nests, or willingly destroy in the Nest, Eggs of any Partridge, Pheasant, or Swan;

4. Or shall have or keep any Setting-dog or Net, to take Partridges or Pheasants, (except they have sufficiency of Estate, &c.)

Every of these four last-recited Offenders (upon proof of the Offence <sup>1 Ja. 27.</sup> before any two Justices of Peace) shall be committed to the common Gaol, there to remain for three months without Bail, unless the Offender shall forthwith pay xx s. for every such Fowl and Egge so taken and destroyed; and 40 s. for having such Setting-dog or Net. See *tit. Partridges*.

5. Hawkers at Partridge or Pheasant in *July* or *August*, (upon proof <sup>7 Ja. 11.</sup> of the Offence before any two Justices of Peace) every such Offender shall be committed to the common Gaol, there to remain for one month without Bail, unless the Offender shall forthwith pay 40. s. for every such Hawking, and 20. s. for every Pheasant or Partridge so killed or taken See *Ibid.*

6. Persons convicted according to the Statute of 23 *El. c. 10.* for destroying or taking of Pheasants or Partridges in the night-time shall have <sup>13 Eliz. 10</sup> one months Imprisonment without Bail, unless they pay the Penalty of that Statute within ten daies; and farther do become bound with good Sureties, for the space of two years not to offend so again.

7. Persons convicted according to the Statute of 11 *H. 7. c. 17.* for taking the Egg of any Hawk, or Swan, out of their Nests, shall be imprisoned for a year and a day, and fined at the Kings will. See *Hawks*, <sup>11 H. 7. 19 Co. 7. 18.</sup>

*Perjury.* Persons committing Perjury, by his or their Deposition in any Court of Record or Court Baron, being thereof lawfully convicted, shall have six months Imprisonment without Bail. <sup>Eliz. c. 9</sup> *P. Per. 1, 2. & 14 Eliz. cap. 11.*

2. So of Procurers of such Perjury; they being thereof lawfully convicted, and having not to pay the Penalty of the Statute, they shall have one years Imprisonment without Bail.

*Physicians.* He which is committed to Prison by the President of the College of the Faculty of Physick *London*, &c. shall there remain without Bail, untill he shall be discharged by the same President, or by such as he shall authorize. *1 M. cap. 9.*

*Plague.* Refusers to pay the Rates for the relief of persons infected with the Plague, and not having whereon to be distrained for such <sup>1 Ja. 31. P. 1, 2, 3.</sup> their Rates, they shall be committed to the Gaol, there to remain with-

without Bail until they shall satisfy the same, and the Arrerages. See *tit.*

*Plague.*

43 Eliz. 2.  
P. 2. 4.

*Poor.* Refusers to pay their Rates towards the relief of their Poor, setting them on work, or putting out of poor Children to be Apprentices, and not having whereon to be distrained for such their Rates, they shall be committed to the Gaol, there to remain without Bail, until they shall pay the same and the Arrerages.

P. 2.

2. Overseers (of the Poor) refusing to make their Account, or refusing to pay (to the new Overseers) such Arrerages, sums of Money, or Stock as shall remain in their hands upon their Account made, they shall be committed to the Gaol, until they have performed the same. See *antea*, *tit.*

*Poor.*

P. 2.

3. Overseers, negligent (or otherwise sayling) in their Office, shall forfeit for every default 20. s. and not having whereon to be distrained for such Forfeiture they shall be committed to the Gaol, there to remain without Bail, until the said Forfeiture shall be paid. See *Ibidem*.

P. 8. 12.

4. The Grandfather or Grandchild, or the Parents or Children, refusing to relieve one the other, in such manner as shall be assessed by the Justices of Peace at their Sessions, shall forfeit for such default 20. s. for every month; and not having whereon to be distrained for such Forfeiture, they shall be imprisoned as aforesaid, until the said Forfeiture shall be paid.

P. 13.

See *Ibid.*

5. Refusers to pay their Rates towards the relief of the Prisoners in the Kings Bench or Marshalsea, and not having whereon to be distrained for such Rates, they shall be imprisoned without Bail, until they shall pay the same. See *antea*, *tit.* *Stock of the Shire.*

where  
Bail is  
taken a  
way.

P. Sacra. 2.

*Praiers.* Such as offend against the Statute 1 Eliz. c. 2. concerning Uniformity of Common Prayer and Service in the Church, and thereof lawfully convicted (by Verdict of 12. men, or by their own Confession, or by the notorious Evidence of the Fact) they shall be committed without Bail: See the Statute 1 Eliz. 2. for in some cases the Offender shall suffer six months Imprisonment, in other cases one whole years Imprisonment, and in other cases Imprisonment during life.

*Preachers.* Disturbers of Preachers in the time of their Sermons, and their Aiders and Procurers, 1 Mar. 3.

2. Such as shall disturb the Arresting of any such Offender;

3. Such as shall rescue any such Offender being apprehended;

1 M. 1. ca. 5

P. 1. 2.

Every such Offender (being thereof convicted before any two Justices of Peace) shall be committed to the Gaol, there to remain without Bail for three months, and farther till the next Quarter Sessions, &c. But *quære* if this Statute be in force.

*Prison.* Breakers thereof shall not be bailed. *West. 1. cap. 15.*

*Propheffers,* to the intent to make Disturbances within the Kings Dominions, every such Offender being thereof lawfully convicted, for his first Offence shall suffer one years Imprisonment without Bail; and for the second Offence, shall suffer Imprisonment without Bail during his life.

*P. Prophef. 1.*

*Purveyors* taking Purveyance within five miles of either University of Cambridge or Oxford, without Licence, &c. and being thereof convicted,

2 & 3 Ph.  
& M. c. 15.  
P. Purv. 32

vict, they shall suffer three moneths Imprisonment without Bail. See *antea*, tit. *Purveyors*.

*Purveyors* (or other Officer) of any Nobleman, &c. taking any thing of any Subject against his will, such Offenders shall be committed to Prison without Bail, until they shall re-deliver the Goods so taken, or the value thereof. See *ibid*. 23 H. 6. c. 14. P. Purv. 1.

*Recusants*. Persons suspected to be Jesuits, Seminaries, or Massing-Priests, and being examined thereof, (by any having lawful Authority in that behalf) if they shall refuse to answer directly thereto, they shall be imprisoned without Bail, until they shall make direct answer thereto. 35 El. cap. 2.

2. Persons suspected, if they shall refuse to answer the Justice of Peace upon Oath, whether they be Recusants or no, they shall be committed to the common Gaol, there to remain without Bail, untill the next Assizes or Quarter-Sessions. See *antea*, tit. *Recusants*. 2 Jac. 4.

3. Popish Recusants refusing to take the Oath of Allegiance, (being lawfully tendred them) they shall be imprisoned till the next Assizes or Quarter-Sessions, as aforesaid. See *ibid*.

4. Every other person of the age of 18 years, refusing to take the Oath of Allegiance, shall be committed untill the next Assizes, or Quarter-Sessions, as aforesaid. See *antea*, tit. *Oath*. 7 Jac. 6.

5. A Woman Recusant convicted, and not conforming her self, being therefore committed to Prison, shall there remain without Bail, until she shall conform her self, &c. See *antea*, tit. *Recusants*. Ibid.

6. A Woman covert refusing in the open Assizes, or at the Quarter-Sessions of the Peace, to take the Oath of Allegiance, she shall be committed to the common Gaol without Bail, until she will take the said Oath. 8 Jac. 4. 7 Jac. 6.

7. If any Woman, or Child under the age of 12 years, shall pass over the Sea without lawful Licence, the Master of any Ship permitting the same shall suffer Imprisonment 12 moneths without Bail. 1 Jac. 4.

8. Recusants refusing to declare what Armour, &c. they have, or if they or any other person shall hinder or disturb the delivery of such Armour to any person lawfully authorized to seise the same; every such Offender shall have three moneths Imprisonment without Bail, 3 Jac. cap. 5. P. Rec. 75.

9. Recusants and Sectaries which shall impugn the Kings Authority in causes Ecclesiastical: P. Rec. 18. 35 El. 1.

Where Bail  
is taken  
away.

10. Or that shall persuade others thereto, or from coming to Church to that end and purpose:

11. Or shall meet at any Conventicles, under colour of any Exercise of Religion (contrary to his Majesties Laws):

12. Or shall perswade any other to meet at any such Conventicles or Meetings.

Every person which shall be lawfully convicted of any of these last four Offences shall be committed to Prison, there to remain without Bail, untill they conform themselves to come to Church, and make open submission and declaration of their said Conformity.

13. Persons absent from Church upon any Sunday, and not having whereon to be distrained for the Forfeiture, shall be committed until payment be made thereof. See *antea*, tit. *Recusants*. 3 Jac. 4. P. 50.

Persons



Persons above the age of 16 years, which shall absent themselves from the Church by the space of one moneth, and shall be thereof lawfully convicted, shall forfeit for every moneth 20 *li.* And if he shall not be able, or shall fail to pay the same within three moneths after Judgment thereof given, he shall be committed to Prison, there to remain untill he hath paid the said summe, or conform himself to go to Church, &c. 23 *Eliz.* 1. P. 1. 4.

So of such persons as shall keep any School-master which shall absent themselves from the Church as aforesaid, or which shall not be allowed by the Ordinary; if such persons shall not be able, or shall fail to pay the penalty (*sc.* 10 *li.* for every moneth) within three moneths, &c. he shall be committed without Bail, as aforesaid. *Ibid.*

Persons convicted for Redisseisin are notailable, *Merton cap. 3. Fitz. 66. c.*

2 H. 5. 8. Rioters attainted of great Riots, shall have one years imprisonment without Bail, P. Riots 11.

All persons (convicted by the View of the Justices, or upon their enquiry, or otherwise) of any Riot, shall be committed until they have paid their Fine. See before, *tit. Riots.*

39 El. 4. Rogues incorrigible, committed to the Gaol or House of Correction, shall remain there untill the next Quarter-Sessions. See *antea, tit. Rogues.*

*Servants. See Labourers.*

*Schoolmaster* that is a Recusant,

23 El. 1. P. Recus. 2. 2. Or that is not allowed by the Ordinary, and being of either of the said Offences convicted, shall be imprisoned for one whole year without Bail.

8 H. 6. 7. 23 H. 6. 15. P. Parl. 4. Sheriffs not making their Election of Knights for the Parliament in their full County, between the hours of 8. and 11. in the forenoon:

2. Or returning Knights for the Parliament contrary to the Statute, and being of either of the said Offences attainted before the Justices of Assize, they shall be imprisoned for one whole year without Bail.

Sheriffs, Under-Sheriffs, or other persons, making any Warrant for the Summons, Arresting, or Attaching of any person to appear in any Court, not having the Original Process or Writ warranting the same, upon examination and Proof thereof before the Judges of Assize, or Judges of the Court, &c. such Offenders and their procurers shall be committed to the Gaol, there to remain without Bail, until they have payed (among them) x. *li.* to the party grieved, and his costs and damages, and also xx. *li.* apiece to the King, 43 *El. cap. 6.* *where Bail is taken away.*

2 Ed. 6. 2. Soldiers, who have purloyned their Horses or Harness, shall be committed without Bail, untill they have satisfied the party grieved, his Executors or Administrators, for such Horse or Harness. See before, *tit. Soldier.*

43 *Eliz.* 2. Stock of the Shire. Refusers to pay their Rates thereto, and not having whereon to be distrained, &c. shall be committed till they have paid it, *Vide ante, tit. Stock.*

*Subsidy.* If any person assessed to the Subsidy shall not pay the same, by reason whereof his body shall be arrested upon a Precept directed out by

by the Commissioners of the same Subsidy, &c. he shall remain in prison without Bail, until he hath paid the said Summ wherewith he is chargeable, also for the Fees of such Arrest, *sc.* to him or them that shall execute such Precept, xx d. See the *Statutes of Grants of Subsidie*.

*Tithes.* The Defendant in a Suit for Tithes that disobeyeth the Judges Sentence shall be committed without Bail, until he shall find sufficient Sureties by Recognizance, &c. to obey and perform that Sentence, *Vide tit.*

*Tithes.*

*Transportation.* The Masters or Mariners transporting any Corn, Beer, Herring, Whitage, or Wood without Licence:

2. The Owners of such things transporting more then they are licen- P. Corn 1.  
fed:

3. The Mariners carrying such things into any Ship to be transpor- 2. 3.  
ted: 1 & 2 P. &  
M. 3.5.

Every such Offender shall be imprisoned one whole year without Bail, and yet see *antea, tit. Transport.* that every man may transport Corn without Licence (or danger, as it seems) it being at the price there mentioned.

4. The Master or Mariners transporting, or shipping to that intent, any Leather, Tallow, or raw Hides, and being thereof convicted, shall have one 18 Eliz. 8.  
years imprisonment without Bail. P. Leather  
50.

5. Transporters of live Sheep:

6. And every person that shall bring, deliver, send, receive, take, or procure any live Sheep to be conveyed out of any the Kings Dominions, their aiders, procurers, and comforters. 8 Eliz. 3.  
P. Sheep 1

The Offenders in either of the former cases, being thereof convicted, shall for the first Offence suffer one whole years imprisonment without Bail.

7. The Master of any Ship, permitting any woman or children under 12. 1 Jac. 4.  
years of age to pass over the Seas without Licence, shall suffer 12. moneths imprisonment without Bail.

8. Aliens transporting Bows or Arrows. See *Aliens*.

If any man shall transport or convey any Horse, Mare, or Gelding, out of *England* without Licence, &c. and be thereof lawfully convicted, he shall suffer imprisonment by the space of one whole year, 1 Ed. 6.  
cap. 3.

*Treason.* Persons committed for any Treason touching the King, are not bailable, *West. 1. cap. 15.*

Counterfeiters of Money, or of the Kings Seal, are not bailable, *Westm. 1. cap. 15. Br. Mainp. 59.*

*Vagabonds.* See before *Rogues*.

*Unlawed persons*, taken for the same, are not bailable, *West. 1. 6, 15. 23 H. 6. cap. 10.*

*Wards.* By the Stat. of *West. 2. cap. 35.* if any person shall ravish (*sc.* shall take and carry away) any Ward, the Offender shall have two years imprisonment; and if he do not restore, or do marry the Child after the years of consent, and be not able to satisfie for the Marriage, he shall abjure the Realm, or have perpetuall imprisonment: and it is said, That it is at the Election of the Justices to award the Offender to abjure the Realm, or to have

where  
Bail is  
taken a-  
way.

have perpetual imprisonment ; and that if the Justices shall award him to perpetual imprisonment, that the King cannot pardon him that imprisonment, for that it is in lieu of damages to the Plaintiff, and that Imprisonment is an Execution thereof, the which the King cannot pardon without the assent of the party Plaintiff.

<sup>23</sup> Eliz. 8. *Wax*, and Vessels of Honey ; if any person shall counterfeit any the Marks thereof, or shall mark them with any other mans Mark, and shall be thereof convicted, he shall suffer three moneths imprisonment without Bail.

<sup>P. Just. of</sup> *Weights*. Falsifiers or Counterfeiters thereof, such Offenders (after they <sup>Peace 61.</sup> be indicted thereof) shall be taken and imprisoned without Bail, untill they <sup>P. Weights</sup> be acquitted or attainted : and if they be attainted, they shall remain in prison untill they have made Fine and Ransom, according to the Justices discretion. <sup>13.</sup> 9 H. 5. 8. *Parl.* 2. *Quare* whether this Statute be now in force.

*Witches*, Conjurers, Sorcerers, and such others, which shall take upon them to hurt any persons in Body, though it be not effected :

2. Or shall take upon them to tell of any Treasure or Goods (lost or stolen) where it may be found :

<sup>1</sup> Jac. 21. 3. Or shall take upon them to provoke any person to Love :

<sup>P. Conju. 2</sup> 4. Or shall hurt any Cattel or Goods thereby :

<sup>4 Ph. & M.</sup> Every such Offender being of any the said Offences lawfully convicted, <sup>c. 8.</sup> shall have one whole years imprisonment without Bail.

<sup>P. Women</sup> *Women*. Taking of Women (unmarried, and under the age of 16 years) <sup>7.</sup> out of the possession of their Parents, or other person having lawfully the keeping, &c. of them, and against their Wills, the Offender being thereof convicted shall be two years imprisoned without Bail, &c.

<sup>P. Women</sup> 2. Taking away and deflowring such Maid or Woman-child, as afore- <sup>8.</sup> said.

3. Contracting of Marriage with such a Maid, against the will of, or unknown of or to the Father of such a Maid, (if he be living) or against the will, &c. of the Mother, having the custody and governance of such Child.

The Offenders in these two last cases, being thereof lawfully convicted, shall have five years imprisonment without Bail, &c.

See more concerning Women, *antea*, *Recusants*.

### Recognizance. CHAP. CXXVII.

**A** Recognizance is a Bond of Record, testifying the Recognisor to owe a certain sum of money to some other ; and the acknowledging of the same is to remain of Record ; and none can take it but only a Judge or Officer of Record.

And these Recognizances, in some cases, the Justices of Peace are inabled to take, by the exprefs words of certain *Statutes* ; but in other cases (as for the Peace, and Good Behaviour, and the like) it is rather in congruity, then by any exprefs authority given them, either by their Commission, or by Statute.

Note,

Note, wheresoever any Statute giveth them power to take a Bond of any man, or to bind over any man to appear at the Assizes, or Sessions, &c. or to take Sureties for any matter or cause, they may take a Recognizance: yea, wheresoever they have authority given them to cause a man to do a thing, there it seemeth they have (in congruity) power given them to bind the party by Recognizance to perform or do it: and if the party shall refuse so to be bound, that then the Justice may send him to the Gaol; for it is a Rule in Law, *Concesso uno aliquo, etiam id concedi videtur sine quo, prius concessum haberi nequit.* But yet inquire of this last case, for there is also another Rule, *In generali concessione non veniunt ea, quæ, quis non esset verisimiliter in specie concessurus.* Crom. 197  
See Firz. 82.  
Co. 11. 52.

I will here set down only some particulars where the Justices of Peace (out of their Sessions) may take a Recognizance.

One Justice of Peace may take a Recognizance for the Peace.

Also one Justice of Peace may take a Recognizance for the Good Behaviour (by the Commission:) and these the Justice of Peace may take, either upon discretion, or upon complaint made to him, or upon a *Supplicavit* delivered to him.

One Justice of Peace may bind by Recognizance such as do declare any thing against a Felon, to appear at the Assizes, or Sessions, there to give Evidence against the Offender; and so in divers other cases.

One Justice of Peace may bind by Recognizance such as keep any common houses or places for unlawful Games, that they keep the same no longer. See *antea*, tit. *Games*, &c.

And also such as play at unlawful Games, contrary to the Statute of 33 H. 8. cap. 9. that they use the same no more.

One Justice of Peace may bind over persons suspected to use Logwood in Dying, and such as can discover the same. See *antea*, tit. *Dying*.

One Justice may bind by Recognizance takers of Partridges, &c. and Hawkers in Corn, to appear at next Sessions to answer their said Offences. See *antea*, tit. *Partridges*.

One Justice of Peace may bind by Recognizance any person convicted for taking or destroying any Pheasants, Partridges, Fowl, or Hare, that they offend not thereafter in any the particulars any more.

Also they use (by way of prevention) to bind Tramellers for Larks, that they shall destroy no Partridges, &c. *Quære* of this, how it is warranted. See *postea*, tit. *Warrants*.

But the binding of Tramellers in this sort seemeth rather to do hurt than good, in that it doth enable or tolerate the use of Tramelling in the night-time, whereby many Partridges are secretly taken and killed; whereas any two Justices of Peace may more legally prevent that night-taking and destroying of Partridges, by taking away all such Nets, where they shall see cause; the which they may do by force of the Stat. 7 Jac. c. 11. which see here before, tit. *Partridges*.

I have known sundry Proclamations, authorizing and commanding the Justices of Peace (at or before the beginning of the Lent-time) to convene and call before them all Taverners, Inn-holders, Ale-house-keepers, keepers of Ordinary-Tables, and other Victuallers within the precinct and Rule of

of the said Justices; and to take Bonds (by Recognizance) with sufficient Sureties of every of them; and in good summs of Money, to the Kings Majesties use, that they shall not dress any Flesh in their houses in the Lent-time; for any respect, nor suffer it to be eaten there.

One Justice of Peace may bind by Recognizance the Master that shall mis-use his Apprentice, &c. to appear at the next Sessions, &c. See *antea*, tit. *Apprentices*.

Two Justices, &c. may take Recognizance of Ale-house-keepers for keeping good Orders, &c. See before.

They may bind by Recognizance an Ale-house-keeper (committed for Victualling without Licence) that he shall keep no more an Ale-house. See *antea*, tit. *Ale-houses*.

Two Justices, &c. may bail Prisoners, and upon such Bailment they are to cause the Prisoners to find Sureties for their appearance, &c. which must be done by their Recognizance. See here, tit. *Bailment*.

They may bind the Overseers of Cloth by Recognizance, to see the Statute observed. See hereof *antea*, tit. *Cloth*.

Also two Justices of Peace may bind by Recognizance the Defendant in a Suit of Tithes, to obey the sentence of the Judge. See *antea*, tit. *Tithes*.

Whether the Justices of Peace may bind an Offender against a penal Statute, to appear and answer his fault at the Sessions; see hereof *postea*, tit. *Warrants*, cap. 128.

<sup>33 H.8.39</sup>  
<sup>P. Ac. 1.</sup> Note, That every Obligation and Recognizance taken by Justices of Peace must be made to the King, and shall be made by these words, *Domino Regi*, upon pain of Imprisonment of any person that shall take it otherwise: And all such Bonds or Recognizances shall be in the nature of a Statute-Staple to all intents. See hereof *postea*, tit. *Recognizance*, cap. 134.

A Justice of Peace can take no Recognizance, but onely for such matters as concern his Office. See hereof, tit. *Surety for the Peace*, *antea*.

Note also, That a Recognizance taken by a Justice of Peace is a matter of Record, presently, so soon as it is taken and acknowledged, although it be not made up, but onely entred into his Book; nay, although it be not entred, as it seemeth. See *Stamf. 77.a.* & *Br. Record 58.* such a matter.

If a Justice of Peace shall take a Recognizance where he hath no Authority, it seemeth void.

And these Recognizances taken by the Justices of Peace are to be certified by them at their next Quarter-Sessions: except Recognizances taken of such as shall inform against Felons, and upon Bailment of Felons, which by Statute they are appointed to certify at their next General Gaol-delivery. See *antea*, tit. *Felony*.

For the forms of Recognizances, see hereafter, tit. *Recognizances*, cap. 134.

## Warrants. CHAP. CXXVIII.

**N**OW concerning the Precepts or Warrants to be made by the Justices of Peace:

By Parol.

The Justice of Peace (seeing that he is a Judge of Record) his Precept or Commandment by word of mouth (in some cases) is as strong as his Precept in writing. Lamb. 87.

And therefore the Justice of Peace, upon any Riot done in his presence, may command the Rioters to be arrested, and cause them to find Sureties for their Good Behaviour. 14 H. 7. 8.

So upon an Affray, Assault, Threatning, or other breach of the Peace done in his presence, the Justice of Peace may command by word the Officer being present, or his own servant, to arrest such Offenders to find Sureties for the Peace. See before, *tit. Surety for the Peace*.

And where the Justice of Peace commandeth one being present to arrest another that is also in his presence, though that commandment be by word onely, it is good, and it is reputed as an Arrest made by the Justice himself, he being present when the Arrest is made, *B. Ex. Imprif. 33*. See *hic cap. 8*.

But the Justices of Peace cannot command by word to arrest another being out of their presence; neither may one in the absence of the Justice arrest another upon his command by Parol, but it must be by a Precept or Warrant in writing, by the greater Opinion of the Justices. 14 H. 7. 8. Br. Peace 7.

And yet in case of Rioters, the Justice of Peace may by word command his servants to arrest them, in the absence of the Justice; by the Opinions of *Pineux and Tremale*, Justices. See hereof, *antea, tit. Riots*. 14 H. 7. 9. 10.

By Writing.

Next, their Warrant or Precept by writing ought to be under their hand and seal, or under their hand at least. See *hic infra*.

The form.

And if it be for the Peace or Good Behaviour, or the like, where Sureties are to be found or required, there the Warrant ought to contain the special cause and matter whereupon it is granted, to the intent that the party (upon whom it is to be observed) may provide his Sureties ready, and take them with him to the Justice of Peace to be bound for him: but if the Warrant be for Treason, Murther, or Felony, or other capital Offence, or for great Conspiracies, Rebellious Assemblies, or the like, it needs not contain any special cause, but there the Warrant of the Justice of Peace may be, to bring the party before him, to make answer to such things or matters generally as shall be objected against him on the Kings Majesties behalf: and this is now the common usage, by the report of *M. Crompton*. Crom. 148

And I once received a Warrant, brought me by one *Thomas Evans*, (a Pursivant or Messenger of his Majesties Chamber) under the hand of the Right Honourable *Tho. Lord Ellesmere*, late Lord Chancellour of England, for the apprehending of one *James Malin*, for a matter of Contempt; and the said Warrant was in general words, *scil.* to answer to such matters as were to be objected against him, without any special cause therein mentioned. Ann. D. 1607.

Also I saw another Warrant granted under the hand of *Poph.* Chief Justice, 3 Jac.

stice, to bring one *Edmonds* (of *Barnwell* by *Cambr.*) before him, to answer to such matters as he had to object against him on the Kings Majesties behalf, without any special cause or matter therein set down.

The like form you shall find in the Book of *Entries*, tit. *Attachment*: *Non omittas*, &c. *quin attach. E. H.*, &c. *ita quod habeas corpus ejus coram Justic. nostris ad Assisas in Com. tuo capiend. assig. apud W. in Octab. Sanct. Mich.*, *ad respond. nobis de his quæ sibi ex parte nostra tunc ibidem objicientur*, & *ad faciendum ulterius & recipiend. quod Curia nostra de eo consider. in hac parte*, &c.

But it is not safe for a Justice of Peace to grant out his Warrant with a blank: for about 30 *Eliz.* one wrote to Sir *J. R.* a Justice of Peace, to send him a Precept or Warrant with a blank, that he might put therein one whom he would attach upon suspicion of Felony; and the Justice of Peace did so, (granting a warrant with a blank; where he neither knew the parties name nor the matter :) and for this the Justice was fined in the Star-Chamber, as *M. Crompton* reporteth, *Author. des Courts* 34.

Also the Warrant of the Justice of Peace should be under the Seal of the said Justice: for every Justice of Peace (being a Judge of Record) hath a Seal of his Office; and when he maketh a Warrant under his Seal to the Officer, then the Officer ought to give credence to the Seal, for that is his Authority, *per Brudenel. 14 H. 8. 16.*

14 H. 8. 16. Again, the Warrant of the Justice of Peace is the better, if it bear date of  
Lamb. 90. the place where it was made, and it must expresse the year and day when it was made. See 21 *H. 7. 22.*

Plo. 37. A Justice of Peace who is dwelling out of the County granteth his warrant to be served within the County; the Officer cannot carry the party out of the County to the Justice of Peace who made the warrant, but must carry him before some other Justice within the County.

*Quære* whether such a warrant be good or no.

First, for that a Justice of Peace hath no Authority but in the County where he is a Justice, and in Commission. See *antea*, cap. 6.

And again, for the date of the place seemeth to be material by the Books 14 *H. 8.* aforesaid, & 21 *H. 7. 22. Br. fx. imp. 12.*

Br. Peace The Justice of Peace may make his warrant to bring the party before  
9. himself, and then the Officer needs not to carry the party before any other  
Co. 5. 59. Justice. And yet upon a warrant for the Peace granted *ex officio*, the usual manner is otherwise. See *antea*, tit. *Sureties for the Peace.*

Also the Justice of Peace may in some cases make his warrant to attach the Offender to be at the next Sessions of the Peace, there to answer his said Offence, &c. See *antea*, tit. *Counterfeiters*; & *postea*, *Warrants*, cap. 132.

If a Justice of Peace shall make his warrant to the Sheriff to attach one, and to bring him to the next Sessions, there to find Sureties for the Peace, &c. it is good. *Crompt. 135. 136.*

So if the Justice shall make his warrant to warn a man to appear at the next Sessions, there to give in Evidence for the King; and where the Justice shall command one by his warrant to be or appear at the next Sessions, &c. if the party do not appear, then from that Sessions there shall go out a Precept to attach him for such his contempt. *Crompt. 123.*

For what  
cause.

A Justice of Peace (*ex officio* by the first *Assign.* in the Commission) may grant his Warrant to arrest or attach one that hath broken the Peace, or committed other misdemeanour against the Peace, to find Sureties for the Peace or good Behaviour, as the cause shall require.

Also the Justices of Peace in divers cases do use to grant their Warrant against a man for his neglect or other default, as for refusing to pay Town-rates, and the like : And such Warrant may be either to attach the Offender to be at the next Sessions, there to answer, &c. or else to bring the Offender before the said Justice, or any other Justice, &c. who, finding cause, may bind such an Offender to appear at the next Sessions to answer the said default.

Also wheresoever any Statute doth give authority to the Justices of Peace to cause another person to doe a thing, there it seemeth they have power given them (of congruity) to grant their Warrant to bring such persons before them, that so they may take order therein. See *antea*, tit. *Recognizance*, cap. 127.

But I find it much controverted, whether a Justice of Peace may grant a Warrant to attach persons suspected of Felony, or against Offenders upon a penal Statute, unless such persons or Offenders be first thereof indicted ; for that the Justice of Peace, as he is Judge of Record, so it is said he must have a Record, whereupon he doth award his Process or Precept. 14 H. 8. 16  
Br. Peace  
6.  
See Br.  
Com. 3.

For the first, some hold that the Justice of Peace may grant his Warrant to attach persons suspected of Felony : for that it seemeth by the first *Assignamus* in the Commission, and by the Statute of 5 Ed. 3. 14. that any one Justice of Peace may cause the Constables to arrest and imprison Offenders suspected of Felony, &c. and how shall the Justice of Peace cause this to be done, but by his Warrant or Commandment :

Again if a Felony be done, there is no doubt but that every private man without a Warrant may arrest whomsoever he suspecteth of it, being a man of evil fame, &c. See hereof cap. 128. tit. *Arrest*. But if the Offender being pursued shall resist, *quare* who shall be aiding to a private man, whose goods are stolen, and who suspected another to have stolen them, either to search for his goods, or to apprehend the party suspected, if the Justice of Peace (by his Warrant) shall not command the Constable to aid him therein. If it be objected that the Constable may doe all this of his own authority, (upon request to him made by the party robbed) be it true ; yet we find by common experience that the Constables, without the Justices Warrant therein, are for the most part both very fearful, and also remiss herein, as neither knowing their own Authority, nor the danger. See ant. tit.  
Examinat.  
& 2 H. 7.  
15. 16.  
pro &  
contra.

Besides, this is no new thing, for there is such a precedent in the old Book of Justices of Peace, *impress.* 1561. fo. 41. a. yea, it is the common practice at this day, and it seemeth to be very serviceable ; and of two evils the less is to be chosen, *sc.* that an Offender, or suspected person, should be imprisoned for a time, (though sometimes wrongfully) rather than one which hath committed Felony should escape unpunished. Lamb. 193  
14 H. 8. 16  
Br. Peace  
6.  
Br. fx.  
imp. 8, & 9  
Co. 10. 76

And yet by the Opinion of the Court 14 H. 8. a Justice of Peace cannot make a Warrant to arrest a Felon, unless he be indicted of Felony, (or that



that the Justice himself hath suspicion of the Felon.) But if the Constable, or other Officer, shall serve such a Varrant, he shall justify the same, though the Justice did erre in the awarding thereof. See 24 E. 3. 9.

Lamb. 191

Crom. 197

The incon-

venience

thereof. See

Lamb. 197

Next, for the Justices of Peace to bind over, or to grant a Warrant against Offenders, upon any penal *Statute*, to appear at the Sessions to answer to their Offence or Fault, though such *Statute* be within the power of the Justice of Peace, yet such Warrant or binding over of such Offenders may seem not warranted, unless it be specially so appointed in the *Statute*: as it is by the *Statutes* of 5 *Eliz.* cap. 4. 23 *Eliz.* 10. 39 *Eliz.* 11. 33 *H.* 8. 1. See *antea*, tit. *Counterfeiters; Dying, Labourers, Partridges, and Sacraments.*

But such Offenders ought first to be indicted, and thereupon Process from the Sessions is to be awarded against them untill they come in, &c.

Crom. 238

Lamb. 191

And yet there be sundry Precedents of Attachments made from one Justice of Peace against Labourers and Servants that shall refuse to serve, or that shall depart out of their Service, &c. contrary to the *Statute*, to be before the Justices at their Sessions, to answer to their said Defaults. But these may seem also to have been warranted and so appointed by the *Statute* of Labourers, made *An.* 25 E. 3. cap. 6. which *Statute* is now repealed by the *Statute* of 5 *El.* 4.

Also it is usual, by way of prevention, to bind by Recognizance such as do trammel for Larks, that they shall destroy no Partridges; as also to bind by Recognizance Butchers, and all Victuallers, that they shall not kill nor dress any Flesh in Lent-time, contrary to the Laws: And for these purposes the Justices of Peace do grant out their Warrants, to convene the said persons before them. For Victuallers, (*sc.* Taverners, Inn-holders, Ale-house-keepers, keepers of Ordinary-tables, and other Victuallers) I have known sundry Proclamations which seem to warrant the Justices of Peace therein: but for the other, what Law or Warrant there is for it, I know not, until the Offender be convicted. See *hic* tit. *Partridges.* Yet see *antea*, where the Justices may in some cases grant their Warrants against Offenders upon penal *Statutes.* But there the Justices have power to hear and determine out of the Sessions.

Also where the Offence prohibited by such a *Statute* amounteth to the breach of the Peace or good Behaviour, there it seemeth the Justices may (either upon discretion, or complaint of such an Offence and breach of the *Statute*) grant out his Warrants, and bind over the Offender to the next Quarter-Sessions, &c. to answer his said Default, and in the mean time to be of the Good Behaviour. See *hic*, cap. 11, 20, & 36. *Servants assaulting their Master.*

14 H. 8.

16.

Br. Peace 6

The Justice of Peace may direct his Precept or Warrant to the Sheriff, To whom directed. Bailiff, Constable, or other Officer, or to any other indifferent person by name, though he be no Officer, yea, to any person that he shall think meet; but yet the safest way is to direct it to the Constable, or to some other sworn Officers.

A Varrant directed by the Justice of Peace to the Constable, or other sworn Officer, and to a Stranger, who is no Officer, and the Warrant

is made, *conjunctim & divisim*, and is delivered to the stranger, who executeth it; all this is good.

A Warrant directed by the Justice of Peace to two men joyntly, to arrest another, &c. yet any one of them alone may do it. Crompt. 247. d. 2. l. 1.

A Warrant directed by the Justice of Peace to the Sheriff, he may by word command his Under-Sheriff, Bailiff, or other sworn or known Officer, to serve it, without any Precept by writing. Lamb. 91.

And so the Sheriffs Servant, or other person by the Sheriff's commandment, and as a servant to the Sheriff, may serve or execute such Warrant without any Precept by writing. See *Br. Faux Imprisonment*. 43. & *Trespas* 339.

But otherwise if the Sheriff will command another man (that is a Stranger) to serve it, he must deliver him a Precept in writing; otherwise a Writ of False Imprisonment will lie for the Arrest.

A Warrant directed by the Justice of Peace to the Sheriffs Bailiff, or to the Constable, or to the Justices Servant, or to a Stranger, to arrest one, &c. such person (to whom the Warrant is made) must serve it himself, for these can command none other to do it, neither by word nor writing, nor make any Deputy. Ed. 4. l. 14. b. 20 H. 7. l. 13. 21 H. 7. l. 14. Co. 9. 69.

The Officers  
Duty.

The Officer to whom any Warrant shall be directed and delivered ought with all speed and secrecy to seek and find out the party, and then to execute the said Warrant.

A sworn and known Officer (be he Sheriff, under-Sheriff, Bailiff, or Constable, &c.) needs not to shew his Warrant to a man when he cometh to serve it upon him, although he demandeth it: But if the Justice will direct his Warrant to his Servant, or to another (who is no sworn Officer) to serve it, they must shew their Warrant to the party, if he demand it, or otherwise the party may make resistance, and needs not to obey it. *Br. Faux Imprisonment*. 23.

But a sworn and known Officer, if he will not shew his Warrant to the party, yet he ought (upon the Arrest) to declare the contents of his Warrant, &c. Co. 6. 54. & 9. 68.

And an Officer giveth sufficient notice what he is, when he saith to the party, *I arrest you in the Kings Name, &c.* And in such case the party at his peril ought to obey him, though he knoweth him not to be an Officer; and if he have no lawful Warrant, the party grieved may have his Action of False Imprisonment against him. Co. 9. 69.

If an Officer do arrest a man for the Peace, or the like, before that he hath any Warrant, and then afterwards doth procure a Warrant (or a Warrant cometh after to him) to arrest the party for the same cause, yet the first Arrest was wrongful, and the Officer is subject to an Action of False Imprisonment. See the *Stat. 43 El. cap. 6.* Dyer 244. R. Bar. 248. Lamb. 93.

Where there be two or three known by the name of *I. S. of D. Yeoman*, and upon a Warrant (or other Process) granted out against one of them, another of them is arrested, an Action of False Imprisonment will not lie against the Officer for this; for the Officer is not bound at his peril to take notice which of them is the Offender, &c. And perhaps no particular Offence is mentioned in the Warrant. *Tamen vid. L. 5 E. 4. fol. 51, & 84. pro & contra, & 11 H. 4. fol. 90. contra & ideo quare.* S. H. 1. 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.

Where

Where a Warrant is granted out against *I. N.* the son of *W. N.* and the Officer thereupon arresterh *I. N.* the son of *T. N.* although in truth he be the same person that offended, and against whom the Complaint was made, yet this Arrest is tortious, and the Officer subject to an Action of False Imprisonment. See the like matter, 10 *E. 4. fol. 12. Br. Faux Imp.* 38.

The Officer, upon any Warrant from a Justice of Peace for the Peace, or Good Behaviour, or in any other case where the King is a Party, may by force break open a mans house, to arrest the Offender, &c. See hereof *antea*, in the former title, *Forcible Entry*.

See *Crom.*  
214. a. &  
148.

Co. 144. 52

If any Officer or other person hath arrested a man by virtue of his Warrant, which he hath from a Justice of Peace, and then taketh his promise that he will come again to him such a day, to go to the Justice with him according to his Warrant, (and so letteth the party go) who comes not again at the day appointed, it seemeth the Officer cannot after arrest or take him again by force of his former Warrant; for that this was by the consent of the Officer: But if the party arrested had escaped (of his own wrong) without the consent of the Officer, now upon fresh sute the Officer may take him again and again, so often as he escapeth, although he were out of view, or that he shall fly into another Town or County. See more *postea*, tit. *Imprisonment*, & *L. 5 E. 4. fol. 12. Br. Faux imp.* 18.

Where an Officer hath received a Warrant, he is bound to pursue the effect of his Warrant in every behalf, or otherwise his Warrant will not excuse him of that which he hath done. See *antea*, tit. *Surety for the Peace*.

21 H. 7. 39

If an Officer, having a lawful Warrant to arrest another, shall be resisted or assaulted by the party, or by any other person, then may that Officer justify the bearing or hurting of such persons; and others (upon his praier) may and ought to aid the Officer.

14 H. 8. 16.  
Br. Faux  
Imp. 8.  
Lamb. 67,  
94.

Co. 10. 76.

Cromp. 74

If a Justice of Peace shall make any Warrant for a matter wherein he hath Jurisdiction, although it be beyond his authority, yet is it not disputable by the Constable, or other such Officer, but must be obeyed and executed by the Officer; as if the Justice of Peace shall make his Warrant to arrest one for the Peace or Good Behaviour, &c. without cause, the Officer shall not be punished for executing this: But if a Justice of Peace shall make his Warrant to do a thing out of his Jurisdiction, or in a cause whereof the Justice of Peace is no Judge, if the Officer shall execute such a Warrant, here he is punishable; for the Officer is not bound to obey him who is not Judge of the cause, no more then a meer Stranger: and so note, That the Officer is bound to take notice of the Authority and Jurisdiction of the Judge. See such a matter, 22 *Aff. 64. Plb. 394. b. Cro. 106.*

Cromp.  
149.

If any man shall abuse the Justice of Peace his Warrant, as by casting of it into the dirt, or treading it under his feet, &c. it seemeth he may be bound to his Good Behaviour, therefore, and may also be indicted and fined therefore, for it is the Kings Proceſs.

When any person cometh before a Justice of Peace, by force of any Warrant for the Peace, Good Behaviour, or for a Riot, or the like, the party must offer Sureties, or else the Justice may commit him. See *antea*, tit. *Sureties for the Peace*.

If a Justice of Peace shall grant his Warrant to one to apprehend another for Murther, Robbery, or Felony, it shall be safe for the Justice upon the delivery of his said VVarrant, to take (upon Oath) the Examination of the said party that requireth the Warrant, or at least to bind him over by Recognizance to give Evidence at the next Gaol-delivery, &c. against the Offender, lest that afterwards when the Offender shall be brought (by the Officer) before the Justice upon his said Warrant, or else happen to yield himself to the said Justice, then the party that procured the VVarrant be gone: for by credible report I am informed, That one having procured a Warrant from a Justice of Peace in *Suff.* against another for a Robbery done upon the High-way, and the Justice upon the delivery of his VVarrant not having bound over the Complainant to give Evidence, nor taken his Examination, as aforesaid; that at the next Assizes and Gaol-delivery, the party charged with the Robbery came and offered himself to the said Justice of Peace; who immediately acquainted Sir *Thomas Flemming* (then Lord Chief Justice, and Judge of Assizes there) with the whole matter; but the said Judge much blamed the said Justice of Peace, for not having bound over the said Complainant at the first when he granted him the VVarrant, and charged the said Justice of Peace, at his peril, presently to send for the party Complainant, to come to give Evidence, &c. and farther directed the said Justice of Peace presently to bind over the party charged with good Sureties for his attendance and appearance.

*Arrest, and Imprisonment.* CHAP. CXXIX.

*What.*

**A**N Arrest is the Apprehending and restraining of a mans person, depriving it of his own will and may be called the beginning of Imprisonment.

Imprisonment is where a man is arrested against his will, or is restrained of his liberty, by putting him into the Gaol; Cage, or Stocks, or into some houses, or otherwise by keeping him in the High-street or open Field, so as he cannot freely go at liberty when and whither he would.

If the Constable, or other Officer, (upon a Warrant received from a Justice of Peace) shall come unto the party, and require, or charge, or command him to go or come before the Justice, &c. this is no Arrest or Imprisonment: and upon a VVarrant for the Peace, the Officer ought first to require the party to go before the Justice, before he may arrest him. See hereof *antea, tit. Surety for the Peace.*

But this Arrest (being in execution of the commandment of some Court, or of some Officer of Justice) is expressed in their VVrits, Precepts, or Warrants by these words, or the like, *sc. Capias, Attachies, &c.* to attach, arrest, take, bring, or convey, or cause to be attached, or arrested, &c. all which words do imply the taking and laying hold of the person.

*What Persons.*

To this Arrest all Lay-persons (under the degree of Barons or Peers of the Realm) be subject, and that by VVarrant from the Justices of Peace, as you may see here before, *tit. Surety for the Peace.*

But

But the Justices of Peace are not to grant their Warrants for the Peace, or the like, against any Nobleman : and yet, if a *Capias* or Attachment shall be awarded against a Baron or Peer of the Realm from the Kings Justices at *West.* for a Contempt, or in case of Debt or Trespas, the Officer without any offence of Law may execute the same, for that the Officer is not to dispute the Authority of the Court.

See P. Arrest 1.

Ecclesiastical persons also may be arrested, and that by Warrant from the Justices of Peace, in some cases. See hereof, *tit. Surety for the Peace.*

A Woman covert may be imprisoned by the Justice of Peace for a Force or a Riot committed by her. See *antea*, *tit. Forcible Entry, and Riots.*

But otherwise of Infants in such cases (as it seemeth.) See *ibid.*

Yet if an Infant cannot find Sureties for the Peace, being demanded against him, he shall be committed until he hath found Sureties. See *antea.*

An Infant (though of years of Discretion, yet he) shall suffer no imprisonment, nor other corporal pain, for any Offence committed or done by him against any Statute, except that an Infant be expressed by name in the Statute. *Br. Imprif. 161. Covert 68. Pl. 364. Doct. & Stud. 147. 148.*

Co. 9. 56. The Liberty of a man is a thing specially favored by the Common Law *For what cause and by whom.* of this Land ; and therefore if any the Kings Subjects shall imprison another without sufficient warrant of him, or his Law, the party grieved may have his Action, and shall recover damages against the other ; and the King also shall have a Fine of him : for Imprisonment of another without Offence of the Law is one of the the Kings Royal Prerogatives, and only annexed to the Crown.

P. Accusat. 1. 5 E. 3. c. 9. Also by the Statute of *Magna Charta*, made 9 H. 3. c. 29. no Free-man shall be taken or imprisoned, &c. but by the lawful Judgment of his Equals, (*sc.* upon his Conviction (for some Offence) by the Verdict of a Jury of 12 good and lawful men) or by the Law of the Realm. See *Petition Anno 3 Caroli Regis. & Stat. 5. Ed. 3. cap. 9.*

Co. 10. 74. And by the Statute of *Magna Charta*, every Arrest or Imprisonment, and every Oppression against the Law of the Land, is forbidden ; and if any Judge, Officer, or other person, against the Law, shall usurp any jurisdiction, and by colour thereof shall arrest, imprison, or oppress any man, it is punishable by the Statute. See *Co. 10. 75.*

This Grand Charter is a Declaration of the ancient Common Law. *Co. 10. 48.* And the Statute of *Magna Charta*, & *Charta Forestæ*, for their excellency, have since been confirmed by the Authority of above 30 several Parliaments. See *Co. Preface* to the 8 Report.

Note, that all Jurisdiction ought to be either by Charter, or by Prescription. *Co. 11. 99.*

Also by the Statutes of 25 Ed. 3. cap. 4. 28. E. 3. cap. 3. & 42 E. 3. cap. 3. no person shall be taken or imprisoned, nor put to answer, unlesse it be by Indictment or Presentment (of a Jury) before Justices, or by matter of Record, or by due Process made by Writ Original at the Common Law. See *P. Accusation 1. & 42 Ass. 5. And Br. Faux imprif. 30. 2 H. 4. the*

the Body of a man shall not be taken but by Process out of a Court of Record.

A Commission to arrest or take a man (and his goods) was holden to be against Law, for that this ought to be either upon Indictment, or suit of the party, or other Process of Law. *Br. Commiss.* 15, 16. & *Faux impris.* 9. & *Indictment* 38. 42. *Aff.* 5. 12. 24. *E.* 3. 9. *Co.* 5. 64. *Et les Commissio- ners de Oyer and Terminer poent prendre tiel Commission del party, & rem. ceo al Counsell le Roy, car est enconter Ley.*

And so note, that no man shall be arrested for Debt, Detinue, Trespass or, other cause of Action, but only by virtue of a Precept or commandment out of some Court of Record.

Neither shall any man commit another to prison, except he be Judge of Record. *Co.* 10. 103.

But yet for misdemeanors done against the Kings Peace, (as for Treason, <sup>See Co. 3. 11. 2.</sup> Felony, or breaking of the Peace, &c.) the Offenders, as well by the Common Law, as by divers Statutes, may be arrested and Imprisoned by the Officers of Justice, and sometimes by private persons, (as hereunder followeth) without either Presentment, Process, Precept, Warrant, or other Commandment. And these being by the Law of the Realm, are warranted by the aforesaid Stat. of *Magna Charta*.

By a private man.

And M. *Bracton lib.* 5. *in fine* saith thus, *In criminalibus causis, ubi sequi debet capitale Judicium, vita viz. vel mutilatio membrorum, non sequitur Attachiamantum aliquod, sed corpus tale (quicumque fuerit ille) ab omnibus arrestetur qui sunt ad fidem Domini Regis, siue inde Præceptum habuerint, siue non habuerint.*

And yet you must observe, that for arresting of the body of a man in such cases there must be some just cause, or some lawful and just suspicion at the least: And therefore where a man is indicted of Felony, that is a good cause for any man to arrest him. But if an Appeal of Felony be commenced against another, that is no sufficient cause, for it is but a private suspicion, &c.

Also every private man may arrest another whom he knoweth or seeth <sup>10 E. 4. 17</sup> to have committed a Robbery, Manslaughter, or other Felony, and may deliver him to the Constable of the Town where such an Offender is apprehended, or in the Constables absence may imprison and set him in the Stocks; and if there be no Stocks there, it seemeth he may carry the Offender <sup>Fitz. Bar. 101.</sup> to the next Town, and deliver him to the Constable there; see *9 E. 4. 28.* or else he may carry him before a Justice of Peace, by him to be examined and sent to the Gaol, there to abide until the next Assizes, or Sessions of the Peace, &c.

Also when a Felony is committed, every man may arrest suspicious persons that be of evil fame, &c. and if such person shall make resistance, the other may justifie to beat him.

But for the arresting of such suspicious persons, note, that there must be some Felony committed indeed.

Also the party that shall arrest such suspected person must have a suspicion <sup>9 Ed. 4. 28.</sup> of him himself, and for the same Felony, or otherwise Suspicion generally is no cause to arrest another. See *antea, tit. Examination, 5 H. 7. 4. & lib. Intr. tit. fx. impris. div. 5.* So

So that when any Felony is done, every man that shall suspect another to be guilty thereof may arrest him. See 5 H. 7. 4. b. *Br. Faux impris.* 16.

Any man suspecting another of a Felony committed, or only intended, may arrest him, so as thereupon he commits him to the Gaol, or carries him before a Justice of Peace, 9 E. 4. 26. 20 E. 4. 6. *Vide Finch* 127. & *hic cap.* 124.

Also when a Felony is committed, the common voice and fame that *I. S.* did the Felony, is sufficient cause for any man to suspect him, and to arrest him, *Ibid.*

Also Hue and Cry after *I. S.* for Felony seemeth to be sufficient cause to arrest him, though there be no Felony committed. *Ibid.*

Also Hue and Cry is sufficient cause to arrest any suspicious person. *Br. Faux impris.* 25,

So when a Felony is done, to be in company of the Offenders, is sufficient cause to arrest him.

9 Ed. 4. 28. So to live idly and vagrant, *Br. fx. imp.* 22. See *antea.*

Nedham. Also every man may arrest such as apparently go about to commit any Felony, and may imprison them, *Finch* 127.

29 E. 3. 39. Also upon Hue and Cry for stolen goods, (*sc.* for a Horse, or Bullocks, &c. of such colour, &c.) if *A.* be taken driving or leading, &c. such a Horse, or such a Bullock, or having such other stolen goods about him, though he be a man of good name and credit, yet every man may apprehend and stay *A.* hereupon, and may deliver him to the Constables, by them to be set in the 16 H. 7. 28 Stocks, or safely kept, untill they can carry him before a Justice of Peace, that so he may be delivered by course of Law.

If any man shall be dangerously hurt in an Affray, (or otherwise) every man may arrest and imprison the Offender, &c. What every private man may farther doe in an Affray, see before, *tit. Affray.*

Unlawful Hunters in Parks, the Keepers, or their Servants, may for such Offence justifie to arrest the Offenders, and to cause them to depart, &c. *Lib. intrat. tit. fx. Imprisonment, div.* 12.

Every man knowing of any that keepeth or useth any Gun, &c. contrary to the Statute, may arrest him, and bring him to the next Justice of Peace, &c. See *antea, tit. Guns.*

Co. 9. 63. b Night-walkers, being strangers, or suspected persons, Watchmen may arrest them, and may stay them till the morning, &c. See hereof, *tit. watch, antea.* Yea, every man may arrest such Night-walkers, for it is for the good of the Kingdome, 4 H. 7. 18. *Br. Faux Imprisonment* 15. See the Statute of *Winch.* 13 E. 1. & 4 H. 7. fol. 2. & 5 H. 7. fol. 5. a.

But in all these cases before, where a private man shall arrest another, he ought thereupon to commit the Prisoner to the Gaol, or to carry and deliver him to the Constable, or to some other Officer, &c. See 20 E. 4. 6. *Finch* 127.

The Sheriff, Bailiff, Constables, and other the Kings Officers may arrest *officers.* and imprison Offenders in all cases where a private person may, and without any Writ or Warrant.

Where

Where a Constable may arrest one, &c. see hereof *antea*, tit. *Conservators of Peace, Affray, Forcible Entry, and Examination*.

A Constable being informed of a lewd man and woman that are together in Incontinency, may take with him so many of his neighbours as he will, to arrest the said man and woman, to find Sureties for their Good Behaviour: 1 H. 7. 7. 13 H. 7. 10.

If a man makes an Assault upon the Constable, he may justifie to arrest him that makes the Assault, and to carry him to the Gaol for the breach of the Peace, although the Constable be the party upon whom the Assault was made, 5 H. 7. 6. *Br. fx. imp.*

The Justice of Peace may arrest and imprison Offenders in all cases where a private person may. See *hic cap.* 8.

The Justice of Peace (upon his own motion and discretion, or upon complaint) may also grant out his Warrant for the arresting (or convening before him) of all such persons as shall break, or go about to break the Peace, or as he shall suspect to be inclined to break the Peace, and may commit them to prison, if they shall refuse to find, or cannot find Sureties for to keep the Peace.

The Justice of Peace (in divers cases) may in like sort grant out his Warrant for the Good Behaviour against Offenders, (as you may see before,) and may commit them to prison for not finding Sureties accordingly.

And these things the Justice of Peace may do by force of the Commission, and of the Statutes, 18 Ed. 3. c. 2. & 34 Ed. 3. c. 1.

If one cometh before the Justice of Peace, upon his Warrant for the Peace, Good Behaviour, or for a Riot, or the like, the Justice needeth not to demand Sureties of him, but may commit him, if he do not offer it, *Br. Peace* 7.

Also the Justices of Peace upon their own view, &c. of the Offence, may imprison the Offender against divers penal Lawes; as namely, such as keep common Ale-houses without Licence, offenders for unlawful Games, Rioters, such as shall make any Forcible Entries or holdings of Possessions, &c. See for these before, under their particular Titles.

There be divers other Offences which by the Statute are committed to the Justices of Peace (out of their Sessions) to hear and determine, and of which the Offenders shall be convicted, sometimes upon their own Confession before the Justices, and sometimes upon Examination and proof of Witnesses; in all which cases the said Justices of Peace may convene the said Offenders before them (by their Process or Warrant,) and after such Examination and Conviction, they may imprison, or otherwise punish the Offenders, according as they are limited by the said Statutes. See before.

Wheresoever the Justice of Peace hath power or authority given him by any Statute to bind over any man, or cause a man to doe any thing, if such person (being in his presence) shall refuse to be bound, or to doe such thing, it seemeth such Justice may send such person to the Gaol, there to remain till he shall perform the same. See hereof *antea*, tit. *Recognition*.



In what cases the Kings Officer may break open a mans house for to arrest an Offender; see hereof, *tit. Forcible Entry, cap.*

All men being required ought to assist the Kings Officers, to pursue and arrest offenders against the Peace, &c.

2 E.4.6.  
21. Pl.7.  
37. If the party against whom any lawful Warrant is granted shall make *Resist.* resistance, or shall make an assault upon the Officer, or shall flie; the Officer may justifie the beating and hurting of him, and may also imprison him in the Stocks for the same: But if the party resisteth or flieth before he be arrested, the Officer cannot justifie the beating of him. 2 Ed. 4. 7. a. *Br. Tresp. 296.*

If the Warrant were to arrest or take one that standeth indicted of Felony, then may the Officer justifie the killing of such a person, if he shall resist or flie, or that he cannot otherwise be taken. See *hic antea, Homicide tolerated.*

5 H.4. 101  
P. Prison I None shall be imprisoned by any Justice of Peace, but onely in the common Gaol, by the Statute of 5 H.4. & 23 H.8. cap. 2. *Imprisonment.*

Co.6. 119.  
b. And therefore Justices of Peace cannot commit Felons to any of the *The* Counters in London, nor to other Prisons which be no common Gaols; *place.* nor make a Gaol of their own houses.

And yet Justices of Peace may commit to the Stocks some Offenders against certain penal Statutes; as Towns-men tippling in Ale-houses, &c. See hereof *antea, tit. Ale-houses.*

Persons refusing to work in Hay and Harvest-time. See *antea, tit. Labourers.*

And in some cases the Justice may commit an Offender to safe custody by his discretion. *Vide antea, tit. Preachers.*

Also in some cases the Justices may send Offenders to the House of Correction, there to be continued for any reasonable time, at the discretion of the Justice. See *antea, tit. Rogues, & hic cap. 136. fine.*

Lamb. 136.  
Crom. 169 The Sheriff or Gaoler may imprison a Felon or other Prisoner in their own house, or in the common Gaol, at their pleasure. *Tamen quare, & vide Cromp. 184.* that the Gaol is the Kings Prison, and that for causes touching the King Offenders shall be sent thither.

20 Ed.4.6.  
22 Ed.4.  
35.  
3 H.4.9. The Constable (or other such Officer) cannot imprison any man in his house, (as it seemeth) but in the Stocks; and that not above such a reasonable time, as he may provide convenient aid safely to convey the Prisoner to the Justice, or Gaol. *Finch.*

And yet in case of an Affray, &c. the Constable may for a time imprison the Offender, being a man of quality, in the Constables own house, or may commit him to some other safe custody. *Vide hic cap. 1.*

If a man commit Felony in one County, and be arrested for the same in another County, he shall be imprisoned in that County where he is taken. *Vide antea, tit. Felony, & 11 E.4. fol.4. Br. faux impr. 25.*

13 E.4.8. The Justice of Peace, Constable, or other Officer, pursuing a Felon into another County, takes him there; the Felon shall be committed to the Gaol of the County where he was taken: for the Justice of Peace or Officer, being out of his County, hath no more Authority then

a private man. *Vide antea, tit. Accessories & Felony. Br. Fresh suit 3. & Plo. 37.a.*

Also if the Constable (or other Officer) shall see an Affray, and he coming to arrest them, the Affrayors do flee into another County, the Officer (as every other private person) may pursue them into the other County, and may stay or arrest them there; but the Officer cannot bring them out of that County, but must carry the Affrayors before some Justice of Peace of the same County where they were taken, &c. But if the Affray be in one Town, and the Affrayors do flee into another Town, or into a Franchise or Liberty within the same County, the Officer may pursue them, and take them out of the Franchise, &c. by fresh suit. *Vide antea, tit. Affray.*

But if the Constable hath arrested one upon a Warrant from a Justice of Peace, and after the Arrest the party escapeth (of his own wrong,) and fleeth into another County, the Constable may pursue and take him in the other County by fresh suit, and bring him before the Justice of Peace upon whose Warrant he was first arrested, as it seemeth. See *Crom. 172, 173. & antea, tit. Felony by Statute.* See 2 E. 4. 6. Br. Tres. 296.

If a Prisoner taken in Execution shall make an Escape of his own wrong, and shall flee out of sight, and into another County, where the Sheriff hath no power, yet the Sheriff, &c. upon fresh suit, may take him again in any other County, and he shall be still said to be in Execution; yea, without fresh suit, the Sheriff, &c. may take him again, and keep him until he hath agreed with him: otherwise, if the Escape were by the consent of the Sheriff, &c. *Co. 3. 52. Br. Escape 4. 12.*

Now for the conveying of Prisoners to the Gaol, it must be at the proper charge of the Prisoners, if they have means or ability thereto; otherwise it must be at the charge of the Town where they are taken. *21 Fac. 6. 28. & 3 Caroli 4. confirmed.* 3 Jac. c. 10. P. Pris. 7, 8.

« And if the Prisoner shall refuse to bear the charge, the Justice, by his  
« Warrant under his hand and seal, may cause the High-Constable of the  
« Hundred, or petty-Constable of the Town, where he hath any Goods,  
« to sell so much thereof as will satisfy the charges; and if the Prisoner  
« have no Goods known, then the Parishioners of the Town where  
« he was apprehended, refusing to pay their Rate towards that charge,  
« may by like Warrant be distrained to pay the same. *Vide Stat. 3 Fac. 10.*

And if a man be arrested for Felony, and the Constable shall carry him to the Gaol, and the Gaoler will not receive him, the Constable must bring him back to the Town where he was taken, and that Town shall be charged with the keeping of him until the next Gaol-delivery, by the Opinion of the Book *10 H. 4.* or the Constable or other party that arrested him may in such case keep the Prisoner in his own house, as it seemeth. See *21 E. 4. Br. Faux Imprison. 25. fine.* 10 H. 4. 7. F. E. c. 8.

But the Gaoler denying to receive a Felon by the delivery of any Constable or Township, or taking any thing for receiving such, shall be punished for the same by the Justices of Gaol-delivery. P. Pris. 6. 4 Ed. 3. c. 10.

When

Co. 8. 119. When a Statute doth appoint Imprisonment, but limits no time when the *The time*  
 Plo. 17. b. Offender shall be imprisoned, then he is to be imprisoned presently; as in  
 case of a Force, the Justices of Peace, upon view thereof, ought to commit  
 the Offenders presently, for after they may not commit them.

Cromp. Also when a Statute doth appoint Imprisonment, but limits no time how  
 171. long, there the Prisoner must remain at the discretion of the Court.

Where a Statute doth ordain that an Offender shall be imprisoned at the  
 Kings pleasure; *Vide antea, tit. Bailment.*

Where a Statute ordaineth that a Prisoner shall not be delivered with-  
 out the Kings special commandment, and that upon a Fine to be made  
 to the King; who may affeas the same Fine, and deliver him, see 18 H.  
 8. 1.

Br. imprif. But Imprisonment to be inflicted by the Justice of Peace, almost in all  
 100. Co. 11 cases, (except for the Peace, the Good behaviour, or for Felony, or higher  
 43. Offences) is but to retain the party until he hath made Fine to the King for  
 his Contempt or Offence; and therefore if he shall offer to pay his Fine,  
 or shall find Sureties by Recognisance to pay it, he ought to be delivered  
 presently, 2 Mar. 1.

Co. 8. 100. Now for the manner of Imprisonment, it seemeth generally in all cases *The*  
 & 5. 87. where a man is committed to Prison, especially if it be for Felony, or upon *manner.*  
 an Execution, (or but for a Trespass, or other Offence) every Gaoler ought  
 to keep such his Prisoner *in salva & arcta custodia: Salva, sc.* that he  
 ought to be imprisoned so surely as that he cannot escape; *Arcta*, in respect  
 that he ought to be kept close, without conference with others, or intelli-  
 gence of things abroad.

Co. 3. 44. And therefore if the Gaoler shall license his Prisoner to go abroad  
 for a time, and then to come again, or to go abroad with a Keeper,  
 though he come again; yet these are Escapes: and if the Prisoner were  
 in for Felony, this is finable in the Gaoler at least, if it be not Felony;  
 and if the Prisoner were in upon an Execution, this is so penal  
 1 R. 2. c. 12 to the Officer, as that he shall be charged for the Debt; and if the Pri-  
 7 H. 4. c. 4. soner were in but for a Trespass, yet the Officer is finable: for Imprison-  
 ment was ordained for punishment of Offenders, and in terror of all others,  
*ut pœna ad paucos, metus ad omnes perveniat. Vide antea, tit. Felony by*  
*Statute, cap. 117.*

And yet see Co. L. 260. That Imprisonment must be *Custodia, & non*  
*pœna*; for *Carcer ad homines custodiendos, non ad puniendos, dari debet*:  
 But yet it seemeth meet and just that it should be *pœna* as well as *Custodia*;  
*sc.* for Malefactors, that it should be a punishment to them, and a terror to  
 others; and for Debtors, that they may the sooner pay, or take order with  
 their Creditors.

For, as one saith, *Maxima illecebra peccandi impunitatis spes*, A great  
 impulsive cause of offence is the hope to escape unpunished: And so a  
 great cause that Debtors care not to pay, nor to take order with their Cre-  
 ditors, is their hope to escape Imprisonment, or of too much favour and li-  
 berty in Prison.

Dyer 249. Also (by the Law) those which are in Execution ought not to go at  
 Co. 3. 44. liberty within the Prison, nor abroad with their Keeper, 24 H. 8. much less  
 in cases of Felony, or of higher Offences.

Also by the Statute of *Westm. 2. c. 11.* Accomptants, and such as are in Execution, the Sheriff or Gaoler may put Irons or Fetters upon them: and yet if the Gaoler shall imprison a man so streightly, by putting him in the Stocks, or putting more Irons upon him then is needful, or keepeth his Vi-<sup>Co. ibid. P. Accom. 2. Fitz. 93. h.</sup>ctual from him, whereby the Prisoner becometh decrepit, lamed, or otherwise diseased, he shall have an Action of the Case against the Gaoler, and if the Gaoler shall keep his Prisoner more streight then of right he ought to do, so that the Prisoner dieth thereof, this is Felony in the Gaoler. *Hic cap. 118. Verbo Gaoler.*

Also the Constable or other such Officer, that shall imprison in the Stocks any Offender for Felony or suspicion thereof, may lock the Stocks, and, if need be, may also put Irons on him, as it seemeth; and when he conveyeth him to the Gaol, or to the Justice, may pinion him, or otherwise make him sure, so that he cannot escape.

It seemeth by *Britton, fol. 17.* that by the Common Law (before the Statute of *Westm. 2.*) none should have Irons put on them but such Offenders as were taken for Felony, or Trespassers in Parks. But the words of the Statute of *Westm. 2. cap. 11.* are general, *quod Carceri mancipentur in ferris*; which word *Carceri* seemeth to signifie any persons imprisoned for any cause, (or any persons worthy of the Prison,) and is not to be restrained to Accomptants onely. See *Cok. 3. 44.* <sup>Kit. 69.</sup>

Also by the Statute 7 *Jacobi Regis*, all Rogues, Vagabonds, sturdy 7 *Jac. 4.* Beggars, and other idle and disorderly persons, sent to the House of Correction, may (by the Master of such a House) be punished by putting Fetters or Gyves upon them.

*Posse Comitatus.* CHAP. CXXX.

**W**Here the Justice of Peace, Sheriff, or other Officer, is enabled to Lamb. 38. take the power of the County, it seemeth they may command, and ought to have the aid and attendance of all Knights, Gentlemen, Yeomen, Husbandmen, Labourers, Tradesmen, Servants and Apprentices, and of all other persons being above the age of fifteen years, and able to travel.

But Women, Ecclesiastical persons, and such as be decrepit or diseased of any continual infirmity, shall not be compelled to attend them.

And in such cases it is referred to the discretion of the Justice of Peace (or Sheriff, &c.) what number they will have to attend upon them, and how and after what manner they shall be armed, weaponed, or otherwise furnished.

But it is not justifiable for the Justice of Peace, Sheriff, or other Officer, to assemble *Posse Comitatus*, or raise a Power or Assembly of people, (upon their own heads) without just cause. *Vide antea, tit. Riots.*

*What*

*What Persons may take Posse Comitatus, and in what Cases.*

ANY Justice of Peace, or Sheriff, may take (of that County where he is a Justice, or Sheriff,) any number that he shall think meet, to pursue, apprehend, arrest and imprison Traitors, Murderers, Robbers, and other Felons; or such as do break, or go about to break, or disturb the Kings Peace: and every man (being required) ought to assist and aid them. *Vide antea, tit. Forcible Entry, and Felony.*

The Justice of Peace (and the Sheriff or Under-Sheriff) may take *Posse Comitatus* for the suppressing of Riots; and all sorts of persons (being able and required) ought to assist them therein. *Vide antea, tit. Riots.*

14 H. 7. 8 Yea, any one Justice of Peace may take the Power and Aid of the County to suppress Rioters, and needs not to tarry for the coming of another Justice, or of the Sheriff.

Also, in cases of Forcible Entry, any Justice of Peace may take *Posse Comitatus* to remove such persons as by his view, or by Inquisition taken before him, shall be found to have made any Forcible Entry (into other mens Possessions,) or to detain them with force. *Vide antea, tit. Forcible Entry.*

P. Recus. 52 Also the Sheriff, or other Officer, upon any lawful Warrant for the apprehending of any Popish Recusants, &c. may take *Posse Comitatus*, &c. See the Statute 3 Jac. 4.

3 H. 7. 1. 10 The Sheriff, Under-Sheriff, or Bailiff, &c. (if need be) may by the  
Co. 5. 115. Common Law take the Power of the County (what number they shall  
P. Distr. 4. think good) to execute the Kings Process or Writ, be it a Writ of  
P. Retor. 5. Execution, *Replevin*, *Estrepment*, *Capias*, or other Writ, it being  
Br. Fin. p. the Kings Commandment. (See also the Statute *Westm. 1. 17. Westminster 3. 39.*)

37.  
Br. Riots  
2, 3.

And such as shall not assist them therein (being required) shall pay a Fine to the King. See *hic, cap.*

3 H. 7. 1.  
Br. Tref.  
266. &  
Riots 2.

The Sheriffs Bailiff, to execute a *Replevy*, took with him three hundred men armed (*modo guerrino, sc.*) with Brigandines, Jacks, and Guns; and it was holden lawful: for the Sheriffs Officer hath power to take Assistance, as well as the Sheriff himself; for that is all one Office, and one Authority.

A man demands the Peace in the Chancery against a great Lord, and hath *Supplicavit* directed to the Sheriff: there, if need shall be, the Sheriff may take *Posse Comitatus* to aid him to arrest such a Lord, &c. *Vide antea, tit. Surety for the Peace.*

So it seemeth, if a *Supplicavit* be directed to a Justice of Peace, the Justice of Peace, or Officer to whom the Justice of Peace shall make his Warrant in this behalf, (upon resistance made) may (if need be) take *Posse Comitatus* to aid him to arrest the party: *Quia quando aliquid mandatur, mandatur & omne per quod pervenitur ad illud. Co. 5. 115.*

But every Sheriff is inabled besides by his Writ of Assistance, whereby there is commandment (under the Great Seal) to all Archbishops, Dukes, Earls, Barons, and all other the Kings Subjects within

the same County, to be aiding to him in whatsoever belongeth to his Office, &c.

The Sheriff may take *Posse Comitatus* to apprehend Felons, &c. or disturbers of the Peace. *Vide antea, tit. Forcible Entry.*

So he may take *Posse Comitatus* to execute the Precept of the Justice of Peace. *Ibid.*

The Constable (of a Town) upon a Felony committed, or upon any Affray, or the like, may take the aid of his Neighbours, or other persons being present, to apprehend the Felons, or to cause the Peace to be kept, and to carry the Offenders before the Justice, &c. See *Br. Riot* 3. 5 H. 7. 10.  
13 H. 7. 10.  
Br. Tref.  
432.

One hath hurt another, whereby he is in peril of death, the Constable may take power or aid to arrest him, &c. 38 E. 3. 8.

So may the Constable take the aid of his Neighbours for executing of the Justices Warrant directed to him. 38 E. 3. 8.

Yea all and every such persons as are Conservators of the Peace by the Common Law, (*sc.* every pety Constable, High Constable, Coroner, Sheriff, Steward of a Leet, or of a Court of Pipowders, Steward of the Sheriffs Tourn, and other Judge in any Court of Record) may command and take the meet help, aid, and force of others, to pacifie and to arrest all such who in their presence, and within their Jurisdiction, shall go about to break the Peace by deed or word.

Every man may assemble his Friends and Neighbours to defend his person, &c. (being in his house) against violence, &c. but not to go abroad with him to a Fair or Market, &c. *Vide antea, tit. Forcible Entry.* Co. 11. 82.  
21 H. 7. 39.

### Certain Advices to the Justices of Peace. CHAP. CXXXI.

**I** Thought it not amiss here shortly to admonish the Justices of Peace again of some few things mentioned before, for their better memory.

1. First, That they exercise not the Office of a Justice of Peace before they have taken the Oath of their Office, and the Oath of Supremacy. *Vide antea, cap. 4.*

2. That they execute not this their Office in their own case, but cause the Offender to be convened or carried before some other Justice, or desire the aid of some other Justice being present; *quia iniquum est aliquem sua rei esse Judicem. Cok. 8. 118.* And some late Statutes have taken special care to prevent this, as you may see *hic tit. Trespas, &c.* Crom. f. 68  
Lit. 212.  
Co. l. 141.

Besides, *idem non potest esse agens & patiens. 14 H. 8. 13.* And when a man is a party, he cannot be a Judge indifferent. *8 H. 6. 19. Auxy ad estre sovent view, que Justice de Peace que ad execute ceo Office en son Case demesne, ad estre puny pur ceo in Camera stellata. Crompt. 68.*

3. That they be careful for the Execution of the Statute of Riots. *Vide ante, tit. Riots, cap.*

If upon their inquiry of a Riot the truth cannot be found, by reason

son of any maintenance, &c. that they certifie the same within one month. *Ibid.*

4. That upon Forcible Entry they make no Restitution without Enquiry. *Vide antea, tit. Forcible Entry.*

5. That upon notice of any Treason, or of any Seminaries, &c. or of any *Agnus Dei*, &c. offered, they discover the same to some of the Privy Council. *Vide tit. Treason.*

6. That they be circumspect in bailing of Prisoners, *viz.* that they neither deny it to such as areailable, nor yield it where it is not grantable. *Vide hic Bailment.*

7. If any Felony be committed, and one is brought before the Justice of Peace upon suspicion for the same, though it shall appear to the Justice that the prisoner is not guilty of that Offence, or that it is not Felony of Death, yet he may not set him at liberty, but so as he may come to his Trial. *Vide antea, tit. Felony by Statute, and Evidence against Felons.*

8. That all Recognizances taken by them be in the Kings name.

9. That all Recognizances taken by them be certified at their next Quarter Sessions, or Gaol-delivery, according as the case shall require.

10. That they meet at every Easter Sessions at the least. *Vide 5 El. c. 4. P. Just. 67.* And yet their presence and attendance at every general Sessions is very requisite.

11. That their Examinations taken concerning the mis-entring of Plaints in County-Courts, or the defaults of gathering the Shire-Amerciaments, be certified into the Exchequer, &c. *Vide antea, tit. Sheriffs.*

12. That such Offences as the Surveyors of High-waies shall present to them, they again present at their next Quarter Sessions. *Vide antea, tit. High-waies.*

13. That the Oaths taken by them upon the submission of any Recusant be certified at their next Quarter Sessions. *Vide antea, tit. Recusants.*

14. Also that they doe Justice, and give remedy to every party grieved, in any thing that lieth within their power to hear, determine, or execute, and that without respect of persons, and according to the Laws and Statutes of this Realm. *Vide antea, cap. 4.*

Note, that all these former matters are penal to the Justices of Peace if they shall offend in any of them, and therefore it is likely they will be the more careful therein. But there are certain other things principally tending to the publick good, and lately commended from his Majesty (by the Judges of Assize) to the care of the Justices of Peace, in all which the Justices of Peace are to imploy also their special care and diligence: and they are shortly these ten Articles following.

1. Alehouses; The abuses there to be reformed, and such as be unlicensed to be suppressed.

2. High-waies and Bridges to be amended.

3. Hue and Cry and fresh sure to be duly made and pursued after Robbers and other Felons.

4. Labou-

4. Labourers, &c. idle persons meet to serve, to be compelled to go to Service.

5. Poor, their Children to be placed Apprentices; such as are able of body, to be holden or set to work.

6. Recusants: First Popish Recusants (especially such as have been reconciled to the Pope, or drawn to the Popish Religion, since the Gunpowder-Treason, for these are by his Majesty accounted most dangerous) that these be certified into the Kings Bench, and farther to be dealt withall (by the Justices of Peace) according to the several Statutes in that behalf made.

Also negligent Recusants, which shall not resort every Sunday to Church, that such be punished according to the Statute: for the first and best means to bring men to God is to bring them to Church.

7. Rogues and Vagabonds to be duly punished.

8. Houses of Correction to be maintained.

9. Watch to be duly kept.

10. Weights and Measures, the abuses therein to be reformed.

Farther, the Justices of Peace are to be careful that they suffer not the King to be disadvantaged, where it lieth lawfully in their power to prevent it. *Viâe Lamb. 521.*

Also, that they remember how that they exercise not the Judgments of men onely, but of God himself, (whose power they do participate, and who is alwaies present with them) and therefore must take heed that in all their actions they set God continually before their eyes.

But forasmuch as most of the business of the Justices of Peace (out of Sessions) consisteth in the execution of divers Statutes committed to their Charge, which Statutes cannot be sufficiently abridged, but that they will come short of the substance and body thereof; therefore it shall be safest for the Justice of Peace not to relye over-much upon these short Collections thereof, but to have an eye to the Abridgment of Statutes, or rather to the Book of Statutes at large, and thereby to take their farther and better Directions for their whole Proceedings: for (as Sir *Ed. Coke* observeth) Abridgments are of good and necessary use to serve as Tables, but not to ground any opinion, much less to proceed judicially upon them: *Ideo, saith he, tutius est petere fontes quàm sectari rivulos. Cok. 10. 117. b.*

And lastly, for the better encouragement of Justices of Peace, Constables, and other Officers, (and of all others which in their aid, or assistance, or by their commandment, shall doe any thing touching his or their Office) who (by causeless Suits commenced by contentious persons against them for executing their Offices) have lately been discouraged from doing their Offices (with that courage, care and diligence which is required at their hands) now for their ease in Pleading, they are by the Statute 7 & 21 *Jacobi* allowed to plead the general issue of Not guilty, and give the special matter in Evidence, and for their wrongful vexation double Costs. And for all Actions, &c. to be brought against any Justice of Peace or other Officer, (or other person which in their aid, &c. shall doe any thing concerning their Office) the said Action, &c. shall be laid within the County where the Fact shall be done, and not elsewhere, &c.

21 *Jac. Reg. cap. 12.*

7 Jac. c. 5.  
21 Jac. 12  
3 Car. c. 1.

Et



*Et nota, quicquid Justice. fecerit de Recordo ignoranter, & pro defectu scientia, non erit pro eo punitus: Nec pro re per ipsum facta judicialiter. 2 E. 3. fol. 10. Mes les Justices d' Assise poient oyer & punier les defaults de Justices de Peace, sc. leur contempts, omissions, negligences, faveurs, affecti- ons, corruptions, & autres defaults quacunque.*

*Warrants, and Precedents. CHAP. CXXXII.*

**T**He Warrants of the Justice of Peace may be styled and made after divers manners. As

1. First, in the name of the King; and yet the *Teste* may be under the name of the Justice (or Justices) of Peace, that grant them out.
2. Or they may be styled and made only in the names of the Justices.
3. Or they may be made without any such style, and only under the *Teste* of the Justice of Peace, or only subscribed by the Justice, as followeth.

*In the Kings Majesties Name.*

*The Style.*

**C**HARLES, by the grace of God, King, &c. To our Sheriff of *Cambr.* our Countie of *Cambridge*, the High Constables of the Hundred of *Radfield*, the pety Constables of the Town of *Balsam*, and to all and singular our Bailiffs and other Ministers in the said Countie, as well within Liberties as without, Greeting. Forasmuch as A. B. of, &c. hath come before Sir *Edward Peyton*, Knight and Baronet, one of our Justices of Peace within the said County, and hath, &c. (concluding it in the Justices name, as thus) Witnesse the said *Edward Peyton*, at *Isleham*, the day of &c.

*The Teste.*

Note, that wheresoever the Warrant is made in the Kings name, (as before) there it seemeth the Warrant ought to be directed to all Ministers as well within Liberties as without, for that the King is made a partie: and so it may be done in all other Warrants, (especially for Felony, or for the Peace, or the Good behaviour, &c.) because it is the service of the King; and no Libertie or Franchise shall be allowed, or hold place against the King. *Br. Franch. 31.* Yet see before, that the Justices of Peace of the County may not intermeddle in any City, Town, or Libertie, which have their proper Justices. *Hic cap. 6.*

*Or thus, in the name of the Justice himself.*

**M**iles *Sandys*, Knight and Baronet, one of the Justices of the Peace of *Cambr.* our Sovereign Lord the King within the said Countie, To the Sheriff of the said County, to the Bailiff or Constables of the Hundred of, &c. to the pety Constables of the Town of *F.* within the said Hundred, and to all other the faithful Ministers and Officers of our Sovereign Lord within the said County, and to every of them, Greeting. Forasmuch as, &c. Given under my Hand and Seal, at the day of &c.

Or

Or they may be directed to any of these Officers (above named) particularly, or else to any other indifferent person, or persons, as followeth.

**C**hristopherus Hatton, *Miles & Baronettus, unus Custodum Pacis Dom. Regis in Com. Cantabr', Vic. ejusdem salutem: vel Ballivo itineranti ejusdem Com. salutem: vel Ballivo Hundred' de R. & Ch. in Com. prad' salutem: vel B.C. & D. E. Constabul' Hundred' de W. salutem: vel Constab. (generally) Hundred. or Villa de H. salutem: vel F. G. & H. I. Constabul. Villa de H, & eorum cuilibet, salutem: vel sic, Dilectis sibi K. L. & M. N, & eorum cuilibet, conjunctim & divisim, salutem, &c.*

*A Warrant for the Peace.*

*Cambr.* **C**HARLES, by the grace of God, &c. To our Sheriff, &c. Forasmuch as *A. B.* of, &c. Yeoman hath personally come before *Sr John Carleton* Baronet, one of our Justices of the Peace within the said County, and hath taken a corporal Oath, that he is afraid that one *C. D.* of in the said County, Yeoman, will \* beat (wound, maim, or kill him, or burn his Houses,) and hath therewithall prayed Surety of the Peace against the said *C. D.*: therefore We command and charge you jointly and severally, that (immediately upon the receipt hereof) you cause the said *C. D.* to come before the said *Sr John Carleton*, or some other of our Justices of the same County, to find sufficient Surety and Main-prise, as well for his appearance at the next Quarter Sessions of our Peace to be holden at the Castle of *Cambridge*, or elsewhere, for or in the said County, as also for our Peace to be kept towards us and all our liege people, and chiefly towards the said *A. B.*, that is to say, that he the said *C. D.* shall not do, nor by any means procure or cause to be done, any of the said evils to any of the said people, and especially to the said *A. B.* And if the said *C. D.* shall refuse thus to doe, that then immediately (without expecting of any farther Warrant) you him safely convey, or cause him to be conveyed safely, to our next Prison in the said County, there to remain until he shall willingly doe the same: (so that he may be before our said Justices, at the said next general Sessions of the Peace to be holden at *Cambridge* aforesaid, then and there to answer unto us for his contempt in this behalf.) And see that you certify your doings in the Premises to our said Justices at the said Sessions, bringing then thither this Precept with you. Witnesse the said *John Carleton*, at aforesaid, the fourth day of *August*, &c.

\* Any one of these causes is sufficient.

*Or thus, in the name of the Justice himself, mutatis mutandis.*

*Cambr.* **O**liver Cromwell Knight, one of the Justices of the Peace of our Sovereign Lord the King within the said County, to the Sheriff, &c. Greeting. Forasmuch as *A. B.*, &c. hath personally come before me, and hath taken a corporal Oath, &c. *ut supra*. These shall be therefore on the behalf and in the name of our said Sovereign Lord, to command you jointly, &c. that you cause the said *C.* to come before me, or

For the Peace.

or some other of his Majesties said Justices of Peace in the said County, &c.  
*ut supra*. Given under my Seal at  
 aforesaid, &c.

Another for the Peace.

*To the Constables of, &c. and to either of them.*

**F**Orasmuch as B. A. the wife of W. A. of your said Town, Labourer, *Cambr.* hath required Sureties of the Peace against T. B. of your said Town, Butcher, and wichall hath taken her corporal Oath before me, that she required the same not for any private malice, hatred, or evil will, but simply that she is afraid of her Life, (or the hurting or maiming of her Body, or the burning of her Houses,) These are therefore to will and require you, and in his Majesties name to charge and command you, that immediately upon the sight hereof, you, or one of you, \* require the said T. B. to come before me, or some other of his Majesties Justices within the said County, to find sufficient Sureties, as well for his appearance at the next general Quarter Sessions of the Peace to be holden for this County, as also that the said T. B. shall in the mean time keep his Majesties Peace, as well towards his said Majestie, as towards all people, and especially towards the said B. A. And if he shall refuse so to doe, that then immediately you do convey the said T. B. or cause him to be conveyed, unto the common Gaol at the Castle of *Cambridge*, there to remain until he shall willingly doe the same. And see that you certifie your doings in the premisses to the Justices at the said Sessions; and have you there this Warrant Dated at, &c.

\* See before, tit. Arrest.

*Or thus.*

**F**Orasmuch as B. the wife of W. A. of your said Town hath personally come before me (I. C. Knight, one of the Justices of the Peace for the said County of C.) and hath taken her corporal Oath, that one T. B. of your said Town hath already assaulted, beaten, and bruised her the said B. and farther hath threatned her, in such sort, that she is afraid that the said T. B. will beat, wound, maim, or kill her, or doe her some other bodily harm; and thereupon she the said B. hath prayed Security of the Peace to be had or granted her against the said T. B. These are therefore to will and require you, (&c. *ut supra*) to find sufficient Sureties (or to be bound with two sufficient Sureties) for his personal appearance at the next general Quarter Sessions of the Peace to be holden for this County, then and there to answer the premisses; and in the mean time that he the said T. B. keep the Peace towards our said Sovereign Lord the King, and all his liege people, and especially towards the said B. And if he shall refuse thus to doe, that then, (*ut supra*.)

*A Warrant for the Peace upon a Supplicavit.*

**C**hrisstopher Hatton Knight, one of the Justices of the Peace within the *Cambr.* County of *Cambridge*, to the Sheriff of the said County, the High Constables

Constables of the Hundred of R, the pety Constables of the Town of B, and to all and singular the Kings Majesties Bailiffs and other Ministers, as well within Liberties as without, in the said County, and to every of them, Greeting. Know ye, that I have received the Commandment (or Writ) of our said Sovereign Lord (in these words, reciting the whole Writ of *Supplicavit*; or only reciting the effect of the *Supplicavit*, thus, to compel A.B. of, &c. to find sufficient Suretie for his Majesties Peace by him to be kept towards, &c.) And therefore on the behalf of our said Sovereign Lord I command and charge you, joyntly and severally, that immediately upon the receipt hereof you cause the said A.B. to come before me at my house in *Chevely*, to find sufficient Suretie and Main-prise for the Peace, to be kept towards our said Sovereign Lord, and all his liege people, and especially toward the said C. D: and if the said A.B. shall refuse thus to doe, that then you him safely convey, or cause to be safely conveyed, to his Majesties Gaol at the Castle of *Cambridge*, (or to the next Gaol of his Majestie in the said County) there to remain until that he shall willingly doe the same, so that he may be before the Justices of the Peace of our said Sovereign Lord within the said County, at the next general Sessions of the Peace to be holden for the said County, there to answer to our said Sovereign Lord for his contempt in this behalf. And see that you certifie your doings in the premisses to the said Justices at the said Sessions, bringing then thither this Precept with you. Yeoven at      aforesaid, under my Hand and Seal, the fourth day of, &c.

The Return of this Writ, and Certificate of the Justices doings herein, see here before in the Title of *Surety for the Peace, cap.*

*A Warrant for the Good behaviour.*

*Cambr.* **F**Orasmuch as A. B. of your said Town is not of good name or fame, nor of honest conversation, (but \* an Evil doer, a Rioter, Barretter, and perturbur of the Peace of our said Sovereign Lord) as we are given to understand by the complaint of fundrie credible persons: Therefore on the behalf of our said Sovereign Lord we command you, and every of you, that immediately, &c. you cause the said A.B. to come before us, or some other of our fellow-Justices, to find sufficient Suretie and Main-prise, as well for his Good abearing towards our said Sovereign Lord and all his liege people, until the next Quarter Sessions of the Peace to be holden in the said County, as also for his appearance then and there. And if he shall refuse so to doe, that then, &c. (as in the Warrant for the Peace.)

\* Any one of these is sufficient, or any other like cause: whereof see his cap.

*or thus.*

*Cambr.* **F**Orasmuch as we have been credibly informed that S.W. of your Town, &c. is a man of Evil behaviour, one that daily moveth discord, strife and dissension among his Neighbors, and a common perturbur of his Majesties Peace: These are therefore in the Kings Majesties name to command you, &c.

*A ge-*

*A general Warrant for Misdemeanour.*

**T** *Thomas Chicheley* Esq; one of the Justices, &c. to the Constables of, *Cambr.* &c. and to every of them. These are to will and require you, and in his Majesties name streightly to charge and command you, and either of you, that immediately upon the sight hereof (or upon Monday next by eight of the clock in the fore-noon) you bring *J. H.* of your said Town, Butcher, before me, to answer to such matters of Misdemeanour as on his Majesties behalf shall be objected against him. And hereof fail you not at your perils. Dated at, &c.

*Another for Misdemeanour.*

**T** These are to will and require you, &c. that immediately upon the sight or receipt hereof, you attach the bodies of *A. B.* and *C. D.*, &c. (or of all and every the persons here-under named) and to bring them forth-with before me, to answer unto such matters of Misdemeanour as on his Majesties behalf shall be objected against them. And hereof fail you not at your perils. Dated, &c.

*To attach one for Felony.*

**F**ORASMUCH as complaint hath been made unto me by *C. D.*, that of *Cambr.* late he hath had certain Goods feloniously taken from him, and that he hath in suspicion one *R. G.* of your said Town: These are therefore to will and require you, &c. presently upon the receipt hereof, to attach the body of the said *R. G.* and thereupon to bring him before me, to answer to the premisses. And hereof fail you not at your perils. Dated, &c.

*Another.*

**T** These are to will and require you, &c. presently upon the receipt *Cambr.* hereof, to attach the body of *A. B.* and bring him before me, to answer unto such matters of suspicion of Felony as on his Majesties behalf shall be objected against him. And hereof fail you not at your perils. Dated, &c.

*Another.*

**T** These are to will and require you, &c. to attach, &c. to answer unto the felonious taking of certain Goods, wherewith he is charged by *J. S.* And hereof fail you not, &c.

*To search for stolen Goods.*

**W**HEREAS complaint hath been made unto me by *N. O.*, that of late he hath had feloniously taken from him certain Goods,  
M m and

and that he hath in suspicion divers lewd and evil-disposed persons within your Parish: These are to will, &c. that immediately upon the receipt hereof you make diligent search in all and every such suspected houses and places within your Parish as you and this Complainant shall think convenient: and if upon your said search you find any of the said Goods, or other just cause of suspicion, that then you bring all such suspected persons as you shall so find before me, to answer unto the premises. And hereof fail you not, &c.

*Another.*

*Cambr.* **W**Hereas complaint hath been made unto me *Robert Hatton* Knight, one of the Justices, &c. by *J. S.* of, &c. that upon Monday at night last he had feloniously taken from him certain Goods, [they would be named] and that he is given to understand, that there are divers parcels of such Goods in the hands or houses of certain suspected persons within your Town: These are to will, &c. that you be aiding to and assist the said *J. S.* (the bearer hereof) with your best endeavours, whereby he may the better come to the sight and view of the same Goods, that so he may the better judge or know whether the said Goods, or any of them, are his; and if he shall find the same Goods, or any of them that were stolen from him, or if he shall challenge or claim any of the said Goods in the possession of any of the said suspected persons, that then you do presently attach the bodies of all such suspected persons within whose custody, house, or possession, you or he the said *J. S.* shall so find the same, and them (together with the said Goods) forthwith bring before me, or some other of his Majesties Justices of Peace for this County, to make answer thereto. And hereof fail you not, &c.  
Dated, &c.

*To bind men to give in Evidence.*

*Cambr.* **T**Hese are in the Kings Majesties name to charge and command you, &c. that presently upon the sight hereof, you, or some of you, do cause to come before me (or some other of his Majesties Justices of Peace of this County) the persons hereunder named, to the end that they and every of them may be bound to make their personal appearance at the next general Gaol-delivery (or Quarter Sessions) to be holden for this County, then and there to testify their and every of their knowledges concerning certain felonious acts committed by one *A. B.* now a Prisoner in the Castle of *C.* &c. And hereof fail you not, &c.

*A Warrant for a Search after a Robbery committed,  
directed to the High-Constables.*

**W**Hereas there have been many Robberies lately committed about, &c. Now for the better finding out of the same lewd persons, we whose names are here-under written, being his Majesties Justices of Peace (for the County of *Cambridge*;) have thought good, and

and do hereby will and require you in his Majesties name, That forthwith you direct your Precepts to every petty Constable within your (several) Hundreds, (commanding them) to make search in all Inns, Ale-houses, and other suspected houses within your Precincts, for all such persons as are masterless, out of Service; as also for all idle, vagrant or wandering Rogues, Beggars, or other persons: and farther, that they the said petty Constables within their Precincts do take Examination and account of all those, and such other persons as be common Ale-house-haunters, or which expend their money in riot, or which do not labour for their living, and have not whereon so to maintain them: And that the same Searches be holden all over in your Hundreds in one night, and at such other several times as to your discretion shall seem meet. And if any such persons shall be found in the same Searches, and that upon your or the petty Constables Examination taken of them, or any of them, there shall be found any cause of suspicion in them, or any of them, that then they bring the same persons so suspected before us, or some one of us, or some other of the Justices of the Peace of this County, to be farther examined in the said causes, and to be farther dealt withall according to Law and Justice. And for the better doing hereof, we require you to command in his Majesties name, that every petty Constable within their precinct do require (and charge) two chief discreet Head-boroughs in every Parish, to assist them the petty Constables in this service. And hereof fail you not, &c.

*A Hue and Cry after Robbers, &c.*

*To all Constables and other His Majesties Officers, as well within the County of Cambridge, as elsewhere within the Realm of England.*

**W**Hereas complaint hath been made unto me Vice-chanc. of the University of *Cambridge*, one of his Majesties Justices of Peace within the said County of *Cambridge*, by *J. S.* of, &c. Husband-man, that upon Tuesday at night last (being the      day of this instant *November*) he was robbed of certain Linen taken out of his house, with some \* other things, and that he hath manifest cause of suspicion of one *A. B.* a lewd Rogue, (here describe his personage and apparel:) These are to require you, and every of you, to make search within your several Precincts for the said *A. B.*, and also to make Hue and Cry after him from Town to Town, and from County to County, and that as well by Horse-men as Foot-men: And if you shall find him the said *A. B.*, that then you carry him before some one of the Justices of Peace within the County where he shall be taken, by him to be dealt withall according to Law, &c.

\* They would be named.

*A Warrant for one who hath dangerously hurt another.*

*Cambr.* **F**Orasmuch as I am credibly informed that *I. B.* of your Town, Blacksmith, hath now lately and dangerously hurt one *T. G.* of your said Town, Husbandman, by a blow which he hath given the said *T.* on the face, and another on the back, so as the said *T.* is in danger of death thereby: These are therefore in his Majesties name streightly to charge and command you, that immediately upon the sight hereof you, or one of you, do bring the said *I. B.* before me, or some other of his Majesties Justices of the Peace of this County, to find sufficient Sureties, as well for his appearance before his Majesties Justices at the next general Gaol-delivery to be holden for this County, then and there to answer unto the Premisses, and to doe and receive therefore that which by the Court shall be enjoyned him, as also that he the said *I. B.* shall in the mean time keep the Kings Majesties Peace towards his said Majesty and all his liege people, and especially towards the said *T. G.* And hereof fail you not at your perils. Dated, &c.

*For the reputed Father of a Bastard-child.*

*Cambr.* **W**Hereas complaint hath been made unto me *H. B.* Sergeant at Law, one of his Majesties Justices, &c. by *K. I.* of your said Town, single woman, that she is gotten with child by one *T. S.* also of your said Town, Butcher: These are therefore to will and require you, and in his Majesties name to charge and command you, and either of you, that presently upon the receipt hereof you attach the body of the said *T. S.* and thereupon bring him before me, (or some other of his Majesties Justices of the Peace for this County) to find sufficient Sureties, as well for his appearance at the next general Sessions of the Peace to be holden for this County, as also for his Good behaviour towards his Majesty and all his liege people in the mean time. And hereof fail you not, as you will answer the contrary at your peril. Dated, &c.

*An Order for a Bastard-child.*

*The Order of Sir I. M. Knight and M. D. Esquire, two of the Justices of Peace of the County of C, made for the relief of the Parish of W. in the said County, for the keeping of B. a Bastard-child begotten by T. S. of, &c. on the body of K. I. &c.*

**I**N *primis*, upon the Examination of the said *K.* duly by us taken, we do find that the said *T. S.* is charged to have had divers times bodily and carnal knowledge of her (between such times,) and to be the onely Father of the said Bastard-child, &c. and therefore we do order and adjudge him to be the reputed Father of the said Child.

We do farther order as followeth: First, that the said *K.* shall keep her said Child until it come to 8 years of age.

Secondly, that the said *T. S.* upon notice of this Order, shall, after such notice, pay into the hands of one of the Overseers of the Poor of

*W.*



W (for the time being) after the rate of 00 every week, to be paid monthly every year, towards the relief of the said child, until it comes to 8 years of age.

Thirdly, that after the said child shall come to 8, &c. that the said T. S. pay to the Overseers, &c. 5*li.* toward the putting out of the same child to be Apprentice, &c.

Fourthly, that the said T. S. presently give good Security to one of the Overseers, &c. to perform this our Order.

*Where a Maid-servant is gotten with child, and from thence sent to her place of birth.*

FORasmuch as *J. M.* for the space of \_\_\_\_\_ years now last past hath dwelt in the Parish of *W.* (in the County of *E.*) and being there settled in Service with \_\_\_\_\_ of *W.* aforesaid, was gotten with child, and being so with child, is now sent or conveyed to your Town of *B.* under colour that she was there born, to the burthening of your said Town, and contrary to Law: These are in his Majesties name to charge and command you safely to convey the said *J.* to *W.* aforesaid, there to be set on work, or otherwise to be provided for according to the Law; and that you deliver and leave, or offer to leave, the said *J.* to and with some one of the Church-wardens or Overseers for the poor of the Parish of *W.* aforesaid. And hereof fail you not, &c.

Note, that such Maid-servant cannot be sent from the place where she is (or last was) in Service to the place of her birth, but must set her self to labour where she last dwelt or served, being able of body: or being impotent, she is to be relieved by the Town where she last dwelt or served. See *hic antea, tit. Poor.*

*A Warrant for Overseers to give up their Account.*

*To the High-Constables of the Hundred of, &c.*

THEse are in the Kings Majesties name to charge and command you forth-*Cambr.* with to give warning to the Church-wardens, and other the Overseers of the Poor of every Parish within your Hundred, that they do personally appear before us at *New-market*, at the Sign of the Grey-hound there, upon Tuesday the \_\_\_\_\_ of \_\_\_\_\_ next coming, by nine of the Clock in the forenoon of the same day, to yield up, and to make a true and perfect account in writing, subscribed with their names or marks, of all such summs of money as they have received, or rated and fessed and not received, for and towards the relief of the Poor of their several Parishes, and also of such Stock (to set their Poor on work) as is in their hands, or in the hands of any their said Poor to work, and of all \* other things concerning their said Office: and hereof that they fail not at their and every of their perils. And farther we require you, that you give warning to the pety Constables of every Town within your said Hundred, that they or one of them be also then and there present before us, to inform and certifie us of the names of such other persons as are meet and fitting to be Overseers of the Poor within their several Towns, for this year next ensuing. And hereof fail you not, &c.

\* See what they be in the title Poor,

And this Warrant must be under the hands and seals of two Justices at the least, the one of the *Quorum*. *Vide tit. Poor.*

*A Warrant to new Overseers to take their Charge.*

BY virtue of the Statute made in the three and fortieth year of the Reign of our late Sovereign Lady Queen *Elizabeth*, (intituled, *An Act for the relief of the Poor*) These are to will and require you whose names are hereunder written, that you, together with the Church-wardens of your Parish for the time being, do (according to the same Statute) take order from time to time, for this year to come, for the setting to work of the Poor within your Parish, and for the raising of a convenient Stock of some Ware or Stuff in your Town to that purpose; and for the providing of necessary relief for such as be lame and impotent amongst you; and for the placing, as Apprentices, such Children whose Parents are not able to maintain them: and hereof see that you fail not at your perils. Dated under the hands and seals of us *I. S.* and *I. D.* two of his Majesties Justices of the Peace within the said County of *Cambridge*.

This Warrant must be under the hands and seals of two Justices. *Vide antea, tit. Poor.*

*A Warrant to Distrain such as refuse to pay their Rates for the Poor.*

« But first the Justices shall doe well to send their Warrant for the Offenders to make answer to the Complaint, and after to grant their Warrant, if they find cause. See *hic cap. 2, & 7.*

« Or else the Justices may make their Warrant after this manner.

*To the Church-wardens, and other the Overseers for the Poor within the Parish of W, and every of them.*

*Cambr.* FORasmuch as we are credibly informed, or that it hath been duly proved before us, that the persons hereunder named do refuse to contribute or pay the summs of mony hereunder mentioned, (set upon their heads) being assessed and rated upon them severally, for and towards the necessary relief of the Poor of your said Town, according to the form of the Statute in that behalf lately provided: These are therefore in his Majesties name to charge and command you, and every of you, forthwith to require and cause the said persons (so refusing) to be before us, to shew the cause of their said refusal: And if they or any of them shall refuse to come before us, that then immediately you do levy all and every the said several summs of mony unpaid, and all the arrerages thereof, of all and every the said persons so refusing, by Distress and Sale of the Offenders Goods, you rendring to the parties the overplus that shall remain upon the Sale of the said Goods. And this shall be your sufficient Warrant therein. Dated, &c. *Vide antea, tit. Poor.*

*Another.*

*Another.*

*To the Church-Wardens, &c.*

**T**Hese are in his Majesties name to charge and command you, and every of *Cambr.* you, presently to demand of all and every the persons hereunder named all and every the several summs of mony hereunder severally written, or set upon their heads, being assessed and rated upon them for and towards the necessary relief of the Poor of your said Town, according to the form of the Statute in that behalf lately provided: And if they or any of them shall refuse to pay the said several summs of mony so rated upon them, that then presently you levy the same by Distress and Sale of the Offenders Goods, rendering to the parties the overplus that shall remain upon the Sale of their said Goods, And this shall be your sufficient Warrant therein. Dat', &c.

These two last Warrants must be also under the hands and seals of two Justices, &c.

And in all cases of Distraining and Sale of an Offenders Goods, and rendering the party the overplus, the Appraisalment of such Goods would be made by four of the honest Inhabitants of the Parish where such Goods remain and be, according to the Statute of 3 Jac. cap. 10, in like case.

*A Warrant for a general Search for Rogues.*

*To the High-Constable of the Hundred of, &c.*

**T**Hese are in the Kings Majesties name to charge and command you, *Cambr.* that you, together with the pety Constables of the several Towns, Parishes and Hamlets within your Hundred, (taking sufficient assistance out of the said Towns) do make a general privy search within every of the said several Towns, Parishes and Hamlets, upon at night next coming, for the finding out and apprehending of all Rogues, Vagabonds, and wandring and idle persons, in or about your said several Towns, Parishes, or Hamlets; and that such as shall be found and apprehended, you do cause them to be brought before us the next day unto L. by nine of the clock, there to be by us \* dealt withall according to the late Statute in that behalf provided. At which time and place we farther require you, together with the said pety Constables, to appear before us, and there to give an account and reckoning upon Oath, in writing, and under the hands of the Minister of every several Parish within your Hundred, what Rogues, Vagabonds, wandring and disordered persons have been there apprehended, as well in the same search, as also since the last Assembly and Meeting that was made for this purpose, being upon or about the day of last past. And hereof fail you not, &c.

\* What the Just. shall doe with them, see *infra.*

See the title of Rogues.

Note, that all Rogues which shall be brought before the Justices upon such search (after Examination of their idle life taken by the Justices) are either to be whipped by the Constables of the Town where the Justices sit, (as it seemeth,) or rather the Constables of the Town where the Justices

*sit*

fit may procure some other to inflict the punishment of Whipping of all such Rogues as are brought thither; and the Constables that brought those Rogues from other Towns, to contribute and give content to such persons as shall whip them; or else such Rogues are from thence to be sent to the House of Correction, and to be conveyed thither by the Constables that brought them, and yet at the charge of the Hundred: which services imposed upon the Constables are some cause of their neglect of this Service; and therefore I have set down another course and Precedent, perhaps no less serviceable, which also may be performed and done every month, or every Meeting of the Justices, if need shall so require: or if the Justices cannot, or shall not meet, yet, it seemeth, such Warrant may be granted out by any Justice of Peace as followeth.

*Cambr.*

These are in the Kings Majesties name to charge and command you, that you, together with the pety Constables of the severall Towns, Parishes and Hamlets within your Hundred, (taking sufficient assistance out of the said Towns) do make a general privy search within every of the said severall Towns, Parishes and Hamlets, upon at night next coming, for the finding out and apprehending of all Rogues, Vagabonds, and wandering and idle persons, in or about your said severall Towns; and that such as shall be found and apprehended, you do cause them to be punished in every severall Town or Parish where they shall be so apprehended, by the pety Constables of every severall Parish respectively, and by them also farther to be conveyed according to the Statute: And if any of the said Rogues shall appear to be dangerous or incorrigible, that then you cause such to be brought before me, or any other of his Majesties Justices of the Peace of this Division, to be farther dealt withall according to the Statute in such cases provided. Dated, &c.

Afterwards any one of these Justices may take the Examination of, or proof against, such dangerous Rogue, and finding cause, (*sc.* finding that he hath offered any violence, or used any threatening speeches, « or other like misdemeanor towards any person; or that he hath been « formerly punished, and sent home; or that he affirms untruly where he « was born, or will not be known, or knows not where he was born, or « last dwelt; for then it is apparent that he hath been and continued <sup>39 El. 8.</sup> « a Rogue of a long time) in every such case the Justice may then join with <sup>Jac. 7.</sup> « any other Justice of Peace of that Limit, being of the *Quorum*, and <sup>P. Vag. 4.</sup> « commit such Rogue to the House of Correction or Gaol, as an incorrigible Rogue, although the said two Justices shall not meet together about it.

*A Warrant for a Fugitive Servant.*

*To the Sheriff of, &c.*

Whereas *I. E.*, being lawfully retained in Service with *N. A.* of, &c. is departed from his said Master's Service before the end of his term, without his Master's leave or licence, (or without any reasonable cause) contrary to the Laws and Statutes of this

this Realm in this behalf provided: These are therefore to command you, and every of you, that you, or some one of you, do attach the body of the said *I. E.*, and bring him before, me (or some other Justice of Peace, &c.) to find sufficient Sureties, well and faithfully to serve his said Master, according to the Covenant between them made: and if he shall refuse thus to doe, that then you cause him to be conveyed safely to the common Gaol, &c. (as before, in a Warrant for the Peace.) Given under the Hand of me *T. S.* one of his Majesties Justices of Peace within the said County.

Or thus; That the said *I. E.* to his said Master to serve again you do cause to be delivered: and if that to doe he shall refuse, that then you cause him to be conveyed to the Gaol, &c.

#### A Warrant for one refusing to Serve.

Crompt.  
288.

**M**ichael Dalton *Armig' unus magistr. Cur. Capcellar. & unus Just. &c. Cambr.*  
*R. L. Ballivo de S. in Com. prad. salut. Ex parte dicti Dom. Reg. tibi mando, quod attachies R. A. de S. prad. Labourer, ita quod eum habeas coram me vel sociis meis Just. dicti Dom. Regis ad Pacem in Com. prad. conservand', necnon ad divers. Felonia, Transgress. aliâque malefacta in eodem Com. audiend' & term' assign', ad prox. general. Sess. Pacis in Com. prad. tenend', ad respond. tam dicto Dom. Regi, quàm B. C. de A. &c. Yeoman, quare ipse prad. R. A. licet in servitio congruo pro statu suo per præs. B. C. fuit sapius requisit. ei servire, ipsi tamen B. C. servire penitus recus', in contempt. dicti Dom. Regis & ipsius B. C. grave dampnum, & contra formam Statut. de servientibus nuper edit. & provisi. Et habeas ibi tunc hoc Mandat. Teste, &c.*

And yet see the Statute 5 *El. cap. 4.* whereby the departure of a Servant, and refusing to serve, &c. are referred to two Justices of Peace, by them to be first examined, and then the Offenders to be committed, if they be faulty therein. See *antea, tit. Labourers, and Warrants.*

#### For Ale-house-keepers to renew their Recognizances.

**J**ohn St. George Esquire, one of the Kings Majesties Justices, &c.  
 These are in the Kings Majesties name to require you, that you direct your Precepts to every pety Constable within your Hundred, requiring them, that they warn all Ale-house-keepers and Victuallers in their several Towns within your said Hundred, to be and personally to appear before us at *Linton* upon Thursday, &c. then and thither bringing with them their former Licences: farther, that every of them bring with them a Certificate of their fittest and honest behaviour in keeping of their Ale-houses and Victualling-houses, under the Hands of four at the least of the most substantial, honest and discreet Inhabitants of the Parishes where they so keep or dwell. And hereof fail you not, &c.

*A Warrant for the suppressing of an Ale-house.*

Cambr.

*T*albot *Pepis* and *Isaac Barrow* Esquires, two of the Kings Majesties Justices of Peace within the said County of *Cambridge*, to the Constables of *B*, and either of them, Greeting. Whereas we are credibly informed, that *R. D.* of your Town, Victualler, is himself a man of evil behaviour, and besides doth suffer evil rule and disorder to be kept in his house, contrary to the Laws and Statutes of this Realm: These are therefore to will and command you forthwith to repair to the house of the said *R. D.*, and to charge him to surcease from keeping any longer any Ale-house or Tippling-house, and from common selling of Ale or Beer, at his peril; and withall that you cause his Sign to be pulled down. Hereof fail you not, as you and either of you will answer to the contrary at your peril. Given under our Hands and Seals at *B.* the                      day of                      and in the year of our most gracious Sovereign Lord *Charles*, &c.

*A Warrant to levie money forfeited by Ale-house-haunters.*

Cambr.

*John Gill* Esq; , one of the Kings Majesties Justices of the Peace within the said County of *Cambridge*, to the Constables and Churchwardens of the Parish of *W*, and to every of them, Greeting.

Forasmuch as it hath been duely proved before me, according to the Statute in that behalf provided, that all and every the persons hereunder named, being Inhabitants within your Parish of *W*, upon the twelfth day of this instant Moneth of *November* have been and continued drinking and tippling in the house of *G. W.* of your said Town (Inne-keeper, or Ale-house-keeper) contrary to the form of the same Statute: These are therefore in his Majesties name to charge and command you, and every of you, forthwith to levy by Distress and sale of the Goods of every the said persons hereunder named the sum of three shillings and four pence apiece, if they shall refuse or neglect forthwith to pay the same; (which several Forfeitures shall be bestowed and imployed by you to the use of the poor of your said Parish) and that you render to every of the said Offenders the overplus that shall remain upon your sale of their said goods: and if the said Offenders, or any of them, shall refuse or neglect to pay their said several Forfeitures, and that you can find no sufficient Distress whereon to levie the same, that then you the Constables, or one of you, shall commit every such Offender or Offenders (refusing or neglecting to pay the said summe or Forfeiture, and not having sufficient whereon to be distrained for the same) to the Stocks, there to remain by the space of four hours. And this shall be your sufficient Warrant herein. Dated, &c.

But before the Justice of Peace shall grant these two last Warrants, or the like, he shall doe well first to send for the Offenders, and to examine them of the Offence, &c. See *hic cap. 2. & 7.*

*A Warrant*

*A Warrant to convene all Victuallers, &c. to put in Sureties for observing Fish-days, according to the Proclamation.*

*To the High-Constables of the Hundred of Radfield, and to either of them.*

**T**Hese are in the Kings Majesties name to command you to warn all the Inne-holders, Taveiners, Cooks, Ale-house-keepers, Butchers, and other Victuallers whatsoever within your Hundred, personally to appear before us at *Linton* upon Thursday, being the twentieth day of this instant *February*, at the sign of the *Griffin* there; and to bring with them Sureties that shall enter into Bond with them, to his Majesties use, for the due observation of the Orders lately published for the restraint of killing, dressing, and eating of Flesh in Lent, or upon Fish-days, according to his Majesties Proclamation in that behalf; and that you, or one of you, be then and there with us, to deliver us a note in writing of the names, surnames, and dwelling-places of every of them, and of all other that victual without Licence within your Hundred, as you will answer the contrary at your perils. Dated at *West-Wrattin* the first day of *February*, &c.

*Against Ale-house-keepers.*

**A**Lso a Warrant (like unto the last but one) may be made to levie the Forfeiture of Inne-keepers or Ale-house-keepers, for suffering Townsmen or others to continue drinking in their house, or for selling lesse then one quart of their best Beer or Ale for 1.d. saving that the Distresse taken of such Inne-keepers and Ale-house-keepers is not to be sold till after six days; and then, for default of satisfaction, the same are presently to be apprifed and sold, and therefore such Warrant must herein be made accordingly. See 1 *Fac. cap. 9. P. 7, 8.*

*To levie the Forfeiture for not keeping the Assize, &c.*

**T**homas Tirrel Esq; one of the Kings Majesties Justices, &c. Forasmuch as it hath been duly proved before me (according to the Statute in such case provided) that *G. W.* of your said Town, Ale-house-keeper, hath lately uttered or sold (in his house) lesse then one full Ale-quart of the best Beer for one peny, contrary to the form of the same Statute: These are therefore in his Majesties name to charge and command you, forthwith to levie, by distresse of the goods of the said *G. W.* the summe of twenty shillings, the same to be bestowed and imployed by you to the use of the poor of your Parish: and if the said *G. W.* within six days next after such Distresse by you taken shall not pay the said xx. s. that then you cause the said Distresse presently to be prifed and sold, and the over-plus that shall remain upon your said sale of the said goods, that you render the same over-plus to the said *G. W.* And this shall be your sufficient Warrant herein. Dated, &c.

Before

Before the Justice shall grant out these two last Warrants, he shall doe well also first to hear and examine the Offenders.

A Warrant for the removing of a pety Constable, and for the swearing of another.

*Cantab.* CAROLUS, Dei gratia, &c. Vicecom. Cantabr', necnon capitali Constabul. Hundredi de R, & eorum cuilibet, salut. Quia W. P. & R. S. Subconstab. villa de C. & K, (certis de causis nos movent.) ab officio suo amoveri & exonerari fecimus; Ideo vobis & cuilibet vestrum, conjunctim & divisim, precipimus & mandamus, quod I. F. & R. M. ad omnia & singula eidem officio incumbencia bene & fideliter exercenda & exequenda (prout ipsi nobis inde respondere voluerint) jurare faciatis: dictis W. P. & R. S. similiter injungentes, quod ipsi de dicto officio ulterius exercendo & exequendo nullatenus se intromittant, quousque aliud de nobis habuerint mandatum. Et quicquid inde feceritis, Justiciariis nostris ad Pacem nostram in dicto Com. conservand. assign. ad prox. general. Sessionem Pacis apud C. in dicto Com. tenend. certificetis, hoc Præceptum nostrum tunc & ibidem remittentes. Teste Roberto Lawrence Armig', uno Justic. nostrorum prædict', tali die, &c.

You shall find this former Precedent in *M. Lamb.* But upon such Warrant, *quare* who shall give the Oath to the new Constables, whether the High Sherif, or High Constable that shall execute such Warrant, or the Justice of Peace that granted out such Warrant. Lam. yy 3.

But for this authority of removing pety Constables, and of chusing and swearing new, it is reputed properly to belong to the Leet, (it being one of the ancientest Courts in the Realm, *Br. Leet* 14.) And if the new-Elect be not present at the Leet to take his Oath accordingly, then upon Certificate or notice thereof to any Justice of Peace of that County, the Justice doth use to send his Warrant for the parties so chosen, and to give them their Oath. *Vide hic cap. 18.*

Also in default of the Leet, or otherwise, where there shall be just cause to remove a pety Constable for his insufficiency, or for any misdemeanor, or other cause, every Justice of Peace, *ex officio*, (as it seemeth) may remove the old Constables, and may chuse and swear new: which also we see to be warranted by common experience. See *Lamb.* of the Duties of Constables, pag. 19.

And I have seen some Precedents to such purpose, as followeth.

*To our loving friend A. B. of W. Yeoman.*

THESE are in his Majesties name to charge and command you to make your repair unto us, or to some other Justice of Peace of this County, to take the Oath of a Constable to serve His Majestie within the Town of *W.* (\* according to the choice made of you by the Jury at the last Leet holden in your Town.) And hereof fail you not. Dated under the Hands of us *M. N.* and *N. O.* Esquires, two of his Majesties Justices of Peace, &c.

\* If they were not chosen at the Leet, this clause is to be left out.

*The*



*The form of the Oath concerning the Office of a Constable.*

**Y**OU shall swear, that you shall well and truly serve our Sovereign Lord the King in the Office of a Constable: You shall see and cause his Majesties Peace to be well and duly kept and preserved, according to your power: You shall arrest all such persons as in your sight and presence shall ride or go armed offensively, or shall commit or make any Riot, Affray, or other breach of his Majesties Peace: You shall doe your best endeavour (upon complaint to you made) to apprehend all Felons, Barretters, and Rioters, or persons riotously assembled; and if any such Offenders shall make resistance, (with force) you shall levie Hue and Cry, and shall pursue them until they be taken: You shall doe your best endeavour that the Watch in and about your Town be duly kept for the apprehending of Rogues, Vagabonds, Night-walkers, Eaves-droppers, Scouts, and other suspected persons, and of such as go armed, and the like; and that Hue and Cries be duly raised, and pursued, according to the Statute of *Winchester*; against Murtherers, Thieves and other Felons; and that the Statutes made for the punishment of Rogues and Vagabonds, and such other idle persons, coming within your bounds and limits, be duly put in execution: You shall have a watchful eye to such persons as shall maintain or keep any common house or place where any unlawful Game is or shall be used; as also to such as shall frequent or use such places, or shall use or exercise any unlawful Games there, or elsewhere, contrary to the Statutes. At your Assises, Sessions of the Peace, or Leet, you shall present all and every the Offences done, contrary to the Statutes made (*1 Jacobi*, *4 Jacobi*, and *21 Jacobi Regis*) to restrain the inordinate haunting and tippling in Inns, Ale-houses, and other Victualling-houses, and for suppressing of Drunkenness: you shall there likewise true Presentment make of all Bloud-sheddings, Affrays, Out-cries, Rescous, and other Offences committed or done against the Kings Majesties Peace, within your limits. You shall once every year, during your Office, present at the Quarter Sessions all Popish Recusants within your Parish, and their Children above 9. and their Servants, (*sc.* their monethly absence from the Church) *3 Jac. 4.* And you shall have a care for the maintenance of Archery, according to the Statute. You shall well and duly execute all Precepts and Warrants to you directed from the Justices of Peace of this County, or higher Officers: you shall be aiding to your neighbours against unlawful Purveyances: in time of Hay or Corn-harvest, upon request, you shall cause all persons meet to serve by the day for the Mowing, Reaping, or getting in of Corn or Hay: you shall in Easter-week cause your Parishioners to chuse Surveyors for the mending of the High-ways in your Parish: you shall have a care that the Malt made, or put to sale in your Town, be well and sufficiently made, trodden, formed and dressed. And you shall well and duly according to your knowledge, power and ability, doe and execute all other things belonging to the Office of a Constable, so long as you shall continue in this Office. *So help you God.*

This Oath I have set down the more largely, whereby to shew the principal matters whereof the Constables are chiefly to have care,

*The form of a Superfedeas by a Justice of Peace.* CHAP. CXXXIII.

*Cambr.*

**R**ichard Love, Doctor of Divinity, and Vice-Chancellor of the University of *Cambridge*, one of the Justices of Peace of our Sovereign Lord the Kings Majesty within the County of *Cambridge*, to the Sheriff, Bailiffs, Constables, and other the faithful Ministers of our Sovereign Lord within the said County, and to every of them, sendeth greeting. Forasmuch as *A. B.* of, &c. Yeoman, hath personally come before me at &c. and hath found sufficient Surety, that \* is to say, *C. D.* \* The *Superfedeas* is good, though it name neither the Sureties nor the Summ. and *E. F.* &c. Yeomen, either of the which hath undertaken for the said *A. B.* under the pain of twenty pounds, and he the said *A. B.* hath undertaken for himself under the pain of forty pounds, that he the said *A. B.* shall well and truly keep the Peace toward our Sovereign Lord and all his liege people, and especially towards *G. H.* of, &c. Yeoman, and also that he shall personally appear before the Just. of the Peace of our said Sovereign Lord, at the next general Sessions of the Peace to be holden for this County of *Cambridge*: Therefore on the behalf of our said Sovereign Lord I command you, and every of you, that you utterly forbear and surcease to arrest, take, imprison, or otherwise by any means (for the said occasion) to molest the said *A. B.*: and if you have (for the said occasion, and none other) taken or imprisoned him, that then you do cause him to be delivered and set at liberty without farther delay. Yeoven at *Cambridge* aforesaid, under my Seal, this last day of *July*, &c.

*Alias.*

**H**enicus Bing *Serviens ad Legem, unus Justic. Domini Regis, &c. Vic. ac omnibus & singulis Ballivis, Ministris, & fidelibus dicti Domini Regis in eodem Com', & eorum cuilibet, salutem. Quia J. S. suffic. Secur. de Pace (& de bonogestu suo) erga dict. Dom. Regem, & precipue erga W. T., coram me invenit; Ideo ex parte dicti Domini Regis vobis & cuilibet vestrum mando & precipio, firmiter injungens, quod de ipso J. S. pro hujusmodi Secur. Pacis inveniend. cap. sive arrestand. omnino supersed', & si ipsum J. S. ea occasione ceperitis sive imprisonaver', tunc eum deliberar. fac', si ipse ea occasione, & non alia, detineatur. Teste, &c.*

If the Prisoner be in the Gaol, see another form, *hic postea, tit. Liberate.*

Note that such *Superfedeas* is good, though it name neither the Sureties nor the summs wherein they are bound; but yet it is the better form to express them both, for then if it shall appear that the Sureties are not sufficient men, or not bound in sufficient summs, better Sureties may be taken: And accordingly all the *Superfedeas* issuing out of the Chancery, Kings Bench, and Court of Common Pleas, do rehearse the names of the Sureties and the summs; and those things which the higher Courts do use, are the Rules and Orders for others to follow, &c. 2 *H. 7. fol. 1. Fitz. Superfed. 4.*

The

The form of a *Superfedeas* (by a Justice of Peace) upon a Writ of *Supplicavit* against an Infant.

**S**Amuel Collins, *Sacra Theologia Doctor, unus Justic. Dom. Reg. nunc ad Cantab. Pacem in Com. præd. conservand. assignat. Vicecom. ejusdem Com., ac omnibus & singul. Ballivis, Constabular., caterisque dicti Dom. Regis Ministris, tam infra Libertates quàm extra, in Com. præd. salutem. Sciatis quòd Breve dicti Dom. Reg. recepi in hac verba; CAROLUS, &c. (reciting here all the Writ verbatim) Et quia J. B. de, &c. J. S. de, &c. & præfat. C. A. coram me præf. Samuele Collins personaliter comparuer', & prædict. J. B. & J. S. manuceper. pro dicto C. A. qui infra etatem 21 ann. existit, viz. quilibet Manucaptor. præd. in 20 li. quas recognover. se debere dicti Dom. Regi, ac concess. de terris & tenementis, bonis & catallis suis, ad opus dicti Dom. Reg. levand', viz. quòd præd. C. A. dampnum vel malum aliq. alicui de populo dicti Dom. Reg. de corpore suo vel de incendio domorum suarum non faciet, nec fieri procurabit quovis modo: Ideo ex parte dicti Dom. Reg. vobis & cuilibet vestrum mando, quòd de coarctand. aut attachiand. dictum C. A. ad aliquam Securitatem Pacis per ipsum gerend. erga dictum Dom. Reg. & cunctum popul. suum, seu aliquem de eodem populo suo, coram vobis, seu aliquo vestr', inveniend', super sed', seu super sed. fac. omnino. Et si ipsum C. A. occasione præd. & non aliâ ceperitis, seu capi mander', & in prisona ipsius Dom. Regis sub custodia vestra detinueritis, tunc ipsum à prisona in qua detinetur sine dilatione deliber. fac', seu unus vestr' deliberari fac'. Teste me præfat. Sam. Collins, 22 die Nov. anno regni dicti Dom. Reg. &c.*

*Alias.*

**H**enricus Smith, *Sacra Theologia Doctor, &c. unus Just. Domini Reg. Cantab. &c. Vic. Com. præd., necnon omnibus Constabulariis, Ball., ac aliis Ministris dicti Dom. Regis, & eorum cuilibet, salutem. Sciatis, quòd Mandat. (aut Breve) Dom. Regis in hac verba recepi; CAROLUS Dei gratiâ, &c. (reciting all the Writ) Et quia J. B. de, &c. & J. S. de, &c. & præd. T. C. coram me præf. H. S. personaliter comp', & præd. J. B. & J. S. pro præd. T. C. manuceper', quilibet Manucapt. præd. sub pæna xx. li. & præd. T. C. pro seipso assumpsit sub pæna xl. li. de terris & catallis suis ad opus dicti Dom. Reg. levand': Ideo, &c. quòd præd. T. C. dampnum vel malum, &c. ut suprà.*

*A Superfedeas for the Good behaviour.*

Crompt.  
237.

**N**ote, that upon good Sureties taken, (for the Good behaviour) a *Superfedeas* of the Good behaviour may be granted, as for the Peace, *mutatis mutandis*.

Note also, that a *Superfedeas de Capias indictatum de Transgression*, and so of an *Exigent*, may be granted by the Justice of Peace out of Sessions: For otherwise it were mischievous for the party, as well by reason of his Imprisonment, as also for that he may be Out-lawed before the

N n 2

Sessions,

Sessions, if the Justice of Peace might not take Sureties of him for his appearance; and all is but to appear to answer to the Indictment.

And M. *Crompton* is of opinion, that these may be granted by any one Justice of Peace; with whom agreeth the *Book of Entries*. But M. *Lambert* thinketh it not in the lawful power of any one Justice of Peace to grant such *Superfedeas* at this day, but that it must be done by two Justices at the least, and the one being of the *Quorum*; nevertheless, for that I find the old Precedents to run in the name of one Justice of Peace alone, I have drawn these accordingly, perswading notwithstanding the joyning of two Justices herein, and the one of the *Quorum*, if they may conveniently.

<sup>234.</sup>  
hic 275. Li.  
Intr. 601.  
Lamb. 508

#### A Superfedeas de Capias indictatum de Transgress.

*Cantabr.* **T** Thomas Bambridge, *Sacra Theologia Doctor, unus Just. Dom. Reg. nunc ad Pacem in Com. præd. conservand', nec non ad divers. Felon', Trans', &c. in eod. Com. audiend' & termin', assign', Vic. Com. præd. salut. Quia C. D. de A. in Com. tuo, Yeoman, venit coram me, & inven. suffic. Manucaptores essendi coram Just. dict. Dom. Regis ad Pacem in Com. præd. conservand', nec non ad divers. Felon', &c. in dict. Com. audiend' & terminand', assign', ad generalem Session. Pacis apud C. in Com. præd. prox. die tenend', ad respond. dict. Dom. Regi de quibusdam transgr. contemp. & offensis unde indict. existit: Ideo ex parte dicti Dom. Regis tibi præcipio, quod de capiend. præf. C. D. seu ipsum imprison', aut eum ea ex causa aliquant. molest', omnino supersed': & si eum ea ex causa, & non alia, ceperis, tunc ipsum sine dilatione deliber. facias. Teste me, &c.*

Alias, quia invenit Plegios pro Fine.

*Cantabr.* **T** Thomas Wilson, *Sacra Theologia Doctor, unus Just. dict. Dom. Reg. ad Pacem in Com. præd. conservand', nec non ad divers. Fel. Transf. & alia malefacta in eod. Com. audiend' & terminand', assign', Vic. Com. præd', ac omnibus & singulis Ballivis, Constabul', caterisq; dicti Dom. Regis Ministris, tam infra Libertates quàm extra, in Com. præd. salutem. Licet nuper per Breve (vel Præceptum) dicti Domini Regis vobis seu uni vestram præceptum fuit, quod caperetis, seu unus vestrum caperet, A. B. de S. in Comit. præd. Yeoman, si inventus fuerit in eodem, & ipsum salvo custod', ita quod haberetis, seu unus vestrum haberet, corpus ejus coram Custodibus Pacis ac Justiciar. dicti Domini Regis ad Pacem in Com. præd', nec non ad divers. Felonias, Transgres. & alia malefacta in eodem Comit. audiend' & terminand', assignat', apud Cantabr. tali die, ad respondend. dicto Dom. Regi de contempt. & transgres. unde coram dictis Just. indictatus existit: Quia modo prædictus A. B. venit coram me, & inven. sufficient. Plegios pro Fine suo cum dict. Dom. Rege pro præmis. faciend': Ideo ex parte dicti Dom. Regis vobis conjunctim & divis. mando, quod ad executionem Brevis prædict. ulterius fac. supersed. omnino. Et si ipsum A. B. eâ occasione, & non aliâ, ceperitis, & in prisona dict. Dom. Regis detinneritis, tunc ipsum sine dilatione ab eadem deliber. faciat', seu unus vestrum delib. faciat: & habeatis, seu unus vestrum habeat, hoc Præceptum ad Sessiones præd. Dat. die Augusti, anno Regni, &c.*

<sup>234.</sup>

Super-

## Superfedeas de Capias pro Fine.

Crom. 234 **J**ohannes St-George Armiger, unus Justic' Dom. Regis nunc ad Pacem in Cantab. Com. præd. conservand. assign', Vic. Com. præd. salutem. Quia C. D. de A. in dict. Com. Yeoman venit coram me, & inven. sufficient. Manncapt. essendi ad proximam generalem Sess. Pacis in Comit. præd. tenend', ad faciend. Finem cum dicto Dom. Rege pro quibusdam transgr', contempt. & offensis unde indictatus existit: Ideo tibi præcipio, quod de capiend. præf. C. D. imprisonand', seu ipsum eâ occasione aliqualit. molestand', omnino supersed': & habeas ibi tunc hoc Præceptum. Teste me, &c.

## Superfedeas de Capias indictat' de Felonia.

Crom. 234 **T**Albot Pepis Armig', unus Justiciar. Dom. Regis nunc ad Pacem in Cantabr. Com. præd. conservand. assign', Vic. Comit. præd', necnon omnibus & singulis Ballivis, Constabul', caterisque dicti Domini Regis Ministris, tam infra Libertates quàm extra, in dict. Com. salut. Quia A. B. de C. in Com. præd. Husbandman venit coram me, & inven. sufficient. Secur. essendi coram Justic. dicti Dom. Regis ad Pacem in Com. præd. conserv', necnon ad divers. Felonias, Transgr', & alia malefacta in eodem Com. audiend. & terminand', assign', ad prox. general. Sess. Pacis in Com. præd. tenend', ad respond. dict. Dom. Regi de divers. Felon. & Transgr. unde coram eis indict. existit: Ideo ex parte dicti Dom. Reg. vobis & cuilibet vestrum mando, quod de capiend. præd. A. B. ea ex causa supers. omnino, & si eum eâ occasione, & non aliâ, ceperitis seu impris', tunc ipsum sine dilatione deliber. faciat. Dat', &c.

## Superfedeas de Exig. fac. de Felonia.

**C**AROLUS, &c. Vic. Com. Cantabr. salutem. Quia C. D. de A. in Com. Cantabr. tuo Yeoman venit coram E. F. &c. & invenit sufficien. Manncaption. essendi coram Custod. Pacis nostræ (ac Just. nostris ad diversas Felon', &c.) ad general. Sess. Pacis nostræ apud C. tali die tenend', ad respondend. nobis de quibusdam Feloniis unde indictatus est: Ideo tibi præcipimus, quod de ulterius exigend. præfat. C. D. ad aliqu. Comit. tuum, vel imprisonand', sive ipsum eâ occasione aliqualiter molestand', omnino supersed': & habeas ibi tunc hoc Breve. Teste Willielmo Marche apud H. tali die & anno.

## Superfedeas ad deliberand. Prisonar. capt. pro transgress. vel simil.

**M**. D. Arm', Justic', &c. Constabul. Villa de B, necnon Custodi Gaole dicti Domini Regis in Com. præd', salutem. Quia W. C. de B. Labourer venit coram me, & invenit suffic' Securitat. essendi coram Justic' dicti Domini Regis ad proxim. generalem Sess. Pacis in Com. prædict. tenend', ad respond. tam Domino Regi quàm B. C. de quibusdam transgress. seu contemptibus, &c. per ipsum perpetratis: Ideo vobis & cuilibet vestrum mando, quod prædict. W. C. à custodia vestra sine dilatione deliberari faciatis, & alio mandato meo inde direct. interim supersedeat

*Et hoc Mandatum meum erit vobis & cuilibet vestrum Warrant. Datum apud West-Wrattin tali die, &c.*

Recognizances. CHAP. CXXXIV.

A single Recognizance taken before Justices of the Peace.

*Cantab.* **M**emorand. quòd die anno Regni Domini nostri Caroli, Dei gratiâ, Angliæ, Scotiæ, Fran. & Hib. Regis, Fidei Defensoris, &c. venerunt coram Mi. Dalton & Isaac Barrow Armiger', Justiciar. dicti Domini Regis ad Pacem in Com. C. conservand. assignat', I. S. de B. in Comitatu præd. Yeoman, & W. S. de eadem Weaver, ac R. D. de S. in Comitatu præd. Tailor, & recognover. se debere dicto Domino Regi, viz. quilibet Manucept. præd. quinque libr', & præd. I. S. decem libr. bonæ & legalis monete Angliæ, (solvend. eidem Dom. Regi in Festo Purificationis beate Mariæ Virginis proxim. futur. post dat. præsent.) Et nisi fecerint, concesserunt pro se, Hæred', Executor. & Administ. suis per præsent. quòd dictæ separales summe levent. & recuperent. de maneriis, mesuagiis, terr', tenement', bonis, catallis, & hæreditament. ipsor. I. S. W. S. & R. D. Hæred', Executor. & Assign. suor', ubicunque fuerint invent. Dat', &c.

Another single Recognizance.

*Cantabr.* **M**emorand. quòd die anno Regni Domini nostri Caroli, Dei grat', &c. D. E. de Balsam in Com. præd. Yeoman personalit. venit coram me Mi. Dalton Armig', uno Just. dicti Dom. Regis ad Pacem in Com. præd. conservand. assign', & recogn. se debere dicto Dom. Regi 10. li. bonæ & legal. monete Angl. (de bonis & catallis, terr. & tenement. suis fieri & levari, ad opus dicti Dom. Regis, Hæred. & Successorum suor') si defecerit in Conditione indorsata.

Alias.

*Cantabr.* **M**emorand. quòd die an. Regni, &c. vener. coram me M. D. uno Just', &c. assign', T. H. de West-Wratt. in Com. præd. Yeoman, & I. S. de eisdem Vil. & Com. Husbandman, & manuceper', & uterque eor. separatim manucepit, sub pæna 5. li. legalis monete Angliæ, pro W. St. de W. præd' Tailor, \* & præd' W. St. assumpt. pro seipso sub pæna 10. li. consimilis monete Angl', quas quidem separales summas recognover', & quilibet eorum, ut prædicitur, recognovit se debere dicto Dom. Regi, de terris & tenement', bonis & catallis suis fieri, &c. si præd. W. St. defecerit in perform. Condit. introscript.

If the party to be bound be within age, then shall he be bound by Sureties onely, (but he himself shall not be bound) and then shall the Recognizance be ut supra to this mark, (\*) and then as followeth: *Qui infra ætatem xxi. annorum existit. Quas quidem separales summas recognover', & uterque eorum, ut prædicitur, recognovit se debere, &c. ut supra.*

A Recogni-

## A Recognizance for the Peace.

**M**emorand. quòd die anno regni Dom. nostri Caroli, Dei gra', &c. R. P. de E. in Com. præd. Yeoman in propria persona sua venit coram me Tho. Tirrel Armig', uno Just. dicti Dom. Reg. ad Pacem in dicto Com. conservand. assign', & assumpsit pro seipso sub pœna 20. li. & H. I. de L. in Com. præd. Yeoman, & N. N. de, &c. & P. Q. de, &c. Husbandmen, tunc & ibid. in propriis personis suis similiter vener', & manuceperunt pro præd. R. P. viz. quilibet eor. separat. sub pœna 100 s. quòd idem R. P. personalit. comparebit coram Just. dicti Dom. Reg. ad Pacem, ad prox. general. Sessionem Pacis in Com. præd. tenend', ad faciend. & recipiend. quod ei per Curiam tunc & ibid. injungetur; & quòd ipse interim Pacem dicti Dom. Regis custodiet erga ipsum Dom. Reg. & cunct. popul. suum, & præcipue versus M. N. de præd. Yeoman, & quòd dampnum vel malum aliq. corporale aut gravamen præf. M. N. aut aliqui de populo dicti Dom. Regis, quod in lasionem aut perturbationem Pacis ipsius Domini Regis seu præf. M. cedere valeat quovis modo, non faciet, nec fieri procurabit. Quam quidem sum. viginti lib. præd. R. P. & quilibet Manucapt. præd. prædictas separales summas cent. solid. recognover. se debere dicto Dom. Regi, de terris & tenementis, bonis & catallis suis quorumlibet & cujuslibet eor. ad opus dicti Dom. Regis, Hæred. & Successor. suor', fieri & levari, (ad quorumcunque manus devenerint) si contigerit ipsam R. P. præmissa vel eorum aliquod in aliquo infringere, & inde legitimo modo convinci. In cujus rei testimon. ego prædictus Tho. Tirrel sigillum meum apposui. Dat. apud, &c.

Li. Intr.  
493.

And if the Justice shall onely subscribe his name to the Recognizance without his Seal, it is well enough; and so is the usual course and form with us, and that in either of these sorts; *sc. Recognit. coram me, R. Th.* or onely to subscribe the Justices name, thus, *R. Th.*

## Or thus for the Peace.

**M**emorandum, quòd die, &c. A. B. de &c. & C. D. de eadem Cantabr. Yeoman, venerunt coram me Johanne Layer Armig', uno Justic', &c. & manuceperunt pro I. S. nuper de L, &c. quòd ipse personaliter comparebit coram me præfato Johanne Layer & sociis meis Justiciar. Pacis Domini Regis ad proximam generalem Session, &c. & quòd ipse interim geret pacem erga cunctum populum Domini Regis, & præcipue erga R. B, &c. viz. quilibet Manucaptorum prædictorum sub pœna viginti librar. Et prædictus I. S. assumpsit, ut supra, pro seipso sub pœna quadragint' librar. Quam quidem summam quadragint. libr. præd. I. S. & quilibet Manucaptorum præd. dict. summam viginti librar. recognoverunt, &c. ut supra.

And this may be well done also by a single Recognizance in Latin, *ut supra*, with a Condition added or indorsed in English, for the keeping of the Peace, and for the day and place of the parties appearance at the Quarter Sessions, as followeth.

A Con-

*A Condition to keep the Peace.*

**T**HE Condition of this Recognizance is such; That if the within-bounded *I. S.* shall personally appear before the Justices of our said Sovereign Lord the King at the next general Sessions of the Peace to be holden in the said County of *Cambridge*, to answer to such matters as shall be objected against him by *R. B.* within named, to doe and receive that which by the Court shall be then and there enjoyned him, and that he in the mean time do keep the Peace of our said Sovereign Lord the King, towards the Kings Majesty and all his liege people, and especially towards the said *R. B.* of *C.* aforesaid, Yeoman; that then, &c.

*A Recognizance for the Good behaviour.*

**M**emorand. quòd die mensis anno Regni Caroli, &c. *R. G.* de, &c. & *H. C.* & *I. S.* de ead', &c. in propriis personis suis vener' coram nobis *Isaac Barrow* & *Roberto Haggar Armiger*, Juss' dicti Dom' Regis, &c. Et predicti *H. C.* & *I. S.* manuceperunt pro prefat' *R. G.* & idem *R. G.* ad tunc assumpsit pro seipso, quòd idem *R. G.* personaliter comparebit coram Juss' dicti Domini Regis ad Pacem, &c. ad proximam generalem Sessionem, \* &c. & quòd ipse interim se bene geret erga Dominum Regem & cunctum populum suum, & precipue erga *I. B. de C.*, &c. sc. quòd ipse non inferet, nec inferri procurabit, per se nec per alios, damnum aliquod seu gravam prefato *I. B.* seu alicui de populo ipsius Dom' Regis, de corporibus suis per insidias, insultus, seu aliquo alio modo, quod in lesionem seu perturbationem Pacis dicti Domini Regis cedere valeat quovis modo; viz. uterque prefat' *H. C.* & *I. S.* sub pœna cent' libr', & prefat' *R. G.* sub pœna ducent' libr'. Quas quidem separales summas cent' libr' uterque prefat' *H. C.* & *I. S.* (ut pradicatur) per se, ac predictus *R. G.* prefat' summam ducent' librar', recognoverunt se debere dicto Dom' Regi, de terris & tenem', bonis & catallis suis, & quorumlibet ac cujuslibet eorum, ad opus ipsius dicti Dom' Regis fieri & levare, si contingat prefat' *R. G.* in aliquo premissor' deficere, & inde legitimo modo convinci. Dat', &c.

\* See the  
Recog. for  
the Peace.

Lib. Int.  
463.

*Or thus, for the Good behaviour.*

*Cantabr.* **M**emorand. quòd die mensis anno Regni Caroli, &c. *N. G.* de, &c. in propria persona sua venit cor' nobis *Isaac Barrow* & *Roberto Haggar Armigeris*, Juss' dicti Domini Regis ad Pacem in dicto Com' conservand' assign', & assumpsit pro seipso sub pœna 200 li. & *H. C.* & *I. S.* de eisdem *Villa* & Com' Husbandmen tunc & ibidem in propriis personis suis similiter venerunt, & manuceperunt pro prefato *N. G.* viz. uterque eorum separatim sub pœna centum libr', quòd idem *N. G.* personaliter comparebit coram Juss' dicti Dom' Regis ad Pacem, &c. ad proximam generalem Sessionem Pacis in Com' prefat' tenend', ad faciend' & recipiend' quod ei per Cur' tunc & ibidem injangetur, & quòd ipse interim se bene geret erga Dom' Reg' & cunctum populum suum, & precipue erga *I. B. de C.*, &c. sc. quòd ipse non inferet, nec inferri procurabit, per se nec per alios, dampn' aliquod seu



*seu gravamen prefato I. B. seu alicui de populo ipsius Dom. Regis, de corporibus suis, per insidias, insultus, seu aliquo alio modo, quod in lationem seu perturbat. Pacis dicti Dom. Regis cedere valeat quovis modo. Quas quidem seperales summas, &c. ut supra.*

*Or by a Recognizance, with this Condition  
subscribed or indorsed.*

**T**He Condition of this Recognizance is such; That if the above-bounded R. G. shall personally appear before the Justices of our Sovereign Lord the King at the next general Sessions of the Peace to be holden in the County of C, to doe and receive that which by the Court shall be then and there enjoined him, and that in the mean time he be of Good behaviour (and do keep the Peace of our said Sovereign Lord the King) towards His Majesty and all his liege people, that then, &c.

Or thus.

*Conditio Recognitionis prad. talis est; Quod si predict. N. G. imposter. se bene geret, & Pacem Dom. Regis conservabit erga dict. Dom. Reg. & cunctum populum suum, quod tunc Recognitio prad. pro nullo teneatur; alioquin in suo robore permaneat.*

Or thus.

Lamb. 125  
Lib. Intr.  
454.

*Conditio Recognit. predict. talis est; Quod si predictus R. G. imposterum se bene geret, & Pacem Dom. Regis conservabit erga dictum Dom. Reg. & cunctum populum suum, & precipue erga I. B. de, &c. & nullum dampnum corporale, nec aliquid quod in lationem Pacis Dom. Regis cedere valeat, prefato I. B. seu alicui de populo ipsius Domini Regis faciet quovis modo, extunc Recognitio predicta pro nullo teneatur; alioquin in suo robore permaneat.*

33 H. 8. c.  
39.

Note, that all Bonds, Obligations and Recognizances that shall be taken by any Justice of Peace (or any other person) for any cause touching the King, must be made and taken in his name, and by these words, *Domino Regi, &c.* See hereof *antea, tit. Suretie for the Peace, and Recognizances.*

Also note that the Recognizance runneth, *De terris & tenementis, bonis & catallis, &c. fieri & levare, &c.* And yet the King may be at his election, to take Execution of the Body of the Recognizors, (as well of the Principal as of the Sureties) or of their Lands and Chattels, (for the sum in the Recognizance contained) *per Curiam 7 Hen. 4. 34. a. Vide antea, tit. Suretie for the Peace.*

And (it seemeth) by the Common Law, before the Statute of 33 H. 8. 39. in all cases where a man is a Debtor to the King, as well his Body as his Lands and Goods are liable to the Kings Execution: For *Theſaurus Regis est Pacis vinculum, & Bellorum nervi*: And therefore the Law doth give to the King full remedy for it. See *Coke 3. 12. b. & Coke 11. 23. a.*

A Re-

A Recognizance to give in Evidence against a Prisoner.

*Cantabr.* **M**emorandum, quòd <sup>die</sup> <sup>anno regni Do-</sup>  
mini nostri Caroli, Dei gratiâ, Angliæ, Scotiæ, Franciæ & Hiberniæ  
Regis, Fidei Defens', decimo, &c. R. T. de C. in Com. prad. Yeoman venit  
coram me Ro. Th. Armig', uno Justic. dict. Dom. Reg. ad Pacem in Com.  
pradiet. conservand. assignat', & cognovit se debere dicto Domino Regi  
quinque libr. legalis monete Angliæ, sub conditione, quòd si ipse persona-  
liter comparebit coram Just. dicti Dom. Regis ad proximam generalem  
Gaol delib. in Com. prad. tenend', ad tunc & ibid. ostendendum in Evi-  
denc. secundum formam Stat. vers. D. F. nuper de W. in Com. prad', qui  
modo attach. & suspect. Felonia Gaol dicti Dom. Regis Com. prad. com-  
missus existit; quòd tunc, &c. Alioquin, &c.

Or this may be done by a single Recognizance, with a Condition en-  
dorsed, as followeth.

*A Condition to preferre a Bill of Indictment, and to give  
in Evidence against a Prisoner.*

**T**He Condition of this Recognizance is such; That whereas one *A. B.*  
of *G.* Labourer, was this present day brought before the said Justice  
by the within-bounden *D. E.* and was by him charged with the Feloni-  
ous taking of twenty sheep of the goods of him the said *D.* and there-  
upon was sent by the said Justice to the Kings Majesties Gaol: If there-  
fore he the said *D. E.* shall and do at the next general Gaol-delivery  
(to be holden in the said County) preferre or cause to be framed and pre-  
ferred one Bill of Indictment of the said Felony against the said *A. B.* and  
shall then also give Evidence there concerning the same, as well to the Ju-  
rors that shall then enquire of the said Felony, as also to them that shall passe  
upon the Trial of the said *A. B.*; that then, &c. or else to stand in full force  
for the King.

*Or thus, to give in Evidence.*

**T**He Condition, &c. That if the above-bounden *D. E.* do at the next  
general Sessions, &c. pursue and give such Evidence as he knoweth  
against *A. B.* now Prisoner in the Castle of *C.* concerning certain Felonious  
acts by him committed; then, &c.

*A Condition to appear before the Justices of Peace  
at their next Sessions.*

**C**onditio istius obligationis talis est; Quòd si *A. W. de, &c.* Spinster in  
propria persona sua compareat coram Justic. Domini Regis de Pace in  
Com.

*Com. C. conservand. assign', (nec non ad, &c.) ad prox. Sessionem Pacis dicti Domini Regis in Com. præd. tenend', ad respondend. tam dicto Domino Regi quàm G. S. de Placito Transgressionis & Contemptus contra formam Statuti, quòd tunc præsens Obligatio vacua & pro nullo habeat' : & si prædict. A. contra præmissa seu eorum aliquod in futur. fecerit, quòd tunc præsens Obligatio in omni suo robore stet & effectu.*

*or thus.*

**T**He Condition of this Recognizance is such ; That if the within-bounden *A. W.* shall make his personal appearance before the Kings Majesties Justices of the Peace at the next Quarter Sessions of the Peace to be holden for the said County of *Cambridge*, then and there to make answer unto such matters as on his Majesties behalf shall be objected against him (by *A. B.* of, &c. or concerning, &c.) and there shew the matter shortly, and shall also stand to and abide such farther Order as the said Court shall award or set down therein, that then and from thenceforth this present Recognizance shall be frustrate and void, or else to remain in his full force, strength, and virtue.

*Another for him that hath dangerously hurt one.*

**T**He Condition of this Recognizance is such ; That whereas the within-bound *R. W.* hath now lately dangerously hurt one *I. T.* of *F.* within the said County of *Cambridge*, Yeoman, giving him divers blows on the head, face and left side with a Bill, so as the said *I. T.* is in danger of death thereby: If therefore the said *R. W.* shall make his personal appearance before the Kings Majesties Justices at the next general Gaol-delivery to be holden in the said County of, &c. then and there to make answer unto the premisses, and to doe and receive that which by the Court shall be then and there enjoyned him, and that he, the said *R. W.*, in the mean time do keep the Peace of our said Sovereign Lord the King, towards the Kings Majesty and all his liege people, that then, &c.

*A Condition for Ale-house-keepers.*

**T**He Condition of this Recognizance is such: Whereas the within-bound *A. B.* is admitted and allowed by the within-named Sir *J. Reynolds* and *Michael Dalton* Esquires, (two of the Kings Majesties Justices of Peace within the County of *Cambridge* within written) to keep a common Ale-house or Tippling-house, and to use common selling of Ale or Beer, onely within the now house of him the said *A. B.*, (and not elsewhere) situate in the high street of the Town of *M.* within written, and called the sign of the Hart: If therefore he the said *A. B.*, during such time as he shall keep such common Ale-house there, shall not suffer any unlawful play at the Tables, Dice, Cards, Tennise, Bowls, Closh, Quoits, Loggers, or other unlawful Games to be used in his said house, or in his Garden, Orchard, or other his ground or place, (especially by mens servants,

*This or the like form hath been allowed.*

Servants, Apprentices, common Labourers, or idle persons) nor dresse, or cause or suffer to be dressed, any Flesh to be eaten upon any day forbidden by the Laws or Statutes of this Realm of *England*; nor wittingly and willingly admit or receive into his said house, or any part thereof, any person notoriously defamed of or for Theft, Incontinencie, or Drunkenness, or that shall be before-hand notified to him the said *A. B.* by the Constable of *M.* aforesaid, for the time being, or by his Deputy, to be an unmeet person to be received into a common Ale-house; nor shall keep or lodge there any strange person above the space of one day and one night together, without notice thereof first given to the Constable or his Deputy there; and finally, if he the said *A. B.*, during all the time that he shall keep common selling of Ale or Beer in the said house, shall and do there use and maintain good order and rule: then this present Recognizance to be void, &c. or else, &c.

Or where the Justices of Peace at their meeting take divers such Recognizances, they were made shortly, as followeth.

**M**emorand', quòd die Aprilis, an. regni Dom. nostri Caroli, &c. coram nobis Ed. Peyton Milite & Baronet', & H. V. Armig', duobus Justiciar', &c. venerunt *A. B. de New-market in Com. pradiet.* Viñtualler, & cognovit se debere dicto Dom. Regi x. li. & C. D. de, &c. & E. F. de, &c. uterque eorum recognovit se debere dicto Domino Regi v. li. bona & legalis monetæ Angl', de bonis & catallis, terris & tenem. suis fieri & levari, ad opus, &c. si defecerit in Conditione sequente.

The Condition of this Recognizance is such; That if, &c. (and write the Condition at large.)

*G. H. de New-market in Com. prad. Viñtualler, & cognovit se debere dicto Dom. Regi x. li. Et I. K. de, &c. & L. M. de, &c. uterque eorum recog. se debere dicto Domino Regi v. li. &c.*

*Sub Conditione, ut suprà.*

*N. O. de New-market in Com. prad. Viñtualler, & cognovit se debere dicto Dom. Regi x. li. Et P. Q. de, &c. & R. S. de, &c. uterque eorum recog. se debere dicto Domino Regi v. li. &c.*

*Sub Conditione, ut suprà.*

*T. V. de Soham in Com. prad. Viñtualler, & cognovit se debere dict. Dom. Regi x. li. Et W. W. de, &c. & I. S. de, &c. uterque eorum recog. se debere dicto Domino Regi v. li. &c.*

*Sub Conditione, ut suprà.*

*Et sic de cæteris.*

For the matter of this Condition for Ale-house-keepers, it is (by the Statute) partly referred to the discretions of such Justices of

**M**emorand. quod die anno regni Domini nostri Caroli, Dei gratiâ, Angliæ, Scotiæ, Franciæ & Hiberniæ Regis, Fidei Defensoris, &c. coram T. P. & H. D. Armiger, Justiciar. dicti Domini Regis ad Pacem in Comitatu predict. conservand. assignat, &c. A. B. de, &c. & C. D. de, &c. manuceperunt pro W. St. de, &c. Victualler, viz. uterque Manucapt. predict. sub pæna quinque librar, & predict. W. St. assumpsit pro seipso sub pæna 10. li. quas concesserunt se debere dicto Dom. Regi, &c. sub Condit. seq.

O o The

THE Condition of this Recognizance is such; That whereas the above (or within) bounden is admitted and allowed by the said Justices to keep a common Ale-house and Victualling-house until the first of *April*, (or for the space of one whole year next ensuing the date hereof) and no longer, in the house where he now dwelleth, at in the said County of and not elsewhere in the said County: If therefore the said shall not, during the time aforesaid, permit or suffer, or have any playing at Dice, Cards, Tables, Quoits, Loggets, Bowls, or any other unlawful Game or Games, in his house, yard, garden, or back-side; nor shall suffer to be or remain in his house any person or persons (not being his ordinary household-servants) upon any Sabbath-day or Holy-day, during the time of Divine Service or Sermon; nor shall suffer any person to lodge or stay in his house above one day and one night, but such whose true name and surname he shall deliver to some one of the Constables, or in his absence to some of the Officers of the same Parish the next day following, (unless they be such person or persons as he or she very well knoweth, and will answer for his or their forth-coming;) nor suffer any person to remain in his or her house tippling or drinking contrary to the Law, nor yet to be there tippling or drinking after nine of the clock in the night-time; nor buy or take to pawn any stolen Goods; nor willingly harbour in his said house, or in his Barns, Stables, or otherwise, any Rogues, Vagabonds, sturdy Beggars, Masterless-men, or other notorious Offenders whatsoever; nor suffer any person or persons to sell or utter any Beer or Ale, or other Victual, by deputation, or by colour of his or her License: and also, if he shall keep the true affize and measure in his Pots, Bread, and otherwise, in his uttering of his Ale, Beer and Bread, and the same Beer and Ale sell by sealed Measure, and according to the Affize, and not otherwise; and shall not utter or sell any strong Beer or strong Ale above a peny the quart, and small Beer or small Ale above a half-peny the quart, and so after the same rates; and also shall not utter, nor willingly suffer to be uttered, drunk, taken, or tippled any Tobacco within his said house, Shop, Seller, or other place thereunto belonging: That then, &c.

« Note, that the whole Sabbath-day being holy, tippling at the Ale-house at any time of the day must needs be a prophanation of the day, and therefore meet to be inserted into this condition.

3. That every Ale-house-keeper and Victualler, so to belicensed, do enter into Recognizance with two able Sureties, to be bound in 5. *li.* apiece, and the principal 10. *li.* at the least, for the performance of the Condition of the said Recognizance, which shall endure but for one whole year, and then determine, unless it shall seem fit to the Justice of Peace to renew the same again, by taking a new Recognizance of the same Condition: and whatsoever date the Recognizance shall have, it is to endure but until the said moneths of *April* and *May*, or one of them.

4. That the Clerks of the Peace, Town-clerks, or their Deputies respectively, be called to attend the Justices of Peace at such their Meetings or Assemblies; and that they do there take the Recognizance aforesaid of every

every Victualler or Ale-house-keeper licensed, and do duly enter them amongst the Records of the Sessions of the Peace in their charge, whereby his Majesty may be duly answered of the Forfeitures that shall be made of the parties so bound.

5. That the Clerks of the Peace, and Town-clerks aforesaid, or their Deputies, shall, within some convenient time after the taking of the said Recognizance, fairly engross the Recognizance and Condition in Parchment, which they shall keep as the Original, and send a true Copy of the said Recognizance, examined with the said Original, to every Ale-house-keeper allowed, whereby he may the better inform himself what he and his Sureties are bound to observe.

6. That the Clerks of the Peace, and Town-clerks, or their Deputies, do write out, and bring with them to every Sessions of the Peace, or other meeting of the Justices, a Register-Book containing the true names, surnames, and places where every Ale-house-keeper or Victualler that is licensed doth dwell, to the end it may appear to the Justices of the Peace who be licensed, and by whom, and who be not, and what other alterations have been from time to time, for the placing of men of honest and good conversation, and displacing of others of ill behaviour.

7. That the Clerks of the Peace, and Town-clerks, and their Deputies, may take of every Ale-house-keeper for their Fee, for performing of the Services aforesaid, at the time of the acknowledgment of the said Recognizance, the Fee of 18.d. and no more, over and above the Fee of 12.d. allowed for the Justices Clerks by the Statute, which shall be paid to the said Justices Clerks.

8. That in case the Ale-house-keeper, not knowing of the Justices meeting, or being hindred by sickness, or other such like impediment, shall fail of admittance at the general or publick Assemblies, and shall notwithstanding be admitted or licensed by two Justices of the Peace, (whereof one to be of the *Quorum*) the Recognizance with Condition fair engrossed in parchment in the form prescribed, as aforesaid, shall forthwith, or at the next Sessions at the farthest, be returned to the Clerks of the Peace, or the Town-clerks respectively, under the hands of the Justices before whom such Recognizance was taken, together also with the said Fee of eighteen pence for the Entering, Registering, making and delivering of a Copy under his hand to the Ale-house-keeper, as aforesaid.

9. That none be licensed or allowed to keep an Ale-house that hath not one convenient lodging at least in his or their houses, for the lodging of any Passenger or Traveller, and hath not always in her or their house good and wholesome small Beer or Ale, of two quarts for a peny, for the relief of the Labourer, Traveller, or others that call for the same.

10. That the Justices of Peace within their several Precincts do not permit or suffer any unlicensed Ale-house-keeper or Victualler to sell Beer or Ale, but that they proceed against them by all due and lawful means whatsoever; and that they be very careful, from time to time, to cause the Brewers to be proceeded against in their General and

Quarter Sessions, for delivering Beer or Ale to such unlicensed persons, according to the Statute in that case provided.

11. That the Clerks of the Peace, or Town-clerks respectively, do once every year, in *Trinity* Term, make and bring in a Brief of all such Recognizances as shall be taken within every County, City and Town Corporate, into the Office of the Patentees, (appointed by them for that purpose) to the end all concealments of Recognizances taken in that behalf may be discovered, and the benefit accruing to his Majesty by such as wilfully break the same may be more duly prosecuted; of which that his Highness be not defrauded, order is given to the Patentees, that, with the allowance of the Chief Justice of the Kings Bench, there be appointed Committees in every County for the recovery thereof from time to time.

12. That the Justices of Assize in their Circuits, and Justices of Peace at their general Sessions of the Peace, do from time to time enquire of the due execution of these presents, and of all other abuses, disorders and misdemeanours whatsoever, committed or suffered against the provisions aforesaid, and the true meaning of them.

« And yet the means (as I conceive) to reduce them both to a more  
« competent number, and to better order, would be by a Law to be made  
« by Statute, that none should be licensed to keep any Ale-house, unless  
« they did find two good and sufficient Sureties (one of them at least to be  
« a Subsidy-man) to be bound for performance of the Condition of their  
« said Recognizance.

#### *A Licence to keep an Ale-house.* CHAP. CXXXV.

*Cambr.* *John Cutts* Knight and *Michael Dalton* Esq., two Justices of the Peace of our Sovereign Lord the Kings Majesty in his Highnesses County of *C*, send Greeting in our Lord God everlasting. Know ye, that we the said Justices, of good and credible report to us made by divers credible and honest persons, &c. that *J. W.* of, &c. is a man meet to keep a common Ale-house in the house where he now dwelleth, Have licensed, allowed, and admitted, and by these presents do license, allow, and admit the said *J. W.* to keep a common Ale-house or Tippling-house at *L.* for one whole year next ensuing the date hereof, so that the said *J. W.* suffer not any unlawful Games to be used in his said house, nor any evil rule or order to be kept within the same, during the time of his said Licence: for the using of which Licence accordingly, we do you to wit, that we have bound the said *J. W.* in 10 *li.* and two other sufficient Sureties in an hundred shillings apiece by Recognizance to the Kings Majesties use. In witness whereof we have hereunto set our hands and seals. Dated, &c.

*Or thus.*

*Cambr.* *J. C.* and *M. D.* two Justices of the Peace of our Sovereign Lord, &c. to all Bailiffs, Constables, and other the Kings Majesties Officers, Greeting. Know ye, that we the said Justices have licensed, and by these presents do license *J. W.* of, &c. to keep a common Ale-house in *L.* afore-



*L.* aforefaid for one whole year next enfuing the date hereof; and have bound the faid *I. W.* by Recognizance with Sureties to the Kings Majesties ufe, that he fhall maintain good rule, and farther to doe and behave himfelf therein in all things according to the Laws and Statutes of this Realm, &c.

*Or thus.*

**W**E whose names are here-under written, Juftices of the Peace of our *Cambr.* Sovereign Lord the King within the County of *Cambridge*, do License and allow *I. W.* of *L.* in the faid County to keep a common Ale-house or Tippling-house in *L.* aforefaid, for and during one whole year next enfuing the date hereof, fo as he doth not fuffer any unlawful Games to be ufed in his houfe, nor any evil rule to be kept there, but doth behave himfelf therein according to the Laws and Statutes of this Realm in that behalf made and provided. In witnefs, &c.

*A Licence to Brew and keep an Ale-house.*

West. 554 **W**Hereas *A. M.* of *W.* in the County of *C.* Husbandman hath *Cambr.* come before us, *John Cutts* Knight, and *Tho. Chichely* Efquire, two of the Kings Majesties Juftices of Peace within the faid County, and bound himfelf in a Recognizance with fufficient Sureties, to Brew and fell, and keep a common Ale-house, according to the Statute made in the fifth year of the Reign of our late Sovereign Lord King *Edward 6.* Now know ye us, the faid *John Cutts* and *Thomas Chichely*, to have licensed the faid *A. M.* to Brew, to fell, and keep a common Ale-house, according to the faid Statute. Given under our hands the 13 of *July* in the, &c.

*A Licence for a Recufant to Travel, &c.*

**W**Hereas *R. C.* of *L.* in the County of *C.* being a Recufant (con- *Cambr.* victed) hath confined himfelf to *L.* aforefaid, being the ufual place of his abode, according to the Statute made in the 35 year of the Reign of our late Sovereign Lady Queen *Eliz.* know ye, that we, &c. four of the King Majesties Juftices of the Peace within the faid County, do, by the confent of the right Reverend Father in God, *Nicolas* by Gods Providence Lord Bishop of *Ely*, at the request of the faid *R. C.* for the difpatch of his urgent and neceffary bufinefs, grant and give Licence to the faid *R. C.* to travel out of the Precincts or compafs of five miles limited by the faid Statute, at all times until the firft day of *November* next coming, and at the faid firft day of *November* to return again to *L.* aforefaid. In witnefs, &c. See *hic antea*, tit. *Recufants*.

*A Testimonial or Pafs-port to Travel.*

**S**IR *Roger Millifent* Knight, and Sir *James Reynolds* Knight, two of the *Cambr.* Kings Majesties Juftices of Peace within the faid County, to all Juft. of  
O o 3 Peace,

Peace, Mayors, Bailiffs, Constaibles, and all other his Majesties Officers and Ministers whatsoever, send Greeting in our Lord God everlasting. Forasmuch as the Bearer hereof *E. P.* (*here shew the cause of his travel*) hath desired our Testimonial (or Licence) for his safe travel unto the City of *B*, where (*here shew whither he is to goe* :) In consideration thereof, know ye, we the said Sir *Roger Millisent* and Sir *James Reynolds*, so far as in us lieth, have licensed the said *E. P.* to travel and pass the direct way from *H*, within the said County of *C*, whereas he lately dwelled, unto the said City of *B*, so as his journey be not of longer or farther continuance then twenty daies next after the date hereof; praying you and every of you not to molest or trouble the said poor man in his travel, but to permit and suffer him peaceably to pass, so as he shew himself in no respect offensive to his Majesties Laws. In witness, &c.

But upon such Licence, the persons thus licensed to travel may neither beg, nor wander idly, nor out of their direct way. Besides, the Justices must be sparing to grant such Licences, except in cases of necessity. For except the person so licensed be one that hath suffered Shipwreck, or a Souldier, or Mariner coming from the Seas, &c. *hic cap.* or be a Labourer, and onely for Hay and Harveft-time, or else be a Servant departing from his Master, *hic cap.* the Justices of Peace are to make no such Licence or Testimonial, (as it seemeth.) And as for the manner of such Testimonial or Licence for the persons suffering Shipwreck, and Souldiers coming from Sea, and in what manner such persons may travel, see *hic antea, tit. Rogues, cap.*

But in other cases where any person shall become poor, lame, blind, or otherwise diseased, or decayed, and shall have just cause to travel, they must be provided of mony or maintenance for their travel; otherwise the Justices ought to forbear to grant any such Licence, and must rather cause them to be sent to, and settled in, the Town where they last dwelt.

Also it is fit that such person do get the allowance of such his Passport under the hand of a Justice of Peace in every County where he is to pass.

*The form of a Testimonial for the conveying of a Rogue that hath been punished according to the Statute of 39 El. c. 4.*

*Cambr.* *John a-Stile*, a sturdy vagrant Begger, (of low personage, red-haired, having the nail of his right thumb cloven) aged about years, was this sixth day of *April*, in the tenth year of the Reign of our Sovereign Lord King *Charles*, of *England*, &c. openly whipped at *W*. in the said County (according to the Law) for a wandring Rogue, and is assigned to pass forthwith from Parish to Parish by the Officers thereof, the next straight way to *P*. in the County of *W*, where (as he confesseth) he was born, (or dwelled last by one whole year, &c. if the case be such) and he is limited to be at *P*. aforesaid within ten daies now next ensuing, at his peril. Given at *West-Wrattling*, under the hand and seal of *M. D.* Esquire, one of his Majesties Justices of Peace in the said County of *Cambridge*.

Note, by the words of the Statute 39 *El.* 4. such Testimonial must be under the hand and seal of the Justice of Peace, Constable, Head-borough, and

and of the Minister of the Parish, or any one of them; and yet it is taken that the Justice of Peace alone under his hand and seal may make such Testimonial. *Lamb. 206.*

Note also, that it is needful both in this and in all other Testimonials, Certificates, Safe-conducts, and Pass-ports whatsoever, to note and specify expressly some assured marks of the party, as his Stature, colour of Hair, Complexion, or (if it may be) some apparent scarre, or other note, by which he may be infallibly distinguished and known from others; lest (as is often found) both himself take the benefit thereof, and he also communicate the use of the same to others, in abuse of him that made it, and of the Law in that behalf provided.

*A Testimonial for such as have suffered Shipwreck.*

**A.** *B. of C. in the County of Norf. Esquire, one of the Kings Majesties Justices, &c. to all, &c. Forasmuch as the Bearer hereof I. S., aged* *Norff.*  
about, &c. having lately been at Sea, in a Ship called, &c. hath suffered Ship-wreck, and got to land at *T.* in the said County of *Norf.* upon the day of last past, (as I am credibly informed, as well by the report of the said *I. S.* as also by the testimony of divers the Inhabitants of *T.* afore said) and for that the said *I. S.* hath not wherewith to relieve himself in his travel homeward to *D.* in the County of *H.* where he saith he was born, (or hath a dwelling, &c.) These are therefore to pray you, and every of you to whom these presents shall come, not to molest or trouble the said *I. S.* in his travel to *D.* afore said, where he is limited to be within daies next after the date hereof; but to desire you rather to relieve him in his necessity, as to you shall seem meet: and withall, you the Constables of every Town where he shall come, to help him with lodging in convenient time, so that he travelleth the direct way to *D.* afore said, not doing any thing contrary to the Laws and Statutes of this Realm. In witness whereof, &c.

The like (with very little alteration) may be made for a poor Mariner, or a poor Souldier, coming from the Seas, or from beyond the Sea. *Vide* *Mariner or Souldier. antea, tit. Rogues.*

But these two last Testimonials must be made by some Justice of Peace dwelling near where such persons do land.

CHAP. CXXXVI.

Warrant, custodi Gaolæ, ad recipiend. Prisonarium pro Felonia.

**E** Dwardus Peyton Miles & Baronettus, unus Justic. Domini Regis nunc *Cantab.*  
ad Pac. in Com. præd. conservand', necnon ad divers. Felon', Transgr. &  
alia malefact. in eodem Com. audiend. & terminand', assign', Custod. Gaolæ  
dict. Dom. Regis in Com. præd. aut ejus locum tenenti, & eor. cuilibet, salut.  
Quia R. T. nuper de I. in Com. præd', Labourer, jam pro suspitione cujusd.  
Felon. per ipsum (ut dicitur) perpetrat. per Constab. Villæ de R. in Com. præd.  
arrestat' :

*arrestat' : Ideo ex parte dicti Dom. Regis vobis & cuilibet vestrum precipio, quòd ipsum R. in custod. vestram recipiatis, seu unus vestrum recipiat, ibidem moratur. quousque secundum Legem & consuetudinem regni Angliæ à custod. vestra deliberetur. Dat. apud Isleham, &c.*

*Alias.*

*J. D. &c.* to the Keeper of the Kings Majesties Gaol at the Castle of *Cambridge*, or to his Deputy there, Greeting: These are in his Majesties name to charge and command you, that you receive into your said Gaol the body of *R. S.* late of, &c. taken by *F. C.* and *I. S.* Constables of the Town of *W.* and by them brought before me for suspicion of Felony, &c. and that you safely keep the said *R. S.* in your said Gaol until the next general Gaol-delivery for the said County, [if he be not bailable: Or if he be bailable, then thus] until he shall be thence delivered by due order of his Majesties Laws. And hereof fail you not, &c.

*A Mittimus of a Felon, after his Examination taken.*

*Cambr.* *John Cotton*, Knight, one of the Justices, &c. to the Keeper of his Majesties Gaol at the Castle of *Cambridge* in the said County, &c. Greeting. I send you herewithall the body of *A. B.* late of *C.* Labourer, brought before me this present day, and charged with the Felonious taking of twenty Sheep, (which also he hath \* confessed upon his Examination before me:) and therefore these are (on the behalf of our said Sovereign Lord) to command you, that immediately you receive the said *A. B.* and him safely keep in your said Gaol, until that he shall be thence delivered by the due order of his Majesties Laws. Hereof fail you not, as you will answer for your contempt at your peril. Given at *Chevely*, the            day of            in the            year of the Reign of our said Sovereign Lord *Charles*, by the grace of God, King of *England, Scotland, France* and *Ireland*, Defender of the Faith, &c.

\* But this clause maketh the Prisoner not to be bailable.

*Alias.*

Or these Warrants or *Mittimus*, whereby a Prisoner shall be sent to the Gaol, may be made in the Kings name, and the *Teste* may be under the name of the Justice of Peace, as followeth.

**C**AROLUS Dei grat. Rex Angl', &c. Cust. Gaolæ nostræ de Cantab. vel ejus locum tenenti salut'. Quia *R. S.* nuper de *B.* in Com. *Essex'*, Labourer, jam pro suspic. cujusdam Feloniæ per ipsum, ut dicitur, perpetrat. arrest': Ideo vobis & cuilibet vestr. precipimus, quòd ipsum *R.* in custod. vestram Gaolæ nostræ prædictæ recipiatis, seu unus vestrum recipiat, ibidem moratur. quousque secundum Legem regni nostri Angliæ à custodia vestra deliberetur. Teste *Edw. P.* &c.

*A Mit-*

*A Mittimus to send to the Gaol an Ale-house-keeper that vieth contrary to commandment, &c.*

**H.** *u.* and *R. T.* Esquires, two of the Kings Majesties Justices of the Peace within the said County of *Cambridge*, to the Keeper of the Kings Majesties Gaol at *C. Greering*. Whereas *R. D.* of *B.* in the said County of *Cambridge* (upon complaint lately made unto us of the evil rule kept and suffered by him in his house, and other misdemeanors) by Warrant under both our hands and seals was discharged of his Ale-house-keeping, and was commanded from us that he should thenceforth use no more common selling of Ale or Beer; and whereas we are credibly informed that the said *R. D.* (notwithstanding our said Warrant and commandment given him to the contrary, as afore said) hath ever since obstinately, and upon his own authority, taken upon him to \* keep a common Ale-house \* *Or to use* or Tippling-house, and still continueth the same: We do therefore send you *common-ly selling of Ale or Beer.* herewithall the body of him the said *R. D.*, commanding you in his said Majesties name to receive him into your said Gaol, and there safely to keep him, until such time as he shall be from thence delivered by due order of Law. And hereof fail you not at your perils. Dated at the day of in the year of, &c.

*Or thus.*

**W** Hereas by Warrant or commandment from divers Justices of Peace of this County, *I. S.* of, &c. hath been suppressed for keeping an Ale-house, &c. and forasmuch as complaint hath notwithstanding been made to us (this present day) that the said *I. S.* hath and doth, contrary to the said commandment, and contrary to the Statute in that behalf provided, still keep a common Ale-house: Therefore we do send you herewithall the body of the said *I. S.*, commanding you, &c. to receive the said *I. S.* into his Majesties Gaol, and there safely to keep him for three dayes without Bail or Main-prise; and afterwards, until he shall with two Sureties enter into Recognizance; that he shall not keep any common Ale-house, or use common selling of Ale or Beer, and pay his Fine of 20. s. according to the Stat. in that case made and provided. Hereof fail you not, &c.

*A Mittimus (to the Gaol) of the reputed father of a Bastard-child, &c.*

**I** Send you herewithall the body of *R. C.* of *B.* in the County of *C.* Labourer, brought before me this present day, and charged by *F. S.* of the same Town to have gotten her with Child: And for that the said *R.* refuseth to put in Security for his appearance at the next Quarter-Sessions, and to the end he may be forth-coming whenas order shall be taken for the relief and discharging of the said Town of *B.*, and for the keeping of the said Child, (when it shall happen to be born) according to the Statute in that case provided; These are therefore on the Kings Majesties behalf to charge and command you, that immediately you receive the said *R. C.*, and him safely keep in your said Gaol, untill such time as he shall be from thence delivered

vered by due order of Law. And hereof fail you not, as you will answer your contempt at your peril. Dated, &c.

In every *Mittimus* the cause of the Commitment is to be set down, to the end it may appear whether the prisoner beailable or no. See hereof before in the title *Bailment*.

Also where the Justices of Peace out of their Sessions may hear and determine, and so may commit Offenders for the Offence or Fine, it is necessary that in their *Mittimus* there be contained the manner of the Offence, and how long time the Offender is to be kept in prison for it. See the *Mittimus* for Guns afterwards.

*A Mittimus to the House of Correction, of a dangerous Rogue.*

*Cambr.* **I** R. Knight, and Michael Dalton Esquire, two of the Kings Majesties Justices of the Peace within the said County of *Cambridge*, to the Master or Governor of the House of Correction at *Bottisham*, (for the East side of the said County) or to his Deputy there, Greeting. Whereas *I. S.*, a sturdy vagrant Begger, was this day of *September, Anno Dom.* brought before us, and charged as well with begging and idle wandering abroad, as also with other lewd and disorderly behaviour, so as he appeareth to us to be dangerous to the inferior sort of people, (or such a one as will not be reformed of his roguish life) contrary to his Majesties Laws in such behalf provided: These are therefore to will and require you to receive the said *I. S.*, and him safely keep in your said House, until the next Quarter Sessions to be holden in the said County, and during all that time (that he shall so continue with you) that you hold him to work and labour, and punish him by putting Fetters or Gyves upon him, and by moderate Whipping him, as in good discretion you shall find cause, yielding him for his maintenance only so much as he shall deserve or earn by his labour and work; and that at the said next Quarter Sessions you have the said *I. S.* there, together with this our Warrant. And hereof see that you fail not, &c. Dated, &c.

*Or such  
rogue  
may be  
sent to  
the Gaol.  
See be-  
fore tit.  
Rogues.*

*See Stat. 7  
Jac. c. 4. &c  
39 El. c. 4.*

*A Mittimus to the House of Correction, of a disorderly Servant,  
or other disorderly person.*

*Cambr.* **I** Have sent you herewithall the body of *E. C. of W.* in the said County of *C.*, being an idle, dissolute, and disorderly fellow: (or one that will not keep his service, nor follow any honest course of life.) These are therefore to will and require you to receive the said *E. C.*, and him safely to keep, (\* until that he shall be thence delivered by Warrant from my self, or some other his Majesties Justice of Peace for this County of *Cambridge*) and in the mean time to hold him to work, and to punish him by moderate Whipping, and otherwise, according to the Law in such cases provided. And hereof see that you fail not, at your peril. Dated, &c. See the Stat. 7 Jac. cap. 4.

*\* Or, by  
the space  
of three  
days next  
after the  
date of  
this War-  
rant.*

*Another*

*Another for one that runneth away, leaving her charge to the Town.*

**W**E have sent you herewithall the body of *I. R.* of *W.* single Woman, *Cambr.* being lately delivered of a Child, and one that is able to labour, and thereby to relieve her self and her said Child, and hath notwithstanding lately run her way, and left her Child upon the Parish, to the charge of the same Parish, contrary to the Statute in that behalf provided: These are therefore to will and require you to receive the said *I. R.* and her safely to keep, until the next Quarter \* Sessions to be holden for this County; and \* *Or else* in the mean time to hold her to such works, and to give her such due correction; by moderate Whipping or otherwise, as shall be fitting in your discretion, and according to the Law in that behalf provided; yielding her for her maintenance, &c. *ut supra.* And hereof see that you fail not at your peril. Dated, &c. See the Statute, 7 *Jac. cap. 4.* & *vide antea, tit. Rogues, bis.* *such party must be delivered at the meeting of the Justices upon priviesearch made for Rogues, and not otherwise.*

Note, if any mean person shall but threaten to run away, and leave their family, (as afore said) any two Justices of Peace of that division may send them to the House of Correction, as afore said; but such their threatening must be proved by two sufficient witnesses upon Oath before the said Justices of Peace. *Vide antea, tit. Rogues.*

*A Mittimus to the House of Correction of the Mother of a Bastard-child.*

**W**E have sent you herewithall the body of *I. C.* of *W.* in the said County, single Woman, being lately delivered of a Bastard-child, like to be chargeable to the Parish of *W.* afore said: and for that the said *I. C.* is able to labour, and that thereby she may the better relieve her self and her said Child; These are therefore to will and require you to receive the said *I.* into your said house, there to be punished, and set on work during the term of one whole year, according to the Statute in that behalf provided. And hereof fail you not, &c.

Rogues and Vagabonds, sturdy Beggars, and other idle and disorderly persons sent to the house of Correction, are there to be punished by putting Fetters or Gyves upon them, and by moderate Whipping. 7 *Jac. c. 4.*

So persons running, or threatening to run away, and leave their Family to the Parish. *Ibid.*

The mother of a Bastard-child, &c. shall be set on work, and punished. *Ibid.*

But where by the plain Letter of the Law there is not authority given to whip or punish Offenders (sent to the House of Correction,) there let the Justices of Peace forbear to appoint or order any Whipping, except it be in open Sessions, or by the Order of the Quarter Sessions.

Note, that the greater part of the Justices of Peace assembled at the Quarter Sessions may set down Orders for the correction and punishment of Offenders committed to the House of Correction.

And the Houses of Correction are to be used and employed for the keeping, correcting, and setting to work of such persons as shall be sent thither,

thither. See *Stat. 7 Jac. cap. 4. sc.* generally for Rogues, Vagabonds, sturdy Beggars, and other disorderly persons.

« What other manner of persons are to be sent to the House of Correction: See *hic cap. 11.* the Mother of a Bastard-child like to charge the « Parish; *c. 20.* Counterfeiters: *cap. alius*, idle and disorderly Servants; poor « children refusing to be put out Apprentices, and their Parents enticing « them from their Masters, and Servants running away; such as are able « to labour, and shall run away, or threaten to run away, and leave their « Wives or Children to the Parish. So a person infected with the Plague, « or dwelling in an house infected, if being commanded by a Justice of Peace « to keep his house, he will not. Common Trespassers in spoiling of « Corn or Woods, breaking of Hedges, or robbing Orchards, &c. being « mean persons.

## CHAP. CXXXVII.

*A Mittimus to send to the Gaol such as shoot, &c. in Guns.*

*To the Keeper of His Majesties Gaol at the Castle of Cambridge, and to his Deputie or Deputies there, and to every of them.*

*Cambr.* **F**ORasmuch as this present day *A. B.* and *C. D.* of in the same County, Yeomen, did arrest and bring before me at (aforesaid) one *J. at S.* in the said County, Mariner, whom they had seen and found the same day (as they said) shooting in a Hand-gun (charged with Powder and Pellet) at a Coney in a certain place in *C.* within the said County, called *the Church-field*, contrary to the Law of this Realm, and thereupon prayed me that Justice might be done in that behalf: I *John Cutts* Knight, being the next Justice of the Peace in the said County to the place aforesaid, did then at aforesaid, upon the said request, take the Examination of the said *J. at S.* and did also then and there hear the proofs of them the said *A. B.* and *C. D.* touching the said Offence: and for that it did manifestly appear unto me, as well by the Testimonies of them the said *A. B.* and *C. D.*, as also by the plain Confession of him the said *J. at S.*, that he had not then Lands, Tenements, Fees, Annuities, or Offices, to the clear value of one hundred pounds, and that he had shot in the said Hand-gun in manner and form as is aforesaid; I do send you herewithall the body of him the said *J. at S.* as lawfully convicted of the said Offence before me, requiring you in his Majesties name to receive him into your said Gaol, and him there safely to keep, (as his Majesties Prisoner) until he shall have truly paid the pain and forfeiture of 10*l.* of lawful money of *England*, laid upon him for his said Offence by the Statute thereof made in the three and thirtieth year of the Reign of the late King *Henry* the eighth; that is to say, the one moiety thereof to our said Sovereign Lord, and the other moiety to them the said *A. B.* and *C. D.*, the first bringers of him before me. And this shall be your sufficient Warrant in this behalf. Hereof fail you



you not, as you will answer for your contempt at your own peril. Yeoven at aforesaid, the twentieth day of *March*, in the . . . year of the Reign of our said Sovereign Lord *Charles*, by the grace of God, King of *England, Scotland, France and Ireland, &c.* Defender of the Faith, &c.

By me the said *Jahn Cutts*.

The Justices Record thereof.

**M**emorand. quòd vicesimo die Martii, anno regn. Dom. nostri Caroli; Cantabr. Dei gratia, Angl', Scotiæ, Franciæ & Hiberniæ Regis, Fid. Defensor', &c. A.B. & C.D. de . . . in Com. præd', Yeomen, quendam J. at S. de . . . in dicto Com. Mariner invener. & viderunt apud . . . in Com. præd. die & anno supradict. cum quodam Tormento (Anglicè vocat. a Hand-gun) onerato pulvere tormentario & globo plumbeo (Anglicè charged with Gun-powder and a leaden Bullet) in quendam Cuniculum adtunc existent, in quodam loco ibid. vocato Church-field sagittantem, & exonerantem dictum Torment', contra formam Stat. (in Parliam. Dom. Henr. nuper Regis Angliæ octavi apud Westmonast. anno regni sui tricesimo tertio tent.) provisi ac editi; ac proinde die & anno supradict. præfat. J. at S. arrestaverunt, & apud præd. coram me Johanne Cutts Milite, uno (& dicto loco proximo) Justic. dicti Domini Regis ad Pacem in dicto Com. conservand', necnon ad diversas Transgres. & alia malefacta in eod. Com. perpetrata audiend. & terminand', assignat', adtunc unà secum adduxerunt, petentes inde justitiam fieri. Quà quidem Petitione audità, ego præfatus Johannes Cutts apud præd. die & anno suprad. debite superinde examinavi præf. J. at S. ac Probationes præd. A.B. & C.D. in hac parte cepi: ac propterea quòd tam per Probation' præd. quàm per Confessionem ipsius J. at S. adtunc & ib. apparuit mihi manifestè, quòd præf. J. at S. (cum non haberet in jure suo proprio, nec in jure uxoris suæ ad usum suum proprium, nec aliqui alii ad usum ejusdem J. at S. haberent Terras, Tenementa, Feoda, Annuitates, aut Officia ad clarum annum valorem centum librarum) in Tormento prædicto modo & forma prædictis sagittasset, contra formam Stat. præd'; Ego præf. Joh. Cutts prænominatum J. at S. die & anno supradict. proxima Gaole dicti Domini Reg. apud Cantabr. in Com. præd. (de Transgres. prædict. coram me convict.) commisi, ibidem moraturum quousq; pœnam & forisfacturam decem librar. legalis monet. Ang. verè solveret, viç. unam medietatem inde dict. Dom. Reg', & alteram mediet. inde dict. A.B. & C.D. primis ejusd. J. at S. coram me ductorib'. In quor. omnium fidem & test. ego præf. Jo. Cutts his præsentibus sigil. meum apposui. Dat. apud . . . præd. die & anno primum supradictis.

Per me præf. Johannem Cutts.

#### Bailment. CHAP. CXXXVIII.

Lamb. 34<sup>1</sup> **M**emorand. quòd secundo die mensis Septembr', an. regn. Dom. nostri Caroli, &c. venerunt coram nobis Johanne Cage Milite & Roberto Castle Armig', duobus Justic. dict. Domini Regis ad Pacem in Comitatus . . .  
P p præd.

*præd. conservand. assignat', (apud H. in Com. præd.) A.B. & C.D. de E. in dict. Comit. Yeomen, & ceperunt in Balliam, usque ad proximam Gaolam deliberationem in dicto Comit. tenend', quendam F.G. &c. Labourer, captum & detentum in prisione pro suspitione cujusdam Felonia, &c. Et assumpsit super se, sc. quilibet præd. A.B. & C.D. sub pœna vigint. lib. bonæ & legal. monet. Angl', & præd. F.G. assumpsit pro seipso sub pœna 40. l. similis monetæ, de bonis & catallis, terris & tenem. eor. quorumlibet & cujuslibet eor., ad opus dicti Dom. Reg', Hæredum & Successor. suor., levandar., si præfat. F.G. ad eandem proximam Gaolam deliberat. personaliter non comparebit coram Justiciariis dicti Dom. Reg'. ad dictam Gaolam deliberand. assignatis, ad standum recto de Felonia præd., & ad resp. dict. Dom. Reg. tunc & ibid. de & super omnibus quæ illi objicientur. Dat. sub sigill. nostris die & anno primùm supradictis. Vid. antea, tit. Bailment.*

*Alias, (sc. if the Gaoler can conveniently bring the Prisoner before the Justices.)*

**M***emorand', quòd die August. &c. A.B. de C. &c. & E.F. de G. &c. venerunt coram nobis M.D. & J.B. Armig', duobus Just', &c. & manucep. pro J.S. de, &c. uterque eorum sub pœna 20. li. &c. & præd. J.S. tunc & ibidem similiter assumpsit pro seipso sub pœna 40. l. consimilis monet. Angl', de bonis & catallis, terris & tenem. eorum & cujuslibet eor. ad opus & usum dicti Dom. Reg', Hæred. & Successor. suorum, fieri & levari, si præfat. J.S. defecerit in Conditione indorsata.*

**T**He condition of this Recognizance is such; That if the within-bounden J. S. shall make his personal appearance before the Kings Majesties Justices of the Peace at the next general Sessions to be holden for this County, then and there to make answer to our Sovereign Lord the King, for and concerning the suspicion of stealing certain Corn, wherewithall he standeth charged, that then, &c.

*Alias.*

*Cantabr. Memorand. quòd die, &c. venerunt coram nobis, &c. A.B. Cromp. 235. de, &c. & C.D. de, &c. & E.F. de, &c. & manucep. pro R. B. de L. 21 H. 7. 20 Br. Main. in Comit. præd. Gener', viz. quilibet eorum corpus pro corpore, quòd idem R. B. personaliter comparebit coram præfat. Justic. & sociis suis Just. Dom. 44. Regis ad proximam generalem Sessionem Pacis in Comit. præd. tenend', ad stand. rectè in Cur', (si quis versus eum loqui voluerit) de diversis Feloniis & Transgr. unde idem R. B. indictatus existit, (ut dicitur) & ad respond. dicto Dom. Regi de eisdem, prout debet, &c. Vide antea, tit. Bailment, that it must be upon a certain sum of money.*

And here *Stare rectè in Curia* is, when he that standeth at the Bar hath no man to object against him.

Yet note, upon this last manner of Bailment, the Mainpernors shall be onely fined, if the Prisoner maketh default. 21 H. 7. 20. Crom. 153 Br. Main. 44.

Before the Statute of *Marl. cap. 27.* if one arrested or in Prison for Felony had been bailed, and at the day the Prisoner would not answer, but

but he took himself to his Clergy, &c. then his Mainpernours were amerced, &c. But now by the Statute, if they have the body at the day, they shall not be amerced, although the Prisoner will not answer, &c. Neither shall they forfeit their Recognizance, if they have the body of the Prisoner there, although the Prisoner will not answer, &c. and yet the words of the Recognizance or Bailment are usually, *Ad respond. dicto Dom. Regi, &c. ut supra.* But these words seem to be of course.

*Alias, to bail a Prisoner for the Peace.*

**M**emorand. &c. A.B. de, &c. C.D. de, &c. & E.F. de, &c. venerunt coram me M.D. &c. & manuceperunt pro R.B. de, &c. quod ipse Pacem geret erga cunctam populum Domini Regis, & precipue erga J.S. sub pœna cuiuslibet Manuceptor. 20. li. & prædict. R.B. sub pœna 40. li. & quod prædict. R.B. comparebit coram Justic. Domini Regis ad proximam generalem Sessionem Pacis pro Com. prædict. tenend', &c.

*The Liberate to deliver a Prisoner committed for Felony.*

**F.F.** and **E.D.** Esquires, two of the Justices, &c. to the Keeper of his *Camb.* Majesties Gaol in &c. Greeting. Forasmuch as **F.G.**, &c. Labourer, hath before us found sufficient Main-prise to appear before the Justices of the Gaol-delivery, at the next general Gaol-delivery to be holden in the said County, there to answer to such things as shall be then on the behalf of our said Sovereign Lord objected against him, and, namely, to the felonious taking of two Sheep, (for the suspicion whereof he was taken and committed to your said Gaol:) We command you on the behalf of our Sovereign Lord, that if the said **F.G.** do remain in your said Gaol for the said cause, and for none other, then you forbear to grieve or detain him any longer, but that you deliver him thence, and suffer him to go at large, and that upon the pain will fall thereon. Given under our Seals, this, &c.

*Warrant. ad liberand. Servientem extra Gaolam.*

**Crom. 238** **F**Ranciscus Brakin Armig', unus Justic', &c. custodi Gaola dicti Dom. *Cantabr.* Regis in Com. præd. salutem. Quia W.C. de N. Labourer coram me invenit sufficient. Securitat. essendi coram Justic. dict. Dom. Reg. ad Pacem in Com. præd. conservand', &c. ad proximam general. Sessionem Pacis in Com. præd. tenend', ad respond. tam dicto Dom. Reg. quam C.D. de, &c. de transgr. & contemptu suis, contra formam Stat. de Servientibus nuper edit. & provis. Ideo tibi ex parte dicti Dom. Reg. mando, quod præd. W.C. à prisione tua, si eâ occasione, & non aliâ, ibid. detineat', sine dilatione delib. fac. Dat. &c.

Wheresoever a Justice of Peace upon his own motion and discretion hath committed one to the Gaol or House of Correction for (want of Sureties for) the Peace or Good behaviour, or for being a Vagrant or idle person, or the like, it seemeth the same Justice of Peace may in like discretion afterwards discharge him again, and make his *Liberate* or *Warrant* to deliver such Prisoner. See 14 H. 6. fo. 8. Fr. Imprif. 27.

To deliver a Prisoner committed for the Peace, or Good behaviour.

**F**.B. Armig', unus Justic', &c. Vic. (seu custodi Gaolæ) &c. Quia J.S. in prisona Dom. Reg. in custod. tua exist. ad Sect. cujusd. A.S. de se bene gerend', vel pro Pace gerend. erga Dom. Reg. & cunctum populum suum, (& præcipue erga prædict. A.S.) invenit coram me suffic. Secur', vel quatuor Manu captiores, scilicet, A.B, C, D, E, F, & G, H, &c. qui manucep. pro prædict. J.S. quod ipse J.S. non inferet nec inferri procurabit per se nec per alios eidem A.S. seu alicui de populo dicti Domini Regis, aliquod dampnum seu gravamen de corpore suo per minas, insidias, insultum, seu aliquo alio modo, quod in læsionem seu perturbat. Pacis Domini Regis cedere valeat quovis modo, viz. quilibet eorum Manu captor. sub pœna 20. li. Ideo ex parte dicti Domini Regis tibi mando, quod prædict. J. S. in prisona Domini Regis in custodia tua eâ occasione, & non aliâ, existent. indilatè delib. fac. Dat. &c.

### Releases of the Peace. CHAP. CXXXIX.

#### The Release of the Justice of Peace.

**E**Go præfat. H. Martin, qui supranominatum A.B. ad præd. Securitat. Pacis invenienđ ex mea discretione compuli, eandem Securitat. Pacis (quantum in me est) ex mea discretione 1 die Aug. &c. remisi & relaxavi. In cuius rei testimon. huic præsent. Relaxationi meæ Sigillum meum apposui. Dat. die & anno supradictis.

#### The Release of the party before the same Justice that took it.

*Cantab.* **M**Emorand. quod primo die Aug', &c. præfat. C. D. venit coram me Roger. Thornton, & gratis remisit & relaxavit (quantum in se est) prædict. Securitat. Pacis per ipsum coram me versus supranominatum A.B. petitam. In cuius rei testimon. ego præfat. Roger. Thornton Sigillum meum apposui. Dat. &c.

These two former Releases are to be written under the Recognizance it self: and if the Justice shall onely subscribe his name to the Release, without his Seal, it is well enough, (especially where the Recognizance is without Seal.)

Or the Release of the party may be by it self in this form, *scil.*

*Cantabr.* **M**Emorand. quod C.D. de S. in Com. præd. Yeoman, primo die Aug. anno regni Dom. nostri, &c. venit coram me Isaac. Barrow, Armig', uno Justic. dicti Dom. Regis ad Pacem in Com. præd. conservand. assign', apud W. in Com. præd', & ib. remisit & gratis relaxavit R. W. de S. in Com. præd. Labourer Securitatem Pacis per ipsum C. D. versus dictum R. W. coram me petitam. Dat. die & anno supradictis.

And

And if the Release be made before another Justice which took not, or hath not the Recognizance, it may be thus.

**M**emorand. *quod A.B. de C. in Com. prad. Yeoman, primo die Augusti, Cantabr. &c. venit coram me Rob. Haggar Armig', uno Justic. dicti Dom. Regis ad Pacem in Com. prad. conservand. assign', (apud W. in Com. prad.) & Securitatem Pacis quam habet versus I. S. de, &c. penitus remisit & relaxavit. Dat. die & anno supradictis.*

But note, that none of these Releases will discharge the Recognizance, or the appearance of the party bound thereby, but that he must appear according to the Condition of the Recognizance for the safeguard of his Recognizance. See *hic c.*

*Release for the Good abearing.*

Lamb. 126  
P. R. 22.

**M**R. *Lambert* seemeth to doubt whether the Surety of the Good abearing may be released by the party, (because it seemeth more popular then the Surety of the Peace:) But others do hold that it may be released; and then may the forms of such Release be easily made by those which are before concerning the Peace, using the words *Securitatem de se bene gerendo*, in stead of the words *Securitatem Pacis*. But notwithstanding such Release, it shall be safe also for the party bound, to appear according to the Recognizance.

*Indentures for Apprentices.*

**T**His Indenture made the                      day of, &c.                      witnesseth, that *A. B. C. D.*, and *E. F.*, Overseers for the Poor in the Town of *H.* in the County of *C.*, and *I. S.* Churchwarden of the same Town, by and with the consent of Sir *I. M.* Knight, and *M. D.* Esquire, two of his Majesties Justices of Peace for the County of *Cambridge*, have by these presents put, placed, and bound *I. H.* (being a poor Fatherless and Motherless child) as an Apprentice with *R. W.* of *H.* aforesaid, Baker, &c. and as an Apprentice with him the said *R. W.* to dwell, from the day of the date of these presents, until the said *I. H.* shall come to be of the age of 24 years, (if it be a Woman, then until her age of 21 years, or the time of her marriage) according to the Statute in that behalf provided. By and during all which time and term the said *I. H.* shall the said *R. W.*, his Master, well and faithfully serve in all such lawful business as the said *I. H.* shall be put unto, according to his power, wit and ability; and honestly and obediently in all things shall behave himself towards his said Master, his Wife and Children, and orderly and honestly towards all the rest of the Family of the said *R. W.* And the said *R. W.* for his part promiseth, &c. the said *I. H.* in the Craft, Mystery and Occupation the which he useth, after the best manner that he can or may, to teach and inform, or cause to be taught and informed, as much as thereunto belongeth, or in any wise appertaineth: And also during all the said term to find unto the said Apprentice Meat, Drink, Linnen, Woollen, Hose, Shoes, and other

things needfull or meet for an Apprentice, &c. In witness whereof, &c.

In this Indenture may also be added other the usual Covenants for Apprentices, which see *l. Intr. verbo Covenant, in Apprentices, and West. 581.*

*Forcible Entry.* CHAP. CXL.

The form of the Record (of a Forcible Entry) by the Justice upon his View.

*Cantab.* **M**emorandum, quòd *die mensis* Januar', Anno regni Dom. nostri Caroli, &c. *questus est mihi* Johanni Cotton Militi, uni Justiciar. dicti Domini Regis ad Pacem in dicto Comitatu conservand. assignat', quidam A. B. de W. in dicto Comitatu Yeoman, quòd C. D. de W. præd', & nonnulli alii Pacis dicti Dom. Regis perturbatores ignoti, in domum mansionale ipsius A. B. in W. præd. manu forti ingressi sunt, & ipsi A. B. disseisiverunt, ac ead. manu forti & armatâ potentiâ adhuc tenent, ac proinde petiit à me sibi in hac parte remedium apponi. Quâ quidem querimoniâ & petitione auditâ, ego præfatus Johan. Cotton immediatè ad dictam domum mansionalem personaliter acceßi, ac in eadem domo adtunc inveni præfatam C. D. & quosdam E. F. & G. H. &c. domum illam vi & armis, manu forti & armatâ potentiâ (viz. arcubus & sagittis, gladiis, pugionibus, galeis & loricis) tenentes, contra formam Statuti in Parlamento Domini Richardi nuper Regis Angliæ secundi, anno regni sui decimoquinto tento, provisi, & contra formam diversorum aliorum Statut' : Ac propterea ego præf. Johan. Cotton præd. C. D. E. F. & G. H. adtunc & ibidem arrestavi, proximaque Gaolâ dicti Dom. Regis apud Castrum Cantabr. in dicto Comitatu duci feci, ut de dicta manu forti tentione per visum & recordum meum convictos, ibidem moratur. quousque Fines dicto Dom. Regi pro transgress. suis prædictis fecerint. Dat. apud W. præd. sub sigillo meo, die & anno supradictis.

*The form of the Mittimus (to the Gaol) of such as hold Land by Force.*

*Cambr.* **J**ohn Cotton Knight, one of the Justices of the Peace of our Sovereign Lord the Kings Majesty within his said County of Cambridge, to the Keeper of his Majesties Gaol at, &c. in the said County, and to his Deputy and Deputies there, and to every of them, Greeting. Whereas upon complaint made unto me this present day by A. B. of Weston in the said County, Yeoman, I went immediately to the dwelling-house of the said A. B. of Weston aforesaid, and there found C. D. E. F. and G. H. of aforesaid, Labourers, forcibly and with strong hand and armed power holding the said house, against the Peace of our Sovereign Lord, and against the form of the Statute of Parliament thereof made in the fifteenth year of the late King Richard the second: Therefore I send you (by the bringers hereof) the bodies of the said C. D. E. F. and G. H. convicted of the said Forcible holding by mine own View, Testimony and Record; commanding you in his Majesties name, to receive them into your said Gaol, and there safely to keep them, until such time as they shall make their Fines to our said Sovereign Lord for their said Trespases, and shall be thence delivered by the order of the Law of the Land. Hereof fail you not,

not, upon the peril that may follow thereof. Yeoven at *Weston* aforesaid, under my Seal, the day and year abovesaid.

The form of a Precept (to the Sheriff) to return a Jury for an Inquiry.

**J**ohannes Cotton Miles, unus Justiciar. Domini Regis ad Pacem in Com. Cantabr. Cantabr. conservand. assign. Vicecomit. ejusdem Comitatus salutem. Ex parte dicti Domini Regis tibi mando & præcipio, quod venire facias coram me apud *Balsham* in Com. præd. vicesimo die Septem. proxim. futur. 24. probos, sufficientes & legales homines de vicineto de *Weston* in Comit. præd. quorum quilibet habeat 40. solid. terrar. & tenementor. vel redd. per annum ad minus ultra reprimas, ad inquirend. sup. Sacrament. suum pro dicto Domino Rege de quodam Ingressu manu forti factò in mesuag. cujusdam A. B. apud *Weston* præd. contra formam Stat. in Parliam. Dom. Henric. nuper Regis Angliæ sexti, anno regni sui octavo tento, editi, ut dicitur. Et videas quod super quemlibet Furatorum per te in hac parte impanellandorum viginti solidos de exitibus ad præfat. diem retornes. Et hoc nullatenus omittas sub pœna viginti librar. quam noveris te incursum si in executione præmissor. tepidus aut remissus fueris: Et habeas ibi tunc hoc Præceptum. Teste me præf. Johanne Cotton, decimo die Martii, anno regni Domini nostri Jacobi, Dei gratiâ, Angliæ, Scotiæ, Franciæ & Hiberniæ Regis, Fidei Defensor, &c.

Note, when the Justices of Peace are to inquire upon the Statute of 8 H. 6. (or any other Statute) they may make their Precept to the Sheriff, to return before them Panels to enquire for the King (generally) of such things as shall be enjoyned them on the Kings Majesties behalf, without saying, to enquire of a Forcible Entry, or of a Riot, &c. *Crompt.* 123.

The form of the Enquiry, Indictment, Presentment, or Verdict of the Jury.

**I**nquisitio pro Domino Rege capt. apud B. in Comit. præd. die Julii, anno regni Domini nostri Caroli, Dei gratiâ, Angl. Scotiæ, Franciæ & Hibern. Regis, Fidei Defensor, &c. per sacramentum A. B. C. D. E. F. &c. coram Johanne Cotton Mil. uno Justiciar. dicti Domini Regis ad Pacem in dicto Comit. conservand. necnon \* ad diversas Felonias, Transgress. & alia malefacta in eodem Comit. perpetrata audiend. & terminand. assign. Qui dicunt super sacrament. suum præd. quod A. B. de W. præd. Yeoman, diu legitimè & pacificè seistus fuit in dominico suo ut de feodo de & in uno mesuagio, &c. cum pertinentiis in W. præd. & possessionem ac seisinam suam prædict. sic continuavit, quousque C. D. de, &c. & alii malefactores ignoti, primo die Septemb. ultim. elapso, (\* vi & armis, viz. cum baculis, gladiis, arcubus & sagittis, cultellis, falcastris, lapid. & aliis armis defensivis & invasivis) in mesuagium prædict. &c. intraverunt, ac ipsum A. B. inde disseisiverunt & manu forti expul. & eundem A. B. sic disseisitum & expulsum ab eodem mesuagio, &c. à præd. primo die, &c. usque ad diem captionis hujus Inquisitionis, cum hujusmodi fortitudine & potentia armata extra tenuerunt, & adhuc extra tenent, in magnam Pacis dict. Dom. Regis perturbationem, ac contra formam Statuti in Parliam. Dom. Henric. nuper Regis Angliæ sexti, anno regni sui octavo tento, in tali casu editi & provisi.

\* Pur le necessity de ce. part vi- de hic cap. 145.

\* Yet these words vi & armis here seem to be needless, being necessarily implied in the words manu forti. Vide ante iii. Forcible Entry. Ubi

This last  
clause may  
be omit-  
ted.

*Ubi nullus eorum, nec aliquis alius, cujus statum ipsi aut aliquis eorum habuerunt, aut habuit, aliquid in eodem mesuagio, &c. aut in aliqua inde parcella habuerunt, aut habuit, infra tres annos proxim. ante Ingress. suum prædictum, neque alio tempore præcedente, ad notitiam Furator. præd.*

Alio modo super Statutum 8 H. 6.

\* And yet  
it seemeth  
not best to  
recite the  
Stat. but  
shew the  
Forcible  
Entry, &c.  
and to  
conclude,  
contra for-  
mam Stat.  
in Parliam-  
enti, &c.  
Vide post,  
tit. Indist-  
ments.

*Furator. pro Domino Rege præsentant,\* Quòd cum in Statuto in Parliam. Domini Hen. nuper Regis Angl. sexti, apud Westmonast. anno Regni sui octavo tent. edit. inter cetera continetur, Quòd si aliqua persona, siue aliqua persona, de aliquibus terris aut tenementis manu fort. expell. seu disseisit, vel pacificè expellat, & postea manu forti extrà teneatur, vel aliquod Feoffament. vel Discontinuac. inde post talem Ingressum ad jus possessoris defraudandum & tollendum aliquo modo fiat, habeat in hac parte pars gravata versus talem Disseisitor. Assisam, vel Actionem Transgress. : & si pars gravata per Assisam vel per Actionem Transgress. recuperet, vel per Verdictum vel aliquo alio modo per debit. Legis formam inveniat, quòd pars Defendens in terris & tenementis sic ingressus fuit, vel ea per vim post talem Ingressum suum tenuit, recuperet Quer. dampna sua ad triplum versus talem Defend. & ulterius idem Defend. Finem & redemptionem dicto Dom. Regi faciet, prout in Statut. præd. plenius continetur : Quidam tamen W. W. nuper de W. in Com. præd. Husbandman, & G. D. de eadem Labourer, Statutum præd. minime ponderant, nec pœnam in eodem Statut. content. aliquamiter verentes, die Februar. anno regni Regis Caroli, &c. apud C. in Com. præd. in unum Horreum, existen. liberum tenement. Roberti W. Decani Ecclesiæ Cathedralis W. manu forti ac vi & armis, viz. gladiis, &c. intraver. & Ingressum fecerunt, & præd. Decanum Ecclesiæ præd. è libero tenemento suo manu forti ac vi & armis præd. inde sine judicio expuler. & disseisiver., & L. P. Milit., firmar. Decani præd. Horrei præd., ad tunc & ibid. de præd. Horreo expulerunt & ejecerunt, & præf. Decanum sic inde expuls. & disseisit. à præd. die Februar. anno supradict., usque diem captionis hujus Inquisitionis, de præd. Horreo vi & armis præd. & manu forti extrà tenuerunt, & adhuc extrà tenent, in contemptum dicti Domini Regis nunc, & ad grave dampnum ipsius R. & contra Pacem dicti Domini Regis, & contra formam Statuti præd., &c.*

Another, wherein the Statute is not recited.

*Inquiratur pro Domino Rege, si A. B. & C. D. nuper de, &c. assumptis eis aliis malefactoribus & Pacis Dom. Regis perturbatoribus modo guerrizo arraiat., ad numer. xii. person., quorum nomina ad præsen. Furat. ignor., x. die, &c. apud D. &c. (vi & armis, viz. &c.) in unum mesuag. cum pertin. supra pacificam possessionem. M. L. intraver., & dictum M. à possessione sua præd. expul. & disseisiverunt, & eundem M. sic expuls. & disseisit. à præd. mesuagio cum pertin. vi & armis præd. ac manu forti extrà tenuerunt, & adhuc extrà tenent, contra Pacem dicti Dom. Regis, ac contra formam Statuti Dom. Hen. nuper Reg. Angl. 6. anno regni sui 8. inde edit. & provis.*

Alio



Alio modo super Statutum 5 R. 2.

\* For such  
recital of  
the Stat.  
see after  
in the title  
Indict-  
ments.

**I***nquiratur pro Dom. Rege, &c. \* Quod cum in Statuto in Parlamento Dom. Richardi nuper Regis Angl. secundi post Conquestum, apud Westm. anno regni sui quinto tent. edit', inter cetera ordinat. sit, quod nullus faceret Ingressum in aliquas terras sive tenement. nisi in casu ubi Ingressus datur per Legem, & illo casu non manu forti nec cum multitudine gentium, sed licito & quieto modo tantum; & si quis in contrarium fecerit, & inde debite convict. fuerit, per imprisonment corporis sui puniatur, & Finem ad voluntatem Domini Regis faciat, prout in eodem Stat. inter alia plenius continetur: Quidam tamen T. H. de I. in Comitatu præd. Yeoman, & alii, &c. Statutum præd. minimè ponderant', 2. die Maii, anno Regni Dom. Caroli, &c. vi & armis, viz. baculis, gladiis, falcastris & bifurcis, in unum Clausum I. C. Militis, jacent. apud in Com. præd. in quodam loco ibidem vocat. H, super possession. ejusdem I. C. Militis, ubi ingressus eis aut eorum alicui non datur per Legem, Ingressum fecerunt, & cent. perticas sepium vivar. ipsius I. Militis, ad tunc & ibid. crescent', eradicaver', evulserunt & spoliaverunt, in dicti Domini Regis nunc contemptum, & ad grave dampnum ipsius I. C. Militis, & contra formam Stat. præd. &c.*

Note, that upon Indictments, &c. the Jury be onely charged with the effect of the Bill of Indictment, *sc.* whether the parties be guilty of the Forcible Entry, (or other Fact) or not; and not whether they be guilty in or under such manner and form as the Indictment or Bill specifieth, or not; (*sc.* not whether it were with Staves and Swords, &c. which is but matter of form, and must be kept in every Indictment, though the parties had neither Staff, Sword, nor other weapon.) And so when the Jury say *Billa vera*, they say true, as they take the effect of the Bill to be. And if there be false Latin in the Bill of Indictment, and the Jury find it *Billa vera*, yet their Verdict is true, *sc.* as to the Fact, and their Verdict stretcheth not to the form of the words, but to the effect of the matter, and to the Fact, *sc.* they are to inquire whether there were any such Fact done by the parties, or not. And so though the Bill varie from the day, from the year, and from the place, and the Jury find *Billa vera*, yet they have given a true Verdict. Doctor and Student, 162, 163.

And therefore the Justices of Peace before whom such Indictments of Forcible Entry, or of Riots, &c. shall be taken, shall doe well to inform the Jury that they are bound to regard the effect of the Bill of Indictment, or the Fact, and not the Form.

The Warrant to the Sheriff for the making of Restitution,  
(if the Justice himself will not make it.)

**J***ohan. Cotton Miles, unus Just', &c. assignat', Vicecom. ejusdem Co- Cantab. mit. salut'. Cum per quandam Inquisition. Patria coram me apud B. in Comit. præd. 29. die Julii, &c. super sacramentum A. B. C. D. E. F. &c. ac per formam Stat. de Ingressibus manu forti factis in tali casu provisi, comp. fuit,*

fuit, quòd C.D. &c. & alii, &c. primo die Sept. &c. in quoddam messuag', &c. A. B. &c. in W. præd. vi & armis ingressi sunt, ac ipsum A. B. inde tunc manu forti disseisiverunt & expulerunt, & præd. A. B. sic expulsus à prædict. mess', &c. à præd. primo die Sept. &c. usque ad diem captionis Inquisitionis præd. manu forti & cum potentia extra tenuerunt, prout per Inquisition. præd. plenius liquet de recordo: Ideo ex parte dicti Domini Regis tibi mando & præcipio, quòd (ad hoc debite requisitus) unà cum Posse Comitatus tui (si necesse fuerit) accedas ad mess'. & cetera præmissa, ac eadem cum pertin. reseisiri facias, & præf. A. B. ad & in plenam possess. suam inde, prout ipse ante Ingress. præd. fuerat seisitus, restitui & mitti facias, juxta formam dicti Stat. Et hoc nullatenus omittas sub periculo incumbente. Teste me præf. Jo. Cotton, &c.

This Warrant to the Sheriff to make Restitution shall be under the Teste of one of the Justices only, as it seemeth, *Dyer* 187.

A Certificate of the Presentment or Verdict of the Jury into the Kings Bench, (whereof *vide antea*, tit. *Forcible Entry*.)

A Certificate into the Kings Bench of the Record of a Force viewed by the Just. (whereof *vide antea*, tit. *Forcible Entry*.)

These two former Certificates (and the like) may be done and made by the Justices of Peace by way of a \* Letter (as it seemeth) inclosing therein the said Presentment of the Jury, or the said Record of the Justices; except the same be removed thither by a *Certiorari*, and then may the Justices return them in such manner as appeareth hereafter, tit. *Certiorari*, with some little alteration.

\* See the like *hic c. fine*.

8 Ed. 4. 18.  
Br. Cor.  
152.  
Cro. 133.

Or the Justice of Peace may himself deliver into the Kings Bench such Presentment found before him, or such Record made by him, and the like, and that without any *Certiorari*: for that he is a Judge of Record. See *hic cap.* 145.

*The form of Certificate (or the manner of the Return) of the Writ upon the Statute of Northampton into the Chancery.*

Upon the Writ it self these words may be indorsed,  
*Executio istius Brevis patet in quadam Scheda eidem Brevi consuta.*

*The Return.*

And the Schedule may be thus:

*The Certificate.*

**E**G O Johan. Cotton Miles, unus Custodum Pacis Domini Regis in Com. Cantabr', certifico in Cancellariam dicti Domini Regis, quòd virtute istius Brevis mihi primò deliberati decimo die Apr. anno, &c. publicè proclamari (ex parte dicti Domini Regis) feci apud B, cujus in dicto Brevi fit mentio, prout in dicto Brevi præcipitur; & quòd quidam A. C. & D. E. de F. in Com. præd. Labourers, præd. Proclam. parvi pendent, post Proclamationem prædict. ibid. sic fact', armati iverunt, ac armat. potentiam ibid. duxerunt, sc. duas galeas, unum arcum & decem sagittas, duos gladios, & totidem pugiones, in perturbationem Pacis dicti Dom. Regis, ac terrorem populi sui, necnon in contemptum Stat. in dict. Brevi specificati manifestum: Ac proinde dicti A. C. & D. E. unà cum armaturis suis præd. arrestavi, & eorum corpora ad prox. prisonam dicti Dom. Regis in Com. præd. duci feci, ibidem moratur. donec aliud à dicto Domino Rege pro ipsorum deliberatione habuero in mandatis: Armaturas etiam eorum præd.

*præd. appretiari feci per A. B. C. D. & E. F. de B. præd. Yeomen, ad hoc juratos, qui dicunt super sacrament. suum præd, quòd præd. dux galeæ valent decem solid', & quòd dict. arcus & decem sagitt. valent sex solid', & quòd gladii præd. valent viginti solid', & quòd dict. pugiones valent quinque solid', & sic Armaturæ præd. valent in toto quadraginta. & un. solid', de quibus paratus sum respondere secund. tenorem dicti Brevis. In cujus rei testimonium huic præsent. Certificationi meæ sigillum meum apposui. Dat. apud præd. die & anno supradictis.*

Jo. Cotton.

The form of a Certificate to be made by him which shall take the Oaths of a Justice of Peace by Commission, or *Dedimus Potestatem*.

Upon the Commission ( or *Dedimus potestatem* ) indorse these ( or the like ) words.

*Executio istius Brevis patet in quadam Scheda huic Brevi annexat'.*

And the Certificate may be thus.

**E**GO M. D. in Cancellaria Dom. Regis certifico, me, virtute Brevis Dom. Regis huic Schedul. annexat', x. die mensis Decemb', Anno regni dicti Dom. Regis Jac', Dei gratiâ, Regis Angl', &c. 19. & Scotiæ 55. apud West-Wrattin in Com. Cant. recepisse Sacram. Johan. Millefent Milit', (in Brevi præd. nominat.) tam de officio Custod. Pacis dict. Dom. Reg. in dict. Com. Cant. bene & fideliter faciend', juxta formam Schedul. Brevi præd. annex'. quàm Sacram. specificat in Actu Parliam. Anno regn. Dom. Eliz. nuper Reginæ Angl. primo fact', secundum tenor. Brevis & Schedule Brevi præd. similiter annex', & in omnibus prout in præd. Brevi præcipitur. In cujus rei testim', &c.

M. D.

## Riots. CHAP. CXLI.

The form of the Record of a Riot viewed by the Justices and Sheriff, or Under-Sheriff.

**M**Emorand. quòd vicesimo die Jan', Anno regni Domini nostri Caroli, Cantab. Dei gratiâ, &c. Nos Johan. Cutts Miles, & Johan. Cage Miles, duo Just. dicti Dom. Regis ad Pacem in Com. præd. &c. assign', & Willielmus Wendy Miles, ad tunc Vicecom. ejusd. Com', ad gravem querim. & humilem petition. A. B. de C. in dict. Com. Yeoman, in propriis personis nostris accessimus ad domum mansional. ipsius A. B. in C. præd', & ad tunc & ibid. invenimus D. E. F. G. & H. I. de C. præd. Labourers, ac alios malefactores & Pacis dicti Dom. Regis perturbatores ignotos, (ad numerum decem pers.) modo guerrino arraiatos, viz. gladiis, pugionibus, galeis, loricis, arcubus & sagitt', illicite & riotose aggregatos, & eandem domum obsidentes, multa mala in ipsum A. B. comminantes, in magnam Pacis dicti Dom. Regis perturbationem, ac populi sui terrorem, & contra formam Stat. in Parlamento Dom. Henrici nuper Regis Angl. quart. anno regni sui decimo tertio tento editi & provisi; ac propterea nos præfati Johannes Cutts, Johannes Cage,

& Willielmus Wendy; præd. D. E, F. G, H. I, &c. tunc & ib. arrestari, ac prox. Gaola dicti Dom. Regis in Com. præd. duci fecimus, per visum & recordum nostrum de illicita Congregatione & Rioto præd. convictos, ibid. moraturos quousque Finem dicto Dom. Regi proinde fecerint. In cujus rei testim. huic præsent. Recordo nostro sigilla nostra apposuimus. Dat. apud C. præd. die & anno primo suprad.

And if a man be slain or maimed, or a Rescous be done to the Officer by the Rioters, then the Record ought to be *riotosè occiderunt*, or *riotosè mahimaverunt*, or *riotosè rescusserunt*; but not *felonicè*, nor simply *rescusserunt*, because their Authority is in this case restrained to the Riot onely: so as notwithstanding that Record, the parties may plead Not guilty to the Felony or the Rescous, howsoever for the Riot they are estopped. Lam. 312.

*Mittimus.* The *Mittimus* for conveying the Rioters to the Gaol may (with some few words of change) be made out of that which is here before, for such as hold by Force. See hereof *paulò antè*, amongst the *Precedents* in *Forcible Entry*.

The Precept (to the Sheriff) to return a Jury for an Inquiry upon a Riot.

*Cantabr.* Johannes Cutts Miles, & Johannes Cage Miles, duo Justic', &c. assignat', Vicecomit. ejusdem Comitatus salutem. Ex parte dicti Domini Regis tibi præcipimus, quòd venire facias coram nobis apud I. in Comitatu prædicto die Januar. prox. futuro 24. probos, suffic. & legal. homines de Comitatu prædicto, quorum quilibet habeat terras & tenementa infra dict. Com. liberi tenementi per Chartam ad annum valorem viginti solidor', aut per copiam Rotul. Curie ad annum valorem viginti sex solid. & octo denarior', aut per utramque, ultra omnes reprisas, ad inquirendum pro dicto Domino Rege, ac pro indemnitate nostra in hac parte, super sacrament. suum, de quibusdam illicitis Aggregationibus & Riotois apud C. in Comitatu præd. nuper commissis, ut dicitur. Et hoc nullatenus omittas, sub pœna viginti librar. quam incursumus es, si in executione præmissor. defeceris. Et habeas ibi tunc nomina Furatorum prædictorum, & hoc Præceptum. Dat. sub sigillis nostris die Januarii, anno regni dicti Domini nostri Caroli, &c.

The form of the Inquiry, Indictment, or Presentment of the Jury.

*Cantabr.* Inquisitio pro Dom. Rege, &c. (as before in Forcible Entries) coram Johanne Cutts Milite, & Johanne Cage Milite, duob. Justic', &c. Qui ad hoc jurati & onerati dicunt super sacramentum suum præd', Quòd D. E, F. G, & H. I. de S. in Com. præd. Labourers, simul cum aliis malefactoribus & Pacis dict. Dom. Reg. perturbatoribus ignotis, (ad numerum sept. person.) modo guerrino arraiati, vi & armis, viz. hawberdis, gladiis, arcubus & sagitt', die mensis Jan. ultim. præterito apud C. in Comitatu prædicto, inter horas octavam & nonam post meridiem ejusdem diei, domum mansionalem A. B. de C. prædict. Yeoman, situat. in C. præd', riotosè fregerunt & intrav',

*intrav', & in ipsum A.B. tunc & ibid. insultum fecerunt, ac ipsum tunc & ib. verberaverunt, vulneraverunt, & indignis modis tractav', ita quod de vita ejus desperabatur, in magnam Pacis dict. Dom. Reg. perturbationem, & pop. terrorem, ac contra formam Stat. de Riotis, Routis, & Congregat. gentium illicitis, in Parliam. Dom. Hen. nuper Reg. Angl. quarti an. regni sui decimotertio tento provisi & editi.* Assault.

Note that all Indictments of Riots or Forcible Entries, &c. taken before Justices of Peace must be after this form, *sc. Inquisitio, &c. capta, &c. coram J.C. & R.T., &c.* (if out of the Sessions; or if at the Sessions, then *coram J.C. & sociis suis*) *Fustic. Dom. Reg. ad Pacem in dicto Comitatu conservand' nec non ad diversas Felonias, &c. Qui, &c. ut hic in Forcible Entry. Vide etiam hic, cap. 145. fine.*

Alias.

*Inquisitio, &c. Qui dicunt, &c. quod A.B.C.D. & E.F. de, &c. aggreg. eis quampluribus aliis malefactoribus & Pacis Dom. Reg. perturbator. ignotis, ad numer. sex person', modo guerrino arraiati, per instigationem & procuratorem J.S. 3 die Sept. anno, &c. vi & armis, viz. gladiis, baculis, & aliis arm. tam invasivis quam defensivis, apud Ab. mag. in Com. Cant' injuste, riotose & routose assemblerunt, Clausumq; W.H. Milit. apud A. prad. ad tunc & ib. injuste fregerunt & intraver', & decem partic. Sepium vivar. ipsius W.H. Militis ad tunc & ibid. crescent. eradicaver', evulserunt & spoliaverunt, ad grave dampnum ipsius W.H. ac contra Pacem dict. Dom. Regis, & contra formam diversor. Stat. in hujusmodi casu editor. & provisor.* Quick-hedges destroyed.

Alias.

*Clausum Willihelmi H. (apud F. or vocat', &c.) infr. Paroch. de Ab. magna in Com. prad. riotose fregerunt & intrav', ac Sepes & Clausum prad. W.H. ad numerum sexcent. ped. ad tunc & ib. existent. laceraverunt, irruer. & prostraver', ad grave dampnum, &c. ac contra Pacem, &c.* Hedges cut or pulled up.

Alias.

*AC Foss. ibid. existent. ad tunc & ibid. cum ligonibus & bipaliis foderunt, planaverunt & impleverunt, ad grave dampnum, &c.* Ditches cast down.

Alias.

*Clausum, &c. injuste freger. & intraver', & sex acras Tritici ad tunc & ib. crescent. valoris, &c. de bonis & catallis W.H. prad. ad tunc & ibid. invent', injuste, riotose & routose messuerunt, falcaverunt & asportaverunt, ad grave dampnum, &c.* Cutting and carrying Corn.

Qq

Alias.

## Alias.

Trespafs,  
&c.

*Quoddam Clausum vocat, &c. ejusd. R. T. Armig. freger. & intraver', ac Herbas ipsius R. T. adtunc & ib. crescent. cum quibusd. Averiis non solum depast. fuer', conculcaver. & consumpser', sed etiam prad. Clausum cum equis & aratro araver. & subvert', ad grave dampnum, &c.*

## Alias.

House broken,  
and  
goods taken away.

*Domum cujusd. J. S. apud, &c. freger. & intrav', ac bona & catal. prad. J. S. ad valent. x. li. in domo sua prad. adtunc invent. riotose ceperunt, spoliaver. & asportaver', ac cistas ipsius J. S. in domo sua prad. tunc existent. riotose freger', & sex cochlear. argent. ad valent. 40. s. de bonis & catal. ipsius J. adtunc & ibid. invent. riotose ceper. & asportaver', ac hordeum ipsius J. S. tunc & ibid. in horreo suo invent. riotose ceper. & asportaver', ad grave dampnum, &c.*

Certificate.

As for the Certificate (which ought to be made to the King and the Council, in case that by this enquiry the truth of the fault and Riot be not found) such Certificate may be done in English, by way of a Letter, comprehending the truth of the whole matter, with the certainty of the time, place, and other circumstances of the Fact or Riot, together with the certainty of the names of the Rioters; as also of the names of such who by maintenance, embracery, or otherwise, were any impediment to the finding thereof, with their several misdemeanours: which Certificate or Letter is to be directed and sent by the said Justices of Peace and Sheriff, or Under-sheriff, into the Star-chamber or Kings Bench, &c. within one moneth. See *Br. Præm. I. antea, tit. Riots.*

## A Traverse to an Indictment of a Riot, and the Record thereupon.

Cantab.  
The style  
of the Sessions.

*Alias, sc. ad Sessionem Pacis tentam apud Castrum Cantab. in Com. prad', die Martis proxim. ante Festum S. Matthæi Apostoli, anno regni Dom. nostri Caroli, Dei gratiâ, Angliæ, Scotiæ, Franciæ & Hibern. Regis, Fidei Defensor', &c. coram & aliis sociis suis Justiciar. dict. Domini Regis ad Pacem in Comitatus prad. conservand', necnon ad divers. Felon', Transgr. & alia malefacta in eod. Com. perpetrata audiend. & terminand', assign', per sacramentum duodecim Furator. extitit presentatum, quod J. L. de, &c. R. M. de, &c. & T. L. de, &c. cum divers. aliis ignotis malefact. & Pacis dicti Domini Regis perturbator', modo guerrino arraiati, uniti & assemblati, vicesimo die Julii, in noct. ejusdem diei, ann', &c. vi & armis, viz. baculis, gladiis, clypeis, pugionibus, falcatris, & aliis armis tam invasivis quàm defensivis, apud C, &c. riotose & routose fregerunt & intraverunt, & octo plaustra fæni ad valent', &c. adtunc & ibid. existent' de bonis & catallis dicti adtunc & ibid. injuste & illicitè ceperunt & asportaver', contra Pacem dicti Dom. Reg. &c. & contra formam Stat. inde editi & provis. per quod precept. fuit Vic. Com', quod non omitteret, &c. quin venire faceret eos ad respond', &c. Posteaque, sc. prad.*

The Indictments.

Process  
ad respond.

*sc. præd. die Martis prox. ante Festum S. Matthæi Apostoli, anno supradicto coram præf. Justic. venerunt præd. J. L. R. M. & T. L. in propriis personis suis, & habit' audit' Indict. præd. separat' dicunt, quod ipsi non sunt inde culp', & ad hoc ponunt se sup. Patriam, & A. M. qui pro Dom. Reg. in hac parte seq' similit', &c. Ideo veniat inde furata coram Just. dict. Dom. Reg. ad Pacem in Com. præd. conservand. assign', &c. ad Sessionem Pacis apud* Traverse Jury.  
*&c. die Martis prox. post Epiphaniam Dom. tunc prox. futuro tenend', & qui, &c. ad recogn', &c. quia tam, &c. Idem dies datus est tam præf. A. M. qui sequitur, &c. quam præf. J. L. R. M. & T. L. &c. Ad quas quidem Sessiones tent. apud* Day given.  
*præd. in Com. præd. die, &c. coram Dom. T. P. G. N. & H. P. Milit', & sociis suis Just. dict. Dom. Reg. ad Pacem in Com. præd. conserv', necnon ad divers. Felon', Transgr. & alia malefacta in eod. Com. perpetrata audiend. & terminand', assignat', venerunt tam præf. A. M. qui seq', &c. quam præf. J. L. R. M. & T. L. in propriis personis suis; & Furator. præd. per Vicecom. Com. prædict. ad hoc impanellati & exacti, viz. J. F. J. G. &c. similiter venerunt; qui ad veritatem de præmiss. dicendam triati & jurati, dicunt super sacramentum suum, quod præd. J. L. R. M. & T. L. culpa-* The Verdict:  
*biles sunt, & eorum quilibet culpabilis est, de Transgress', Contemptu & Ri-*  
*otto præd. in Indictamento prædict. superius specificatis, modo & formâ prout superius vers. eos supponitur. Ideo concessum est per Curiam, quod præd. J. L. R. M. & T. L. capiantur ad satisfaciend. dict. Dom. Reg. de Finibus suis oc-* The Judgment.  
*cassione Transgress', Contemptus & Riotti præd'. Qui quidem J. L. R. M. & T. L. ad tunc & ibid. præsent. in Cur. petierunt se ad Finem cum dict. Dom. Rege occasione præd. admitti: Et inde ponunt se separat. in misericord. Dom. Regis. Et assessatur Finis ejusd. J. L. per Just. præd' ad tres lib', sex solid', octo denar'; & Finis ejusdem R. M. assessatur ad vigint. solid'; & assessatur* Cap. pro Fine.  
*Finis ejusdem T. L. ad quinque libr. bonæ & legalis monetæ Angliæ, ad opus* Ponunt se in misericordiam Regis. Fine affect.  
*& usum dicti Dom. Reg.*

I have inserted this former Precedent, for that it discovereth much matter worthy the Justices observation.

## Indictments. CHAP. CXLII.

**F**OR the form of Indictments in cases of Forcible Entry and Riots, I have here before set you down certain Precedents; nevertheless for that these Indictments be the chief foundation whereupon the whole business and Trial is after to be grounded and built, I thought it not amiss to observe here these few general Rules, as well concerning the matter as the form of these and all other Indictments or Presentments to be taken before the Justices of Peace.

First, in these Indictments of Forcible Entry and Riots (as also in all other Indictments of Felony or Trespas) it is good to say, *Against the Peace*, or other words to that effect.

Lamb. 484  
17 H. 8. c. 8 Also these words, *With Force and Arms, to wit, with Swords, &c.* are not of necessity, yet it is good to use them, especially if the circumstances of the Fact do require them; for these circumstances do either aggravate or diminish the Offence. *Stamf. 94.*

Qq 2

But

But these words [with Force and Arms] are needlesse in an Indictment of Forcible Entry, because they are implied in the word Force.

Yet note, that in all the Indictments of Treason, Murther, Felony, or Trespases, these words [with Force and Arms] are necessary to be put in: (Otherwise it seemeth of Offences which are against the Peace only, as Conspiracies, Deceits, Slanders, Escapes for Debt, and the like.) *Finch.*

Also in Indictments found upon Statutes, it is not needful, nay, it is not safe to recite the Statute at all: for as the recital is not necessarie, so the mis-recital thereof in the matter, or in the year, day, or place, is fatal to the Indictment, and maketh it void. But it is safe and sure to draw the Indictment with this Conclusion, *sc.* Co. 4. 48.  
Br. Parl. 87.

Against the form of the Statute in such case made and provided, (if the Indictment be founded upon the Statute:) or, against the form of several Statutes in such case made and provided, (without naming any special Statute, where many Statutes do concern one Offence) *Crom. 104.* Co. 4. 48.  
Dyer 363.

Yet the Offence against the Statute must be certainly described in the Indictment, and the substance and material words in such Statute must be fully set down therein. *Plow. 1. & 79. Lamb. 485. Co. L. 98. b.* Plow. 1. & 79

Also all Indictments and Presentments (being in the nature of Declarations for the King against the Offenders) ought to contain certaintie, and shall not be supplied or maintained by implication, intendment, or argument, *Co. 5. 120. Plow. 84. 122.* and therefore six principal things be most commonly requisite in all Presentments before the Justices of Peace. *viz.* Lamb. 463  
&c.  
Br. Indictment 6. 24  
34. 46, &  
47.  
Stamf. 96.

1. The Names and Surnames, as well of the parties indicted, as of the parties offended; with the addition of the Degree, Mystery, and the Dwelling-place of the party indicted, (*sc.* both the Town and County.)

Yet in some cases an Indictment, that he did procure unknown persons, or that he did take the Goods of an unknown person, &c. or the like, may be good. See *plus Lam. 470. 476. Br. Indictment 6, 10, 11. Dyer 99. & Plow. fol. 85. b.*

2. The Time, *sc.* the day and year when the Offence was done.

3. The Place, *sc.* the Town and County where it was done, as at *B.* Br. Indictment 24,  
41, 42.  
Lamb. 478

4. The Name or quality of the thing in which the Offence is committed: *viz.* of dead things it may be, the Goods and Chattels, expressing them certainly; of live things, Horse, Oxe, Sheep, &c. but not Goods and Chattels. So of Entry, &c. into Land, &c. to express certainly whether it be House, Land, Meadow, Pasture, Wood, &c.

5. Also the Value or price of the thing is commonly to be set down, to aggravate the fault.

6. The Manner of the fact, *sc.* the manner and nature of the Offence; as whether it be Felony, or Trespass, or penal Statute, &c. See *Lamb. 480. Br. Indict. 7. 36.* Lamb. 480

And yet for the form of Indictments the Jury are not strictly tied thereunto, (*sc.* to the day, year, or place, &c.) but chiefly to the manner of Fact. *Vide hic cap. 140.*

*Verity.* Also Indictments ought to be framed so near the Truth as may be, and the rather, for that they are to be found by the Jury upon their Oaths. *Co. 9. 119. Plow. 84.*

Yea,



Yea, an Indictment, being *verdictum, id est, dictum veritatis*, and a matter of Record, ought to set forth all the truth that by Law is requisite; for *de non apparentibus & non existentibus eadem ratio*: And every part of the Indictment material ought to be found by the Oath of the Jurors, and is not to be supplied by Averment; otherwise the Indictment will be insufficient.

But false Latin shall not make void an Indictment. *Co. 5. 121.*

And to this purpose note, that false Latin may be said to be of three sorts.

First, words of Art, being words significant allowed by our Law, and known to the Sages of the Law, although not allowed by the Grammarians, nor having the Countenance of Latin: as *Messuagium*, *Toftum*, *Gardin*, *Bruera*, *Murdred*, *Burglariter*, *Felonice*, &c. these and the like are words of Art, and are allowed in the Law; yea the Civilians and Physicians do use the like, and every Science have their *vocabula artis*.

The second sort are false writing or incongruous Latin: as *viginti* for *vinginti*, *Septinginti*, for *Septingenti*, *presato* for *prafato*, &c. These two former sorts shall not avoid or make void any Indictment, Grant or Deed.

The third sort are words insensible, especially if the words of Art are written insensibly or falsly: as *Murdredum* for *Murdrum*, *Burgariter* for *Burglariter*, *Feloniter* for *Felonice*. These words *Murdredum*, *Burgariter*, and *Feloniter*, (being no Latin words, nor allowed by Law as words of Art) if they shall be in any place or point material, they do make void the Indictment: except where such words insensible be surplusage. See *Co. 4. 39, 42. & 5. 121. & 10. 133.*

And yet *quare*, for these words have the Countenance of those other words of Art, and do shew to the Court sufficiently what is thereby meant, and seem to be onely the false writing of the Clerks, and therefore might be amended in case of Indictment. See *Coke 10. 133.*

### Process. CHAP. CXLIII.

*The forms of Process (upon Indictments of Trespas) which also the Justices of Peace out of their Sessions may in some few cases make out against Offenders.*

NOTE, that as the authority of making Process upon Indictments is given by express words in the Commission to the Justices of Peace in their Sessions; so is it given by express words in some Statutes to the Justices of the Peace (yea to one Justice of Peace) out of their Sessions to make out Process, upon Indictments found (before them,) against Offenders, or upon Information against them, as if they were indicted of Trespas in Sessions; as you may see here, *tit. Forcible Entry, & tit. Sheriffs, antea.*

Lamb. 317.  
501.

Also in other cases, and by some other Statutes, this authority of making out Process (against Offenders) by the Justices of Peace out of their Sessions seemeth to be implied of congruence, or rather of necessity: as where any Statute doth give power or authority to the Justices or Justice of Peace out of their Sessions to inquire, hear, and determine,

(as *hic, tit. Riots, tit. Transportation, tit. Tyle, & tit. Weights*) in these and in all other such cases, where the Justices may enquire, hear and determine, there, after Indictment or Presentment of the Offence, the said Justices may make out Process against such Offenders, to cause the Offenders to come and answer; for unless the Offenders do come in, either *gratis* or by Process, the Justices cannot proceed to hear and determine. Again, in the former cases of Transportation, Tyle and Weights, as also in all other cases where any Statute doth give power to the Justices of Peace out of their Sessions to hear and determine, either upon the Confession of the Offenders, or upon Examination of the Witnesses, (whereof see *antea, tit. Hear and determine, &c. cap.* ) in all such cases it seemeth the Justices of Peace may grant out their Process or Warrant against such Offenders, to appear before them, to answer to their said Offences; and thereupon may proceed to examine, hear and determine the Offence, as being convict thereof upon such Confession or Examination, without any Indictment or Process.

The difference between Process and the Precept or Warrant of the Justices of Peace seems to be this:

The Precept or Warrant of the Justice is onely to attach and convene the party before any Indictment or Conviction, and may be made either in the name of the King, or of the Justice, as is before shewed:

Process is alwaies in the name of the King, and usually after an Indictment found, or after other Conviction.

*Now these Processes seem to be as followeth.*

1. *Venire fac.*

**F**irst, if the Offender be absent, a *Venire facias* shall be awarded by the Justice or Justices of Peace under his or their own *Teste*: And if thereupon the Offender be returned sufficient, (and maketh a Default) then *Distingas* is awarded, which *Distingas* shall go forth *infinite*, till the Offender come in: But if a *Nihil habet, &c.* be at the first returned, then after the *Venire facias* a *Capias*, then an *Alias*, and after a *Pluries* shall go forth, and after that an *Exigent*, till the party be taken, or yield himself, or else be Outlawed.

2. *Distingas, or Capias.*

And these are the ordinary Processes upon all Indictments of Trespass against the Peace, or of other Offences against penal Statutes, not being Felony, or a greater Offence, (if it be not otherwise ordained by Statute.) But the Process is commonly grounded upon an Indictment, and is onely to cause the Offender to come in, and to make his answer; and therefore if the Offender be present, and confess such Indictment, Information, or Offence, then needeth there no Process at all, for he shall be forthwith committed to Prison, (commonly,) there to remain until he hath paid his Fine, or given Surety for it. 1 H. 7. 20. & Br. Imp. 100.

Also these Processes shall be alwaies directed to the Sheriff, (who is the immediate Minister and Officer of the King to execute all Process) except the Sheriff himself or his Officers be parties: but if the Justice of Peace be to grant out Process against the Sheriff, Under-Sheriff, or their Officers offending contrary to the Statute, 8 H. 6. cap. 9. or 11 H. 7. cap. 15. which you may see here before, it seemeth such Process shall

shall be directed to the Coroners of the County, and shall be served by them; and so are divers Books, as 2 H. 6. 12. 8 H. 6. 30. 9 H. 6. 11. & 18 Ed. 4. 7. and others. And so also the Oath of the Justices of Peace seemeth to bind them.

Br. Franch  
18.

Note also, that this Process ought alwaies to be made in the name of the King: and for that the King is a party, it must be with a *Non omittas propter aliquam Libertatem*, &c. But the *Teste* thereof may be under the name of the Justice of Peace.

If the Offender be within any Liberty or Franchise, the Sheriff is to enter the Franchise, and to execute the Process himself, (and not to write to the Bailiff of the Franchise, because the King is a party.) See 41 Ass. 17. Br. Franch. 18. 31.

The forms of these Processes to be made by the Justice of Peace out of the Sessions seem to be as followeth.

The *Venire facias* thus.

CAROLUS, Dei gratiâ, Angliæ, Scotiæ, Franciæ & Hiberniæ Rex, Fidei Defensor, &c. Vic. Com. Cantabr. salutem. Præcipimus tibi, quòd non omittas propter aliquam Libertat. in Balliva tua, quin venire fac. A. B. de C. in dicto Com. tuo, Yeoman, coram R. M. Milite & M. D. Armig', duobus Justic. nostr. ad Pacem conservand', necnon ad divers. Felonias, Transgr. & alia malefacta in dicto Com. perpetrata audiend. & terminand', assignatis, apud Linton in Com. tuo die Maii prox. futur', ad respond. nobis super quibusdam Articulis versus ipsum A. B. presentatis: & habeas ibi tunc hoc Præceptum. Teste R. M. & M. D. apud Linton die, &c.

The *Distringas* thus.

CAROLUS, Dei gratiâ, Angliæ, Scotiæ, Franciæ & Hibern. Rex, Fidei Defensor, &c. Vic. Com. Cantab. salutem. Præcipimus tibi, quòd non omittas propter aliquam Libertat. in Balliva tua, quin eam ingrediaris, & dstringas A. B. de C. in Com. tuo, Yeoman, per omnia terras & tement', &c. Et quòd de exitibus eorum respondeas, &c. Et quòd habeas corpus ejus coram, &c. Justic', &c. ad respond', &c. Teste, &c.

The Writ of *Capias* thus.

CAROLUS, Dei gratiâ, Angliæ, &c. Vic. Com. Cant. salutem. Præcipimus tibi, quòd non omittas propter aliquam Libertatem in Balliva tua, quin eam ingred', & capias I. D. de A. in Com. tuo, Yeoman, &c. si invent. fuerit in Balliva tua, & eum salvo custod. fac', ita quòd habeas corpus ejus coram R. M. Milite, & M. D. Armig', duobus Just. nostris ad Pacem conservand', necnon ad divers. Felonias, Transgr. & alia malefacta in eodem Com. tuo perpetrata audiend. & terminand', assign', apud L. in Com. tuo die Martis prox. futur', ad respondend. nobis de divers. Transgr', Contempt. & Offensis de quibus ipse indictat. existit: Et habeas ibi tunc hoc Breve. Teste R. M. & M. D. apud Linton, sexto die Jan. &c. anno regni nostri, &c. Ad quem diem Willielmus Wendy Miles, Vic. Com. præd. retorn', quòd ipse

*se non est inventus in Balliva sua, & ipse non venit. Ideo praeceptum est, sicut Alias, &c.*

The *Alias Capias*.

**C**AROLUS, &c. *Vic', &c. Praecipimus tibi, sicut alias tibi praecipimus, quod non omittas, &c. verbatim ut supra.*

*Ad quem diem, &c. ut supra, & ipse non venit. Ideo praecept. est Vic', sicut Pluries, &c.*

The party may appear *gratis*, and so avoid the Attachment or Arresting of his body; and that is the cause that the Entry is made, & *ipse non venit*.

The *Pluries Capias*.

**C**AROLUS, &c. *Vic', &c. salutem. Praecipimus tibi, sicut plur. tibi praecipimus, quod non omittas, &c. ut supra.*

*Ad quem diem Willielmus Wendy Miles, Vic' Com. praed', retorn', quod praed. C. D. non est inventus in, &c. & ipse non venit. Ideo praecept. est, quod exigi faciat, &c.*

The *Exigent*.

**C**AROLUS, &c. *Vic', &c. salutem. Praecipimus, quod exigi fac. C. D. de A. in Comit. tuo Yeoman, quousque secundum Legem & consuetudinem regni nostri Angl. utlagatur, si non comparuerit, & si compar', tunc eum capias, & salvo custodir. fac', ita quod habeas corpus ejus coram R. M. Milite, & M. D. duobus Justic. ad Pacem nostram conservand', necnon ad divers. Felon', Transgr. & alia malefacta in eodem Com. tuo perpetrat. audiend. & terminand', assignat', apud L. in Com. tuo die Sept. prox. futur', ad respond. nobis de diversis Transgr', Contempt. & Offensis de quibus ipse indictatus existit: & habeas ibi tunc hoc Breve. Teste R. M. & M. D. apud L. octavo die Septem. anno regni nostri, &c.*

*Ad quem diem Willielmus Wendy Miles, Vic. Com. praed', retorn', quod ad Com. tentum apud Cantabr. die anno regni Dom. Regis nunc, &c. & sic ad quatuor alios Com. tunc prox. sequent. ibid. tent', praed. C. D. exactus fuit, & non comparuit. Ideo utlagat. fuit.*

These Processes are sent out, to the end that either the party shall come or be brought in to make his answer, and to be justified by the Law; or else, that (for his contumacy) he shall be Out-lawed, and so be deprived of the benefit of the Law: but the power of the Justices of Peace endeth with the Utlary, for they can make no *Capias Utlagatum*, but must certify the Utlary into the Kings Bench. Lamb. 503

Also all such Processes (as well of *Capias*, &c. as of Utlary) may be stayed by a *Superfedeas* issuing from other Justices of Peace, (out of Sessions) testifying that the party hath come before them, and hath found Sureties for his appearance to answer to the Indictment, or to pay his Fine, &c. See before. Lamb. 500

Note that this Authority of the Justices of Peace in sending out these Processes

The Com-  
missions  
14 H. 7. 8.  
Br. P. 5. 7.

Proceſſes (being out of their Seſſions) is beyond the bounds of their Com-  
miſſion. And again, by the Commiſſion one Juſtice of Peace alone cannot  
grant a *Capias*, nor other Proceſs, but two Juſtices of Peace at the leaſt  
muſt doe it, and that fitting the Court, and in their Seſſions; and yet ne-  
vertheleſs, in theſe former caſes, the Statutes (expreſſly, or by neceſſary im-  
plication) giving ſuch authority to the Juſtices of Peace, or to one Juſtice  
alone, and that out of the Seſſions, are ſufficient Warrant and Commiſſion  
to the Juſtice of Peace therein, as it ſeemeth.

### Traverse. CHAP. CXLIV.

Lamb. 325. **A**fter that ſuch Proceſs (or other Proceſs *ad reſpond.*) is awarded againſt  
the party, it ſeems he may come in and yield himſelf to pay his Fine:  
or elſe he may offer his Traverse to the Indiſtment found againſt him before  
the Juſtices of Peace, and the Juſtices ought to allow him his Traverse  
againſt it; which Traverse is to take iſſue upon the chief matters of the In-  
diſtment, or to deny the point of the Indiſtment. The formal words of  
the Traverse are in Latine, *Absque hoc, &c.*

See Lamb.  
522, 523.  
& hic cap.

But although the Juſtices of Peace have power in divers caſes, as afore-  
ſaid, (out of their general Seſſions) to take Indiſtments, and after ſuch In-  
diſtments found to award a Proceſs *ad reſpondendum* againſt Offenders;  
and to hear and determine thereof; and the Offenders alſo have liberty  
to come in, and to ſpeak, and may answer for themſelves, and may offer  
their Traverse, and that the Juſtices of Peace are to allow of and to receive  
the ſame: yet *quare* whether the Juſtices of Peace (out of their general Seſ-  
ſions) may try ſuch Traverse being tendred to them, (except in caſes of  
Riots and Forcible Entries) without which Trial all the reſt may ſeem idle.  
(*Vide hic cap. 94. fine.*) Or, upon the Traverse tendred, they muſt cer-  
tify or ſend the Inquiſition or Indiſtment ſo found before them into the  
Kings Bench, or unto their Quarter or General Seſſions of the Peace, there  
to be tried and determined: howſoever it is ſafeſt in all caſes (after ſuch  
Traverse tendred) to certify or deliver ſuch Inquiſition or Indiſtment in-  
to the Kings Bench, or to their next Quarter Seſſions, and ſo to refer the  
trial of the Traverse, and farther proceedings therein, to them. See hereof  
*tit. Riot, and Forcible Entry, cap.*

### Certiorari. CHAP. CXLV.

*The return of a Certiorari ſent to remove an Indiſtment may be thus;*

**F**irſt, upon the back-ſide of the Writ of *Certiorari* indorſe theſe or the  
like words:

*Executio iſtius Brevis patet in quadam Scheda eidem Brevi an-  
nexa.*

And that Schedule may be thus.

*Ego*

*Cantabr.* **E**GO Michael Dalton, *unus Custodum Pacis ac Justiciar. Dom. Regis ad Pacem in dict. Com. Cantabr. conservand', necnon ad divers. Felonias, Transgr. & alia malefacta in eodem Com. perpetrata audiend. & terminand', assignator', virtute istius Brevis mihi deliberati, Indictamentum illud (unde in dicto Brevis fit mentio) una cum omnibus Indictamentum tangentibus, in Cancellar. dicti Domini Regis distinctè & apertè sub sigillo meo certifico. In cujus rei testimonium ego pref. M.D. his presentibus sigillum meum apposui. Datum apud W. die mensis Anno regni, &c.*

Then take the Record of the Indictment, and close it within the Schedule, and seal and send them up both together with the *Certiorari*.

Now to shew what is farther meet for the Justice of Peace to know concerning this Writ of *Certiorari*, and their Certifying or Return thereof.

After an Indictment found before Justices of Peace, a *Certiorari* is procured by the means of some party indicted or grieved, thereby to remove such Indictment from the said Justices, and to convey it to Justices of a higher authority, to the end the party may either traverse such Indictment above, or may there avoid it for insufficiency of form or matter.

And this *Certiorari* is the Kings Writ, issuing sometimes out of the Chancery, and sometimes out of the Kings Bench, and may be directed to any inferiour Court of Record, or Officer of Record, (as to a Justice of Peace, Sheriff, Coroner, or Escheator) to be certified of any Record which is before any of them: and first an *Alias*, then a *Plur'*, and lastly an *Attachment* lieth against them that should send it, (if the Record be not certified accordingly,) or it seemeth a *Subpœna* is used at this day. Fitz. 245. a

If it be returnable into the Chancery, then are the words, *In our Chancery*; and if into the Kings Bench, then the words are, *Nobis mittatis*; and if into the Court of Common Pleas, then, *Before the Justices of our Common Bench*.

The *Certiorari* may be sometimes to remove and send up the Record it self, and sometimes but only the Tenor of the Record, (as the words therein be) and it must be obeyed accordingly. Pl. 393.

If there be variance between the *Certiorari* and the Record which is to be removed, the Justices need not to certify such Record. Fitz. 245. b

A Justice of Peace may deliver or send into the Kings Bench an Indictment found before him, or a Recog. of the Peace taken by him, or a Force recorded by him, without any *Certiorari*: but if a Justice of Peace having a Record in his hands be discharged of his Office, now he cannot certify it without a *Certiorari*, although he be made a Justice of Peace again. See 8 H. 4. f. 5. *Br. Record* 64. Crompt. 130. a. & 133. b.

If a *Certiorari* be to send up the Indictment of *A*, in which Indictment some others be indicted together with the same *A*, yet need not the Justice of Peace to make Certificate concerning any but *A*: For although they be named joyntly, yet be they indicted severally, and the King may pardon *A*. without forgiving the other. 6 Ed. 4. 5.

If a *Certiorari* shall come to the Justices of the Peace to remove an Indictment, and the party sueth not to have it removed, but suffereth it to lie still after the day of return of the *Certiorari*; yet it seemeth the Justices of Peace ought (*ex officio*) to send it away, because the Writ containeth 6 H. 7. 16. Br. Jud. 17.

eth in it self a Commandment to them so to doe, and so is a *Superfedeas* of it self to the Justices of Peace to stay their proceedings. See *antea, tit. Forcible Entry*.

And yet by others, the Justices may proceed upon the Indictment. *Vide Cromp. 132. 133. & 166. Dyer 245.*

Lamb. 497. And albeit the *Certiorari* be a *Superfedeas* of it self, yet may the party upon the *Certiorari* purchased have a *Superfedeas* also directed to the Sheriff, commanding him that he arrest him not upon that Record before the Justices of Peace, *Fitz. fol. 237.* In which place also he doubteth whether the Justices of Peace themselves ought not of duty to award their own *Superfedeas* to the same effect, after that the Writ of *Certiorari* is brought to their hands.

Lamb. 438. If a *Certiorari* come to the Justices of Peace to remove an Indictment, and in truth the Indictment was not taken till after the date of that *Certiorari*, yet if the Indictment be removed thereby, it is good enough, for that they be both the Kings Cours, (1 Ric. 3. 4.) and in such a case it is now usual to remove it. *Vide Fitz. 17. d.*

But all Writs of *Certiorari* being to remove any Indictment of Forcible Entries, or Riot, or of Assault and Batterie, found before the Justices of Peace, shall now be delivered at some Quarter-Sessions of the Peace, in open Court, &c. Stat. 21 Jacobi cap. 8. See *hic antea, tit. Forcible Entry, cap.*

Lamb. 501. All the higher Courts at *Westm.* may write to the Justices of Peace, to certifie their Records that do make for the trial of causes depending in them, as you may read, 19 H. 6. 19. where they of the Common Pleas did send to the Justices of Peace for an Indictment, because in a Writ of Conspiracie (brought or depending before them) it was material to have it.

In some cases the Justice of Peace may certifie a Record (by him made, or found before him out of Sessions) without any Writ of *Certiorari* therefore to him directed. *Vide antea, tit. Forcible Entry.*

In other cases he must of duty certifie his proceedings, but may spare to certifie the Record, until a *Certiorari* come to him for it. See hereof *antea, tit. Surety for the Peace.*

For the manner of the Writ of *Certiorari* to remove Records from one Court to another, or from the Justices of Peace, or other Officers of Record, to any the higher Courts at *Westminster*, &c. there are divers forms and sorts thereof, as you may see in *Fitz. Na. Br. fol. 242, &c.*

I will only set you down here one form for all, and so conclude.

The form of *Certiorari* out of the Chancerie, to certifie a Recognizance taken by a Justice of Peace in the County, for the keeping of the Peace, &c.

F.N.B. 18.  
c. Crom.  
148.

CAROLUS, Dei gratiâ, Angliæ, Scotiæ, Franciæ & Hibern. Rex, Fidei Defensor, &c. Custod. Pacis nostr. in Comitatu Cant', & eorum cuilibet, salutem. Volentes certis de causis certiorari super tenorem cujusdam Securitatis Pacis, (vel Bonigestus) quam A. P. Armiger nuper invenit coram vobis, vel aliquo vestrum, de eo quod ipse dampnum vel malum aliquod R. S, aut alicui alii de populo nostro, de corpore suo nec faceret, nec

*nec fieri procuraret quovis modo; vobis mandamus, quod tenorem Securita-  
tis Pacis (sive Boni gestus) predicti nobis in Cancellar. nostr. in Octabis  
Purificat. beatae Mariae prox. futur', ubicunque tunc fuerit, sub sigill. vestr.  
vel unius vestrum distincte & aperte sine dilatione mittatis: Et hoc sub poena  
centum libr. nullatenus omittatis, nec aliquis vestrum omittat. Teste me-  
ipso apud Westmonast. die Novembris, anno regni nostri sexto.*

The Return hereof see *antea*, tit. *Surety for the Peace*, cap.

« But if the *Certiorari* be with these words, We command that you send  
« all and singular the Recognizances aforesaid, with all matters concerning  
« the same, as fully and wholly as before you, &c. they were late taken, &c.  
« here the Justice of Peace, together with the Recognizance, must certify  
« and send his Examinations taken, or the Warrant whereby the party was  
« brought before him to find such Surety, and such other matter or cause as  
« he knoweth why such Surety was required against the party; that so the  
« Court above may proceed against the party (if cause be required) accor-  
« ding to Law and Justice. And the Certificate may be thus.

**I** *M. D.*, one of the Justices of the Peace in the County of *Cambridge*, do  
certify his Majesty (in his Court of Chancery or Kings Bench) that I,  
by virtue of a certain Warrant, the tenor of which is hereunder written, did  
compel *R. C.*, in the same Writ named, to find sufficient Surety according to  
the form of the said Warrant. And I the said *M. D.*, by virtue of the said  
Writ, the said Recognizance in the said Writ mentioned, and all things  
touching the same, to his Majesty, under my Seal, do hereby distinctly send,  
as in the said Writ is of me required. In witness whereof, &c.

*The tenor of the above-mentioned Warrant followeth.*

*Then underneath write the Warrant, &c. verbatim.*

*Nota, quod Record ne ferra remove mes per Certiorari, ou Corpus cum  
causa. Fitz. Record 3.*

Note also that upon a *Certiorari* to remove an Indictment of a Riot  
or forcible Entry, &c. the Return must have these words, *Necnon ad diver-  
sas Felonias, &c.* For if the Return mentions only that they are Justices of  
the Peace, without the former words, *Necnon ad diversas Felonias, Trans-  
gress. & alia malefacta, &c.* according to the Commission, the Return is in-  
sufficient. 12 H. 7. 25. 2 R. 3. 9. Br. *Indictment* 32. 50.

Also note, that no *Certiorari* shall be granted to remove any Recognizance,  
except the same Writ be signified with the proper hand of the Chief Justice,  
or (in his absence) of one of the Justices of that Court out of which the said  
Writ shall be awarded or made. Statute 1 & 2 Ph. & M. cap. 14.

*Deus*

*Minimus Magnus.*

A T A B L E





# A T A B L E O F The Principal Matters Contained in this Book.

A.

**A** *Bjured persons* cap. 52, 81, 104, 118  
*Accessaries in Treason*, 119. *in Felony*,  
*ib. in Trespass*, 68. *before the Façt*, 119  
*after the Façt*, *ib.* for buying stolen  
*Goods*, *ib.* by taking his own *Goods* from the Fe-  
*lon*, *ib.* by suffering a *Felon* to escape, *ib.* *Accef-*  
*sary of an Accessary*, *ib.* the principal must  
*first be attainted*, *ib.* in *præmunire* *ib.*  
*Advices to the Justices of Peace* 2. 77, 131  
*Adultery* 87  
*Affray*: what private men may doe therein, what  
the *Constable*, and what the *Justice of Peace*, 8  
made upon an *Officer*; *ib.* where an *affray* is  
*misprision of Treason*, 102. in the *K. Palace*, *ib.*  
*Agnus Dei, &c.* 52, 101  
*Ale-house-keepers*, 7. &c. their true use, *ib.* suffering  
*Townsmen* therein, *ib.* selling less then the  
*Affize*, *ib.* the *Forfeiture*, *ib.* how *Forfeitures*  
shall be levied, and to what use, *ib.* *Ale-house-*  
*keepers* must be allowed by two *Justices*, and  
may be put down by two *Justices*, *ib.* *keepers*  
without *Licence*, *ib.* *Townsmen* continuing  
therein, *ib.* *Drunkards*, 7, 87, 107. *Ale-house-*  
*haunters*, 7, 87. what persons disabled, and pla-  
ces unmeet to keep an *Ale-house*, 7. *Inn-keepers*  
when to be bound as *Ale-house-keepers*, *ib.* *Or-*  
*ders for Ale-house-keepers*, 134. lodging such  
for whom they will not answer *ib.*  
*Alien* 80  
*Annum, diem, & vastum* 103, 121  
*Apprentices.* See *Labourers.*  
*Approver* 125

*Armour*, 9. wearing it offensively, 86, 99.  
what weapons be offensive, 9, 86, 89. where it  
may be seized and taken away as forfeit, 9, 27,  
55. who may wear *Armour*, 9, 55, 130. taken  
from *Reesuf.* 53. prisoners having weapons, 9.  
*Arrest*, 129. what, *ib.* for what cause, *ib.* who  
may be arrested, *ib.* who may not, 68, 129. *Ar-*  
*rest* by a private person, *ib.* by whom, *ib.* whe-  
ther the person may break the doors, 78. where  
the *Officer* is resisted. 128, 129  
*Artificers.* See *Labourers.*  
*Assaults.* See *Battery.*  
*Attainder* 121  
*Authority* must be pursued 6

## B.

**B** *Arretor*: who, 10. bound to the *Peace*, *ib.*  
or *Good Behaviour*, 87. in *Courts* and  
*Countrey* 10  
*Bastardy.*  
*Punishment of the Parents*, and the woman to be  
committed to the *House of Correction*, 11, 87.  
the reputed father bound to be forth-coming, *ib.*  
two *Justices* are to take order for the *Town*, 11  
form of an *Order*, 132. if the *Justices* cannot  
agree, 11. to what *Bastards* these *Statutes* ex-  
tend, *ib.* the woman to be examined upon *Oath*,  
*ib.* *Bastard* killeth his *Mother* 103  
*Battery* justifiable.  
by reason of *Authority* over others, 84. in de-  
fence of my person, 84, 90. in defence of others,  
*ib.* in defence of my *Goods*, *ib.* in defence of  
*Justice* *ib.*

R r

Baker

## The TABLE.

Baker	76	ther deceit in Linnen cloth	ib.
Bailment, 12, 125. what it is, 125. by whom, ib.		Commission for the Peace	5
the manner, ib. who are bailable, ib. who are		Commissioners	3, 6, 60
not bailable, ib. where by one Justice, 12, 125		Concealment punishable	34, 101, III, II3
the party bailed forced to find new Bail	82,	Plus hic Misprision.	
	125	Confederacies where Felony	III
Bawdry	87	Confession where a Conviction	124
Good Behaviour	86	Conjuration	III
Surety for it, ib. the difference between it and		Constables, 16. their beginning, 1, 16. by whom	
the Peace, ib. for what cause it is grantable, 87.		chosen, 16, 132. what manner of men, 16, 8	
form of the Warrant, 132. the form of the Re-		Conservators of the Peace, 1, 16, 105, 132. their	
cog. 134. the Recog. removed by a Certiorari		duty upon the Justices Warrant, 81, 128. as-	
87. what act shall forfeit a Recog. 86, 87. if		saulted, 79, 128. resisted, 8, 129. neglect	
it may be released, 87. A Superfedeas there-		their Office, 7, 56. their Oath	132
of, ib. taken by Supplicavit, 86. grantable by		Plus tit. Warrants.	
one Justice	ib.	Contracts	32
Block-wood. See Dying.		Conventicles	19
Breaking of Prison	103, 117	Conviction, what	121
Bridges	13	Corn	17
Who shall repair them, 13. the power of the Ju-		Trespassers in Corn	68
stice to tax Inhabitants thereof, ib. to institute		Plus tit. Weights.	
Collectors, Surveyors, and other Officers, every		Coroner	1, 104, 109
of which shall be countable, 13. they may lay		Cozeners	87
their stuff upon any ground adjoining	13	Counterfeiters	20
Buggery	118	Cutpurse	III
Burglary	110		
The time and manner, ib. the place, ib. the in-		D.	
tent, ib. the punishment	III	Dodand	109
Burning of houses	116	Deputy made by a Justice	55, 85, 128
Or a stack of Corn	116, 118	made by an Officer	ib.
Busbel	76	Discretion defined, 6. where things are referred to	
Butter	14	the Justices discretion, 6. how to be used	ib.
		Drapery. See Cloth.	
C.		Dying	18
Carriages	15	Drunkard. See Ale-houses.	
Certiorari, to remove a Recog. for the P.		Bound to the Good Behaviour	87
82, 85, 87. to remove a Presentment of a Forci-		kill a man	107
ble Entry, 27, 96. to remove an Indictment		Doves	43, 114
from the Sessions, 92. The return of a Certio-		E.	
rari	85	Ecclesiastical persons	80
Chattels	114	Eggs of Wild Fowl	43
Churchwardens	7, 25	Hawks	118, 126
Cinque-Ports	80	Egyptians :	
Circumstances considerable in examination	6,	Where Felons, 118. where Rogues, 56. their	
	124	Goods seized	22
Claim	32, 89	Embezzling provision for War	118
Clergy	105, 106, III, II2, 118, 119	Embezzling Records	ib.
Cloth, the Just. may search and sell tenters, 16		Enfant compellable to serve, 36. may bind himself	
may appoint Overseers yearly for Woollen		as a Servant, 36. bound to the Peace, 80. may	
cloaths, 16. faulty cloth cut in pieces and for-		commit Force, 88. committing a Riot, 100. if to	
feited, ib. the Overseers duty, ib. he that refuseth		be imprisoned for such Offence, 88, 100. Felo	
to be an Overseer, his Forfeiture, ib. Spinsters, &c.		de se, 103. may commit Homicide, 106. may	
imbezilling their Wool, and Clothiers refusing		commit	
to pay the Spinsters, ib. for stretching, and o-			

## The TABLE.

commit Larceny, 114. a Felon by Statute, 118.  
acknowledgeth a Recognizance 80  
Escape 117  
Without arrest, ib. where Felony, ib. where fi-  
nable, ib. & 129. voluntary, ib. negligent, ib.  
where the Town or Hundred charged, 109. ta-  
king the prisoner after his escape, 117, 129. one  
in execution escapes, 129. who answerable for  
an Escape 117  
Eaves-dropper 87  
Evidences. See Felons, Witnesses.  
Examination of Felons, 24, 122, 124. of Wit-  
nesses, 77, 122. of the Offenders, ib. upon Oath,  
ib. certified into another County 122  
Excise 23

## F.

**F**alse imprisonment 124  
*Fairs.* See *Markets.*  
*Felonies by the Common Law* 103, 116  
*Felons*, 24. the diversity of felonies, and what power the Justices of Peace have in the examination of felonies, 24, 103, &c. to 117. by Statute-Law, 117. *Man-slaughter*, 105. *Murder*, 104. *Homicide or Chance-medly*, 105. *Misadventure*, 107. *Homicide justifiable*, 108. *Homicide by an Idiot*, &c. 106  
*Burglary* }  
*Burning* } See under their proper titles.  
*Robbery* }  
*Theft* }  
*Persons not chargeable for Felony*, 106. *concealment of Felony*, 119. *Principals and Accessories*, ib. *Examination of Felons*, 122, 124. *Evidence against Felons*, and by what persons, 122. where the bringers can or will bring no Evidence, 24, 120. *Evidence against the King*, 123. the Justices proceedings against Felons out of Sessions, 24, 122. If the Justices at their Sessions may hear and determine Felonies, 24. *Rules concerning Felony*, 104, 120. *Felonies wherewith the Justices of Peace cannot meddle*, 24, 118. *Felons Goods when to be seized* 121  
*Felo de fe* 103  
*Fesants.* See *Partridges.*  
*Fines by whom assessed* 4  
*Ought to be reasonable* ib.  
*Fish* 25  
*Justices of Peace are Conservators of Rivers*, & may preserve fries and spawn, ib. They may search *Viſtualling-houses in Lent* 25  
*Fish-days* ib.

	For Treason	102
	For misprifion	ib.
	In Præmunire	ib.
	Of Felo de fe	104
	For Felony	121
Forfeitures	For Misadventure	108
	Se defendendo	110
	For a Deodand	109
	For petty Larceny	112
	Of a Recognizance. See Recogn.	
	By Juft. of Peace	31, 55, 101, 125
Forcible Entry.		27, 88

What Justices ought to doe herein, viz.	273
1. To arrest the Offender	27
2. To record the Force	ib.
3. To imprisen Offenders	ib.
4. To fine them	ib.
5. To enquire thereof	ib.
6. To make restitution	ib.
What Justices are to doe upon the Statute of Northampton	ib.
What Forcible Entry is	89
Of a Rent common	ib.
What Forcible detainer	ib.
By words	ib.
By commanding or consenting	ib.
By what persons	ib.
By one person alone	ib.
Upon particular tenants	ib.
Where justifiable	91
Force lawful	90
Force punishable where the Entry is lawful	88
Force of Weapons	89
Enquiry upon Force	27, 88, 92
Indictment thereupon	92, 93
Traverse of Indictment	96
Restitution, to whom	95
By whom Restitution shall be made	94
Causes to stay Restitution	96
Several remedies for the parties put out	92
By three or more is a Riot	27, 89
Two sorts of Force	ib.
Forging of Evidences Felony	118
Fowl. See Partridges.	
Fresh suit after Felons	120

G.

**G**ames unlawful 28  
 Justices of Peace may enter such places, ib.  
 may imprison the Owners, ib. may imprison the  
 players, ib. what Games are lawful, what not,  
 28. what persons especially prohibited ib.  
 Gaoler 116, 117, 129  
 Good Behaviour. See Behaviour.

# The TABLE.

**Guns** 29  
Who may carry, or shoot in them, *ib.* what they may shoot at, *ib.* their length, *ib.* what private persons may do therein, *ib.* what Justices of Peace may do *ib.*

## H.

**H**abeas Corpus 311  
Hares 86, 87, 98, 99  
Hawks imbezilled or concealed, Felony 39, 118  
Hawking in eared Corn, or untimely 43  
Hawks eggs 126  
High-ways 31

To be enlarged by the Just. and cleansed of Trees and Bushes, 31. they may present them of their own knowledge, *ib.* to be amended, and by whom 31. Ditches cleansed, *ib.* the duty of Householders in this behalf, *ib.* the duty of Surveyors, *ib.* Regia via, what, and why so called, 31. what interest the King hath herein, *ib.* what the Lord, *ib.* who shall have the Trees therein, *ib.* A Commission for mending of High-ways, *ib.* how the Forfeitures shall be levied, *ib.* the Surveyors authority, *ib.* what a Plow-land is, 31, 76. what a Draught is, 31. mended by particular persons, *ib.* High-ways in Suffex, Surrey, and Kent, *ib.*

Homicide. See Felony.  
Horses stolen, and sold in Fair or Market 32  
Houses of Correction 136  
Hue and Cry, 33. Every Justice of Peace may cause it to be made, *ib.* how it ought to be followed, *ib.* All men ought to follow it, 120. Defect therein punishable 57, 120  
Hunting of Deer, it is Felony, 34. where but 3. Trespas, *ib.* where a Riot, *ib.* keeping Dogs not having a sufficient living 34, 43, 126  
Plus tit. Hare, Partridges.

## I.

**J**ews 80  
Imprisonment, 129. for what cause, *ib.*  
By whom, *ib.* the place, *ib.* the time, *ib.*  
the manner, *ib.* the end *ib.*  
Indentures for Apprentices 139  
Inn-keepers, plus Ale-house-keepers.  
Indictments, rules for the form thereof 142  
Infidel 80  
Information against Felons 122, 123, 124  
Against other Offenders 20, 21  
Inrollment 35  
Intent, where punishable 97, 101, 105, 111  
Jurisdiction 129  
Justices: Justices of Peace defined, 2. their begin-

ning and name, *ib.* their Office, 4, 5. their power, 6. how limited, *ib.* their Oaths, 4. are Judges of Record, 2. their Commission, 5. their Authority determineth by divers means, 3. what they may hear & determine out of Sessions, 77. they must pursue their authority, 6. assaulted or abused, 78, 86, 131. advices to them, 2, 131. they are not to dispute Writs out of higher Courts 81

Justices of the Kings Bench 81, 93  
Justices of the Common Pleas 1  
Justices of Assize *ib.*  
Justice perverted, whereby 2

## K.

**K**ing: Capitalis Justic. 1  
His death, what alteration it maketh 3

## L.

**L**aws: The antiquity and excellency of the Common Law 1

Labourers, 36. who are compellable to serve, *ib.* an Infant compellable to serve. See tit. Infant.  
Refusing to serve, 36. what retainer is good, *ib.* departure of a Servant, *ib.* retaining another mans Servant, *ib.* taking away a Child or Servant not retained, *ib.* Servants for how long retainable, *ib.* their testimonial of departure, *ib.* giving or taking excessive wages, *ib.* Labourers, &c. assaulting their Master, *ib.* Apprentices how to be retained, 36. how to be by one Justice discharged, *ib.* compellable to serve by one Justice, *ib.* misused by his Master, *ib.* seized by his Guardian, *ib.* Who may take Apprentices, and in what manner, *ib.* None prohibited to use divers Trades, *ib.* Using a Trade not being Apprentice thereto, *ib.* A Maid-servant marrieth 36

Larceny. See Theft.

Leet 1  
Lent-time 26  
Libellers 87, 101

Licences.  
Who may give licence to keep an Ale-house 7  
To beg, not good 46, 56  
Licence to travel *ib.* & 135

Log-wood. See Dying.

London 37  
Erecting of small Cottages or Tenements in or near London *ib.*

Lunatick. See Non sana memoria.

Main-

# The TABLE.

## M.

**M**ain-prise. See Bailment.  
Mault deceitful, taken away, 38. Disobey-  
ing the restraint of Maulding ib.  
Man-slaughter, what 106  
Marriage to two is Felony 118  
Marriages 39  
Marriners 40  
Plus Rogues and Souldiers.  
Market overt : where sale there altereth the  
propriety 32  
Measures. See Weights.  
Misprision, what 102  
Of Treason 101, 102  
Of Felony 119  
Mittimus : the forms and rules for it 125, 136  
Moneth, how reckoned 35  
Multiplication of coin 118  
Murther-defined, 105. to kill any Officer without  
provocation, ib. By a Physician, ib. by a  
Thief, 105. by sufferance of a beast, ib. by an  
harlot, ib. upon the sudden, ib. by poison-  
ing, 95. intending one, and killing another, ib.  
intending, but a Trespas in all that be pre-  
sent, ib. rules therein ib.

## N.

**N**ews false spoken of the King or Peers 126  
Night-walkers 41, 87  
Noble personages 80, 129  
Non sanæ memoriæ, three sorts 107  
Surety of the Peace granted to them, or against  
them, 80. may be chastised, 84. Felo de se, 104  
killeth another, 107. committeth theft, 115. bound  
by Recognizance, 80. committeth Treason 97  
Nusance 98

## O.

**O**fficer. See tit. Sheriff, Constable, War-  
rants.  
Oath, 42. of the Justices of Peace, 4. of Suprema-  
cy, ib. of Allegiance, 4, 42, 52. of Under-Ske-  
riffs, 61. of Sureties for their ability, 82. of  
Witnesses, 77, 122. of the Offender never, ib. of  
Constables, 132. of him that requireth surety  
for the Peace, 79. All men may be sworn to  
keep the Peace, &c. 42

## P.

**P**ardon, 105, 107. none for murther, ib. hang-  
ed after pardon for making an affray, 105.

for Misadventure, 105, 107. how to be obtain-  
ed, ib. granted by the King 105  
Partridges, 43. taken in the night, ib. taking or de-  
stroying them by any means forbidden, ib. who  
are excepted out of those Statutes, ib. destroying  
their eggs, ib. buying and selling them, ib. Set-  
ting-Dogs and Nets taken away by Justices, ib.  
Tramellers bound from taking them, ib. de-  
stroying of Mallard, and other such Fowl ib.  
Park: none may make without the K. Licence 34  
Peace, what in Law, 3. breach of the Peace, what  
ib. the Justices power therein, 44. Conserva-  
tors of the Peace by the Common Law, 1. the  
power of such conservation by the Common  
Law, 1. what act is a breach of the Peace 84  
Surety for the Peace, 79. granted by discretion, ib.  
upon request, ib. by word, ib. by writing, ib. by  
virtue of Supplicavit, ib. against whom, and  
for whom, 80. for what cause, 79, 80. where one  
offers himself to the Justice to be bound, 81.  
Form of the Warrant, 132. form of the Recog.  
133. the Recog. removed by a Certiorari, 82.  
the Recog. is at the discretion of the Just. bound  
in 1000 l. 82. during life, ib. discharge of the  
Recognizance, 83. forfeiture of the Recog. 84  
Release of the Peace, 83. death of the party, ib.  
death of the King, ib. death of the Sureties, ib.  
how the Officer shall execute such Warrant, 81.  
going to another Justice, ib. Sureties sufficient  
82  
Plus tit. Surety, Superfedeas, Supplicavit, &  
Recog.  
Peers. See Noble personages.  
Perjury 122  
Piracy 103  
Plague 45  
Poor, 46. Overseers to be yearly appointed, and by  
whom, ib. their authority and duty, ib. are to ac-  
count yearly, ib. Overseers and their defaults,  
ib. refusers to pay their rates, ib. persons over-  
rated, their remedy, ib. Corporate Towns, ib. a  
Parish in two Counties, ib. Parents and children  
must relieve each other, ib. what Poor must  
charge the Parish, ib. may not be suffered to beg,  
ib. none to be put out of any Town, ib. disturbing  
the execution of this Law, ib. how many sorts of  
Poor, ib. that will not work as they are appointed  
ib. Stock given to the Poor, 46. Justices may  
license some to travel, ib. but none to beg, 46,  
56. who may beg, ib. a breviat of such forfei-  
tures as are given to the Poor 46  
Pope. See Rome, and Recusants.  
Popish Priests : to receive them, &c. is Felony, 101  
maintenance of the Popes authority is treason  
ib.

# The TABLE.

Poisoning	103, 105, 118	Release of the Peace by the King 83. by the Just.	
Posse Comitatus what 55. where it may be raised	27, 55, 130	83. by another Justice 83, 139. by the party	
Possession: what preserveth a mans possession	89	83. of the good behaviour	87
Presentment made by the Justice	31	Rescous of a Felon	116, 119
Preachers disturbid	47	in other causes	34, 56
Præmunire	101, 119	Restitution of lands, &c. See Forcible Entry.	
Prærogativa Regis	28, 90, 105, 120	Restitution of Goods stoln	122
Principals 108. plus tit. Felons.		Revenew	54
Prison: prisoner 49. who may make a prison of his own house 129. prisoners conveyed, at whose charge 49, 129. Gaoler refusing to take a prisoner ib. breaking of prison 119. prisoners fettered	129	Riots, &c.	
Process granted by Justices out of Sessions.		The power of the Justices in Riots 55, 97. what every Justice ought to do therein ibid. what the two next Justices are to do therein 55. what Riot is 97. what a rout ib. the number ib. the intent 97. the lawfulness 98. the manner 99. by whom 99. The Sheriff to be aiding therein 55. 1. They must go to the place 55. 2. They must remove the force ib. 3. They must record what they see ib. 4. They must imprison the Offenders ib. 5. They must fine the Offenders ib. where they must enquire thereof ib. certificate thereof to the King ib. the Justices may bear and determine thereof after inquiry ib. such Offenders as shall be punished in the Star-chamber ib. if such Offenders escape ib. Commission to enquire of the justices defaults ib.	
Proclamation to stay an affray 8. to remove a force	27	Rogues 56. who shall be taken for Rogues 56. incorrigible and dangerous Rogues ib. their punishment ib. how and whither to be conveyed ib. no child under seven years ib. a married woman ib. Disturbers of the execution of this statute ib. Constable neglecting his duty ib. all persons ought to apprehend Rogues ib. two Justices may determine all doubts upon this Statute ib. general searches to be made for Rogues ib. the Justices duty therein ib. who may beg ib. where Rogues are Felons	118
Property, 3 sorts	114	Robbery 57. to charge the Hundred, what the person robbed must first do ib. Contribution to the parties sued ib. Contribution from other Hundreds ib. for what robberies the Hundred is not chargeable ib. apprehending any of the Thieves excuseth the Hundred ib. where the Lord shall be answerable	ib.
Purveyors	50	Robbing of houses	118
Punishment, but once for one Offence 11. twice for one Offence	52, 53.	Rome. See Pope.	
Q.		Persons maintaining the Popes authority, 101	
Q		Books maintaining such authority ib. obtaining Bulls from Rome ib. reconciling any to the Pope	ib.
Quakers	51	Resolutions of the Judges of Assises	118
R.		S.	
R		Sabbath-day	59
Ransome.	55	Sacraments	58
Rape, Ravishment	111	Salt-peter-men	90
Rates. See Taxations.		Servants.	
Razing of Records	118		
Rebellious assemblies	97, 118		
Recognizances defined 127. the forms 134. for the Peace 82. for the good behaviour 134. what dischargeth such Recog. 83. what shall be a forfeiture of such Recognizance 84, 87. Recognizance forfeited shall be certified 82. Recognizance removed by a Certiorari 82. who may take Recognizances 1, 2, 82, 127. what Recognizance the Just. may take out of Sessions 127. must be certified at the next Sessions 17, 82, 127. where to the next Assises 17, 122, 127. acknowledged by an Infant, or the like 80. how to be levied 134. taken by prescription for the Peace 1. taken by the Sheriff 1. may not be cancelled 83. other rules concerning Recognizances	127		
Recusants 52. Popish, any Justice may certifie into the Kings Bench ibid. their submission ib. negligent upon any Sunday ibid. their oath of Allegiance ib. not to come within ten miles of London 52. married women, and their houses searched 52. where they must abjure 52. where Felons 118. confined to five miles 52. Popish Priests every one ought to discover	52, 101		

# The T A B L E.

*Servants. See Labourers.*  
*Murdering their Masters* 103. robbing their Masters 113. killing another in defence of their Master 90, 109  
*Sewers* 60  
*Sheriffs* 61. a Sheriff cannot be a Justice of Peace for that year 3. Conservators of the Peace by the common Law 1. may take a Recognisance, 1, 79. may arrest breakers of the Peace, &c. 90. may cause pursuit for Felons 120. may go armed 9, 130. may arrest others that go armed, &c. 9. may seize their armour ib. may take Posse Comitatus, and where 130. where he may break open mens doors 90. where he may justifie to beat or kill 84, 90, 109. to kill him or any of his Officers is murder 105. suffering an escape 117, 129. may take his prisoner again that escaped, 129. may fetter his prisoners ib. is to aid the Justices to suppress the Riots, &c. 55. is to aid them in forcible Entries 27, 88. bail prisoners 125. answerable for escape of Felons out of gaol, 117. Justices of Peace may examine Sheriffs proceedings in their Courts 61. also the defaults of their Bailiffs in their County Courts ib. also their Estreats for their Shire-americiaments ib. also the defaults of their Collectors for such americiaments ib. the Justices of Peace may take the Oaths of the Under-sheriffs, and their officers ib.  
*Souldiers purloining their Horse and Armour* 62. suffering shipwreck ib. rates made for maimed souldiers ib. cannot get work ib. where Felons 118  
*Statutes expounded* 89  
*Steward of a Lect* 1  
*Steward of other Courts* ib.  
*Stock of the Shire : to what uses they are to be employed* 63. how to be assessed 63. rules for making rates ib. the remedy for them that are rated wrongfully. 63  
*Surety for the Peace* 79, &c. granted upon the Justices discretion ib. for the good behaviour 86. for whom, and against whom the Peace shall be granted 80. the parties must offer sureties 81. how this surety for the Peace may be commanded, and that commandment executed 81. what things shall discharge a Recog. of the Peace 83. what act forfeits a Recognizance 84  
*Superfedeas* 81  
*Supplicavit : for the Peace* 79, 85. for the good behaviour 86. the form of the Writ 85. the return of the Writ 85. the execution thereof. ibid.  
*Suspicion of Felony : causes thereof* 124

*Subsidie* 64  
*Swans, their Eggs* 43  
*To steal Swans is Felony* 114  
*Swearing* 65

## T.

**T**axations : Rules for making rates 60, 63  
*Testimonial* 36, 56  
*Theft, what* 111  
*Of what things* 114. the manner 113. notwithstanding delivery of the goods ib. by a servant ib. by the wife 115. by an Idiot, &c. ib. by an Infant ib. by taking his own goods 114, 119. finding goods 114. by false message ib. rules in Felony 120  
*Threatnings, to burn houses or goods* 118. Of imprisonment, &c. 79. where it amounteth to a forcible detainer. 89  
*Tobacco not to be planted* 66  
*Transportation* 67  
*Trades. See Labourers.*  
*Traverse, what* 141  
*To an Indictment of a Riot or force* 27, 55, 96. where to be tried ib. & 141  
*Treason. High-Treason defined* 101  
*What acts ib. by non compos mentis* ibid.  
*Counsellors and consenters ib. Receivers and accessaries after* 102. Concealers ib. the forfeiture ib. the punishment ib. where Justices of Peace may enquire thereof 24. how far the Justices of Peace may deal therein. 24, 102  
*Petty treason what* 103. What acts ib. &c. the forfeiture, 103. the punishment ib.  
*Trial of offences done beyond the Sea* 102  
*Trespases* 68  
*Tyles* 70  
*Tyrhes* 69

## V.

**V**agabonds. See Rogues.  
*Vitnallers. See Ale-house-keepers.*  
*Villain* 80

## W.

**W**arrants of the Justices of Peace, 11. by parol, ibid. & 81. by writing, ib.  
*Rules for the forms, 128. to whom to be directed, 4, 128. for what cause grantable, 128. how the officer shall carry himself in the execution of it, 81, 128. whether the officer may make his deputies, 128. if he need shew his Warrant, ib. Where he may break open the doors, 90. whether he may dispute the Justices Warrant,*

# The TABLE.

warrant, 128. what plea for him in an action of false Imprisonment, 124. abusing the Justices warrant, ib. before what Justices it is returnable, 81, 128. Upon granting a Warrant for Felony, it is safe for the Justice to bind over the Plaintiff	128	Trespassers in Words.	
Warren, not without Licence	34	Women covert bound to the Peace, 80, 100. acknowledge a Recognizance, 80. commit a Force, 89. commit a Riot, 108. commit any Trespass, ib. where the husband shall be chargeable, ib. indicted without her husband, ib. within what penal Statutes women covert be, ib. commit theft, &c. 115. compelled by the husband, 115. commit murder, ib. no accessory by relieving her husband, 115, 119. Popish Recusants, 52. ravishing a Woman Felony, aiders thereto Felons. Stealing a maid under 16 years of Age. &c. is Felony, ib. carnal abusing a woman-child under ten years of age is Felony, ib. taking away a mans Wife with his goods is Felony, ib. stealing a Woman being an Heir, &c. is Felony, ib. accessories thereto Felons	ibid.
Water-men	72	Wine	74
Wax	73	Witnesses examined upon Oath, 77, 122. where two at the least, 122. what persons, ib. persons formerly discredited, ib. a caveat to all witnesses	ibid.
Weapons. See Armour.			
Weights and Measures, 76. defaults of Officers in great Towns punishable by Justices of Peace, ib. One weight and measure through the kingdom, ib. two used notwithstanding, viz. Troy-weight, and Averdupois, ib. the one of these by custome, the other by Law, ib. Averdupois-weight, ib. Troy-weight, ib. Measures of Corn, ib. Measure of Ale, Wine, and Beer, ib. of Bread, ib. of sundry other things, ib. measure of length, ib. in every Shire-town there must be standards of Brasses, ib. in every Market-town there must be sealed weights, ib. none may use weights unsealed, ib. the Officers Fee for sealing, ib. all defaults of Buiers and Sellers punishable by the Justice of Peace. ib.		Y.	
Witches. See Conjuratation.			
Observations for their better discovery	118	Y Ear, how accounted	35
Wood	75		



# A T A B L E containing fundry Precedents concerning the Peace, and matters within the Authority of the Justices of the Peace out of their SESSIONS.

<b>A</b> <i>Le-house-keepers.</i>	
<i>A License to keep an Ale-house, Chap. I 5. Orders to be prescribed to Ale-house-keepers, 134. Recog. with the condition, ib. Warrant to suppress them, 132. Mittimus of him that victualleth contrary to commandment, 136. A Warrant to levie money forfeited by an Ale-house-keeper or Ale-house-haunters</i>	132
<i>An Order for a Bastard</i>	ibid.
<i>Bailment of a Felon</i>	138
<i>Plus hic, Liberate.</i>	
<i>Capias</i>	144
<i>Certiorari, 145. the return thereof</i>	ibid.
<i>Certificate or return of a Supplicavit</i>	85
<i>Certificate or return of the Writ of Northampton in case of Forcible Entry</i>	140
<i>Certificate of the presentment, or Record of a force into the Kings Bench</i>	140
<i>Certificate of a Riot to the Kings Council</i>	55
<i>Certificate or return of the Commission for taking the Oath of the Justice of Peace</i>	141
<i>Distringas</i>	144
<i>Exigent</i>	144
<i>Forcible Entry.</i>	
<i>The Record made by the Justice upon his view</i>	140.
<i>The Mittimus of the Offender to the Gaol</i>	ibid.
<i>The precept to the Sheriff to return a Jury for the enquiry</i>	140.
<i>The form of the Enquiry, Presentment, or Verdict</i>	140.
<i>A Warrant to the Sheriff to make restitution,</i>	140.
<i>Certificate of the presentment into the Kings Bench</i>	140
<i>Hue and Cry</i>	132
<i>Indentures for Apprentices</i>	139

<i>Indictments upon a forcible entry</i>	140
<i>Upon a Riot 130. General rules for the form of the Indictments</i>	140, 142
<i>Liberate, to deliver a felon</i>	138.
<i>To deliver a servant out of the gaol</i>	ibid.
<i>Licenses: plus Testimonial.</i>	
<i>To keep an Ale-house</i>	135.
<i>to brew</i>	ibid.
<i>to travel</i>	ib.
<i>Mittimus to the gaol.</i>	
<i>Of a Felon 136. Of Ale-house-keepers contrary to commandment</i>	ibid.
<i>Of forcible holders of possession</i>	140.
<i>Of Rioters</i>	141.
<i>Of the reputed father of a Bastard, &amp;c. that refuseth to give surety for his appearance</i>	136
<i>Mittimus to the house of Correction. Of an incorrigible or dangerous Rogue</i>	136.
<i>Of such as leave their charge upon the Town, and run their way</i>	136.
<i>Of a disorderly servant, or other idle person</i>	ibid.
<i>Process granted out of Sessions</i>	143
<i>Recognizance</i>	134
<i>Single ib. For the Peace ib. For the good behaviour</i>	ibid.
<i>To give evidence against a prisoner</i>	ib.
<i>To appear at the Sessions to answer certain contempts</i>	ibid.
<i>For Ale-house-keepers</i>	ib.
<i>Records made by the Justices of Peace out of their Sessions, of forcible entry or detainer</i>	140, &c.
<i>Of Riot</i>	141.
<i>Of shooters in Guns unlawfully</i>	137
<i>Release of the Peace</i>	139.
<i>Of good behaviour</i>	139
<i>Return. See Certiorari, Certificate, and Supplicavit.</i>	
<i>Riots. The form of the Justices record upon their view</i>	141.
<i>the Mittimus of the Rioters to the gaol</i>	

# The T A B L E.

<i>gaol</i> 141. the precept to the Sheriff for a Jury	<i>ibid.</i> their style and teste 132. for the Peace
<i>ibid.</i> the enquiry of the presentment of the Jury	132. for the good behaviour 132. for misdemeanors generally 132. to attach one upon
141. the Certificate thereof to the King, &c.	suspicion of Felony 132. to search for stolen
141. the traverse to an Indictment of a Riot	goods 132. for such as can give in evidence <i>ib.</i>
141	for one that hath dangerously hurt another
Supersedeas.	132. for the reputed father of a Bastard-child
Granted <i>ex Officio</i> , to discharge a Warrant for	<i>ibid.</i> for Overseers to give up their account
the Peace 133. granted upon a Supplicavit <i>ib.</i>	132. to distrain such as refuse to pay their
De capias indictatum de transgressionem <i>ib.</i> De	rates 132. for a general search for Rogues <i>ib.</i>
capias pro fine <i>ibid.</i> De Capias indictatum	for a Fugitive servant 132. for one refusing
de Felonia 133. De exigi facias, to stay an	to serve 132. for suppressing of an Ale-house-
Outlaw <i>ibid.</i>	keeper 132. to levy money forfeited by Ale-
Testimonial, for the conveying of a Rogue 124.	house-haunters 132. to remove a Constable, and
such as have suffered shipwreck, Mariner	swear another 132
or Soldier 135	
Warrants, 128, 132. by word, by writing, the form	

Soli Deo Gloria.

Deus

*Minimis Magnus.*